

NASD NOTICES TO MEMBERS 94-55

Members Reminded To Report Address, Contact Changes To NASD

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 Membership Department would like to remind members of the importance of keeping the names of executive representatives, as well as mailing addresses for branch offices, up to date. Making certain that Central Registration Depository (CRD) is kept informed of changes in address and contact people ensures that regular notices and special mailings will be properly directed. This is especially important at this time because we are approaching the period for elections.

Article III, Section 3 of the NASD By-Laws requires each member to appoint and certify to the NASD one "executive representative." The executive representative of your firm must be a registered principal and a senior manager within the firm. The individual designated will represent, vote, and act in all NASD affairs, and will receive NASD mailings, including *Notices to Members, Regulatory & Compliance Alert*, and updates to the *NASD Manual*.

To change the address for mailings sent to *branch offices*, or to update the contact name, a properly executed Schedule E of Form BD must be sent to CRD. Notifications submitted on U.S. Post Office address change cards **cannot** be processed.

To change the executive representative of your firm, you must submit written notification to the NASD Corporate Secretary. The form to use for this purpose is included with this Notice. You may submit the original or a photocopy to:

Joan Conley
Corporate Secretary
c/o Membership Department
9513 Key West Avenue
Rockville, MD 20850.

EXECUTIVE REPRESENTATIVE FORM

Date: _____

NASD Member Firm: _____

Firm CRD #: _____

The NASD Member Firm referenced above designates (name) _____,
Social Security # _____, CRD # _____, as
Executive Representative to the NASD as of (date) _____. This person is a member of
the firm's senior management and is a registered principal with the firm.

Name of person preparing this form: _____

Telephone number: _____

Return this form to:

Joan Conley, Corporate Secretary
Executive Representative Program
c/o Membership Department
National Association of Securities Dealers, Inc.
9513 Key West Avenue
Rockville, MD 20850

NASD NOTICE TO MEMBERS 94-56

As of June 28, 1994, the following bond was added to the Fixed Income Pricing SystemSM. This bond is **not** subject to mandatory quotation:

<u>Symbol</u>	<u>Name</u>	<u>Coupon</u>	<u>Maturity</u>
CQB.GG	Chiquita	9.125	3/1/04

The bond listed above is subject to trade-reporting requirements. Questions pertaining to trade-reporting rules should be directed to Bernard Thompson, Assistant Director, NASD Market Surveillance, at (301) 590-6436.

Fixed Income Pricing
System Additions,
Changes, And Deletions
As Of June 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

NASD NOTICE TO MEMBERS 94-57

Nasdaq National Market
Additions, Changes,
And Deletions As Of
June 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 June 28, 1994, the following 68 issues joined the Nasdaq National MarketSM, bringing the total number of issues to 3,688:

Symbol	Company	Entry Date	SOES SM Execution Level
ABRX	ABR Information Services Inc.	5/26/94	200
FRES	Fresh America Corp.	5/26/94	500
LZTN	Lazer-Tron Corporation	5/26/94	200
NPSP	NPS Pharmaceuticals, Inc.	5/26/94	500
NFLD	Northfield Laboratories, Inc.	5/26/94	1000
OCTA	Octagon, Inc.	5/26/94	500
OCTAW	Octagon, Inc. (Cl A Wts exp 2/16/99)	5/26/94	200
PENN	Penn National Gaming, Inc.	5/26/94	500
QHGI	Quorum Health Group, Inc.	5/26/94	200
SMCO	Simpson Manufacturing Co., Inc.	5/26/94	200
WINN	Winston Hotels, Inc.	5/26/94	500
TRPS	Tripos Inc.	5/31/94	200
MATE	Matewan BancShares, Inc.	6/1/94	200
PLLL	Parallel Petroleum Corporation	6/1/94	200
APHT	Apton Corp.	6/2/94	500
LJPC	La Jolla Pharmaceutical Company	6/3/94	200
LJPCW	La Jolla Pharmaceutical Company (Wts exp 6/3/99)	6/3/94	200
PSAI	Pediatric Services of America, Inc.	6/3/94	200
SIGA	Sigma Circuits, Inc.	6/3/94	200
WBCI	WFS Bancorp, Inc.	6/3/94	200
WAVE	Wavefront Technologies, Inc.	6/3/94	1000
DAWK	Daw Technologies, Inc.	6/6/94	200
FPBK	First Patriot Bankshares Corporation	6/6/94	200
MICM	MICOM Communications Corp.	6/6/94	500
APGG	Apogee, Inc.	6/7/94	200
EDUC	Educational Development Corporation	6/8/94	200
KBKC	KBK Capital Corporation	6/9/94	500
MTRN	Metrotrans Corporation	6/9/94	200
COGI	Consolidated Graphics, Inc.	6/10/94	500
IMAXF	Imax Corporation	6/10/94	200
CDPT	CDP Technologies, Inc.	6/14/94	500
DMED	Diametrics Medical, Inc.	6/14/94	200
FNBN	FNB Corp.	6/14/94	200
AECI	American Electronic Components Inc.	6/16/94	200
NSSY	Norwalk Savings Society	6/16/94	200
CINE	Cinergi Pictures Entertainment Inc.	6/17/94	500
CCSCR	Coherent Communications Systems Corporation (Rts 7/21/94)	6/17/94	200
CCSCV	Coherent Communications Systems Corporation (WI)	6/17/94	200
FHPCA	FHP International Corporation (Pfd A)	6/17/94	500
GEER	Geerings & Wade, Inc.	6/17/94	500
GLFD	Guilford Pharmaceuticals Inc.	6/17/94	500
MTLI	MTL, Inc.	6/17/94	500
MODL	Model Imperial, Inc.	6/17/94	200
PHARY	Pharmacia Corporation (ADR)	6/17/94	500

Symbol	Company	Entry Date	SOES SM Execution Level
VFLX	Variflex, Inc.	6/17/94	200
TWHH	Transworld Home HealthCare Inc.	6/20/94	200
TWHHW	Transworld Home HealthCare Inc.	6/20/94	200
BPLX	Bio-Plexus, Inc.	6/21/94	500
INTR	Interscience Computer Corporation	6/21/94	200
INTRW	Interscience Computer Corporation (Wts exp 11/15/96)	6/21/94	200
CFWC	CFW Communications Company	6/23/94	200
STAF	CareerStaff Unlimited, Inc.	6/23/94	1000
CGRO	Crop Growers Corporation	6/23/94	200
FLMK	Foilmark, Inc.	6/23/94	200
GWRX	Geoworks	6/23/94	500
MRSA	Marisa Christina, Incorporated	6/23/94	200
TRND	Trend-Lines, Inc.	6/23/94	500
REDI	Reddi Brake Supply Corp.	6/24/94	200
TOWV	Stratosphere Corporation	6/24/94	200
TOWVW	Stratosphere Corporation (Wts exp 2/22/99)	6/24/94	200
THTX	TheraTx, Incorporated	6/24/94	500
THBC	Troy Hill Bancorp, Inc.	6/24/94	200
BPRXL	Bradley Pharmaceuticals, Inc. (D Wts exp 12/9/96)	6/27/94	200
MCBS	Mid Continent Bancshares, Inc.	6/27/94	500
WCII	Winstar Communications, Inc.	6/27/94	200
CLTDF	Computalog Ltd.	6/28/94	500
NPIX	Network Peripherals, Inc.	6/28/94	500
VJET	ValuJet Airlines, Inc.	6/28/94	200

Nasdaq National Market Symbol and/or Name Changes

The following changes to the list of Nasdaq National Market securities occurred since May 26, 1994:

New/Old Symbol	New/Old Security	Date of Change
ONEC/CCAL	OneComm Corp./Cencall Communications Corp.	5/27/94
ONECW/CCALW	OneComm Corp.(Wts)/Cencall Communications Corp. (Wts)	5/27/94
XRAY/XRAY	DENTSPLY International Inc./Dentsply International Inc.	5/27/94
MDAL/IMGA	MedAlliance Inc./ImageAmerica Inc.	6/1/94
CITI/GACC	Citicasters, Inc./Great American Communications Co.	6/8/94
DRAXF/DEPLF	Draxis Health Inc./Deprenyl Research Ltd.	6/9/94
MOXY/MOXYV	McMoran Oil & Gas Co. (S/D 6/17/94)/ McMoran Oil & Gas Co. (WI)	6/13/94
UMED/UMED	Unimed Pharmaceuticals, Inc./Unimed Inc.	6/16/94
MVII/MNXI	Mark VII, Inc./MNX, Inc.	6/20/94
LACI/REPO	Latin American Casinos Inc./Repossession Auction Inc.	6/20/94
LACIW/REPOW	Latin American Casinos Inc. (Wts 12/12/96)/ Repossession Auction Inc. (Wts 12/12/96)	6/20/94
SILVW/SILVW	Sunshine Mining and Refining Company (Wts 3/9/99) Sunshine Mining Company (Wts 3/9/99)	6/21/94

Nasdaq National Market Deletions

Symbol	Security	Date
AMPX	Ampex Corporation (Cl A)	5/26/94
WTPR	Wetterau Properties Inc.	5/26/94
STCP	The Stephen Company	5/27/94
BNKW	Bank Worcester Corporation	5/31/94
CRGN	Cragin Financial Corp.	6/1/94
EFIL	Envirofil, Inc.	6/1/94
TFSB	The Federal Savings Bank (New Britain, CT)	6/1/94
VYBN	Valley Bancorporation	6/1/94
LDAKM	LIDAK Pharmaceuticals	6/2/94
RADS	Radiation Systems, Inc.	6/6/94
UNIF	Uniflex, Inc.	6/8/94
CBCXE	Cambridge Biotech Corp.	6/9/94
ENGY	Energy Ventures, Inc.	6/9/94
SIDY	Science Dynamics Corporation	6/10/94
LAIS	Advanced Interventional Systems, Inc.	6/13/94
WMBS	West Mass Bankshares, Inc.	6/15/94
GENC	General Cable Corporation	6/17/94
TKCR	TakeCare, Inc.	6/17/94
FEBC	First Eastern Corp.	6/20/94
USCLQ	USA Classic, Inc.	6/21/94
CMPX	Comptronix Corporation	6/22/94
HSRS	H.S. Resources, Inc.	6/22/94
KDON	Kaydon Corporation	6/22/94
UWSI	United Wisconsin Services, Inc.	6/22/94
MIKA	Medical Imaging Centers of America, Inc.	6/23/94
QUAD	Quadrex Corporation	6/23/94
ACLB	Allied Clinical Laboratories, Inc.	6/24/94
CNTX	Centex Telemanagement, Inc.	6/24/94
FORB	Fortune Bancorp, Inc.	6/24/94
FORBP	Fortune Bancorp, Inc. (Cum Conv Pfd A)	6/24/94
GTWY	Gateway Financial Corporation	6/27/94
INBC	Independence Bancorp, Inc.	6/28/94
SFTIF	SOFTIMAGE Inc.	6/28/94

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 DISCIPLINARY ACTIONS

Disciplinary Actions Reported For July

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, July 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

Gorman Commodities, Inc. (Beverly Hills, California) and Ira Gorman (Registered Principal, Los Angeles, California). The firm and Gorman were fined \$20,000, jointly and severally and the firm was expelled from NASD membership. In addition, Gorman was barred from association with any NASD member in any capacity. The sanctions were based on findings that the firm, acting through Gorman, conducted a securities business while failing to maintain its minimum required net capital.

UNEX Capital Corporation (Costa Mesa, California), Lawrence Robert Hazlewood (Registered Principal, Laguna Hills, California), and Mona Lynn Houseworth (Registered Principal, Irvine, California). The firm was fined \$50,000 and expelled from NASD membership, and Hazlewood was fined \$50,000 and barred from association with any NASD member in any capacity. Houseworth was fined \$15,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hazlewood functioned as a principal and was actively engaged in the management

of the firm's securities business without either having registered as a principal or having passed a qualification examination for principals. Moreover, the firm and Houseworth permitted Hazlewood to engage in the aforementioned activity.

Firms Fined, 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 timely 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.

Financial Services Group (Belmont, California), Douglas Loy Chin (Registered Principal, Belmont, California), and Joanne Susan Abe-Chin (Registered Principal, Belmont, California) submitted an Offer of Settlement pursuant to which the firm was fined \$150,000, jointly and severally with Douglas Chin and Joanne Abe-Chin. Douglas Chin was suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Chin and Abe-Chin, engaged in the securities business without having a principal registered with the NASD, and the firm and Douglas Chin permitted Joanne Abe-Chin to act as a representative of the firm without proper registration with the NASD. In addition, the findings stated that Chin and Abe-Chin participated in private securities transactions while failing to give prior written notification to their member firms. The NASD also determined that Chin forged a customer's signature to a new account form for the purchase of securities.

J. Gregory & Company, Inc. (Great Neck, New York), Warren R. Schreiber (Registered Representative, New York, New York), Gennady I. Klotsman (Registered Representative, New York, New York), and Lawrence A. Rosenberg (Registered Representative, Brooklyn, New York) submitted an Offer of Settlement pursuant to which the firm was fined \$25,000 and required to pay \$450,000 in restitution, plus interest, to public customers. In addition, the firm will hire an individual with appropriate experience and expertise to supervise the firm's trading activity, and will hire an individual with appropriate experience and expertise as a head trader. Furthermore, the firm will adopt and implement new written supervisory and compliance procedures. Schreiber was fined \$5,000, suspended from association with any NASD member in any capacity for five business days, and required to pay \$20,000 in restitution, plus interest, to public customers. Klotsman and Rosenberg were required jointly and severally to pay \$78,723.30 in restitution, plus interest, to public customers.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Schreiber, effected principal transactions with retail customers in securities at prices that included markups ranging from 5.04 to 70 percent above the prevailing market. The NASD also found that Klotsman and Rosenberg caused 89 customers to buy the securities at prices that were not fair.

Furthermore, the findings stated that, in violation of the Board of Governors' Free-Riding and Withholding Interpretation, the firm sold units in an initial public offering (IPO) to an account controlled by

Schreiber's brother, and the brother of the president and majority shareholder of the firm which units traded at a premium in the immediate secondary market. In addition, the NASD determined that the firm failed to establish and maintain an effective supervisory system that would have enabled it to assure compliance with the NASD's rules and policies.

Firms And Individuals Fined

C. R. Boggs Financial Services, Inc. (Fair Oaks, California) and Charles Richard Boggs (Registered Principal, Fair Oaks, California) submitted an Offer of Settlement pursuant to which they were fined \$15,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Boggs, offered and sold limited partnership interests to investors and failed to make certain disclosures to customers. The NASD also found that the firm, acting through Boggs, failed to establish and maintain adequate written supervisory procedures, failed to evidence supervisory review of 40 transactions in equity securities and mutual funds, and failed to conduct an annual inspection of its main office. The findings also stated that the firm, acting through Boggs, engaged in options transactions without having a registered options principal.

Covato/Lipsitz, Inc. (Pittsburgh, Pennsylvania) and Alfred I. Lipsitz (Registered Principal, Pittsburgh, Pennsylvania) were fined \$30,000, jointly and severally. The fine may be reduced by repaying to a partnership, with interest, the \$4,793.40 paid to customers as interest on their loan to the partnership. The reduction will be

dollar for dollar with the respondents required to provide proof of such reimbursement that satisfies the Philadelphia DBCC staff. In addition, within 60 days, the firm must have registered with it a person along with Lipsitz who is qualified as a financial and operations principal or else it must cease effecting transactions until it has a second financial principal. If at any time it ceases to have at least two registered financial principals associated with it, it will have 60 days to register a second financial principal. This requirement will remain in effect unless and until rescinded in writing by the Philadelphia DBCC. Moreover, the firm and Lipsitz were required to make rescission offers to the investors who purchased interests in an offering.

The NBCC imposed the sanctions following appeal of a Philadelphia DBCC decision. The sanctions were based on findings that the firm, acting through Lipsitz, participated in a contingent offering of limited partnership interests and disbursed funds from its escrow account before the required minimum number of units were sold, and failed to disclose material information to investors necessary in determining whether to invest in the partnership. Furthermore, the respondents conducted a securities business while failing to maintain the firm's minimum required net capital and failed to maintain accurate books and records.

In addition, the firm, acting through Lipsitz, filed inaccurate FOCUS Parts I and IIA reports, filed its annual audited report late, and failed to comply with its restrictive agreement with the NASD. The firm, acting through Lipsitz, also failed to register its branch offices with the NASD and failed to establish, maintain, and enforce a supervisory system and written

procedures to supervise the types of business in which it engaged and the activities of its registered representatives and associated persons.

R.A. Johnson and Co., Inc. (Salt Lake City, Utah), Ronald A. Johnson, Jr. (Registered Principal, Salt Lake City, Utah), and Elaine Johnson (Registered Principal, Salt Lake City, Utah). The firm was fined \$2,500, jointly and severally with Ronald Johnson, and fined \$12,500, jointly and severally with Ronald and Elaine Johnson. The sanctions were based on findings that the firm, acting through Ronald Johnson, made an improper extension of a contingency offering and failed to return customer funds promptly when the terms of the contingency were not met. In addition, the firm, acting through Ronald and Elaine Johnson, failed to maintain required books and records reflecting the receipt of customer funds received in the aforementioned offerings, and failed to comply with the Securities and Exchange Commission (SEC) Customer Protection Rule 15c3-3 in that it held customer funds when the firm did not qualify for an exemption from the Rule.

Noyes Partners Incorporated (New York, New York) and Jansen Noyes, Jr. (Registered Principal, Darien, Connecticut) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$14,619, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that, in contravention of the Board of Governors' Free-Riding and Withholding Interpretation, the firm, acting through Noyes, sold a hot issue to restricted accounts. In addition, the NASD found that the firm, acting through Noyes, failed to

abide by its restriction agreement with the NASD and failed to establish and implement supervisory procedures to ensure compliance with the Board of Governors' Free-Riding and Withholding Interpretation.

Pension Fund Evaluations, Inc. (Centereach, New York) and George W. Philipps (Registered Principal, Stony Brook, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$12,500, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through Philipps, effected options transactions before employing a qualified registered options principal. The findings also stated that the firm, acting through Philipps, failed to establish and implement supervisory procedures to ensure compliance with its options activities.

In addition, the NASD found that the firm, acting through Philipps, failed to abide by the restrictions specified in its agreement with the NASD in that the firm commenced an options business without providing prior written notification to and obtaining written approval from the NASD to expand its business activities.

B. R. Stickle & Co. (Chicago, Illinois) and Bruce R. Stickle (Registered Principal, Chicago, Illinois) were fined \$15,000, jointly and severally. The SEC affirmed the sanctions following appeal of a June 1993 NBCC decision. The sanctions were based on findings that the firm, acting through Stickle, effected securities transactions while failing to maintain its minimum required net capital and conducted a securities business while failing to have an appropriately qualified and registered limited financial and operations

principal employed by the firm. In addition, Stickle acted in the aforementioned capacity, but failed the qualification examination needed to become registered in such capacity.

Firms Fined

Lew Lieberbaum & Co., Inc. (Garden City, New York) submitted an Offer of Settlement pursuant to which the firm was fined \$5,000, ordered to pay \$9,600 in restitution to public customers, and to provide the NASD with satisfactory proof of payment of restitution. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it purchased shares of a common stock which it sold at a markup of more than 20 percent over its contemporaneous costs.

Network 1 Financial Securities, Inc. (Red Bank, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it conducted a securities business while failing to maintain its required minimum net capital.

Individuals Barred Or Suspended

Robert A. Amato (Registered Representative, New Orleans, Louisiana) was fined \$20,000, suspended from association with any NASD member in any capacity for four weeks, and required to requalify by examination as a registered representative. The United States Court of Appeals for the Fifth Circuit affirmed the sanctions following appeal of a 1993 SEC decision. The sanctions were based on findings that, in violation of the NASD

Mark-Up Policy, Amato engaged in securities transactions with public customers at prices that reflected unfair markups in excess of 10 percent.

Amato has filed a Petition for Certiorari with the U.S. Supreme Court; however, the petition does not act as a stay of the sanctions.

David W. Anderson (Registered Representative, New Orleans, Louisiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$7,500 and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Anderson consented to the described sanctions and to the entry of findings that he executed unauthorized purchase and sale transactions in the accounts of public customers without their knowledge or consent.

Kenneth L. Anderson (Registered Representative, Brookline, Massachusetts) 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, Anderson consented to the described sanctions and to the entry of findings that he engaged in a course of conduct involving the execution of at least 56 transactions by using false and misleading prices. These transactions were executed in a customer account under Anderson's control wherein the account received illegal profits in excess of \$83,000.

Lyle Glenn Beaton (Registered Principal, Rapid City, South Dakota) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$62,924 (reducible by the amount of

restitution paid to customers), suspended from association with any NASD member in any capacity for 60 days, and required to purchase 11 shares of a common stock for public customers within 60 days or otherwise pay restitution satisfactory to the customers. Without admitting or denying the allegations, Beaton consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firms.

David Burgher (Registered Representative, Stanton, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000, barred from association with any NASD member in any capacity, and required to pay \$520 in restitution to his member firm. Without admitting or denying the allegations, Burgher consented to the described sanctions and to the entry of findings that he received from insurance customers \$520 for insurance purposes but failed to deposit the funds with his member firm and, instead, misappropriated and converted the funds to his own use.

Jon R. Butzen (Registered Representative, Clearwater, Florida) and **Peter H. You (Registered Representative, Northfield, Illinois)**. Butzen was fined \$20,000, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by examination as a general securities representative. You was fined \$40,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Butzen and You effected unauthorized transactions in customer accounts and You failed to respond to NASD requests for information.

Robert A. Carter, Jr. (Registered Representative, Corbin, Kentucky) 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 demonstrate that full restitution has been made. Without admitting or denying the allegations, Carter consented to the described sanctions and to the entry of findings that he received from public customers \$171,037.56 for investment purposes, failed to execute the transactions and, instead, converted \$56,958.59 of the funds to his own use and benefit without the knowledge or consent of the customers. In addition, the findings stated that Carter failed to respond to NASD requests for information.

David L. Chandler (Registered Representative, Louisville, Kentucky) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$7,500 and suspended from association with any NASD member in any capacity for two weeks (deemed served). Without admitting or denying the allegations, Chandler consented to the described sanctions and to the entry of findings that he exercised discretion in the account of a public customer without having obtained prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm.

Steven Robert DeVries (Registered Representative, North Aurora, Illinois) was fined \$150,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that DeVries participated in private securities transactions while failing to obtain prior written permission from his member firm to engage in such activities.

Thomas Scott Drysdale

(Registered Representative, Mt. Clemens, Michigan) 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, Drysdale consented to the described sanctions and to the entry of findings that he engaged in private securities transactions with public customers while failing to give prior written notice to or receive written permission from his member firm to engage in such activities. The NASD also found that Drysdale failed to respond to NASD requests for information.

Shahkar M. Fatemi (Registered Representative, Greenfield, Massachusetts) submitted an Offer of Settlement pursuant to which he was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fatemi consented to the described sanctions and to the entry of findings that he misappropriated insurance customer funds totaling \$2,500 without the knowledge or consent of the customers. Specifically, the NASD found that Fatemi caused checks to be issued against the customers' life insurance policies, obtained the checks, forged the customers' signatures, and deposited the checks in his personal account. In addition, the NASD found that Fatemi failed to respond to NASD requests for information.

Sheron Dillworth Fielding (Registered Representative, Lawton, Utah) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity until such fine is paid or arrangements for payment have been agreed upon by the NASD. Without admitting or denying the

allegations, Fielding consented to the described sanctions and to the entry of findings that he participated in outside business activities.

Thomas Joe Gemlich (Registered Representative, Indianapolis, Indiana) was fined \$40,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Gemlich submitted a disbursement request form to withdraw \$318.15 in accumulated dividends from a public customer's insurance policy. Gemlich used the funds to pay the premium on another policy without the customer's knowledge or consent and despite instructions by the customer to permit the second policy to lapse. In addition, Gemlich failed to respond to NASD requests for information.

Mukesh H. Gidwani (Registered Representative, Phoenix, Arizona) 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, Gidwani consented to the described sanctions and to the entry of findings that he forged a customer's name on a life insurance policy application and submitted the application to his firm for processing without the customer's knowledge or authorization.

Lawrence M. Gottlieb (Registered Representative, West Bloomfield, Michigan) 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, Gottlieb consented to the described sanctions and to the entry of findings that he submitted Form U-4 applications that failed to accurately disclose certain

employment dates, three unsatisfied judgments entered against him, and that he was discharged or permitted to resign for violating investment related rules or standards of conduct.

Chester G. Gural (Registered Representative, East Syracuse, New York) was fined \$5,000, suspended from association with any NASD member in any capacity for six months, and required to requalify as a general securities representative. The sanctions were based on findings that Gural failed to respond to NASD requests for information concerning a customer complaint.

Don E. Harrison (Registered Representative, Mena, Arkansas) was fined \$120,000, barred from association with any NASD member in any capacity, and required to pay \$13,936.62 in restitution to his member firm. The sanctions were based on findings that Harrison submitted a falsified copy of a check indicating that he had received a premium payment for a life insurance policy from a public customer. As a result, Harrison received compensation from his member firm in the amount of \$13,936.62 to which he was not entitled. In addition, Harrison failed to respond to NASD requests for information.

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.

Wayne D. 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 Market Surveillance Committee decision. The sanction was based on findings that Ingbritson engaged in manipulative and deceptive practices in a best efforts Regulation E offering by failing to make material disclosures to customers. Specifically, Ingbritson caused a member firm to effect a series of transactions in a common stock that created actual and apparent trading activity for the purpose of inducing the purchase or sale of the stock by others. Ingbritson also raised the commission payout to his registered representatives to 100 percent to generate demand for the stock.

Furthermore, Ingbritson arranged for the extension of credit to the same member firm to allow it to purchase the common stock with the proceeds of its immediate resale, in violation of Regulation T and X. In addition, Ingbritson failed to reasonably supervise the activities of a registered representative.

Theodore Kaplan (Registered Representative, Stony Brook, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that during the course of a Series 7 examination, Kaplan was found to be in possession of, and reading printed information that contained, material relevant to the subject matter of the examination.

Douglas Edward Laube (Registered Representative, Highland, California) submitted an Offer of Settlement pursuant to which he was fined \$105,000 and barred from association with any NASD member in any capacity. Without admitting or denying the

allegations, Laube consented to the described sanctions and to the entry of findings that he withdrew funds totaling \$22,000 from the accounts of public customers without their knowledge or consent and deposited the funds into his personal securities account. According to the findings, Laube subsequently used the customers' funds for personal expenses, including, among other things, the purchase of shares in a mutual fund. The findings also stated that Laube shared in the losses in the accounts of 12 public customers carried by his member firm without obtaining prior authorization from his member firm and without having made any financial contribution into such accounts.

Mike K. Lulla (Registered Representative, Oklahoma City, Oklahoma) was fined \$220,000 and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of a June 1993 NBCC decision. The sanctions were based on findings that Lulla engaged in fraudulent activity in that he induced a public customer to give him checks totaling \$200,000 for investment purposes and, instead, deposited the funds in his personal account and converted the funds to his own use and benefit.

Ronald J. Marolda, Sr. (Registered Representative, Woodland Hills, California) was fined \$2,500, jointly and severally with a former member firm and barred from association with any NASD member in any principal capacity. The sanctions were based on findings that Marolda actively engaged in the management of the former member firm, but failed to requalify by examination as a principal as required by the NASD.

Thomas Vincent Meaglia (Registered Representative, Glendora, California) and **Robert**

Bradley Fuller (Registered Principal, Pasadena, California) submitted an Offer of Settlement pursuant to which Meaglia was fined \$15,000. Meaglia was also ordered to pay a customer \$3,899 (which represents the amount of commissions received by him); to provide satisfactory proof to the NASD that such restitution was paid; and to requalify by examination as a general securities representative. Fuller was fined \$5,000 and suspended from association with any NASD member as a general securities principal for one year. Without admitting or denying the allegations, Meaglia and Fuller consented to the described sanctions and to the entry of findings that Meaglia recommended to a public customer the purchase of securities without having reasonable grounds for believing such recommendations were suitable for the customer. The findings also stated that Fuller, as Meaglia's branch manager and immediate supervisor, failed to utilize their member firm's supervisory procedures or otherwise to adequately review and monitor Meaglia's cited sales activities, which comprised mutual fund "switching," to ensure Meaglia's compliance with the applicable rules.

Charles Joseph Muzzio, Sr. (Registered Representative, Manahawkin, New Jersey) was fined \$70,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Muzzio had "de facto" control of a public customer's account and made recommendations in the customer's account without having a reasonable basis to believe that the recommendations were suitable for the customer in light of her stated investment. In addition, Muzzio failed to respond to NASD requests for information.

Robert Theodore Nelson (Registered Principal, Seattle, Washington) was fined \$73,000 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of a Seattle DBCC decision. The sanctions were based on findings that Nelson engaged in the sale to public investors of common stock for which no proper registration statement was filed with the SEC or for which no exemption from registration existed. Nelson also engaged in private securities transactions without providing prior written notice to his member firm. Furthermore, Nelson was delegated supervisory responsibility for the activities in his firm's branch office and failed to discharge those responsibilities properly and adequately.

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

Robert Lynn O'Kelley (Associated Person, Goodlettsville, Tennessee) was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay \$5,029.53 in restitution to the appropriate parties. The sanctions were based on findings that O'Kelley misused customer funds totaling \$5,029.53 when he endorsed the names of four public customers to life insurance refund checks and converted the funds to his own use and benefit without the customers' knowledge or consent. In addition, O'Kelley failed to respond to NASD requests for information.

Daniel Oleckna (Registered Representative, Woodbridge, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was a fined \$2,500 and suspended from association with any NASD member

in any capacity for 10 business days. Without admitting or denying the allegations, Oleckna consented to the described sanctions and to the entry of findings that he telephoned a public customer and left threatening messages on the customer's answering machine.

Don D. Padilla (Registered Representative, Mary Esther, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$70,000, barred from association with any NASD member in any capacity, and required to pay \$10,000 in restitution. Without admitting or denying the allegations, Padilla consented to the described sanctions and to the entry of findings that he received \$10,000 from an insurance agent knowing that the funds were from a public customer and converted the funds to his own use and benefit without the customer's knowledge or consent. In addition, the findings stated that Padilla failed to respond to NASD requests for information.

Neel Jay Pass (Registered Principal, Logan, Utah) was suspended from association with any NASD member in any capacity for 15 business days and required to requalify by examination as a principal before becoming associated with any NASD member following the suspension. The sanctions were based on findings that Pass, while an associated person of a member firm, engaged in the securities business without being registered with the NASD in any capacity. Also, in connection with sales literature disseminated to 342 public customers, Pass made exaggerated, unwarranted, and misleading statements and claims; failed to obtain prior approval of such material from a principal of his member firm; and failed to provide customers with prospectuses for

these programs before dissemination.

Steven W. Pelletier (Registered Representative, Kennebunkport, Maine) was fined \$5,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Pelletier misused public customer funds in the amount of \$854 intended for deposit into an insurance policy.

Rodney Lee Pigford (Limited Representative, Buffalo, New York) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Pigford obtained \$272.60 from an insurance customer for the purpose of paying the annual premium on an insurance policy, failed to remit the funds to his member firm and, instead, misappropriated the funds to his own use. In addition, Pigford failed to respond to NASD requests for information.

Deborah Ruth Pines (Registered Representative, Oakland, California) submitted an Offer of Settlement pursuant to which she was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Pines consented to the described sanctions and to the entry of findings that she forged the names of five public customers on change-of-broker/dealer forms.

Ian D. Quan-Soon (Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$15,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Quan-Soon consented to the described sanctions and to the entry of findings that he signed client

signatures to 18 delivery assurance forms.

Seldon Scott Rodgers (Registered Representative, Solana Beach, California) was fined \$10,000 and ordered to pay \$5,000 in restitution to a customer. In addition, he was suspended from association with any NASD member in any capacity for 90 days and thereafter until he demonstrates to the NASD that he has paid the aforementioned fine and restitution. Moreover, he must requalify by examination as a general securities representative after the suspension. The sanctions were based on findings that Rodgers participated in private securities transactions while failing to provide prompt written notification to his member firm to participate in such transactions.

Theodore Rodosovich (Registered Representative, Poway, California) was fined \$10,000, and suspended from association with any NASD member in any capacity for 30 days, and thereafter, until he demonstrates, to the satisfaction of the Los Angeles DBCC, that he has completely satisfied an arbitration award (by payment or settlement). The sanctions were based on findings that Rodosovich failed to pay a \$24,674.66 New York Stock Exchange arbitration award and \$1,350 in forum fees.

Bradley S. Schaeffer (Registered Representative, Louisville, Kentucky) submitted an Offer of Settlement 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, Schaeffer consented to the described sanctions and to the entry of findings that he received \$130 from an insurance customer as an insurance premium payment and failed to remit the payment to his member firm, thereby

converting the funds to his own use and benefit without the knowledge or consent of the customer. In addition, the findings stated that Schaeffer failed to respond to NASD requests for information.

Michael E. Seifert (Registered Representative, Ridgefield, Connecticut) 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, Seifert consented to the described sanctions and to the entry of findings that he prepared a fictitious letter of authorization purportedly signed by a public customer authorizing his member firm to draw a check against the customer's securities account in the amount of \$12,500. The NASD found that upon receipt of the check, Seifert negotiated the check and misappropriated the proceeds to his own use and benefit. Thereafter, the findings stated that Seifert submitted a fictitious receipt to his member firm falsely reflecting delivery of the check to the customer.

Charles Robert Tassinari (Registered Representative, Valley Stream, New York) was fined \$20,000, suspended from association with any NASD member in any capacity for 10 months, and required to requalify as a general securities representative. If Tassinari does not requalify within 30 days after his suspension is served, he will again be suspended until he has passed the Series 7 examination. The sanctions were based on findings that Tassinari maintained trading accounts at his member firms that he had a beneficial interest in and caused trades to be effected in the accounts at prices that were away from the market and that were detrimental to the interest of his member firms. In addition, Tassinari caused seven blank order tickets to

be completed which had previously been time-stamped by another representative at Tassinari's direction and submitted to the trading desk for execution.

Jeffrey Alan Turk (Registered Representative, San Jose, California) submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Turk consented to the described sanctions and to the entry of findings that he recommended to a public customer the purchase of securities that were not suitable for the customer.

Clifford C. White (Registered Representative, Jasper, Alabama) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$120,000, barred from association with any NASD member in any capacity, and required to pay \$20,000 in restitution to the appropriate party. Without admitting or denying the allegations, White consented to the described sanctions and to the entry of findings that he received from a public customer a \$20,000 check for investment purposes and, instead, converted the funds to his own use and benefit without the customer's knowledge or consent. The NASD also found that White prepared a false account statement and provided such statement to the same customer to cause the customer to believe that he had executed a purchase.

Furthermore, the NASD determined that White engaged in a private securities transaction without prior written notice to and approval from his member firm. In addition, the findings stated that White failed to respond to NASD requests for information.

Individuals Fined

John R. McAlister, II (Registered Representative, Atlanta, Georgia) submitted an Offer of Settlement pursuant to which he was fined \$8,920 and required to pay \$3,580 in restitution to public customers. Without admitting or denying the allegations, McAlister consented to the described sanctions and to the entry of findings that he recommended to public customers the purchase of shares of an income fund without having reasonable grounds for believing that the recommendation was suitable for the customers.

Furthermore, the NASD found that in his efforts to induce the customers to purchase shares in an income fund, McAlister sent a facsimile transmission to a representative of a member firm misrepresenting the source of the funds that the customers had available to invest. In addition, the findings stated that McAlister sent a letter to the same customers containing a misrepresentation of a material fact to induce them to maintain such investment.

Individual Whose Registration Was Cancelled/Suspended Pursuant To Article VI Section 2 Of The NASD Code Of Procedure For Failure To Pay An Arbitration Award

Lawrence Greenberg, Tulsa, Oklahoma (April 15, 1994)

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.

Capital Equity Corporation, Raleigh, North Carolina (June 6, 1994)

Electronic Trading Systems, L.P., Great Neck, New York (June 6, 1994)

Eurocapital Partners, Inc., Laguna Hills, California (June 6, 1994)

Hellmold Associates, Inc., New York, New York (June 6, 1994)

Kreiling Associates & Co., Dallas, Texas (June 6, 1994)

Metcap Securities, Inc., New York, New York (June 6, 1994)

Regency Capital Group, Inc., Glendale, California (June 6, 1994)

Seward, Groves Richard & Wells, New York, New York (June 6, 1994)

TRV Securities, Inc., Sewickley, Pennsylvania (June 6, 1994)

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

Bob Hedges Financial Services, Incorporated, Delray Beach, Florida

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

Robert D. Hedges, Deerfield Beach, Florida

Hans J. Kuhl, Boca Raton, Florida
Dwight Ruddell, Castro Valley, California

FOR YOUR INFORMATION

Treasury Proposal Would Affect Government Securities Broker/Dealers

The U.S. Department of the Treasury (Treasury) recently published for comment amendments to the financial responsibility requirements established under the Government Securities Act of 1986 (GSA). The proposed amendments raise the minimum capital requirements for all government securities broker/dealers subject to the provisions of Section 402.2 of the regulations implemented under the GSA, and require written notification for certain withdrawals of capital. The changes parallel recent Securities and Exchange Commission (SEC) actions in these areas. Treasury also is proposing a conforming change to its recordkeeping requirements. Comments are due on or before August 22, 1994. This rule will affect 15C sole government securities broker/dealers only.

The amendments create four minimum capital categories, to be phased-in over an 18-month period.

- Government securities broker/dealers that carry customer or broker/dealer accounts would be subject to a minimum level of \$250,000.
- Government securities broker/dealers that carry customer accounts but operate under the exemption provided by Rule 15c3-3(k)(2)(i) would have a minimum requirement of \$100,000.
- Government securities broker/dealers that introduce accounts on a fully disclosed basis and receive but do not hold customer securities would be subject to a minimum requirement of \$50,000.
- Introducing firms that never handle customer funds or securities would be subject to a minimum requirement of \$25,000.

The proposed notification provisions

require post-withdrawal notification of certain significant capital withdrawals as well as prior notification for larger withdrawals. Whether notification is required prior to the withdrawal depends upon the aggregate size of total withdrawals relative to the government securities broker/dealer's excess liquid capital over a 30-calendar-day period.

- Aggregate withdrawals that exceed 20 percent of a government securities broker/dealer's excess liquid capital in a 30-calendar-day period require notification within two business days after the withdrawal.
- Aggregate withdrawals in excess of 30 percent of excess liquid capital in any 30-calendar-day period require notification two business days prior to such withdrawal.

The proposed rule excludes the reporting of net withdrawals that, in the aggregate, are less than \$500,000 in any 30-calendar-day period or those that represent securities or commodities transactions between affiliates, except that forward settling transactions between affiliates are not eligible for this exclusion. The exclusion for securities and commodities transactions requires that the transactions be conducted in the ordinary course of business and settled no later than two business days after the date of the transaction.

Notification must be sent to the SEC and to the broker/dealer's designated examining authority, not to Treasury.

* * *

A Special Notice to Selected Members subject to the provisions of Section 402.2 of the regulations implemented under the Government Securities Act of 1986 will be distributed separately. These members are urged to review the proposed amendments in their entirety.

Questions regarding this Notice may be addressed to Brad Darfler, District Coordinator, (202) 728-8946.

CRD Enhanced For PHLX Dual Registration

Beginning August 1, 1994, a Central Registration Depository (CRD) enhancement will be rolled in for firms that are dually registered with the Philadelphia Stock Exchange (PHLX) and the NASD.

This enhancement is a result of a PHLX request made pursuant to Exchange Rule 604. The Rule was amended in 1993 to require all Series 7 General Securities (GS) Representatives to register with PHLX via CRD. A CRD conversion in October 1993 identified all NASD-GS approved agents with PHLX firms and added a PHLX-GS status line. Thereafter, PHLX/NASD registered firms were instructed to mark the "PHLX" box in Item 10 of Form U-4 on all initial, transfer, or amended applications requesting a GS license.

PHLX expressed a concern that omissions might occur respecting firm requirements to mark the PHLX box on these applications and would therefore fail to meet the Rule 604 requirement. The CRD enhancement will address this concern by systematically generating a PHLX-GS status line for any initial, transfer, or amended U-4 containing a GS registration request, even if the PHLX box is not marked.

In addition, a second conversion will take place the weekend of July 30-31 that will follow the same logic as the October 1993 conversion described above. (Duplicate PHLX-GS status

lines will not be generated for agents already possessing one, however.)

If you have any questions, please contact Amy Kitzen, PHLX Market Regulation, at (215) 496-5378.

SEC Expands Wrap Fee Disclosure

The Securities and Exchange Commission (SEC) recently adopted amendments to the Investment Advisers Act of 1940 that require advisers sponsoring wrap fee programs to deliver to current and prospective clients a separate brochure describing the cost of the wrap fee programs and the services provided.

The specific information that must be included in the brochure is set forth in a new schedule, Schedule H, to Form ADV. The brochure must be delivered to prospective wrap fee clients and annually offered to an adviser's existing wrap fee clients.

Also, advisers must deliver the brochure to all clients on a one-time basis when the brochure is filed with the SEC. The brochure must be updated promptly for material changes; other changes must be added within 90 days after the end of the sponsor's fiscal year.

In addition, sponsors must file the brochure with the SEC as part of Form ADV. The amendments also mandate when the brochure must be updated. Sponsors must comply with the new requirements by October 1, 1994.

For complete details regarding these changes, members may refer to Release No. IA-1411, which was

published in the April 26, 1994, *Federal Register*.

NAIC's "Own Your Share of America" Campaign Gets Underway

To increase direct individual investment, the National Association of Investors Corporation (NAIC) is conducting its third annual "Own Your Share of America" campaign. This month-long promotional effort is intended to encourage people to become direct owners of the common stock of publicly traded companies. The last two campaigns have proven quite successful, with corporate participants reporting increases of as much as 20 percent in their employee stock purchase and investment programs during that time period.

The NASD supports NAIC's efforts because The Nasdaq Stock MarketSM is the market of individual investors—they own 60 percent of Nasdaq[®] securities by market value, and their participation in this market is growing. According to recent survey data, between 1985 and 1990 the number of individual investors in Nasdaq securities jumped from 8.3 to 11.1 million, an increase of 32.4 percent.

If you or your firm would like more information on the program, call NAIC at (810) 543-0612 ext. 323, or write NAIC, P.O. Box 220, Royal Oak, MI 48068.



SPECIAL NASD NOTICE TO MEMBERS 94-58

SEC Approves New NASD Limit Order Protection Rule

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 June 29, 1994, the Securities and Exchange Commission (SEC) approved a proposed Interpretation to Article III, Section 1 of the NASD Rules of Fair Practice that prohibits a member firm from trading ahead of its customer's limit orders in a firm's market-making capacity.¹ Accordingly, the Interpretation is now in effect.

Approval of the Limit Order Protection Interpretation thus eliminates the so-called "Manning safe harbor" that permitted a member firm to trade ahead of its customers' limit orders in the firm's market-making capacity if the firm adequately disclosed to its customers that the firm may accept a limit order and then trade ahead of it in the process of discharging its market-making obligations. The enactment of this Limit Order Protection Interpretation by the NASD reflects the ongoing effort of the NASD and The Nasdaq Stock Market, Inc., to ensure investor protection and enhance market quality. The affirmative obligation for a firm to protect its customer's limit orders and to give those orders standing over its own market-making activity enhances opportunities for price improvement that directly benefit public investors.

Background And Description Of The Interpretation

The issue of limit-order protection in The Nasdaq Stock MarketSM was highlighted in 1985 when a customer alleged that a member firm accepted his limit order, failed to execute it, and failed to discharge its fiduciary duties by trading ahead of the customer's order without notifying the customer that it was doing so. In the *Manning* decision, the SEC affirmed the findings of an NASD disciplinary proceeding whereby the NASD determined that, upon accepting a

customer's limit order, a member undertakes a fiduciary duty and cannot trade for its own account at prices more favorable than the customer's limit order unless the member provides clear disclosure and the customer understands the priorities that will govern the order.²

In July 1993, the NASD Board of Governors reviewed the background of the *Manning* disclosure safe harbor and voted to replace it with the Limit Order Protection Interpretation that would eliminate the *Manning* safe-harbor approach and prohibit a member from trading ahead of a customer's limit order. Because of the significance of the change to The Nasdaq Stock Market, the Board authorized a *Notice to Members* soliciting comment on how elimination of the safe harbor and adoption of rules prohibiting trading ahead of customer limit orders would affect the operation of member firms and the treatment of investors' orders.³ The Board also solicited comment on any unintended effects or unacceptable consequences of any new requirements on member firms. Specifically, comment was requested on the impact of the requirements on an integrated broker/dealer handling its own customer order flow, on customers limit orders received from other member firms (member-to-member trades), and on market liquidity.

After full consideration of the concerns articulated during the comment process, the Board reaffirmed its decision to eliminate the disclosure

¹ See Securities Exchange Act Release No. 34279 (June 29, 1994).

² *In the Matter of E.F. Hutton & Co.*, Securities Exchange Act Release No. 25887 (July 6, 1988).

³ See *Notice to Members 93-47* (July 23, 1993).

safe harbor and to adopt the Limit Order Protection Interpretation.⁴ In light of numerous comments from member firms of the adverse market impacts that could result from application of the Interpretation to member-to-member limit orders, however, the Board determined to defer application of the Interpretation to these limit orders until a special task force could examine the ramifications of extending the Interpretation to include these limit orders.

Accordingly, the Limit Order Protection Interpretation approved by the SEC does not apply to member-to-member limit orders.

Under the Interpretation approved by the SEC, a member firm cannot accept and hold its customer's limit order in a Nasdaq security and continue to trade that security for its own market-making account at prices that would satisfy the customer's limit order. The Interpretation, however, does not mandate that a member firm accept limit orders from its customers.

In addition, the Board recognized that member firms handling and committing substantial capital to institutional orders generally have reached a separate understanding as to the execution parameters for those orders. Accordingly, the Interpretation provides that a firm may attach terms and conditions governing the acceptance of a limit order, provided that such terms and conditions are made clear to the customer at the time that the order is accepted.

Following are answers to questions frequently asked about the Interpretation.

Question #1: Must a firm accept a customer's limit order?

Answer: No. The Interpretation specifically provides that the NASD does not impose any obligation upon

members to accept and handle limit orders from any or all of its customers.

Question #2: If a firm assesses commission-equivalent charges on its customers' limit orders, does the Interpretation require that the firm not trade ahead of the limit order at the "gross" limit price (including the commission-equivalent charge), or at the "net" limit price (excluding the commission-equivalent charge)?

Answer: The interpretation requires that the firm provide protection for customer limit orders at the "net" limit price, exclusive of any markup, markdown, commission, or commission equivalent charged. If a member intends to protect a customer limit order at a price net of an amount equal to a sales credit or other internal credit charged, then the price at which the limit order is to be protected must be clearly explained to the customer. Any transaction effected by the member at a price equal or superior to the price agreed upon with the customer for protection of the limit order will obligate the member to immediately execute such limit order.

Question # 3: Does the Interpretation apply to limit orders placed by large institutions?

Answer: The Interpretation does not distinguish between institutional and retail customers because language in the Interpretation that allows members to establish specific terms and conditions on each order clearly encompasses the handling of institutional orders. The NASD notes that filling institutional-sized orders generally involves best-effort commitments and the commitment of substantial capital that many times results in agreement upon separate execution parameters. Accordingly, members accepting institutional orders on a best-efforts basis that

may involve trading to cover a short position or buying stock along with the institution would not violate the Interpretation as long as the member maintains a clear understanding with its clients of the terms and conditions under which the order is being executed.

Question #4: Does the Interpretation require a member to disclose the terms and conditions under which it will accept a limit order in a particular fashion?

Answer: The Interpretation provides that the terms and conditions under which customer limit orders are accepted by a firm must be made clear to customers at the time their orders are accepted so that trading ahead in the firms' market-making capacity does not occur. Thus, the Interpretation clearly mandates clarity and specificity by the firms in making **each** of their customers aware of the terms and conditions under which their limit orders are accepted. However, the Interpretation does not dictate the means by which members must make this disclosure. The SEC also stated that the Interpretation "**establishes that a member holding its customer's limit order may not continue to trade for its own position without executing that limit order under the specific terms and conditions that the customer understands and accepts.**"

Question #5: If a member provides an automated service for the entry of limit orders without human intervention, is the member still obligated to disclose the specific terms and conditions under which it will accept each limit order?

Answer: Regardless of how a limit order is transmitted by a customer to

⁴ See Notice to Members 93-67 (October 1993).

a member, the Interpretation clearly mandates clarity and specificity by the firms in making each of their customers aware of the terms and conditions under which their limit orders are accepted.

Question #6: If a member firm routes limit orders to an affiliated firm for execution, are these limit orders subject to the Interpretation or are they considered member-to-member limit orders?

Answer: For purposes of the Interpretation, if a member controls or is controlled by another member, both members shall be considered a single entity. Thus, if a customer's limit order is accepted by one affiliate and forwarded to another affiliate that it controls for execution, the firms are considered a single entity and the market-making unit must protect the limit order as if it were its own and, thus, may not trade ahead of that limit order.

It is a facts-and-circumstances analysis to determine whether one member controls or is controlled by another member. For example, the NASD would view the following factors as indications of a "control" relationship between two members:

- common ownership;
- the existence of a common parent corporation or partnership;
- ownership by one member of a significant amount of the voting securities of another member; or
- ownership by one member of a significant partnership interest in another member.

NASD staff is available to assist members in determining whether a "control" relationship may exist between the member and another firm.

Question #7: Does the Interpretation apply to orders routed by one firm to another for execution?

Answer: Assuming the two firms are not deemed to be one entity under the Interpretation because of a "control" relationship, the Interpretation does not apply to member-to-member limit orders. The NASD is reviewing the appropriateness of application of the Interpretation to these orders. Any expansion of the scope of the Interpretation to include these orders will require NASD Board and SEC approval.

In addition, the Interpretation emphasizes that any member accepting customer limit orders owes those customers duties of "best execution" regardless of whether the orders are executed through the member's market-making capacity or sent to another member for execution. Accordingly, the Interpretation reiterates that the best execution Interpretation requires members to use reasonable diligence to ascertain the best inter-dealer market for the security and buy or sell in such a market so that the price to the customer is as favorable as possible under prevailing market conditions. The Interpretation also emphasizes that order-entry firms should continue to routinely monitor the handling of their customers' limit orders regarding the quality of the execution received.

Question #8: If a firm holds a customer limit order to buy 500 shares of XYZ at 20 1/4 and purchases 200 shares of XYZ at 20 1/8 in its market-making capacity, must the market maker execute the full 500 shares at 20 1/4 or only 200 shares at 20 1/4? Would the answer be the same if the limit order were an all-or-none (AON) order?

Answer: The market maker need only execute 200 shares of the limit order in this instance. However, the

market maker would have to continue to protect the remaining 300 shares. If the limit order were an AON order, the market maker would not have to execute the limit order unless the market maker traded in an amount equal to or greater than the size of the AON limit order.

Question #9: Does the Interpretation apply to odd-lot orders?

Answer: No.

Question #10: Do Small Order Execution System (SOESSM) trades activate the execution of limit orders?

Answer: Yes. Any transaction effected by a member at a price equal or superior to the price agreed upon with the customer for protection of the limit order will obligate the member to immediately execute such limit order.

Question #11: If a non-market maker holds a customer limit order, can it trade ahead of that limit order?

Answer: No. Even though the Interpretation speaks in terms of members trading in their market-making capacity, it would be inconsistent with a member's best execution obligation if the member were to trade ahead of a customer's limit order when it is not acting as a market maker in the security. It has never been the NASD's position that members can trade ahead of their customer's limit orders when not acting as a market maker.

Question #12: Does the Interpretation apply to all Nasdaq[®] securities or just Nasdaq National Market[®] securities?

Answer: The Interpretation applies to all Nasdaq securities.

Questions regarding this Notice

should be directed to James Cangiano, Senior Vice President, Market Surveillance, at (301) 590-6424; Glen Shipway, Senior Vice President, Nasdaq Market Operations, at (203) 385-6250; Robert Aber, General Counsel, at (202) 728-8290; or Thomas Gira, Assistant General Counsel, at (202) 728-8957.

Text Of Interpretation To Article III, Section 1 Of The NASD Rules Of Fair Practice

To continue to ensure investor protection and enhance market quality, the NASD Board of Governors is issuing an Interpretation to the Rules of Fair Practice dealing with member firm treatment of their customer limit orders in Nasdaq securities. This Interpretation will require members acting as market makers to handle their customer limit orders with all due care so that market makers do not "trade ahead" of those limit orders. In the interests of investor protection, the NASD is eliminating the so-called disclosure "safe harbor" previously established for members that fully disclosed to their customers the practice of trading ahead of a customer limit order by a market-making firm.

Interpretation

Article III, Section 1 of the Rules of Fair Practice states that:

A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.

The Best Execution Interpretation states that: In any transaction for or with a customer, a member and per-

sons associated with a member shall use reasonable diligence to ascertain the best inter-dealer market for the subject security and buy or sell in such a market so that the resultant price to the customer is as favorable as possible to the customer under prevailing market conditions. Failure to exercise such diligence shall constitute conduct inconsistent with just and equitable principles of trade in violation of Article III, Section 1 of the Rules of Fair Practice.

In accordance with Article VII, Section 1(a)(2) of the NASD By-Laws, the following interpretation under Article III, Section 1 of the Rules of Fair Practice has been approved by the Board:

A member firm that accepts and holds an unexecuted limit order from its customer in a Nasdaq security and that continues to trade the subject security for its own market-making account at prices that would satisfy the customer's limit order, without executing that limit order under the specific terms and conditions by which the order was accepted by the firm, shall be deemed to have acted in a manner inconsistent with just and equitable principles of trade, in violation of Article III, Section 1 of the Rules of Fair Practice. Nothing in this section, however, requires members to accept limit orders from their customers.

By rescinding the safe harbor position and adopting this Interpretation of the Rules of Fair Practice, the NASD Board wishes to emphasize that members may not trade ahead of their customer limit orders in their market-making capacity even if the member had in the past fully disclosed the practice to its customers prior to accepting limit orders. The

NASD believes that, pursuant to Article III, Section 1 of the Rules of Fair Practice, members accepting and holding unexecuted customer limit orders owe certain duties to their customers that may not be overcome or cured with disclosure of trading practices that include trading ahead of the customer's order. The terms and conditions under which customer limit orders are accepted must be made clear to customers at the time the order is accepted by the firm so that trading ahead in the firms' market-making capacity does not occur. For purposes of this Interpretation, a member that controls or is controlled by another member shall be considered a single entity so that if a customer's limit order is accepted by one affiliate and forwarded to another affiliate for execution, the firms are considered a single entity and the market-making unit may not trade ahead of that customer's limit order.

The Board also wishes to emphasize that all members accepting customer limit orders owe those customers duties of "best execution" regardless of whether the orders are executed through the member's market-making capacity or sent to another member for execution. As set out above, the best execution Interpretation requires members to use reasonable diligence to ascertain the best inter-dealer market for the security and buy or sell in such a market so that the price to the customer is as favorable as possible under prevailing market conditions. The NASD emphasizes that order-entry firms should continue to routinely monitor the handling of their customers' limit orders regarding the quality of the execution received.