

NASD DISCIPLINARY ACTIONS

Disciplinary Actions Reported For August

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, August 15, 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

FEC Securities Corporation (Dallas, Texas) and Earl Carter Bills, II (Registered Principal, Dallas, Texas) submitted an Offer of Settlement pursuant to which they were fined \$5,000, jointly and severally. The firm was also expelled from NASD membership. Bills was suspended from association with any NASD member in any capacity for one year and required to requalify by examination before serving in any capacity with any NASD member. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Bills, failed to record as loans in its general ledger, commission advances from its affiliate firm. The findings also stated that the firm, acting through Bills, failed to make and preserve trial balances, net capital computations, and computations of aggregate indebtedness.

Furthermore, the NASD found that the firm, acting through Bills, failed to maintain its minimum-required net capital and failed to promptly forward for deposit in an escrow account at least 10 customer checks. In addition, the NASD determined that the firm, acting through Bills,

failed to maintain customer funds in an escrow account over which the respondents had no control or to which the respondents had no direct access. The findings further stated that the firm, acting through Bills, deposited and withdrew funds on the same date from escrow accounts while continuing to sell units of the limited partnerships to its customers, and failed to file accurate FOCUS Part IIA reports.

Lux Investors Services Corporation (Bethesda, Maryland) and John Ernst Lux (Registered Principal, Bethesda, Maryland)

submitted an Offer of Settlement pursuant to which they were fined \$100,000, jointly and severally, and ordered to pay \$10,191 in restitution to investors. In addition, the firm was expelled from NASD membership and Lux was 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 the firm, acting through Lux, failed to comply with its restrictive agreement with the NASD and conducted a securities business while failing to maintain its required minimum net capital. The findings also stated that the firm, acting through Lux, failed to give telegraphic notice to the Securities and Exchange Commission (SEC) and NASD of its net capital deficiency. Furthermore, the NASD found that the firm, acting through Lux, acted as an underwriter and engaged in the unregistered distribution of a common stock.

In addition, the NASD determined that the firm, acting through Lux, purchased a common stock for an account in which it had a beneficial interest and effected principal transactions with public customers at prices that were not fair. The findings further stated that the firm, acting through Lux, failed to accurately dis-

close to its customers the markups charged by the firm. According to the findings, the firm, acting through Lux, failed to maintain and keep current books and records and failed to give telegraphic notice to the SEC and NASD of its failure to maintain and keep current books and records. The NASD also found that Lux converted to his own use and benefit \$400,000 in estate assets belonging to a beneficiary without the knowledge or approval of the beneficiary.

Furthermore, the findings stated that the firm, acting through Lux, failed to file its annual audited financial report within the time period prescribed by Rule 17a-5 under the Securities Exchange Act of 1934. The NASD additionally found that the firm, acting through Lux, employed about 28 registered persons in violation of its restriction agreement with the NASD. In addition, the firm, acting through Lux, participated as the sole underwriter of a best-efforts offering, however, the offering circular did not disclose that the minimum offering amount could be satisfied through purchases by parties affiliated with the escrow agent and was not amended during the offering period to so disclose, in contravention of Exchange Act Rule 10b-5. Also, the findings stated that the firm, acting through Lux, failed to return the escrowed funds to the subscribers at the end of the offering period, but rather released the funds to the issuer. The NASD also determined that the firm, acting through Lux, engaged in a manipulative, deceptive, or fraudulent device or contrivance in connection with the sale of securities.

McCarley and Associates, Inc. (Greenville, South Carolina) and **Harold C. McCarley, Jr. (Registered Principal, Greenville, South Carolina)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined

\$100,000, jointly and severally, and ordered to pay \$720,224.19, jointly and severally in restitution to a member firm and public customers. In addition, the firm was expelled from NASD membership and McCarley was 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 the firm, acting through McCarley, misappropriated at least \$750,000 from 16 customer accounts. The NASD also determined that the firm and McCarley misappropriated an additional undetermined amount of money from customers of the firm through unauthorized withdrawals from their securities accounts and converted the funds to the benefit of the firm.

G.R. Stuart & Company, Inc. (Maynard, Massachusetts) and **Gregory R. Stuart (Registered Principal, Maynard, Massachusetts)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$200,000, jointly and severally. The firm was suspended from executing transactions with its customers in a principal capacity for two years provided, however, that nothing herein shall prohibit the firm from applying to the District Office of the NASD for removal of this restriction after January 1, 1995. Stuart must requalify by examination as a registered principal by taking and successfully passing the NASD general securities principal examination.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Stuart, engaged in the securities business while failing to maintain its required minimum net capital. The NASD also found that firm, acting through Stuart, failed to

prepare and maintain its books and records and failed to establish and maintain a supervisory system to adequately supervise the activities of each registered representative and associated person.

Furthermore, the findings stated that the firm, acting through Stuart, failed to comply with the Interpretation of the Board of Governors with respect to markups, in that the firm effected the execution of various transactions as principal to retail customers that were not fair and reasonable taking into consideration all relevant circumstances. In addition, the NASD determined that the firm, acting through Stuart, failed to give certain disclosures and/or information to its penny-stock customers as required or to obtain from its public customers required agreements and suitability statements.

Sunpoint Securities, Inc. (Longview, Texas) and **Van R. Lewis, III (Registered Principal, Longview, Texas)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$40,000, jointly and severally. The firm was also suspended from NASD membership for five business days. Lewis was barred from association with any NASD member as a financial and operations principal and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Lewis, conducting a securities business while having a net capital deficiency and failed to make and keep current its required books and records. The findings also stated that the firm, acting through Lewis, filed materially inaccurate FOCUS reports and failed to file its FOCUS Part IIA report within the time required by SEC Rule 17a-5.

Furthermore, the NASD found that the firm, acting through Lewis, inaccurately stated its accounts receivable and accounts payable. In addition, the NASD determined that the firm, acting through Lewis, obtained agreements from five of its registered representatives providing that they would forego commissions due them to stabilize the firm's financial condition when they should have known that such agreements would not, and did not, improve the firm's financial condition. The findings further stated that the firm, acting through Lewis, made an erroneous entry to its cash account, which had the effect of overstating the firm's cash.

First Interregional Equity Corp. (Short Hills, New Jersey), Lawrence J. Doherty, Registered Representative, Matawan, New Jersey, and Anthony L. Gianninoto (Registered Principal, Malverne, New York) submitted an Offer of Settlement pursuant to which the firm was fined \$30,000, of which \$7,500 is to be jointly and severally paid with another respondent and \$5,000 is to be jointly and severally paid by Gianninoto. Doherty was fined \$10,000, suspended from association with any NASD member in any capacity for 15 days, and required to requalify by examination as a general securities representative. Gianninoto was suspended from association with any NASD member in any capacity for three days and required to qualify by examination as a general securities principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, Doherty, and Gianninoto engaged in the distribution of shares of a common stock when they knew, or should have known, that no registration statement was in effect or had been filed with the SEC and no exemption from registration was available.

The findings also stated that the firm and Doherty created inaccurate books and records. Specifically, the NASD found that, in completing new account forms for 19 retail customers, Doherty provided information that he knew, or reasonably should have known, was materially inaccurate, or recklessly provided customer information without regard for the accuracy of material information required by the account forms and required by NASD rules. Furthermore, the NASD found that in executing the sale of the aforementioned shares of common stock, the firm failed to contact any other market makers to obtain a quotation for the stock and further failed to note quotations of any market makers of the common stock on any order tickets written for these sales. In addition, the NASD determined that the firm and Gianninoto failed to maintain and enforce written supervisory procedures designed to enable them to supervise properly the activities of the firm and its associated persons.

Gianninoto's suspension began with the opening of business on June 22, 1994, and concluded June 24, 1994.

Wedbush Morgan Securities, Inc. (Los Angeles, California), Rene R. St. Pierre (Registered Representative, Meadow Valley, California), and Richard Anthony Lanni (Registered Principal, Los Angeles, California). The firm was fined \$15,000 and Lanni was fined \$10,000. In addition, the firm must submit a letter to the NASD describing steps it has taken to detect and prevent further violations. St. Pierre was fined \$25,000 and suspended from association with any NASD member in any capacity for 30 days. The National Business Conduct Committee (NBCC) imposed the sanctions following review of a San Francisco District Business Conduct Committee (DBCC) decision. The

sanctions were based on findings that St. Pierre exercised effective control over the account of public customers and engaged in excessive transactions, commonly referred to as "churning," in the account. These transactions were unsuitable for the customers in view of the size and frequency of the recommended transactions, and the customers' financial situation and needs. In connection with such activities, the firm, acting through Lanni, failed to take the appropriate steps to enforce the firm's written supervisory procedures in the firm's Reno office to prevent the violations alleged, and to otherwise supervise St. Pierre.

Firms And Individuals Fined

First Inland Securities, Inc. (Spokane, Washington) and Glenn Lamoyne Ottmar (Registered Representative, Spokane, Washington) were fined \$5,000, jointly and severally, and required to pay, jointly and severally, restitution of \$29,393.70 to public customers. In addition, Ottmar was required to requalify as a general securities principal. The SEC affirmed the sanctions following appeal of an April 1993 NBCC decision. The sanctions were based on findings that the firm, acting through Ottmar, effected 14 sales of common stock at unfair prices, taking into consideration all relevant factors in that sales resulted in markups from 14 to 57 percent over the firm's contemporaneous cost.

Gilmore Securities & Co., Inc. (Fair Lawn, New Jersey) and Daniel D. Gilmore (Registered Principal, Washington Township, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm and Gilmore were fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respon-

dents consented to the described sanction and to the entry of findings that the firm, acting through Gilmore, failed to prepare accurate books and records and failed to preserve records relating to its quarterly box count. The findings also stated that the firm, acting through Gilmore, failed to reduce to its possession and control of a total of five customers' fully paid or excess margin securities within required time frames and failed to prepare and maintain a detailed description of the procedures utilized to comply with the possession and control requirements of the SEC Customer Protection Rule.

Furthermore, the NASD found that the firm, acting through Gilmore, failed to deposit cash or qualified securities into its Special Reserve Bank Account when required to do so, and on five occasions withdrew monies from the reserve account when in fact a deposit was required. In addition, the NASD determined that the firm, acting through Gilmore, failed to file its FOCUS Parts I and II reports in a timely manner. Also, according to the findings the firm, acting through Gilmore, failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with securities laws and regulations applicable to its financial recordkeeping and reporting, reserve account, and possession and control requirements.

Paragon Capital Corporation (New York, New York) and Danny Jay Levine (Registered Principal, West Caldwell, New Jersey) submitted an Offer of Settlement pursuant to which they were fined \$65,000, jointly and severally, and ordered to pay \$97,616.94, jointly and severally, 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 the firm and Levine engaged in a solicitation and selling effort of an initial public offering that resulted in the execution of contracts of sale with 146 public customers before the SEC declared the registration statement for the security effective. The NASD also found that the firm, acting through Levine, effected transactions, and induced others to effect transactions in the aforementioned stock at prices that were excessive and fraudulent with markups of 6.625 to 10.5 percent above the prevailing market price, and markdowns ranging from 5.56 to 36.8 percent below the prevailing market price.

Furthermore, the findings stated that the firm, acting through Levine, failed to adequately supervise the firm's employees to ensure that sales were effected according to federal securities laws. In addition, the NASD determined that the firm, acting through Levine, failed to establish, implement, and enforce reasonable supervisory procedures to prevent pre-effective date sales and prevent retail customers from being charged fraudulently excessive markdowns and markups.

Sherman, Fitzpatrick & Co., Inc. (Mineola, New York), Sheldon Paul Prager (Registered Principal, Lynbrook, New York), and Jack Weinberg (Registered Principal, Flushing, New York) were fined \$15,000, jointly and severally. The SEC affirmed the sanctions following appeal of a September 1992 NBCC decision. The sanctions were based on findings that the firm, acting through Prager and Weinberg, engaged in a securities business and failed to maintain its required minimum net capital. In addition, the firm, acting through Prager and Weinberg, sold shares of common stock to customers in principal transactions at unfair prices with markups on these transactions ranging from 5.41 to 18.75 percent above the pre-

vailing market price, in violation of the NASD Mark-Up Policy.

In contravention of the Board of Governors Free-Riding and Withholding Interpretation, the firm, acting through Prager and Weinberg, sold shares of three "hot" issues to restricted accounts. Furthermore, the firm, acting through Prager and Weinberg, effected transactions in the accounts of two registered representatives of other members but failed to notify the firms in writing that the respondents intended to open or maintain accounts for these individuals. Also, before executing any transactions in these two accounts, the respondents failed to use reasonable diligence to ensure that the transactions would not adversely affect the interests of the member firms.

Firms Fined

First Continental Corporation (Old San Juan, Puerto Rico) was fined \$30,000. The sanction was based on findings that the firm conducted a securities business while failing to maintain its required minimum net capital. The firm also failed to maintain and keep current and accurate its books and records and filed materially inaccurate FOCUS Parts I and IIA reports. In addition, the firm failed to file its annual audited financial report in a timely manner and failed to establish and maintain written supervisory procedures.

Individuals Barred Or Suspended

Thomas Dean Anderson, Jr. (Registered Representative, Norfolk, Nebraska) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Anderson failed to respond to NASD requests for information concerning his termination from a member firm.

Gary E. Arbogast (Registered Representative, Louisville, Kentucky) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 18 months. Without admitting or denying the allegations, Arbogast consented to the described sanctions and to the entry of findings that he misused customer funds in the amount of \$1,000 intended for investment in a life insurance policy and failed to apply the funds as required or return the funds to the public customer. Furthermore, the NASD found that Arbogast failed to exercise reasonable and proper supervision over a registered representative and failed and neglected to establish, maintain, and enforce proper supervisory procedures governing the handling of public customer funds. In addition, the NASD determined that Arbogast accepted two \$10,000 cash payments from a public customer to be invested in variable appreciable life insurance policies and failed to file the required currency reports for the receipt of cash in the amount of \$10,000 or more from a customer.

Michael Scott Azrak (Registered Representative, Portland, Oregon) was fined \$40,000 and barred from association with any NASD member in any capacity. In addition, Azrak must pay \$1,500 in restitution to a public customer. The sanctions were based on findings that Azrak received from two public customers checks totaling \$2,500 for investment purposes and failed to remit the funds for their intended purpose or to return the funds to the customers. In addition, Azrak failed to respond to an NASD request for information.

James Clayton Bain, Jr. (Registered Representative, Montesano, Washington) submitted an Offer of Settlement pursuant to

which he was fined \$62,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bain consented to the described sanctions and to the entry of findings that he received from a public customer a cashier's check in the amount of \$3,375 for investment purposes. According to the findings, Bain endorsed the check, deposited it into his personal bank account, and used the funds for his personal benefit. The findings also stated that Bain, while acting as the agent for the guardian of an individual, redeemed \$9,000 in seven transactions from the individual's money market account, deposited the proceeds into an account for himself, and used the funds for his benefit.

Individuals Barred Or Suspended

Berry Dale Baxley (Registered Representative, Atlanta, Georgia) was fined \$25,000, barred from association with any NASD member in any capacity, and required to disgorge \$9,924 to his member firm. The sanctions were based on findings that Baxley engaged in securities transactions outside the regular course or scope of his association with his member firm and failed to provide written notice of these private securities transactions or obtain approval from his member firm.

Thomas Michael Benz (Associated Person, Dubuque, Iowa) was barred from association with any NASD member in any capacity. The sanction was based on findings that Benz received assistance while taking the Series 7 examination by bringing and/or using notes regarding the subject matter of the examination with him into the examination room.

Barry V. Bernstein (Registered Representative, Brooklyn, New York) submitted a Letter of

Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Bernstein consented to the described sanctions and to the entry of findings that he failed to disclose two convictions and an arbitration award rendered against him on his Form U-4 filings.

James Phillip Braseth, II, (Registered Representative, St. Louis Park, Minnesota) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Braseth failed to respond to NASD requests for information concerning a public customer. In addition, Braseth guaranteed the same customer against any loss incurred in connection with purchases of shares of a common stock.

Bruce E. Butler (Registered Representative, Altoona, Pennsylvania) was fined \$10,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Butler submitted to his member firm redemption requests when he knew, or reasonably should have known, that the signatures thereon purporting to be those of a public customer were forged.

Raymond B. Cahoon (Registered Representative, Tuscumbia, Alabama) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$125,000, barred from association with any NASD member in any capacity, and ordered to demonstrate that full restitution of at least \$158,000 has been made to the appropriate parties. Without admitting or denying the allegations, Cahoon consented to the described sanctions and to the entry of findings

that he signed a public customer's name to documents in connection with the handling of her account without the customer's knowledge or consent. Furthermore, the NASD found that Cahoon converted about \$158,391.16 to his own use and benefit by causing checks to be drawn from annuities owned by the same customer and depositing them into his personal checking account, without the customer's knowledge or consent. In addition, the findings stated that Cahoon failed to respond to NASD requests for information.

R. Anderson Cain (Registered Principal, Greensboro, North Carolina) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cain consented to the described sanction and to the entry of findings that he diverted customer funds to the accounts of other customers to reimburse those customers for investment losses that they realized.

Michael Charles Cammarota (Registered Representative, Huntington, New York) submitted an Offer of Settlement pursuant to which he was fined \$25,000 suspended from association with any NASD member in any capacity for 30 business days, and required to requalify in all capacities requiring qualification within 90 days or be suspended until the requisite qualifications are complete. Without admitting or denying the allegations, Cammarota consented to the described sanctions and to the entry of findings that he made recommendations to a public customer without having reasonable basis to believe that the recommendations were consistent with the customer's stated investment objectives or financial needs.

The NASD also found that Cammarota liquidated or caused to be

liquidated all GNMA bonds in the accounts of the same customer and used the proceeds to make a purchase without the prior knowledge, authorization, or consent of the customer. Furthermore, the findings stated that Cammarota forged the same customer's endorsement on checks from the proceeds of the aforementioned liquidation. In addition, the NASD determined that Cammarota sent the customer a letter wherein he personally guaranteed the customer's investment against any risk or loss of capital.

Joan Alisa Carter (Registered Representative, Murray, Utah) was fined \$60,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Carter submitted to her member firm five fictitious applications for the purchase of securities products. In addition, Carter submitted to her member firm an application for the purchase of a securities product without a customer's prior authorization and consent and forged the customer's signature to the application. Carter also failed to respond to NASD requests for information.

Joseph P. Christian (Registered Principal, Stayton, Oregon) was fined \$70,000, barred from association with any NASD member in any capacity, and ordered to disgorge ill-gotten gains in the amount of \$530,591. The sanctions were based on findings that Christian offered and sold to public customers shares of unregistered stock. As part of the unregistered distribution, Christian used two nominee accounts as repositories for shares of the stock that his member firm acquired from affiliates of the company and knew, or should have known, that these shares were not accurately reflected on the firm's books and records as part of the firm's inventory. Furthermore, Christian failed to establish, imple-

ment, and enforce reasonable supervisory procedures and measures necessary to detect and prevent the above violations and failed to respond to NASD requests for information.

Cary Daniels Clark (Registered Representative, Englewood, Colorado) was barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a Denver DBCC decision. The sanctions were based on findings that Clark made fraudulent misrepresentations to public customers to induce them to purchase securities and, thereafter, made improper use of the customers' funds totaling \$176,000.

Jose A. Collazo (Registered Representative, Guayama, Puerto Rico) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Collazo consented to the described sanction and to the entry of findings that he obtained \$13,411.61 from the life insurance policies of seven public customers and converted the funds to his own use and benefit.

Marilyn A. Davis (Registered Representative, Oakton, Virginia) submitted an Offer of Settlement pursuant to which she was fined \$15,000 and suspended from association with any NASD member in any capacity for 15 days. Without admitting or denying the allegations, Davis consented to the described sanctions and to the entry of findings that she participated in private securities transactions while failing to provide prior written notification to her member firm.

Kenneth R. Dew, Jr. (Registered Representative, Jackson, Mississippi) submitted a Letter of

Acceptance, Waiver and Consent pursuant to which he was fined \$12,500 and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, Dew consented to the described sanctions and to the entry of findings that he signed the names of two public customers to a margin agreement in an attempt to accommodate the customers, but without their knowledge or consent.

In addition, the NASD found that Dew engaged in margin purchase transactions in the joint account of the same customers without having reasonable grounds for believing that this purchase was suitable for the customers on the basis of their financial situations, investment objectives, and needs.

Ronald A. Durando (Registered Principal, Nutley, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$8,000, jointly and severally with a member firm and suspended from association with any NASD member as a financial and operations principal for 20 days. Without admitting or denying the allegations, Durando consented to the described sanctions and to the entry of findings that while acting on behalf of a member firm he conducted a securities business while failing to maintain the firm's required minimum net capital.

Dori Edelman (Registered Representative, N. Miami Beach, Florida) and Alvin Baer Epstein (Registered Principal, Hollywood, Florida) submitted an Offer of Settlement pursuant to which Edelman was fined \$15,000 and suspended from association with any NASD member in any capacity for 20 business days. Epstein was fined \$5,000 and suspended from association with any NASD member in any

principal capacity for 20 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Edelman recommended numerous transactions in eight customer accounts that were excessive in view of the nature of the securities involved and for which she did not have reasonable grounds for believing that the transactions were suitable for said customers. The NASD also found that Epstein failed to adequately supervise Edelman's securities sales activities.

Ahmed Elsayed (Registered Representative, Avenel, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$100,000, barred from association with any NASD member in any capacity, and required to pay \$105,000 in restitution to his member firm. Without admitting or denying the allegations, Elsayed consented to the described sanctions and to the entry of findings that he received \$105,000 from a public customer for the purpose of establishing and funding an annuity but failed to deposit the funds with his member firm and, instead, misappropriated and converted the funds for his own use. In addition, the NASD found that in an attempt to conceal his activities, Elsayed prepared fictitious account statements and tax documentation to give the appearance that the customer actually had an effective annuity investment.

Emanuel Bahr Feit (Registered Representative, Brooklyn, New York) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for 10 business days and ordered to disgorge \$4,886.16 to customers. Without admitting or denying the allegations, Feit consented to the described sanctions and to the entry

of findings that he effected sales of a common stock to public customers at prices that were not fair and reasonable in that the total markups represented about 50 percent of the total cost to the customer.

Robert F. Franek (Registered Principal, Charlotte, North Carolina) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$30,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Franek consented to the described sanctions and to the entry of findings that he purchased and sold shares of common stocks in the securities accounts of public customers without their knowledge or authorization. The NASD also found that Franek gained access to a check made payable to a public customer in the amount of \$2,336 and converted the funds to his own use and benefit. In addition, the findings stated that Franek prepared and presented to a public customer a letter wherein he guaranteed the customer against loss on his purchase.

Oscar Garcia (Registered Representative, Elmhurst, New York) 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 ordered to pay full restitution to the City of New York, Department of Probation, in the amount set forth in the restitution agreement. Without admitting or denying the allegations, Garcia consented to the described sanctions and to the entry of findings that he secured unauthorized policy loans from the insurance policies of 10 public customers, forged their signatures on the loan disbursement checks totaling \$42,900, and converted the customers' funds for his own use and personal benefit.

Raymond J. Gibbs (Registered Representative, Ocala, Florida) was fined \$16,625 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Gibbs received from a public customer \$3,325 intended for the purchase of shares of a common stock but, instead, converted the funds to his own use and benefit without the customer's knowledge or authorization.

Joseph Steven Giordano, Jr. (Registered Representative, Seattle, Washington) 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 five business days. Without admitting or denying the allegations, Giordano consented to the described sanctions and to the entry of findings that, in contravention of the Board of Governors' Interpretation with respect to Free-Riding and Withholding, Giordano financed the purchase of common stock in initial public offerings that immediately traded at a premium in the secondary market. According to the findings, Giordano personally benefited from these transactions by retaining about \$5,542 of the profits generated from these transactions.

Traci Lynn Gramenz (Registered Representative, Denver, Colorado) submitted an Offer of Settlement pursuant to which she was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gramenz consented to the described sanctions and to the entry of findings that she solicited a customer to purchase shares of securities and instructed the customer to wire to her member firm's clearing firm \$6,500. According to the findings, Gramenz represented to the customer that the funds would be credited to the account of another

customer of the firm and that the shares would be transferred into the appropriate account upon receipt of payment. Contrary to the representations made to the customer, the NASD found that Gramenz failed to transfer the shares to the customer's account. The findings also stated that Gramenz failed to respond to NASD requests for information.

Michael J. Highlands (Registered Representative, New Oxford, Pennsylvania) was fined \$2,500, suspended from association with any NASD member in any capacity for 15 days, and required to requalify by examination. The sanctions were based on findings that Highlands submitted to his member firm applications for the purchase of shares of stock by public customers. Highlands was listed on the applications as the soliciting representative when such transactions were actually solicited by individuals who were not then associated with the member firm or not registered at all.

James R. Hill (Registered Representative, Memphis, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$15,000, suspended from association with any NASD member in any capacity for one month, and required to requalify by examination as a general securities representative. Without admitting or denying the allegations, Hill consented to the described sanctions and to the entry of findings that he executed a discretionary sale transaction in the account of a public customer without the customer's knowledge or consent. The findings also stated that Hill executed a trade in the same account on the order of the customer's husband, without obtaining a third party power of attorney to take such directions.

Furthermore, the NASD found that Hill sent correspondence to a public customer wherein he proposed cred-

iting the customer's account in connection with losses incurred. In addition, the NASD determined that Hill sent correspondence to the same customer that led the customer to believe that he would be repaid for trading losses of \$1,476, thereby sharing in the losses in the account. Furthermore, this correspondence was not approved by a principal of Hill's member firm. The findings further stated that Hill failed to respond in a timely manner to NASD requests for information.

Robert Holbert (Registered Principal, Phoenix, Arizona) and Cary DePriest (Registered Principal, Phoenix, Arizona). Holbert was fined \$25,000, jointly and severally, with a former member firm, and barred from association with any NASD member in any capacity. DePriest was fined \$20,000, jointly and severally, with a former member firm, and jointly and severally with the firm required to pay \$42,446.75 in restitution to customers. In addition, DePriest is required to requalify by examination as a general securities principal. The NBCC imposed the sanctions following review of a Denver DBCC decision. The sanctions were based on findings that a former member firm, acting through Holbert, conducted a securities business while failing to maintain its minimum required net capital, failed to maintain accurate books and records, filed inaccurate Focus Part I reports, and failed to respond to NASD requests for information.

In addition, the firm, acting through DePriest, effected transactions in common stock with public customers at prices that were not reasonably related to the prevailing market price for these securities and failed to disclose to customers the amount of markup, markdown, or similar remuneration received in connection with principal transactions. Moreover, the

firm, acting through DePriest, purchased restricted securities from four insider customers while failing to comply with the provisions of SEC Rule 144 pursuant to the Securities Act of 1933 and, thereafter, resold these securities to customers in simultaneous riskless principal transactions.

Ebrima S.M. Jeng (Registered Representative, Banjul, Gambia, West Africa) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Jeng failed to respond to NASD requests for information concerning his termination from a member firm.

Steven D. Kelly (Registered Representative, Harrisburg, Pennsylvania) was barred from association with any NASD member in any capacity. The sanction was based on findings that Kelly executed unauthorized transactions in the accounts of public customers and made misrepresentations to one of the customers after the unauthorized purchase was made concerning the stock's profitability.

Michael Ben Lavigne (Registered Principal, Spokane, Washington) was fined \$10,000 and barred from association with any NASD member in any principal capacity. The SEC affirmed the sanctions following appeal of a July 1993 NBCC decision. The sanctions were based on findings that Lavigne permitted a barred individual to remain associated with a member firm. In addition, Lavigne failed to implement written or unwritten procedures to ensure that the individual did not effect any transaction directly or indirectly in customer accounts during his association with the firm. Moreover, Lavigne failed to supervise the transactions effected by the individual in customer accounts through the firm.

Gary L. Leavitt (Registered Principal, Orem, Utah) was fined \$5,000, suspended from association with any NASD member in a principal or supervisory capacity for one year, and ordered to requalify by examination as a general securities representative, general securities principal, and a financial and operations principal. The sanctions were based on findings that Leavitt failed to establish, maintain, and enforce an adequate system to supervise the activities of his member firm's registered representatives, which was reasonably designed to achieve compliance with NASD rules and policies. In addition, Leavitt failed to properly and adequately supervise the activities of a registered representative to detect, deter, and prevent marking-the-close violations.

G. Earl Lloyd II, (Registered Representative, Sandy, Utah) submitted an Offer of Settlement pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. In addition, Lloyd must pay \$26,994 in restitution to customers. Without admitting or denying the allegation, Lloyd consented to the described sanctions and to the entry of findings that he induced investors to purchase securities by making material misrepresentations and omitting to state material facts necessary to prevent other statements from being misleading. The findings also stated that Lloyd made unsuitable recommendations to public customers, failed to respond to NASD requests for information, and neglected to provide to his member firm prompt written notice of his involvement in outside business activities. Moreover, the NASD determined that Lloyd failed to amend his Uniform Application for Securities Industry Registration (Form U-4) to reflect current information.

Mark R. Loft (Registered Representative, Memphis,

Tennessee) submitted an Offer of Settlement pursuant to which he was fined \$17,500 and suspended from association with any NASD member in any capacity for three weeks. Without admitting or denying the allegations, Loft consented to the described sanctions and to the entry of findings that, in an attempt to circumvent sales charges, he falsified public customers' birthdates on new account cards. The findings also stated that Loft knowingly provided false and misleading information in correspondence sent to a public customer regarding the current annualized yield on the customer's portfolio. Furthermore, the NASD found that Loft failed to obtain prior approval from his member firm before transmitting the written information to the public customer.

In addition, the NASD determined that Loft recommended and engaged in purchase and sale transactions in the account of the aforementioned customer without having reasonable grounds for believing that the recommendations and resultant transactions were suitable for the customer on the basis of his financial situation, investment objectives, and needs. The findings further stated that Loft exercised discretion in the same customer's account without having obtained prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm.

Finley Henderson Martell (Registered Principal, Irvine, California) submitted an Offer of Settlement pursuant to which he was fined \$2,500, suspended from association with any NASD member as a direct participation programs principal for six months, and ordered to requalify by examination in any principal capacity should he seek to become associated as such. Without admitting or denying the allegations, Martell consented to the described

sanctions and to the entry of findings that he permitted an individual to function as a principal and actively engage in the management of a member firm's securities business without having registered as a principal or having passed a qualification examination for principals.

Sabrina Lynn Martinez (Registered Representative, Englewood, Colorado) submitted an Offer of Settlement pursuant to which she was suspended from association with any NASD member in any capacity for one year and required to requalify by examination as a general securities representative. Without admitting or denying the allegations, Martinez consented to the described sanctions and to the entry of findings that she participated in private securities transactions while failing to provide prior written notice of these transactions to her member firm.

Steward Ross Moscov (Registered Representative, Rochester, New York) and **David James Whitaker (Registered Principal, Rochester, New York)** submitted an Offer of Settlement pursuant to which Moscov was fined \$5,000 and suspended from association with any NASD member in any capacity for five business days. Whitaker was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Moscov, aided and abetted by Whitaker, offered and sold securities to a public customer of another member firm without first having provided written notice to or received written authorization from his member firm. The findings also stated that, in connection with the aforementioned activity, Moscov and Whitaker submitted false or misleading documents to

Whitaker's member firm and/or the issuer the of securities. In addition, the NASD found that Whitaker failed to adequately supervise the activities of Moscov.

Kenneth M. Murdock (Registered Representative, Elysburg, Pennsylvania) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Murdock failed to respond to NASD requests for information concerning the disposition made by him of insurance premium payments that he had received from policyholders.

John Gordon Nevers (Registered Principal, Scottsdale, Arizona) was fined \$2,500 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following review of a Denver DBCC decision. The sanctions were based on findings that Nevers failed to respond truthfully to an NASD request for information relating to securities purchased by a public customer whose checks were allegedly deposited into Gordon's personal bank account.

Gerald Thomas Nolan (Registered Representative, Dallas, Texas) was fined \$43,825, barred from association with any NASD member in any capacity, and ordered to pay \$8,765 in restitution to his son. The sanctions were based on findings that Nolan made improper use of customer funds by receiving \$6,400 from an overpayment on the customer's life insurance policy and by making an unauthorized loan on the proceeds of both transactions to his own use and benefit. In addition, Nolan failed to respond to NASD requests for information.

P. David Pack (Registered Representative, Philadelphia, Pennsylvania) was fined \$5,000 and

barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of a Philadelphia DBCC decision. The sanctions were based on findings that Pack obtained statements of another registered representative that reflected year-to-date production of \$196,385.43 and affixed his own name to it. At that time, his own year-to-date production had been \$75,748.99. Thereafter, seeking employment with another member firm, Pack submitted the altered production statement to the firm and falsely represented it as his own.

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

Vincent A. Paolano (Registered Representative, Massapequa, New York), Richard M. Gross (Registered Principal, Seaford, New York), and Michael P. Rouse (Registered Representative, Lynbrook, New York) submitted an Offer of Settlement pursuant to which Paolano and Gross were each fined \$100,000 and barred from association with any NASD member in any capacity. Rouse was fined \$2,500 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Paolano and Gross artificially and fraudulently created increased demand for a common stock through misrepresentations, material omissions, improper price predictions, and the sale of stock to customers for whom the investment was unsuitable. This activity influenced the price at which other market makers bid for the stock, thus creating the appearance of actual bona fide trading in the stock and resulting in increased prices.

The findings also stated that Paolano, Gross, and Rouse made recommendations to a customer to purchase the same stock without having reasonable grounds for believing that such recommendations were suitable for the customer in light of the nature and size of the recommended transactions and the customer's investment objectives, financial situation, and needs. Furthermore, the NASD found that Paolano, Gross, and Rouse solicited customers and made misrepresentations and omissions of material facts in recommending the purchase of the same stock. In addition, the NASD determined that Paolano and Gross failed to notify their member firm in writing that they had opened an account at another member firm and failed to notify the other member firm of their association with their member firm. The findings further stated that Paolano and Gross failed to notify their member firm of their outside business practices.

Sherry Lynn Parman (Registered Representative, Greenville, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$65,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Parman consented to the described sanctions and the entry of findings that she made material misrepresentations orally and through newspaper advertisements concerning the rate of return on variable annuity products to public customers to induce them to invest in variable annuities. The findings also stated that Parman failed and neglected to include in the advertisements necessary data, including the name of the member and failed to obtain prior written approval from her member firm for the placement of the advertisements.

Furthermore, the NASD found that Parman obtained cashier's checks

totaling \$4,612.50 and deposited such checks into public customers' accounts, thereby sharing in their accounts. In addition, the NASD determined that Parman forged the public customers' signatures on handwritten notes requesting that cashier's checks purchased by her be deposited into the customers' annuity accounts.

Lee F. Pioske (Registered Principal, Safford, Arizona) and **Amy L. Lofgreen (Registered Representative, Mesa, Arizona)**. Pioske was fined \$100,000, barred from association with any NASD member in any capacity, and required to pay \$181,000 in restitution to customers. Lofgreen was barred from association with any NASD member in any capacity. The sanctions were based on findings that Pioske provided false and misleading information to public customers for the purpose of obtaining and misusing their funds. By inducing investors to rely on this information, Pioske obtained funds aggregating about \$228,000 and, thereafter, used the funds for his own use and benefit.

In addition, Pioske and Lofgreen failed to respond to NASD requests for information.

David G. Poindexter (Registered Representative, Riverdale, New York) 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 ordered to pay \$88,000 in restitution to his member firm. Without admitting or denying the allegations, Poindexter consented to the described sanctions and to the entry of findings that, through a scheme involving forgery and the establishment of fictitious accounts, he converted customer funds in the amount of \$88,000 to his own use and purposes.

Julio R. Quintana (Registered Principal, Marietta, Georgia) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$35,500 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Quintana consented to the described sanctions and to the entry of findings that, without the knowledge or authorization of officers of his member firm, he drafted checks in the amount of \$7,100 from the operating bank account of his member firm and converted the funds to his own use and benefit.

Kevin W. Roberts (Registered Principal, Biloxi, Mississippi) was fined \$15,000 and suspended from association with any NASD member in any capacity for one month. The sanctions were based on findings that Roberts executed unauthorized transactions in the account of a public customer without the customer's knowledge or consent. In addition, Roberts failed and neglected to reflect the aforementioned transactions on the books and records of his member firm.

Michael Joseph Schlueter (Registered Representative, Rogersville, Missouri) was fined \$5,000 and suspended from association with any NASD member in any capacity for 90 days. The NBCC imposed the sanctions following review of a Kansas City DBCC decision. The sanctions were based on findings that, without the knowledge or consent of a public customer, Schlueter falsified a money market statement of another customer by changing the name and address to that of the first customer. Schlueter then sent the falsified statement to the first customer to hide losses sustained in the account.

Raniero Sebastiani (Registered Representative, Sussex, New

Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$27,500, barred from association with any NASD member in any capacity, and ordered to pay \$5,484.71 in restitution to his member firm. Without admitting or denying the allegations, Sebastiani consented to the described sanctions and to the entry of findings that he submitted a disbursement request form to his member firm to obtain a cash surrender check against the policy of a public customer and signed the customer's name to the form. The NASD found that, upon receipt of the check, Sebastiani signed the customer's name, endorsed his own name, deposited the check into his own personal bank account, and converted the funds to his own use without the knowledge or consent of the customer.

Robert S. Silverman (Registered Representative, New Castle, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined \$2,500 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Silverman consented to the described sanctions and to the entry of findings that he failed to pay a \$50,000 arbitration award.

Harold S. Simpson, Sr., (Registered Representative, Jackson, Tennessee) 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 three weeks. Without admitting or denying the allegations, Simpson consented to the described sanctions and to the entry of findings that he deposited a \$25,575 check into the account of a public customer to compensate for losses that were incurred in the customer's account. The NASD also found that Simpson

sent correspondence to the same customer on the letterhead of his member firm without having obtained prior approval of the correspondence by a principal of the firm. In addition, the findings stated that Simpson received a verbal complaint from the same customer but he failed and neglected to refer the complaint to his branch office manager.

Mark D. Socci (Registered Representative, Monroeville, Pennsylvania) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Socci received from insurance customers premium payments totaling \$206.55 that he retained and failed to remit to his member firm. In addition, Socci failed to respond to NASD requests for information.

Ronald S. Spotts (Registered Representative, Beech Creek, Pennsylvania) was fined \$70,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Spotts used funds received from insurance customers for purposes other than the payment of premiums on their annuities. In addition, Spotts failed to respond to NASD requests for information.

Ramiro Jose Sugranes (Registered Representative, Miami, Florida) was fined \$16,988.38 and suspended from association with any NASD member in any capacity for three months. The NBCC imposed the sanctions following appeal of an Atlanta DBCC decision. The sanctions are based on findings that Sugranes provided an institutional customer with a letter in which he falsely stated that a certificate of deposit the customer had purchased was backed by a letter of credit from a bank. In addition, Sugranes provided the same customer with copies of wires indicating that the bank had

issued irrevocable standby letters of credit for the certificates of deposits when, in fact, the wires were prepared by Sugranes and the bank had no such standby letters.

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

John W. Sutton (Registered Representative, Denver, Colorado) 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 one year or until the fine is paid, whichever is longer. Without admitting or denying the allegations, Sutton consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in a customer's account, failed to enter a "stop loss" order for the customer, and guaranteed the customer against loss. The NASD also found that Sutton converted the customer's cash account to a margin account by forging the customer's signature on a margin account agreement.

Scott Michael Symons (Registered Principal, Boca Raton, Florida) submitted an Offer of Settlement pursuant to which he was fined \$5,738.29 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Symons consented to the described sanctions and to the entry of findings that he guaranteed a public customer against loss regarding the sale of a stock that the customer had purchased through him.

Gary Dean Taylor (Registered Representative, Estherville, Iowa) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and barred from association with any

NASD member in any capacity. Without admitting or denying the allegations, Taylor consented to the described sanctions and to the entry of findings that he submitted phony invoices totaling \$1,497.60 to his member firm for reimbursement on the rental of a machine and converted \$867.44 to his own use and benefit.

Sherwood A. Taylor (Registered Representative, Norman, Oklahoma) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$300,000, barred from association with any NASD member in any capacity, and required to pay \$258,000 in restitution to his member firm. Without admitting or denying the allegations, Taylor consented to the described sanctions and to the entry of findings that he exercised discretion in the accounts of public customers without having obtained prior written authorization from the customers and prior written acceptance of the accounts as discretionary by his member firm. The findings also stated that Taylor obtained a check that was disbursed from the joint account of public customers, indorsed the customers' names and delivered the check to another individual as a loan, thereby converting \$37,500 to his own use and benefit without the customers' knowledge or consent. Furthermore, the NASD found that Taylor prepared a misleading account asset statement for public customers to induce them into believing that he had purchased a collateralized equipment trust on their behalf.

In addition, the NASD determined that Taylor recommended and engaged in purchase and sale transactions in the accounts of public customers without having reasonable grounds for believing that such recommendations and resultant transactions were suitable for the customers on the basis of their financial situa-

tions, investment objectives, and needs. The findings further stated that Taylor made payments disbursed from his personal funds, to a public customer to reimburse the customer for losses incurred in her accounts.

James Harvey Thornton (Registered Principal, Houston, Texas) submitted an Offer of Settlement pursuant to which he was fined \$5,000, jointly and severally, with a member firm and suspended from association with any NASD member in a principal capacity for three days. Without admitting or denying the allegations, Thornton consented to the described sanctions and to the entry of findings that while acting on behalf of a member firm, he failed to maintain its books and records and placed an advertisement offering to sell certain securities by way of a private placement and invited accredited investors to a meeting sponsored by the firm and the president of the potential issuer of such securities thereby failing to comply with Section 5 under the Securities Act of 1933.

The findings also stated that Thornton, on behalf of the same member firm, failed to maintain a copy of one of two advertisements. In addition, the NASD determined that Thornton, on behalf of the same member firm, allowed off-site retirement investment group representatives of the firm located at branch offices not registered with the NASD to use firm letterhead that failed to meet NASD requirements.

Furthermore, the NASD found that the same member firm, acting through Thornton, failed to file amended Form U-5s to disclose a state investigation and a customer complaint against two employees of the firm.

Maryann Ward (Associated Person, Glen Cove, New York) sub-

mitted an Offer of Settlement pursuant to which she was fined \$1,000 and suspended from association with any NASD member in any capacity for 14 days. Without admitting or denying the allegations, Ward consented to the described sanctions and to the entry of findings that she failed to appear for testimony as requested by the NASD staff.

Joey Wade Whiteside (Registered Representative, McAlester, Oklahoma) submitted an Offer of Settlement pursuant to which he was fined \$120,000, barred from association with any NASD member in any capacity, and ordered to pay \$300,000 in restitution to the appropriate parties. Without admitting or denying the allegations, Whiteside consented to the described sanctions and to the entry of findings that he engaged in private securities transactions with public customers without providing prior written notice to his member firm. The NASD also found that Whiteside failed to make complete and timely payments to investors in accordance with the terms of promissory notes he issued thereby misappropriating the customers' funds. In addition, the findings stated that Whiteside failed to respond adequately to NASD requests for information.

Individuals Fined

Jeffrey D. Field (Registered Principal, Lafayette, California) was fined \$30,000, jointly and severally, with other respondents and fined an additional \$5,000. The SEC affirmed the sanctions following appeal of a July 1992 NBCC decision. The sanctions were based on findings that a member firm, acting through Field, effected principal securities transactions with public customers at prices that were not fair and reasonable with markups ranging from 5 to 50 percent.

Alan R. Michael (Registered Representative, Carnation, Washington) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000. Without admitting or denying the allegations, Michael consented to the described sanction and to the entry of findings that he accepted compensation totaling \$7,000 as a result of business activities outside the scope of his relationship with his member firm without providing prompt written notice to his member firm of such activity.

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.

Chatmon Capital Group, Inc., West Orange, New Jersey (June 29, 1994)

Genesis Holding Group, Ltd., Chicago, Illinois (June 29, 1994)

Suspensions Lifted

The NASD has lifted suspensions from membership on the dates shown for the following firms, because they have complied with formal written requests to submit financial information.

Capital Equity Corporation, Raleigh, North Carolina (June 7, 1994)

Eurocapital Partners, Inc., Laguna Hills, California (June 7, 1994)

Kreiling Associates & Co., Dallas, Texas (June 22, 1994)

Metcap Securities, Inc., New York, New York (June 15, 1994)

Pond Equities, Inc., Brooklyn, New York (July 21, 1994)

Regency Capital Group, Inc., Glendale, California (June 7, 1994)

Seward, Groves, Richard & Wells, New York, New York (June 10, 1994)

NASD Orders F.N. Wolf & Co, Inc., And Its President To Rescind More Than 2,400 Trades With Customers, Imposes Fines Of \$550,000 And Suspends President And Other Officers Of The Firm

The NASD has ordered F.N. Wolf & Co., Inc. (F.N. Wolf), and its President and largest shareholder Franklin N. Wolf (Wolf) to offer rescission of retail trades totaling more than 1,850,000 shares of Treats International Enterprises, Inc. (Treats), a penny stock that the firm recommended and sold to customers in more than 2,400 trades from May 1992 through October 1992 at prices ranging from \$3.37 to \$4.25 per share. In addition to the order of rescission, the NASD imposed a fine of \$500,000 against the firm and Wolf, while James H. Petrantis, F.N. Wolf's Financial and Operations Principal, and Richard T. Sullivan, the firm's Compliance Director, were each fined \$25,000. In addition, Wolf and Petrantis were suspended from acting in a supervisory capacity with any NASD member firm for two years, and Sullivan was suspended from acting in a supervisory capacity for one year. F.N. Wolf was also suspended for two years from doing business in penny stocks.

On June 30, 1994, shortly after the NASD imposed these disciplinary sanctions, Wolf Financial Group, Inc., a publicly held company that owns F.N. Wolf, announced that F.N. Wolf would close its operations as a broker/dealer, and that all customer accounts would be processed by the firm's clearing broker.

VIOLATIVE BEHAVIOR

The focus of the NASD disciplinary action concerned F.N. Wolf's sales of the securities of Treats in violation of penny-stock rules established by the Securities and Exchange Commission (SEC) to reduce high pressure sales tactics and increase customer awareness in the sale of penny stocks by broker/dealers. The NASD found that between May 1, 1992, and October 30, 1992, F.N. Wolf, Wolf, Petrantis, and Sullivan effected 2,432 sales of Treats to customers without complying with required penny-stock sales practice rules designed to protect the investing public. Those rules required F.N. Wolf, before each retail sale, to provide every customer a written determination that must be signed by the customer that such securities were a suitable investment for the customer, and to obtain written authorization from the customer to purchase such penny stock. In addition, the NASD found F.N. Wolf and Sullivan failed to establish or enforce adequate supervisory procedures relative to transactions in penny stocks.

The case was decided by the District Business Conduct Committee for District 7 in Atlanta, Georgia, and affirmed on appeal by the NASD National Business Conduct Committee. The decision stems from an investigation conducted by the NASD Enforcement Department in coordination with the Atlanta District Office. This enforcement action is part of an ongoing concerted effort by the NASD to eradicate abusive sales practices in the sale of penny stock to the investing public.

All the respondents have appealed this matter to the SEC.

NASD Expels Hibbard Brown & Co., Inc., And SEC Issues A Partial Stay Order

On July 18, 1994, the NASD expelled Hibbard Brown & Co., Inc. (Hibbard Brown), and ordered the firm and its President and sole owner, Richard P. Brown, to pay more than \$8.7 million in restitution to its retail customers. Hibbard Brown, a registered broker/dealer with its principal offices in New York City, operates 15 branches nationwide. The NASD also barred Richard Brown and the firm's Head Trader, Anthony Nadino, from association with any NASD member in any capacity, and fined them \$150,000 each.

The NASD found that Hibbard Brown clearly dominated and controlled the market for Site-Based Media, Inc. (SITE), a penny stock that traded in the over-the-counter market, during the review period, notwithstanding the fact that it was not a market maker in the security. As a result, the NASD found that the firm, Richard Brown, and Anthony Nadino charged retail customers fraudulently excessive markups in over 6,200 transactions in the sale of SITE shares. During the eight trading days from August 22 through September 8, 1991, the firm sold 7.8 million shares of SITE to its customers at prices ranging from \$2.25 to \$3.00 per share. Based on the firm's contemporaneous cost of \$1.11 per share, this resulted in overcharges totaling more than \$8.7 million, and excessive mark-ups of 101 to 169 percent over the prevailing market price for the security. This activity constituted fraud under Article III, Section 18 of the NASD Rules of Fair Practice that prohibits the use of manipulative, deceptive, or other fraudulent devices in connection with the purchase or sale of any security.

The NASD strictly enforces its rules, that require its members to sell securities to retail customers at fair prices. The NASD Board of Governors has consistently held that when a member firm sells stock to a customer from its own account, it may not charge more than a fair markup, generally 5 percent or less over the prevailing market price for that security.

In its decision, the NASD stated that, "[w]e consider the violations so egregious that a bar of Brown and Nadino, and expulsion of the firm, are necessary in the public interest based on the violations found, and will serve as an appropriate deterrent to others in the securities industry."

The NASD's decision was issued following an appeal of a Market Surveillance Committee disciplinary action to the NASD National Business Conduct Committee (NBCC). The Market Surveillance Committee, composed of 12 professionals from securities firms nationwide, is responsible for disciplining members and individuals who fail to comply with market-related securities laws. The NBCC is comprised of members of the Association's Board of Governors. The investigation of this case was conducted by the NASD Enforcement Department in Washington, D.C.

"This enforcement action by the NASD is indicative of our commitment to eliminate fraudulent activity and abusive sales practices in the securities industry," said John Pinto, Executive Vice President, Regulation. "Based on the facts and findings in this matter, we believe the interests of the investing public have been well served by closing Hibbard Brown, and barring Brown and Nadino from the securities business."

While this disciplinary action represents a final enforcement action by the NASD, an appeal was filed with

the SEC. On August 2, 1994, the SEC issued a partial stay order that stayed the NASD expulsion of the firm and the bars of Richard Brown and Anthony Nadino, pending Commission review.

The stay was granted subject to the conditions that Hibbard Brown, Brown, and Nadino shall not conduct any retail securities business, including soliciting any transactions for or with new or existing customers, or engage in any underwriting activities involving retail sales.

NASD Expels Deltavest Financial, Inc., And Bars Its Principals

On July 20, 1994, the SEC denied a request for reconsideration of its order to deny a stay of all disciplinary sanctions imposed by the NASD against Deltavest Financial Inc., Los Angeles, California (Deltavest), and its principals David Alan Park (Park), and Diana Mariniello-Park (Mariniello-Park).

The NASD expelled Deltavest from NASD membership, and barred Park, and Mariniello-Park from associating with any NASD member in a principal capacity in a disciplinary decision issued on June 27, 1994. In addition, Deltavest, Park, and Mariniello-Park were fined \$300,000 jointly and severally, Park was suspended from association with any NASD member in any capacity for 90 days, and required to requalify by examination, and Mariniello-Park was suspended from association with any NASD member in any capacity for 60 days, and required to requalify by examination.

As a result of the SEC's decision to deny the request for a stay, the expulsion of Deltavest and bars against the firm's principals, Park and Mariniello-Park, take effect immediately.

The NASD sanctions were based on findings that Deltavest, Park, and Mariniello-Park, permitted Charles Alan Bergman (Bergman) to remain associated with the firm as a "consultant" after he was barred from the securities industry pursuant to a New York Stock Exchange (NYSE) enforcement action. Deltavest and its principals were aware of the NYSE bar, which would also act to prohibit Bergman from associating with any NASD member in any capacity, but nonetheless continued to retain Bergman.

The NASD found that, "the Consulting Agreement with the compensation arrangement was designed as a ruse to permit Bergman to con-

tinue his association with Deltavest," and that Bergman (who was also named in the NASD disciplinary proceeding) acted as an "associated person" in violation of the bar. The NASD also found that the conduct of Deltavest, Park, and Mariniello-Park was egregious and occurred from August 28, 1992, through at least May 1993. The NASD had firmly opposed Deltavest's, Park's, and Mariniello-Park's application to the SEC to stay the sanctions pending their appeal of the NASD decision.

"In order to protect the investing public and deter similar misconduct in the future, it was critical that the sanctions against Deltavest and its principals take effect immediately in

view of the seriousness of the violations found by the NASD," said Lani M. Sen Woltmann, Director of the NASD Los Angeles District Office. "The NASD's decision to expel Deltavest and bar Park and Mariniello-Park as principals, and the SEC's decision to deny their request to suspend these sanctions, is significant in its recognition of the fact that such behavior will have serious consequences."

The case was decided by the District Business Conduct Committee for District 2 in Los Angeles, California, and affirmed on appeal by the NASD National Business Conduct Committee. The respondents have appealed this matter to the SEC.

FOR YOUR INFORMATION

NASD Extends Mutual Fund Reporting Deadline To 5:40 P.M.

The National Association of Securities Dealers, Inc. (NASD®), which collects and reports mutual fund net asset values (NAVs) to the public, extended the reporting deadline for them by 10 minutes to 5:40 p.m., Eastern Time, effective Monday, July 11, 1994.

The new deadline was set in consultation with representatives of the news media.

A representative from the Investment Company Institute (ICI) said that the trade association will encourage its mutual-fund members in a memo to make their best efforts to meet the new deadline and to alert the NASD in advance when the fund or reporting service may miss the deadline.

The NASD and the mutual fund industry are exploring ways to improve the technology used in collecting and reporting NAVs to vendors and the news media.

The NASD also issued procedures for funds to alert the NASD and the news media if delays occur in their reporting. These procedures will be distributed by the NASD and ICI to mutual funds.

Procedures For Alerting NASD And Media About Fund Delays

1. When a mutual fund group, or its reporting service, expects a delay in its ability to calculate its same-day NAVs for its family of funds, the fund or service should alert the NASD as soon as possible if it wishes to have its NAVs in the dissemination. As the day progresses toward the deadline, the fund or service should continue to keep the NASD apprised as to the length of the delay in reporting same-day NAVs to the NASD.

2. If it appears that the fund or service will not meet the 5:40 p.m., ET, deadline, the NASD will contact *The Wall Street Journal*, the Associated Press, and Tribune Media Services to seek their guidance about whether the time at which the NASD disseminates the feed can be extended given their deadlines.

3. If there is general agreement by the media to extend the feed deadline, the NASD will do so and notify the funds seeking the extension. If the media does not agree to an extension, the fund or reporting service may report their NAVs directly to news organizations.

Farewell Reception And Retirement Dinner To Be Held For DTC Chairman

NASD and 25 other securities groups are sponsoring a reception and retirement dinner for departing DTC Chairman and CEO William T. Dentzer, Jr. The dinner will be held at the New York Hilton's Grand Ballroom September 20, 1994. Proceeds from the event will be contributed to the Securities Industry Foundation for Economic Education to establish the William T. Dentzer, Jr., Education Fund. For ticket information, call (212) 618-0580.

SEC Extends Comment Period On Proposed Capital Charges For Listed Options And Related Positions

The SEC is extending the comment period for Release No. 34-33761 (March 21, 1994, *Federal Register*) on proposed amendments to the net capital rule concerning capital charges for listed options and related positions. In its release, the SEC also solicited comments on the applicability of the proposed theoretical pricing haircut methodology to assess the market risk for OTC options. The

new deadline for comments is now September 16, 1994.

Persons interested in submitting written comments should file three copies with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6-9, Washington, D.C. 20549. All comments should refer to File No. S7-7-94.

Virginia, New Hampshire Provide IPO Exemption To Nasdaq National Market Securities

Securities listed on the Nasdaq National Market® are now regulated the same as securities listed on the New York and American stock exchanges in all 50 states. As of July 25, 1994, Virginia Securities Act Rule 504 is amended to grant an ini-

tial public offering (IPO) exemption from registration to Nasdaq National Market securities. Virginia was the last state that treated the Nasdaq market differently for "blue-sky" registration purposes. Since 1988 Nasdaq National Market securities have been granted an exemption by Virginia to trade six months after they have been issued without registration, although exchange-listed securities were exempt at issuance.

On August 8, 1994, a New Hampshire Securities Act amendment becomes effective to exempt IPOs listed on the Nasdaq National Market, as well as those listed on the New York and American stock exchanges. Issuers must pay a fee to claim the exemption. Before this amendment, IPOs listed on these three stock markets were required to

register with the New Hampshire Bureau of Securities Regulation.

NASD Member Voting Results

As a member service, the NASD publishes the result of member votes on issues presented to them for approval in the monthly *Notices to Members*. Most recently, members voted on this issue:

- *Notice to Members 94-22*—NASD Solicits Member Vote On Proposed Amendments To The Pre-Membership Interview Procedures. Ballots For: 1,879; Against: 161; and Unsigned: 6.

Questions regarding this item should be directed to Joan Conley, President's Office, at (202) 728-8381.