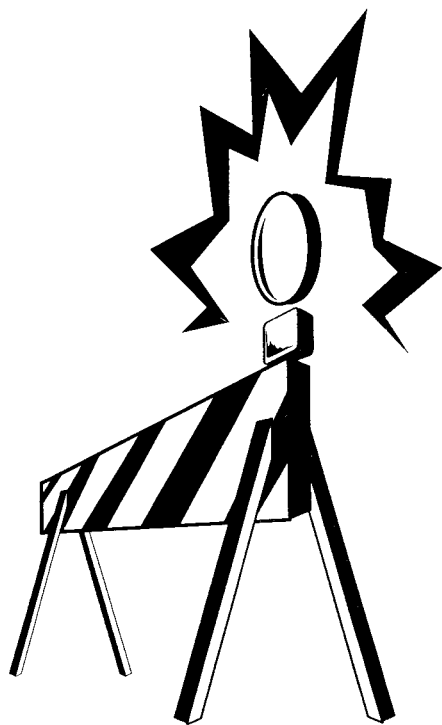


ALERT

National Association of Securities Dealers, Inc.

Volume 8, Number 1 March 1994



NASD Weeds Out Member Firm Repeat Violators

The NASD®, through its business conduct committees, is intensifying its regulatory focus and oversight of registered representatives with extensive disciplinary history. It also strongly supports initiatives by members to exercise closer supervision over the activities of these individuals by their member firms. This is consistent with the NASD's longstanding practice of imposing more severe sanctions for repeat violations by registered persons, which reflects the determination that individuals already disciplined for violative conduct should face more severe disciplinary action for repeated misconduct.

Current initiatives by the SEC, the self-regulatory organizations (SROs), and Congress clearly highlight the issue. For the NASD, it will result in a more intensified effort to focus on persons who, through their flagrant disregard for securities laws and NASD rules and regulations, continue to place customers, their employer member firms, and the securities industry in jeopardy.

During 1993, the NASD joined with the SEC and the New York Stock Exchange (NYSE) to investigate main and branch offices of nine NASD/NYSE members
(Continued on page 3)

Recommends Several Regulatory-Related Initiatives

SEC Market 2000 Report Says Competition Improves Equity Markets

"Clearly, the equity markets can adhere to the existing regulatory standards that preserve the integrity of the market and at the same time meet the service needs of market users. It is unnecessary and unwise to upset this carefully maintained equilibrium."

—*Market 2000, An Examination of Current Equity Market Developments*

The SEC concludes that competition has strengthened the markets since its last market examination in 1975 and that competition between auction and dealer markets ought to continue.

More Investor Disclosure Sought

The report calls for more investor disclosure, ranging from how broker/dealers handle payments for order flow to the display of orders entered on SelectNetSM. The NASD Board had already acted in January to change SelectNet before the SEC released its Market 2000 report, so that it will display order information. To implement this change, the NASD is filing appropriate documents with the SEC to allow members and nonmembers alike to see immediately, when it is entered, any
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(Market 2000, continued from page 1) order broadcast by a member through SelectNet.

The SEC also recommends that customer limit orders priced better than the inside be displayed—for both Nasdaq® and exchange-listed stocks. Currently, the display of limit-order information is being considered by Nasdaq as well as other markets.

Fair Market Competition

Market 2000 recommends that the NASD develop a comprehensive program to regulate third-market activity as a separate market, and not just as the trading activity of individual broker/dealers. This program would include reviews of market-maker performance and order-handling practices, including assessments of the integrity of automated systems.

In addition, the report recommends third-market market makers adhere to five specific trading principles that include:

"Overall, the SEC report recognizes that technology will continue to drive the markets..."

- Displaying customer limit orders better than the existing Intermarket Trading System (ITS) best bid or offer.
- Enhancing customer limit-order protection.
- Crossing of customers' orders to the extent possible without dealer intervention.
- Arranging fixed standards for queuing and executing customer orders.
- Complying with ITS trade-through and block policies.

Nasdaq Limit-Order Handling

The report recommends that Nasdaq market makers should not put their

interests ahead of a customer limit order, regardless of where the order originates, and that it is inappropriate to distinguish handling of customer orders based on whether they are sent to another member firm.

Report On The Right Track

"Overall, the SEC report recognizes that technology will continue to drive the markets, fueling the extraordinary change that has occurred since the SEC looked at these issues 20 years ago. We couldn't be more pleased," says NASD Executive Vice President and Chief Operating Officer Rick Ketchum, "that much of the report contains items the NASD and The Nasdaq Stock Market™ have supported for a long time. There may be specifics we disagree with, but we believe the report emphasizes the right themes—encouraging competition and increasing disclosure to investors. We're delighted with its overall conclusions." □

(Repeat Violators, continued from page 1) with regard to the SEC's "large producers" reviews. In 1993 and again in 1994, a significant regulatory priority for the NASD district offices is to identify and conduct intensive examination of member main and branch offices and individuals associated with these offices where past conduct indicates a history of abusive sales and/or trading practices, thereby posing a regulatory concern to the NASD. In 1994, the NASD also plans to work cooperatively with the NYSE and the state regulatory bodies to address the repeat violator issue.

CRD Enhancement Coming

The NASD is in the early process of a multi-million dollar enhancement to its Central Registration Depository (CRD), a computerized system that allows the NASD to maintain employment, qualification, and disciplinary histories of more than 460,000 securities industry professionals who deal with the public.

"Targeted for completion in 1995, the new system will make CRD a major factor in establishing more effective regulation and early detection of these repeat offenders as it becomes a valuable regulatory tool that will greatly expand our ability to detect, monitor, and track those reps with disciplinary histories as they move from firm to firm, or from office to office," says NASD Executive Vice President John E. Pinto. While the new CRD is under development, NASD's staff is working to upgrade CRD's current detection capabilities with PC-based programs that make it easier to track these problems.

Member Hiring Practices

In addition, many NASD members are intensifying efforts to remove problem reps from their firms. More and more, firms realize that hiring and retaining good people is good business. Similarly, terminating existing representatives who encounter problems and not hiring ones with serious regulatory problems are responsibilities that members are pursuing more

vigorously. In this respect, the NASD is increasing its educational and preventive compliance efforts to help members understand better their sales practice and compliance responsibilities relative to representatives with a history of regulatory difficulties.

Qualified Immunity Sought

Finally, in another major initiative, the NASD is working with the SEC and others to support legislation to give broker/dealers qualified immunity from civil liability for providing factual *Uniform Termination Notice for Securities Industry Registration* (Form U-5) disclosures when terminating individuals believed to have engaged in misconduct. When a registrant's employment is terminated by an NASD member, Form U-5 must be completed by the firm and sent to the NASD. By furnishing qualified immunity, a more thorough record of alleged misconduct will be reflected in a registered representative's disciplinary file, and the NASD will have more accurate information for use in investigation and enforcement efforts. More accurate disclosure on the U-5 should make it more difficult for problem reps to find new employment in the securities industry.

Members' Responsibility

Members are reminded that the responsibility of providing timely and accurate disclosure on Form U-5 is a current obligation, and that the NASD is placing increasing regulatory attention on members who fail to do so. Further, members assume a higher level of supervisory responsibility when they hire a representative with a significant regulatory history. This is consistent with the NASD's long-held position that "normal" supervision is not sufficient when a member hires a rep with a pattern of serious customer complaints

"Targeted for completion in 1995, the new system will make CRD a major factor in establishing more effective regulation and early detection of these repeat offenders as it becomes a valuable regulatory tool that will greatly expand our ability to detect, monitor, and track those reps with disciplinary histories as they move from firm to firm, or from office to office," says NASD Executive Vice President John E. Pinto.

or disciplinary history, or for an existing rep who becomes the subject of such problems. In these instances, members must develop and impose special supervisory practices designed to address the particular areas of concern for the individual rep. □

Regulation

Additional Depth And Liquidity Added To Market By Passive Market Makers

Early analysis of passive market-making activity under Rule 10b-6a indicates that further depth and liquidity are furnished to the market by passive market makers, thus reducing volatility prior to a secondary offering. This was the leading reason behind NASD's plan to bring passive market making to The Nasdaq Stock Market.

The SEC has requested that the NASD provide economic and trading statistics to help evaluate the effectiveness of Rule 10b-6a and compliance with its terms by market participants. Evaluation of early economic data by the NASD Corporate Financing Committee indicates that passive market making is used for securities offerings with a higher per-share offering price (\$23.01 vs. \$14.90) and the percentage of share volume represented by syndicate participants also is much higher (59.45 percent vs. 35.35 percent). Additionally, a composite corporate profile shows that where passive market making is utilized, companies tend to

have larger market share value (\$449,580,000 versus \$165,252,000) and the spread is lower (2.55 percent vs. 5.07 percent) for companies with underwriters using passive market making.

The data also indicate that The Nasdaq Stock Market's quality improves dramatically for offerings involving passive market making. Statistical analyses reveal that the increase in volatility for offerings that used passive market making was only 2.5 percent, while volatility for offerings not using passive market making increased from 21 to 27 percent. These data suggest strongly that additional depth and liquidity supplied to the market by passive market makers benefit all market participants.

For more details on this subject, see *Notice to Members 93-29* (April 23, 1993). □

SEC Issues Alert About Stolen General Motors Stock Certificates

Members should be alert to possible fraud involving canceled General Motors Corporation (GMC) common stock certificates, according to a February 15 notification from the SEC to the NASD. Stolen after cancellation, the certificates involved were issued before January 1, 1984, and may number as many as 1.3 million.

The canceled GMC certificates are being presented for sale or use as collateral at banks and brokerage firms around the world. Although U.S. criminal authorities are investigating this matter, the SEC is warning all securities firms, depositories, and other financial institutions that these securities are in circulation.

Members should take precautions to avoid possible loss, including examining certificates for indication of cancellation and verifying certificate numbers with the Securities Information Center and the transfer agent. The agent is First Chicago Trust Company at (201) 222-4451, or members may write to John P. Bagdonas, Vice President, P.O. Box 2519, Jersey City, NJ 07303-2519.

SEC Approves SOES Interim Modifications

The SEC approved amendments to the NASD Rules of Practice and Procedure that modify the Small Order Execution System (SOESSM). The changes became effective January 31, 1994, after a brief delay in their implementation pending consideration of motions for a stay in the U.S. Court of Appeals for the District of Columbia. The motions were denied.

SOES allows broker/dealers to execute electronically trades of small-agency orders for customers at the best bid or ask price available on Nasdaq at the time of order entry. As a result of these amendments, the new rules:

- Prohibit short sales in SOES.
- Decrease the maximum order size in SOES from 1,000 shares to 500.
- Reduce market makers' required exposure limits from five to two times the tier level and decrease SOES exposure limits using unpreferred order flow only.
- Permit Nasdaq to automatically update market-maker quotations after market makers' exposure limits have been exhausted.

Specific rule language and additional details are in *Notice to Members 94-1*,

and on page 72 of the February 1994 *Notices to Members*. If you have questions about these changes call James M. Cangiano, Senior Vice President, Market Surveillance, at (301) 590-6424, or Beth E. Weimer, Associate General Counsel, at (202) 728-6998.

The NASD proposes to redesign its system for small order execution to provide greater potential for price improvement, expand limit-order protection, and revise order-execution procedures. Complete operating rules for the new system, called The Nasdaq Primary Retail Order View Execution System (N•PROVE), were submitted to the SEC in March. □

UPC Change Approved By SEC To Resolve Issue Of Fails Following Account Transfers

On October 26, 1993, the SEC approved an amendment to Section 65(f)(1) of the Uniform Practice Code (UPC) that clarifies the time frame within which members must initiate the resolution of fails resulting from account transfers. The amendment took effect February 1, 1994; the text appears in *Notice to Members 93-86* (December 1993). The amendment makes clear that the appropriate time period for initiating the resolution of fails resulting from account transfers is 10 days after the date delivery is due, but it

allows additional time for certain types of securities specified in the rule.

The original language of UPC subsection 65(f)(1) required members to "promptly" resolve fails resulting from account transfers. The NASD determined that members should initiate a close-out within 10 days from the date delivery was due, which is consistent with the requirements of NYSE Rule 412(c). However, to accommodate the wide variety of securities as well as associated delivery and

transfer issues typical of many over-the-counter securities, the amendment includes an exception to permit more time for certain types of securities (see examples below) for which a 10-day close-out period is not practicable.

For fail contracts resulting from customer account

transfers, Section 65(f)(1) now requires the inclusion of such fails in the member's fail-file, and pursuant to SEC Rule 15c3-3, requires the member to take steps to obtain physical possession or control of the failed securities by initiating a buy-in procedure or otherwise, not more than 10 business days following the delivery date. The time frame within which a member must take possession or control of the failed securities is extended to 30 days for certain securities, including banker's acceptances, bond anticipation notes, certificates of deposit, commercial paper, FMAC certificates, FNMA certificates, foreign securities, GNMA certificates, limited partnership interests, municipal bonds, mutual fund shares (transferable), revenue anticipation notes, SBA certificates, and tax anticipation notes.

If you have any questions about this issue, call Dorothy L. Kennedy, Assistant Director, Market Operations, at (203) 375-9609, or Robert J. Smith, Attorney, Office of General Counsel, at (202) 728-8176. □

New Subordination Filing Procedures

Beginning April 1, 1994, the NASD transferred responsibility for processing and approving new subordinated loan-agreement filings and existing agreement renewals, covered under SEC Rule 15c3-1d, to its local district offices. Therefore, it is no longer necessary to make these filings with the NASD Washington office. If you need further information, please contact your local NASD district office.

Advertising

NASD Increases Scrutiny Of Members Marketing Alternatives To Certificates Of Deposit

With short-term interest rates currently at or near 30-year lows, the NASD is exercising increased scrutiny over the sale of securities products to customers formerly invested in insured, depository instruments such as certificates of deposit (CDs), or bank savings or money-market accounts. Recent media reports document investors' confusion between insured products offered by banking institutions and securities products, like mutual funds. This confusion may be magnified by the growth in

securities product sales by bank-affiliated broker/dealers and broker/dealers involved in networking arrangements with banks. In addition, many banking institutions are now sponsoring or advising mutual funds that feature similar or identical names.

All NASD members and their salespersons should emphasize to customers seeking alternatives to insured depository accounts that securities products, while potentially providing attractive

investment returns, are not the same as CDs or bank accounts, are not government insured, and have varying associated risks. Members are obligated to provide full and fair disclosure of the greater degree of risk to capital that these customers may experience. Failure to provide adequate disclosure or engaging in certain marketing efforts to replace depository instruments may subject members and their associated persons to disciplinary action for violations of the NASD Rules of Fair Practice.

Required Disclosures

In *Notice to Members 93-87* (December 1993), the NASD outlined certain minimum disclosures for offering mutual fund investments as alternatives to depository products such as CDs. In offering money-market funds, investors should be advised that although fund managers strive to maintain a stable net-asset value, funds are not federally insured and there is no guarantee that a stable net-asset value will be maintained. Similarly, for fixed-income or bond funds, investors should receive clear disclosures that, although such funds may pay higher rates than CDs, their net-asset values are sensitive to interest-rate movement. A rise in interest rates can result in a decline in the value of the customer's investment. Finally, for equity funds, while there may be less possibility that investors will confuse such funds with an insured product such as a CD, they should be clearly advised of the higher degree of risk to capital associated with equity mutual funds.

Sales of Securities in Banks

Bank-affiliated members or firms that sell mutual funds on bank premises through networking arrangements bear a higher level of responsibility to ensure that first-time securities investors understand the distinction between insured bank products and those offered by a broker/dealer. These members must assure that specific suitability and supervision standards are established and followed strictly. Members selling mutual funds on bank premises should require registered persons to reiterate to customers, in all oral and written com-

munications, the differences between insured bank products and securities investments that carry risk to principal.

To help guard against customer confusion about securities offered or sold at bank branch locations, the NASD has outlined certain precautions for both bank-affiliated members and members engaged in networking arrangements with banks. Advertising and sales presentations should disclose that mutual fund shares purchased through banks are not deposits or obligations of, or guaranteed by the bank, and are not federally insured or otherwise guaranteed by the federal government. Members may want to obtain signed, written acknowledgments from their customers that they have received and understood these disclosures. Members should advise their customers annually about these and other pertinent disclosures.

In addition, customers may enter a bank branch with certain preconceived assumptions and expectations of the types of products and services available at that institution. Members must ensure that the customer understands the differences in products and services offered by the broker/dealer, and that the customer is not confused or misled by any misunderstanding or previous assumption, albeit inaccurate.

Where banks permit their unregistered employees to discuss with customers the reinvestment of maturing CDs in mutual funds sold by the bank, members should advise their affiliates that unregistered employees should provide disclosures similar to those provided by the mem-

bers. Members should carefully review the activities of these unregistered employees to ensure that they do not require NASD registration. In addition, such members should advise their affiliate to display appropriate signs or labels near the investment area to distinguish the broker/dealer securities operation from the bank's traditional deposit-taking functions.

Customer Protection Rules

The NASD reminds all members, including those affiliated with banks or engaged in networking arrangements with banks, that they are subject to the full scope of NASD regulation, including various customer-protection provisions in the NASD Rules of Fair Practice when engaged in the offer or sale of securities. These rules include standards governing member conduct in general, as well as in specific areas such as: reasonable grounds that recommendations are suitable; prohibition of fraudulent practices; maintenance of information regarding customers; sales charges associated with mutual funds and variable contract products; supervision of personnel; and content of members' advertising and sales literature.

Please see *Notice to Members 93-87* (December 1993) for more information about the NASD's views in these areas. Also, *Notice to Members 94-16* delineates more specifically members' mutual-fund sales-practice obligations. If you have more questions, call the Advertising/Investment Companies Regulation Department at (202) 728-8330 or your local district office. □

Nonmember Sales Materials Subject To Review When Used By NASD Members

The NASD now reviews certain types of sales material prepared by third-party, nonmember firms for sale to NASD member firms and/or their registered or associated persons. The program

enables the NASD to work directly with certain nonmember publishers when the material is created, thereby allowing it to be brought into compliance with applicable advertising standards before

it is purchased by NASD members. Furthermore, this program ensures consistency and eliminates duplication of work by the NASD staff since only one review will be necessary, provided that

the NASD member using the material does not make any material changes.

relating to options; and advertisements pertaining to U.S. Government Securities and Collateralized Mortgage Obligations (CMOs). For a detailed description of the filing requirements regarding advertisements and sales literature, see Article III, Sections 35(c)(1), 35(c)(2), and Section 35A(c)(1) of the NASD Rules of Fair Practice, and Section 8(c)(1) and 8(c)(2) of the NASD Government Securities Rules.

- Integrated Concepts Group, Inc.
- Liberty Publishing, Inc.
- Mazur Publishing Group
- Publish PDQ
- R&R Associates, Inc.
- Successful Money Management Seminars, Inc.
- WPI Communications, Inc.

CMO/REMIC Brochure Helps You Meet New NASD Requirements

The NASD recently mandated that securities dealers provide investors with materials to ensure that they are fully educated about Collateralized Mortgage Obligations (CMOs) /Real Estate Mortgage Investment Conduits (REMICs).

The Public Securities Association (PSA), the international trade association of mortgage-backed securities dealers, has published *An Investor's Guide to REMICs*, a 32-page booklet explaining REMIC fundamentals, their credit quality, interest and prepayment rates, tranches, types of REMICs, settlement and payment dates, minimum investments and liquidity, tax considerations, and other key points every investor must know. It also features a worksheet, *Questions You Should Ask Before Investing*, and a glossary of terms. Although the NASD does not require members to use the PSA booklet, it does contain the disclosures necessary to comply with the CMO Advertising Guidelines (see *Notice to Members 93-85*, December 1993).

Copies of this brochure may be ordered directly from the PSA Publications Department. The minimum order is 50; they also can be imprinted with your company's logo with a minimum order of 1,000. For pricing information, call Cheryl Dantoni at (212) 440-9430 or write to the Public Securities Association, Attn: Publications Department, 40 Broad Street, New York, NY 10004-2373.

Since nonmember firms are not under the its jurisdiction, the NASD will review such material only if the nonmember agrees, in writing, to follow certain conditions when filing its sales material. The nonmember must incorporate all of the NASD-required changes and revisions and again file a copy of its material reflecting these adjustments. Once the NASD accepts the material, it will be assigned a code number that the nonmember must print on each page of its material and resubmit a final draft. After the NASD receives the final draft with the assigned code number, the nonmember receives an NASD "no-

The NASD will keep members informed with periodic updates in its *Regulatory & Compliance Alert* regarding additions or deletions to this list. NASD members are not required to submit any nonmember sales material that has been previously filed and reviewed by the NASD, and is used without material change.

However, it is strongly recommended that NASD members obtain copies of the NASD no-objection letter from the nonmember to indicate that the sales material has been filed with the NASD and that it is consistent with applicable standards. NASD members should also confirm that the assigned code in the no-objection letter matches the code on each page of the nonmember material.

Please note that if a nonmember firm creates customized sales material for a particular NASD member, it would not be appropriate for the nonmember to submit that material to the NASD for review on behalf of that NASD member. Rather, it is the NASD member's responsibility to submit such information directly to the NASD.

It is very important that NASD member firms and/or their registered or associated persons who purchase any material created by nonmember firms have this material signed or initialed before use, by a registered principal of the NASD member firm in accordance with Section 35 (b)(1) of the NASD Rules of Fair Practice and Section 8 of the NASD Government Securities Rules.

Members with questions about the NASD nonmember filing program should contact the Advertising/Investment Companies Regulation Department at (202) 728-8330. □

Prior to the implementation of this program, it was common for several NASD member firms to submit the same piece of nonmember sales material for review.

Nonmember Material Under Review

The NASD will review only generic advertisements and sales literature subject to NASD filing requirements, including material that applies to registered investment companies securities and public direct participation programs; advertisements and educational material

objection letter" evidencing that the material has been filed and appears consistent with advertising standards.

As of February 28, 1994, the NASD is working with these nonmember entities:

- American Society of Certified Life Underwriters (CLU) & Chartered Financial Consultants (ChFC)
- Emerald Publications
- Financial Profiles, Inc.
- Graphic Communications
- Ibbotson Associates

Use Of Cooperative Advertising Grows To Achieve Lower Cost

Cooperative advertising is a marketing technique—used more and more by NASD members—whereby two or more entities contribute to the cost of designing, producing, and distributing an advertisement (co-op ad) or advertising campaign. This cooperative process enables firms to reach new markets less expensively.

Frequently, an underwriter designs a print advertisement and then makes it available to an introducing broker/dealer in camera-ready form. An introducing broker/dealer may personalize the advertisement (e.g., by adding its name, address, and telephone number), then distribute the final advertisement using a preferred medium (i.e., direct mail, newspaper, etc.). In this example, the underwriter may assume all design costs, with the introducing broker/dealer assuming all distribution costs, and both contribute to the costs of producing the advertisement.

In another common situation, an NASD member and a nonmember, such as a trade association, may cooperate to market securities products and services to a particular target group. Although circulation is limited, this approach is seen as worthwhile because the target group may previously have been unreachable by the member, and the securities products and services may provide an important value-added benefit to the non-member's affiliates. In this example, both entities may contribute to and share the costs of all phases of the marketing process—design, production, and distribution.

Who Is Responsible?

Where more than one NASD member is involved in a cooperative situation, it is important to note that no rule or standard requires the inclusion of multiple member names. However, the member that ultimately offers and sells the securities must be identified. Article III, Section 35(d)(2)(A) of the

Rules of Fair Practice, which specifies the data that must be included in communications, requires that advertisements contain the name of a member.

If the names of a member and nonmember are included, their relationship or lack of it should be clear. Securities products and services must be clearly identified as being offered only by the member. Article III, Sections 35(f)(2)(B) and 35(f)(2)(C) of the Rules of Fair Practice give specific standards applicable to the use and disclosure of the NASD member's name and require this clarification.

Whether identified or not, it is important to remember that while marketing functions and costs may be shared, each member firm is responsible for compliance-related issues. Depending on the control over content exercised by the individual member, each item of advertising and sales literature may require approval by signature or initial, before use, by a registered principal (or designee) of each member. A separate file of all advertisements and sales literature, including the names of the person(s) who prepared them and/or approved their use must be maintained by each member for three years from the date of each use. These review procedures and filing requirements are provisions of Article III, Section 35(b) of the Rules of Fair Practice.

Certain communications must be filed with the NASD Advertising/Investment Companies Regulation Department. For example, Article III, Section 35(c)(1) of the Rules of Fair Practice applies to the advertising and sales literature of registered investment companies and direct participation programs. While this section requires that such materials must be filed with the NASD Advertising/Investment Companies Regulation Department within 10 days of first use, it notes that members need not file advertising and sales literature previously filed

that is used without change.

The Department does not consider the addition of an introducing broker's name, address, and telephone number as a material change. Therefore, only one of the involved NASD members must file the advertisement for review. Upon receipt of the Department's acknowledgment letter, the member that has filed the advertisement should revise the material for consistency with Department comments and recommendations. All necessary revisions should be incorporated prior to distribution to others.

Members with questions regarding cooperative advertising can contact the Advertising/Investment Companies Regulation Department at (202) 728-8330. □

“ASK THE ANALYST”

“Ask the Analyst” provides member firms a forum to pose questions to the NASD Advertising/Investment Companies Regulation Department on a variety of topics. Please note that we cannot guarantee all questions will be answered in this publication. However, we will respond to all questions either here or by directly contacting you. If you have any suggestions or comments, please do not hesitate to contact us. We look forward to hearing from you.

Q. *Would you clarify when the use of a derivative name is acceptable?*

A. A member firm may use a derivative name solely to promote a specific area of its business. For example, a firm may use a derivative name to promote its research services or its business as an underwriter. However, a firm may not use a derivative name to replace its actual name, nor may the derivative name be used generally for the firm.

When using a derivative name, the firm's actual name must be disclosed unless two conditions are met. First, the name used to promote a specific business area must be derived from the member's actual name. Second, the derivative must not be used in a misleading manner given the context. See Article III, Section 35(f)(3)(C) of the Rules of Fair Practice for more details.

Q. *Can articles that have appeared in independent publications be reprinted and used as sales material with investors?*

A. The NASD does not object to the use of article reprints with investors. However, when used for a member's securities business, reprints are considered sales material and are subject to the approval, recordkeeping, and filing requirements in Article III, Section 35 (b) and (c) of the Rules of Fair Practice. In addition, the content of such reprints must comply with applicable NASD, SEC, or MSRB

rules.

Q. *My firm uses a number of advertisements and brochures submitted to the NASD for review several years ago and found consistent with standards at that time. Although we keep all the information in this material current, we are wondering whether we should resubmit the material given its age?*

A. The NASD strongly encourages member firms using older material to resubmit it periodically for our review. Many advertising rules and interpretations have changed during the past few years as have market conditions and the investing public. Accordingly, advertisements or sales literature previously found unobjectionable by the NASD may no longer be consistent with current standards.

Q. *Does the prior-to-use filing requirement in Article III, Section 35(c)(3)(A) of the Rules of Fair Practice apply to brochures and flyers as well as advertisements?*

A. The rule applies only to advertisements of member firms that have not filed advertising with the NASD previously. The pre-use requirement does not apply to sales literature sent or given directly to members of the public, such as brochures, form letters, flyers, or mailers. However, other product-specific filing requirements contained in Article III, Section 35(c) may apply to sales literature. For example, both

advertising and sales literature for mutual funds must be submitted to the NASD within 10 days of first use. For complete definitions of advertising and sales literature, please see Article III, Section 35(a).

Q. *Does mutual fund or variable contract sales material that has been filed with the NASD by an underwriter or insurance-affiliated member need to be resubmitted by a member firm under Article III, Section 35(c)(1) or (c)(3)(A) of the Rules of Fair Practice?*

A. A member does not need to file material which has already been filed by another member so long as no revisions are made to the presentation beyond nonmaterial changes such as updating performance or substituting telephone numbers. However, the principal approval and recordkeeping requirements of Article III, Section 35(b) would still apply. □

Correction: The December 1993 “Ask the Analyst” column contained an error. The answer regarding the inclusion of the telephone number of a local office that is not registered as a branch office of the member inaccurately stated that a local address may be included in advertising. Please note that non-branch addresses may not be included in advertisements.

Arbitration

NASD Seeks SEC Approval For Pilot Plan Dealing With Large And Complex Arbitration Cases

Because the NASD conducts the securities industry's largest arbitration forum, it is aware that certain large and complex cases often require special management. Consequently, the NASD has proposed an amendment to the Code of Arbitration Procedure to establish special procedures for handling large and complex cases. The SEC must approve the proposal before it becomes effective.

The proposed new rule specifies that the procedures are applicable to arbitration matters where the claim or counterclaim is at least \$1 million (exclusive of interest costs or fees), or where the parties agree that the matter should be subject to the procedures. This provision would permit parties with claims of less than \$1 million to have their matter heard according to these procedures if they judge that to be advantageous.

An eligible matter must be set over for an Administrative Conference, and,

unless the parties agree, the matter may not continue under the large and complex case procedures following the conference. An Administrative Conference is conducted by an Arbitration Department staff member. The purpose of the Administrative Conference is to determine procedural issues, including special qualifications of arbitrators, how they will be selected and compensated, setting timetables for discovery, determining the required number of hearings, and other pertinent matters. The parties will also determine if they want to proceed under the remaining provisions of the rule.

Appointment Of Arbitrators

A panel of three arbitrators appointed from a special pool will hear eligible cases. One of these must be an attorney. (The NASD plans to have available a pool of highly qualified arbitrators to preside over large and complex cases.) Promptly following their selection, the panel of arbitrators will convene a pre-

liminary hearing, led by one of the arbitrators. The presiding arbitrator can act for the panel on any issue that comes up before the hearing.

In addition, the presiding arbitrator has unlimited discretion to refer any such matter for the full panel's consideration. Issues that may be addressed by the presiding arbitrator at a preliminary hearing include: stipulations regarding uncontested facts; exchanging and premarking exhibits to be offered at the hearing; and the schedule, form, scope, and use of sworn statements and depositions in lieu of "live" testimony and form of the award, including the desire for a reasoned decision. The arbitrators also will inquire whether parties have attempted to mediate or otherwise settle their case.

The proposed rule change specifies that the large and complex case rules will be effective on a pilot basis for one year after their approval, unless modified or

Arbitration Bodies To Refer Investigations To District Offices For Possible Further Action

In order to clarify an existing authority, the NASD Board approved an amendment to Section 5 of the Code of Arbitration Procedure to specifically provide that arbitrators may, at the conclusion of a proceeding, refer issues that are discovered during an arbitration case to NASD district offices for regulatory investigation and possible disciplinary action. Such referrals would be made only after the matter before the arbitrator was settled, or after an award was rendered. The SEC must approve the rule change before it becomes effective. In addition, the Board affirmed the authority of the Arbitration Department

staff to initiate a regulatory referral at any time if they observe any patterns, trends, or other conduct indicating possible violations of NASD or SEC rules and regulations or federal and state statutes.

Training, now mandatory for new arbitrators, includes information about a discussion of the disciplinary process. Arbitrators receive copies of the *NASD Disciplinary Procedures* brochure and various orientation materials. This information describes the kinds of activity that may be referred to by the arbitrators. Further-

more, the participants are notified that a referral has been made at the same time that it is sent to the regulatory staff.

The district office will review referred material, such as a statement of claim, recording of the proceeding, exhibits, and the award, to determine whether an investigation into rule violations is warranted. If so, the district office may initiate an investigation and gain access to the complete arbitration file of any closed arbitration case. Also, as is the normal practice for NASD investigations, districts will be request-

ing information from members and individuals as well.

Access to the file of an open arbitration case will not be provided unless the district office gets the consent of one or

more parties to the arbitration case. If information is withheld, an investigation should continue through the normal process and use of Article IV, Section 5, of the Rules of Fair Practice.

For more information about this issue, call your local NASD District Office or the NASD Arbitration Department at (212) 480-4881. □

MARK YOUR CALENDAR

Take advantage of the NASD conferences planned for you in 1994

As a member of the securities industry, you already know that staying knowledgeable and up-to-date is one of the most important, yet time-consuming, parts of your job. The NASD has planned a series of conferences for 1994, intended to make it easier for you to do just that.

WHEN	WHAT	WHERE	WHO
May 18	Arbitrator Skills Program	Washington, DC	Arbitrators and attorneys
May 18-20	Spring Securities Conference	Washington, DC	Management, compliance officers, attorneys, and branch office managers
October 12	District 10 Educational Seminar	New York, NY	Management, compliance officers, and attorneys
October 20-21	CRD Membership Meeting	To be announced	Registration and qualification personnel
September 28	Advertising Regulation Seminar	Washington, DC	Compliance and marketing executives
November 2	Arbitrator Skills Program	Phoenix, AZ	Arbitrators and attorneys
November 2-4	Fall Securities Conference	Phoenix, AZ	Management, compliance officers, attorneys, and branch office managers

You'll receive more information about each conference through Notices to Members and individual mailings. Now you simply need to mark your calendar and plan to attend to get the latest information on securities legislation, compliance, and regulation.



NASD Arbitrator Education Improvement Program Continues

An NASD initiative to improve availability of competent arbitrators begun in 1993 continues this year. Two primary subjects identified for improvement are: basic arbitrator skills and the role of the chairperson with a focus on managing large and complex cases. The object of the initiative is to supplement the arbitrator data base with 3,600 arbitrators and to increase the number of qualified chairpersons by 500.

The arbitrator education program is designed to:

- Educate novice arbitrators unfamiliar with NASD rules and procedures. Trainers use interactive video tapes that incorporate vignettes to demonstrate the arbitration process and analyze typical cases with the aid of a study guide.
- Refresh seasoned chairpersons and arbitrators on the conduct of hearings, especially the prehearing conference that is used for discovery purposes. Emphasis is on the special role of the chairperson and managing large and complex cases.
- Encourage use of a joint training program, operating since 1992, with the American Arbitration Association and the New York and American stock exchanges. These sessions have been attended by more than 1,100 arbitrators. The rules of all participating organizations receive emphasis, and faculty include practitioners informed about current legal issues that impact the arbitration process.
- Raise the level of understanding by arbitrators in areas such as the Americans with Disabilities Act and the Civil Rights Act in the securities industry employment setting. Essentially the program is a primer on employment issues, especially discrimination and sexual harassment. The program is a joint effort of the NASD and the Employment Committee of the Association of the Bar of the City of New York.
- Offer a one-day seminar in conjunction with the NASD National Regulatory Conference, designed for

the experienced arbitrator. Participants are encouraged to attend the dual program so that they are exposed to arbitration issues and current developments in the regulatory arena. Participants review problems derived from actual cases and then discuss and determine proposed solutions.

- Formulate regional education programs developed by arbitrators and practitioners around the U.S. In this voluntary effort many participants accepted NASD's invitation to form steering committees to identify topics, prepare written material, and lead presentations. Committees set their own schedules, using full-day conferences, monthly seminars, or periodic luncheon gatherings.

The program is continually under review to further enhance arbitrator education. Information about a particular program is available from Margaret Duzant at (212) 858-4400. □

Violations

Securities And Exchange Commission Affirms NASD Disciplinary Action Against G. K. Scott & Co., Inc.

Customers Charged Excessive And Fraudulent Prices

The NASD took disciplinary action against G.K. Scott & Co., Inc. of Plainview, New York; George Kevorkian, Registered Principal of Dix Hills, New York; and John Kevorkian, Registered Representative of Boca Raton, Florida, for charging customers excessive and fraudulent prices. The SEC affirmed the NASD sanctions following appeal of a decision by the NASD's National Business Conduct Committee (NBCC).

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

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

SEC Upholds NASD Findings

G.K. Scott underwrote an initial public offering (IPO) of First Agate Corporation units, a blind pool offering

priced at \$10 a unit. On the first day of aftermarket trading the firm priced the units at \$15 bid and \$30 ask.

The SEC upheld the NASD's findings that G.K. Scott dominated and controlled the market in First Agate units, common stock, and warrants, all non-Nasdaq over-the-counter (OTC) securities, and thus was required to use its contemporaneous cost as the basis to calculate markups. While the firm argued that it did not control the market in First Agate securities, the SEC said that "where an integrated dealer dominates the market to the extent that there is no independent, competitive market ... then the firm controls wholesale prices, absent evidence to the contrary." The SEC found that "G.K. Scott had the ability to exercise control over the market" for the First Agate securities given that the firm placed 100 percent of the First Agate IPO with its customers, that it was a market maker in the secondary market for each security, and that it traded 100 percent of the aftermarket volume in the units and warrants, and 96.25 percent in the common stock. Accordingly, the SEC found that "the firm, and not a competitive market set the prices for these securities."

As a consequence of this violative conduct, G.K. Scott, through J. Kevorkian, overcharged customers more than

\$666,000 by selling at prices marked up as much as 480 percent above the prevailing market price. The vast majority of the transactions charged were marked up more than 10 percent, which constitutes a fraud under Section 18 of the NASD Rules of Fair Practice which prohibits the use of any manipulative, deceptive, or other fraudulent device in the purchase or sale of any security. Furthermore, in finding that the firm's trader acted with the requisite scienter, the SEC held that J. Kevorkian is "charged with knowing fundamental standards for charging fair prices to the public" and that his "reckless disregard for determining the actual prevailing market price satisfies the scienter requirement."

Poorly Supervised Employees

In affirming findings that G.K. Scott and G. Kevorkian failed to supervise to prevent the misconduct, the SEC found that the firm failed to establish and enforce effective procedures to supervise employees. The SEC stated that "a firm's failure to establish such guidelines is symptomatic of a failure to supervise reasonably." The firm's procedures merely cautioned employees to review principal markups to ensure compliance with the markup interpretation. The SEC found that such procedure "provided no meaningful

guidance on the manner in which compliance could be achieved with respect to the NASD's markup policy."

In several significant procedural rulings, the SEC rejected claims that the Applicants were denied an opportunity to prevent a meaningful defense because the NASD refused to compel production of certain records or testimony from certain witnesses. The SEC stated that "it is the Applicant's obligation, not the NASD's, to marshal all the evidence in their defense" and that the record "was void of any showing by applicants' counsel that he made any attempt to obtain the testimony of witnesses trading in First Agate securities." Finally, the SEC held that the applicants "may not use the discovery process to go on a fishing expedition in the hopes that some evidence will turn up to support an otherwise unsubstantiated theory."

This disciplinary action was taken by the NASD District Business Conduct Committee for District 10 in New York, and is part of the NASD's concerted effort to combat fraudulent and deceptive practices used to sell non-Nasdaq OTC securities to the public.

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

COMPLIANCE SHORT TAKES

Last September, the NASD asked members to vote on a proposed new section to the Rules of Fair Practice that would require a member holding an open order to adjust that order by the amount of any dividend, payment, or distribution on the day that the security is quoted ex-dividend, ex-rights, ex-distribution, or ex-interest. The vote tally: For 1, 682; Against 232; and Unsigned 11.

The SEC approved the NASD filing of the proposed new section originally published in *Notice to Members 93-61* (September 1993). Details of the latest filing, effective May 16, 1994, are in *Notice to Members 94-9* (February 1994). Members should notify their customers about how open orders will be treated. If you have any questions about open-order pricing, call Elliott R. Curzon, Senior Attorney, at (202) 728-8451, or Robert J. Smith, Attorney, at

(202) 728-8176, NASD Office of General Counsel.

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In Notice to Members 92-11 (February 1992), the NASD told members that Article III, Section 3 of the Rules of Fair Practice specifies that charges for services performed "shall be reasonable and not unfairly discriminatory between customers." In addition to rea-

sonableness, the NASD believes that customers must receive adequate notice prior to the member's implementation or change of a service fee.

Recently, the NASD has noticed that some firms may selectively be charging customer accounts a fee solely to create debit balances, even in cases where there is no firm policy to charge such a fee. Furthermore, this is done in order to dissuade or discourage customers from transferring their accounts to another broker/dealer, often in conjunction with the movement of their registered representative to that other firm.

Members should review their procedures for transferring customer accounts to ensure that they are complying with Article III, Section 3 requirements, and not acting in a manner inconsistent with the rule's intent.

The SEC recently asked the Municipal Securities Rulemaking Board (MSRB) to develop a T+3 implementation plan for the municipal securities market. Effective June 1, 1995, SEC Rule 15c6-1 (approved October 1993) will establish three business days as the standard settlement time period for most securities transactions, excluding municipals. T+3 settlement will require the securities industry to compress the current five-business-day settlement time frame to three business days. However, since the rule does not cover municipal securities, the MSRB, at the SEC's request, is drafting a plan concerning how to handle the conversion to T+3 settlement for municipals. If you have questions about this issue, contact Brad Darfler, NASD Compliance Department, at (202) 728-8946.

On February 7, the Chicago Board Options Exchange (CBOE) launched its program to trade options on the

Nasdaq-100 Index®. The Nasdaq 100, a benchmark for large growth stocks traded on The Nasdaq Stock Market, is a capitalization-weighted index comprised of 100 of the largest nonfinancial stocks listed on the Nasdaq National Market®. On January 3, The Nasdaq Stock Market halved the Nasdaq-100 Index value, citing soaring growth of Nasdaq. The cash-settled Nasdaq-100 options are based on the current Nasdaq-100 level times \$100, feature European exercise, and are morning settled. Trading hours at the CBOE are 8:30 a.m. to 3:15 p.m., Central Standard Time.

The NASD Board of Governors approved granting access to non-NASD members for SelectNet, a screen-based service that allows members to negotiate and execute transactions by computer for Nasdaq stocks. The sanctioned changes would permit both members and nonmembers to view any broadcast of an order by a member through SelectNet. The service provides a fast, low-cost, efficient means to execute customer and proprietary orders. Broker/dealers send buy and sell orders to one or all market makers in an issue over a Nasdaq terminal for full or partial execution. Nonmembers would be able to see orders sent to market makers via SelectNet and would be able to contact market makers by phone to execute those trades. The SEC must approve these changes before they become effective.

The SEC recently approved an amendment to Section 3 of Appendix E to the NASD Rules of Fair Practice to increase certain position- and exercise-limit rules to conform to stepped-up limits approved for options exchanges. The amendment raises the current position and exercise limits for equity options from 3,000, 5,500, and 8,000 contracts to 4,500, 7,500, and

10,500 contracts, respectively. This adjustment conforms the NASD's position and exercise limits to the limits of the options exchanges for NASD members that are access firms and all NASD members involved in transactions in conventional options on securities that underlie exchange-traded options. In addition, the change raises position and exercise limits for conventional options on securities that do not underlie exchange-traded options from 3,000 contracts to 4,500 contracts. (See Securities Act Release No. 34-33432 in the January 13, 1994 *Federal Register*.)

In November 1993, the NASD requested members to vote on an amendment to Article III, Section 35(c) of the Rules of Fair Practice that would require a member using mutual fund rankings in advertising or sales literature to submit copies and the data on which they are based to the NASD Advertising/Investment Companies Regulation Department for review. Members overwhelmingly approved the amendment, 1,759 voting for and 333 against. The amendment and ranking guidelines have been submitted to the SEC for approval. The guidelines are listed in *Notice to Members 93-76* (November 1993) and are available from the NASD Advertising/Investment Companies Regulation Department at (202) 728-6977.

Beginning December 15, 1993, SEC-approved amendments to the Corporate Financing Rule are in effect under Article III, Section 44 of the Rules of Fair Practice that prohibit underwriters and related persons from accepting as underwriting compensation options, warrants, or convertible securities that (1) contain antidilution terms designed to provide the underwriter and related persons with disproportionate rights, privileges, and economic benefits

not provided to the purchasers of publicly offered securities, or (2) contain terms that provide for the receipt or accrual of cash dividends before the exercise or conversion of the security.

The NASD determined that variations of disproportionate antidilution rights are unfair and unreasonable when not also provided to investors in the public offering. The receipt of these disproportionate benefits by underwriters and related persons, when these benefits are not received by other purchasers of public securities, could result in the underwriter and others receiving securities as underwriting compensation in excess of 10 percent of the securities sold to the public in the offering. This violates the Stock Numerical Limitation Rule in Subsection (c)(6)(B)(ix) of the Rule.

The NASD has adopted new Subsections to the Rule under Article 111, Section 44 of the Rules of Fair Practice to address these situations. For a complete text of the amendments, see *Notice to Members 93-84* (December 1993). If you have questions, call Paul Mathews or Eugene Buchanan, Supervisors, Corporate Financing Department, at (202) 728-8258.

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On January 24, the SEC approved a new Section 47, Article III, of the Rules of Fair Practice that requires members entering into clearing or carrying agreements to specify the obligations and supervisory responsibilities of introducing and clearing firms. The text of the amendment, effective April 15, is in *Notice to Members 94-7* (February 1994). If you have any questions about its applicability to your firm, call Elliott R. Curzon, Senior Attorney at (202) 728-8451, or Robert J. Smith, Attorney at (202) 728-8176.

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The NASD Board approved changes to Article III, Section 44 of the Rules

of Fair Practice, the corporate financing rule, that would clarify NASD filing requirements and underwriting compensation and arrangements. SEC approval is necessary before the rule change can be effective.

Currently, when calculating an appropriate fee for an offering, the NASD charges a fee equal to \$500 plus .01 percent of the gross dollar amount of the offering, not to exceed \$30,500. In a case where the number of securities being offered is increased by amendment, the NASD requires an additional fee of .01 percent of the offering's amended gross dollar amount. However, the current rule is unclear regarding the calculation of the filing fee for an amendment that increases the number of securities and decreases the public offering price without changing the gross dollar amount. To clarify the rule's application, the proposal provides that the fee calculation would be based on the .01 percent of the per-share offering price of the new or additional securities, multiplied by the number of new or additional securities being offered.

To ensure that underwriting compensation and arrangements remain fair and reasonable, if modified after the offering's effectiveness, the rule proposal would also specifically require the filing of a detailed explanation along with any documents related to the modification of any item of underwriting compensation that the NASD reviewed and approved.

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On November 10, 1993, the SEC approved an amendment to Subsection (b)(7)(C) to Article III, Section 44 of the Rules of Fair Practice clarifying that the exemptions from the filing requirements of the NASD Corporate Financing Rule for securities registered on Forms S-3 or F-3 offered pursuant to Rule 415 under the Securities Act of 1933 are limited to offerings that meet the eligibility criteria as shown in these

forms prior to October 21, 1992. In addition, the exemption for securities registered on Form F-10 under the Securities Act is amended to limit the exemption to Canadian issuers that meet the standards in the SEC release approving that form and are offered pursuant to Canadian shelf-offering procedures. For more information, see *Notice to Members 93-88* (December 1993).

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Effective December 20, 1993, NASD members began submitting trade reports of transactions in convertible debt securities listed on Nasdaq within 90 seconds after execution. Also on that date, members must report all over-the-counter (OTC) equities within 90 seconds of execution. Further, members executing trades between 9 and 9:30 a.m., Eastern Time, in Nasdaq and OTC securities not listed on Nasdaq started reporting those transactions within 90 seconds after execution to the NASD through the Automated Confirmation Transaction (ACTSM) service, utilizing the after-hours or .T symbol in their trade reports. The SEC approved both of these rule changes, and they appear in Schedule D to the By-Laws.

The SEC approved a new Part XIII to Schedule D of the By-Laws to require real-time trade reporting for Nasdaq-listed convertible bonds. The requirements call for members to report all transactions in convertible debt securities for surveillance purposes within 90 seconds after execution, using the same reporting procedures as Nasdaq equity securities. The new rules also provide that only those transactions for 99 bonds or less will be disseminated real-time to the public, effective December 21, 1993. The NASD is simultaneously eliminating the requirement for end-of-day volume reporting currently required for market makers in convertible-debt securities.

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Effective March 1, the NASD began

assessing an \$85 surcharge on all initial and transfer Form U-4 filings that require a Special Registration Review of information reportable on Page 3 of the form. The surcharge will offset the cost of

performing detailed reviews of disclosure information as part of Central Registration Depository (CRD) processing, and maintain the CRD disciplinary data base. More information about this subject is in *Notice*

to Members 94-11 (February 1994), or call the NASD Member Services Phone Center at (301) 590-6500.



NASD DISCIPLINARY ACTIONS

In November and December 1993, and January 1994, the NASD announced the following disciplinary actions against these firms and individuals. Publication of these sanctions alerts members and their associated persons to actionable behavior and the penalties that may result.

District 1—Northern California (the counties of Monterey, San Benito, Fresno, and Inyo, and the remainder of the state north or west of such counties), northern Nevada (the counties of Esmeralda and Nye, and the remainder of the state north or west of such counties), and Hawaii

November Actions

Larry Alan Eggers (Registered Principal, Gilroy, California) was barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of a San Francisco DBCC decision. The sanctions were based on findings that Eggers participated in private securities transactions without giving prior written notification to his member firm. In connection with these transactions, Eggers made material false statements and omissions to investors by representing that an investment was guaranteed a specific rate of return, while failing to disclose any financial information that would support these representations, in violation of Section 17(a)(2) of the Securities Act of 1933.

Jill Kyle (Associated Person, Fremont, California) was fined \$100,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Kyle misappropriated from her member firm \$35,367.74 and converted the proceeds to her own use and benefit. Kyle also failed to respond to NASD requests for information.

Kelly Suzanne Simpson (Associated Person, Monterey, California) was fined \$5,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Simpson forged signatures to six checks totaling \$551.76 and failed to respond to NASD requests for information.

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

The NBCC imposed the sanctions following appeal of a San Francisco DBCC decision. The sanctions were based on findings that a member firm, acting through Smith, failed to comply with the SEC's Customer Protection Rule 15c3-3 in that it received and accepted customer funds in contravention of its claimed exemption from the rule and did not otherwise comply with the full provisions of the rule. In addition, the firm, acting through Smith, failed to file its FOCUS Part II reports on a timely basis, to establish adequate written supervisory procedures, or to implement a supervisory system to prevent violations and achieve compliance with securities rules and regulations. Smith has appealed this action to the SEC, and the

sanctions, other than the bar, are not in effect pending consideration of the appeal.

December Actions

William Louis Morgan (Registered Principal, Danville, California) was barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of a November 1992 NBCC decision. The sanctions were based on findings that Morgan participated in private securities transactions without providing prior written notification to his member firm.

January Actions

James Earl Jacoby (Registered Representative, Elk Grove, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Jacoby consented to the described sanctions and to the entry of findings that he effected sales of securities in the accounts of 35 public customers without the customers' prior knowledge and consent.

Brett John Kacura (Registered Representative, San Francisco, California) was fined \$52,920 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Kacura effected the purchase of securities in the accounts of public customers without their prior knowledge and consent. Kacura also failed to respond to NASD requests for information.

Gene Wilbur Williams, Jr. (Registered Principal, Rocklin, California) was fined \$5,000, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify by examination as a general securities principal following his suspension. The sanctions were based on findings that Williams participated in private securities transactions while failing to give prompt written notification to his member firm.

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

November Actions

Steven Michael Hartwell (Registered Representative, Fort Bragg, North Carolina) was fined \$10,000, suspended from association with any NASD member firm in any capacity for seven business days, and ordered to requalify by examination in any capacity he seeks to become associated. The sanctions were based on findings that Hartwell engaged in outside business activities while failing to provide prompt written notification to his member firm.

William Felbert Nowlin, III (Registered Representative, Los Angeles, California) was fined \$100,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Nowlin solicited a public customer to purchase stock and received from the

customer a \$10,200 check for payment of the stock. However, Nowlin failed to purchase any stock for the customer or return any funds to the customer. Instead, he converted the funds by depositing the check into the personal securities account of another registered representative and led the representative to believe that the money being deposited was to be used to purchase securities on Nowlin's behalf.

In addition, regarding a NASD investigation into the above activities, Nowlin willfully made or caused to be made an untrue statement of a material fact or omitted to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading.

Dale M. Russell (Registered Principal, LaVerne, California) was fined \$53,287.45 and suspended from association with any NASD member in any capacity for seven days. The SEC affirmed the sanctions following appeal of a May 1992 NBCC decision. The sanctions were based on findings that Russell engaged in private securities transactions without giving prior written notification of such activity to his member firm.

December Actions

None

January Actions

Stephen Russell Boadt (Registered Principal, Marina del Rey, California) was fined \$10,000 and required to take a financial and operations principal examination within 120 days. However, if he fails to pass the examination during that period, he may not act in any principal capacity until he passes the examination. The SEC modified the sanctions following appeal of a January 1993 NBCC decision. The sanctions were based on findings that Boadt continued to act as a financial and operations principal for his member firm after he had been ordered by the NASD not to act in that capacity until he had requalified by examination.

Robert Keith Malkin (Registered Principal, Castaic, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was suspended from association with any NASD member in any capacity for 30 days and required to requalify by examination. Without admitting or denying the allegations, Malkin consented to the described sanctions and to the entry of findings that he recommended to a public customer the purchase of securities without having reasonable grounds for believing such recommendations were suitable for the customer in view of the size of the transactions and the customer's financial situation and needs.

Philip Everett Merchant (Registered Principal, Redlands, California) was suspended from association with any NASD member in any capacity for seven days, barred from association with any NASD member as a general securities principal, and required to requalify by examination as a registered representative. The sanctions were based on findings that Merchant secured at least \$233,000 in loans from 16 individuals and issued short-term unsecured promissory notes in connection with such loans to finance the operation of a broker/dealer branch office. However, Merchant failed to provide prompt written notification to the SEC of the loans.

cation to his member firms of his participation in these private securities transactions.

Carlos Montanez Murillo (Registered Principal, Bakersfield, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$41,240 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Murillo consented to the described sanctions and to the entry of findings that he accepted \$8,248 in customer funds intended for the purchase of securities and failed to apply the funds to the customer's account for that purpose. Instead, the findings stated that Murillo deposited the funds into his personal bank account for his own use and benefit.

Carolyn Paula Powers (Registered Representative, Pasadena, California) submitted an Offer of Settlement pursuant to which she was fined \$10,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Powers consented to the described sanctions, and to the entry of findings that she used a customer's name and social security number to obtain a credit card account in the customer's name. According to the findings, the customer was unaware that her name and social security number had been used by Powers to obtain credit until a \$5,759.40 debit balance was placed with a collection agency as a result of Powers' failure to pay the balance on the account.

Lynn Marie Rach (Registered Representative, Lake Forest, California) submitted an Offer of Settlement pursuant to which she was fined \$5,000 and suspended from association with any NASD member in all capacities for five business days. In addition, she must requalify by examination. Without admitting or denying the allegations, Rach consented to the described sanctions and to the entry of findings that she executed unauthorized transactions in customer accounts.

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

November Actions

Jeanne M. Casebolt (Registered Representative, La Junta, Colorado) was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay \$2,937 plus interest in restitution to customers. The sanctions were based on findings that Casebolt obtained from six insurance customers \$2,937 intended for the purchase of insurance policies. However, Casebolt failed to forward these funds to her member firm, failed to cause the intended policies to be purchased, and failed to use the funds for the benefit of the customers. Casebolt also failed to respond to NASD requests for information.

Kirk L. Ferguson (Registered Principal, Centerville, Utah) was fined \$5,000, jointly and severally with a member firm, and jointly and severally, has to provide restitution of \$56,335 plus interest to customers. The NASD has to approve an explanation to the customers of the reason for the restitution and the firm and Ferguson have to provide proof to the NASD that they have made such restitution. Ferguson was fined an additional \$5,000, suspended from association with any NASD member in any capacity for five business days, and required to requalify by examination as a financial and operations principal and general securities principal before acting in those capacities with any NASD member firm.

The NBCC affirmed the sanctions following appeal of a Denver DBCC decision. The sanctions were based on findings that the firm, acting through Ferguson, conducted a securities business while failing to maintain its minimum required net capital and effected securities transactions with retail customers in a common stock that included markups ranging from 5 to 10 percent above the prevailing market price. Moreover, the firm, acting through Ferguson, engaged in, and induced others to engage in, deceptive and fraudulent devices and contrivances in connection with the aforementioned stock by dominating and controlling the market in the stock such that there was no independent, competitive market in the shares. Ferguson has appealed the action to the SEC, and the sanctions are not in effect pending consideration of the appeal.

Michael K. Fultz (Registered Representative, Boulder, Colorado) was barred from association with any NASD member in any capacity. The sanction was based on findings that Fultz had in his possession unauthorized material while taking the Series 7 examination.

John L. Gravitt (Registered Representative, Denver, Colorado) was fined \$15,000, suspended from association with any NASD member in any capacity for 30 days, and must requalify by examination in any capacity in which he seeks to act in the securities industry. The sanctions were based on findings that Gravitt effected five unauthorized transactions in a customer's account.

Thomas Edward Krotkowski (Registered Representative, Tacoma, Washington) was fined \$100,000 and barred from association with any NASD member in any capacity. In addition, Krotkowski is required to provide proof that he has paid restitution to his former member firm before applying for relief from the disqualification arising from the bar.

The NBCC imposed the sanctions following appeal of a Seattle DBCC decision. The sanctions were based on findings that Krotkowski completed disbursement request forms for 41 insurance customers requesting that their policies be surrendered without their consent. Krotkowski then signed the customers' names to the forms and submitted the forms to his member firm for the customers, obtained the surrender checks totaling \$19,780.37, and endorsed the checks with the name of each customer.

Garland W. H. McDonald (Registered Representative, Mesa, Arizona) 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 provide proof of restitution in the amount of \$67,010.45 to customers plus per annum interest at the rate of 10 percent.

Without admitting or denying the allegations, McDonald consented to the described sanctions and to the entry of findings that he misrepresented to public customers that they could purchase certain interest bearing notes at a discount from him. According to the findings and based on these representations, the customers gave McDonald \$67,010.45 for investment in these notes. Moreover, the findings stated that McDonald failed to invest these funds for the benefit of the customers and, instead, deposited the monies into his business bank account for his own benefit, and provided fabricated order tickets, confirmations, or receipts that implied the notes were being sold through his member firm.

Robert J. Niichel (Registered Representative, Littleton, Colorado) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Niichel instructed his member firm to change the addresses on the accounts of public customers to reflect addresses at which these customers did not reside in an attempt to circumvent state registration requirements. Niichel also failed to respond to NASD requests for information.

Lloyd Dwight Pankey (Registered Principal, Spokane, Washington) submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pankey consented to the described sanction and to the entry of findings that he engaged in outside business activities without giving his member firm prompt written notice. The findings also stated that Pankey engaged in private securities transactions while failing to provide prior written notice to his member firm and engaged in the solicitation, sales, and supervision of securities sales through an unregistered broker/dealer.

Anthony J. Parisi (Registered Representative, Scottsdale, Arizona) was fined \$20,000 and required to provide proof of restitution to a customer in the amount of \$6,830.38 plus interest. The sanctions were based on findings that, in violation of the Policy of the Board of Governors entitled "Fair Dealing With Customers," Parisi made misrepresentations to a public customer to induce the improper trading of mutual fund shares in the customer's account.

Douglas B. Reeves (Registered Principal, Cheyenne, Wyoming) was fined \$100,000 and barred from association

with any NASD member in any capacity. However, the fine is waived if restitution of \$80,000 plus interest is paid to certain customers within 180 days. Without admitting or denying the allegations, Reeves consented to the described sanctions and to the entry of findings that he misappropriated funds from various customers through the use of fraudulent misrepresentations. Specifically, the NASD found that Reeves requested the disbursement of a \$200,000 check from the account of two customers without their consent. Reeves used the funds to pay shareholders of a former member firm he founded.

The NASD also determined that Reeves caused checks totaling \$80,000 from a customer account to be endorsed and made payable to a corporation of which he was a majority shareholder, and deposited the funds in the corporation's account without the customer's knowledge. Thereafter, the findings stated that Reeves instructed a bookkeeper of the corporation to pay \$65,000 of the funds to Reeves and to record the purchase of a debenture by the customer on the corporation's books and records. All of the above activity was also found by the NASD to violate Section 40 of the Rules of Fair Practice concerning private securities transactions. The NASD also determined that Reeves instructed a customer to withdraw \$25,000 from a mutual fund account and \$50,000 from her securities account at the member firm he founded. Reeves then deposited the \$25,000 check in his business account and provided the customer with a statement indicating that the funds had been invested in the firm he founded. However, she was not listed as a shareholder on the firm's books and records. Also, the NASD found that initially Reeves did not tell the customer what he intended to do with the \$50,000, but later told her the funds were used for a specific investment purpose. However, the investment was never recorded by the company in which the customer's funds were allegedly placed.

The NASD also determined that Reeves sent correspondence to two public customers on a member firm's letterhead representing that the firm was providing a mortgage on real property to them. This letter included payment coupons that instructed the customers to remit their payments to the member firm's branch office for deposit into another customer's securities account. However, the firm did not lend money to the customers and neither the branch manager nor an acting principal of the member firm approved the correspondence. Finally, the NASD found that Reeves failed to respond to NASD requests for information. This investigation was conducted by the Denver District Staff with the assistance of the Wyoming Securities Division.

Wasatch Stock Trading, Inc. (Salt Lake City, Utah), Roger Hill Neslen (Registered Principal, Sandy, Utah), and Michael W. Klekas (Registered Principal, Salt Lake City, Utah) The firm was fined \$20,000, and suspended from conducting a securities business for 15 days. Neslen was fined \$10,000, barred from association any NASD member as a financial and operations principal, or in any proprietary or ownership position of any NASD member firm. Neslen also was suspended from association with any NASD member in any capacity for 15 days. Klekas was fined \$10,000, suspended from association with any NASD member in any capacity for 15 days, and required to requalify by examination in any capacity.

The NBCC imposed the sanctions following appeal of a Denver District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that the firm, acting through Neslen and Klekas, engaged in a fraudulent and deceptive course of conduct that involved "parking" securities in customers' accounts to provide the appearance that the firm was in compliance with the net capital requirement of SEC Rule 15c3-1. In addition, the firm, acting through Neslen, conducted a securities business while failing to maintain minimum required net capital and failed to make required deposits into its Special Reserve Account for the Exclusive Benefit of Customers in accordance with the SEC Customer Protection Rule 15c3-3. Moreover, the firm, acting through Neslen, filed inaccurate FOCUS Part I and II reports and engaged in a fraudulent and deceptive course of conduct of "kiting" checks between its bank accounts to create the appearance of good funds in those accounts. Furthermore, the firm, acting through Neslen, failed to establish adequate written supervisory

procedures required to supervise the types of business in which it engaged and failed to enforce its written supervisory procedures.

December Actions

Robert Murray Brooke (Registered Representative, Bozeman, Montana) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that, on two occasions, Brooke completed a Uniform Application for Securities Industry Registration (Form U-4) that contained false and misleading information.

Daniel Gordon DeWeert (Registered Representative, Missoula, Montana) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that DeWeert received from a public customer a \$9,000 check for investment purposes. DeWeert failed to follow the customer's instruction and deposited the funds into a bank account in which he had a beneficial interest. DeWeert also failed to respond to NASD requests for information.

Harold W. Gorden (Registered Principal, Castle Rock, Colorado) submitted an Offer of Settlement to the SEC pursuant to which he was fined \$75,000 and suspended from association with any NASD member in any capacity for 60 days. Gorden consented to the described sanctions and left undisturbed SEC findings that a former member firm, acting through Gorden, effected securities transactions with retail customers in a common stock that included fraudulent and unfair markups ranging from 11 to 150 percent above the firm's contemporaneous costs. Gorden's suspension commenced November 8, 1993, and concluded January 6, 1994.

U. S. Securities Clearing Corp. (San Diego, California) and Anthony James Miranti (Registered Principal, San Diego, California) The firm was fined \$55,000, jointly and severally with Miranti and the firm and Miranti were required to pay \$396,846 in restitution to customers in whose accounts transactions were effected at prices in excess of 5 percent over the prevailing market price for the securities. In addition, the firm was suspended from effecting any principal transactions for 90 days and Miranti was suspended from association with any NASD member in any capacity for 90 days.

The National Business Conduct Committee (NBCC) imposed the sanctions following appeal of a Denver District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that the firm, acting through Miranti, executed 301 principal retail sales to public customers at unfair and unreasonable prices taking into consideration all relevant circumstances. These circumstances included the fact that the firm was not a market maker in these securities at the time the trades were effected and that the markups on these trades ranged from 5.1 to 150 percent over the prevailing market price for the securities at the time the trades were executed. In addition, the firm, acting through Miranti, failed to report its price and volume activity for its principal transactions in non-Nasdaq securities. This action has been appealed to the Securities and Exchange Commission (SEC) and the sanctions are not in effect pending consideration of the appeal.

January Actions

Robert William Cox (Registered Representative, Medford, Oregon) 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 30 days. Without admitting or denying the allegations, Cox consented to the described sanctions and to the entry of findings that he received compensation from a mortgage broker representing customer referral fees while failing to provide prompt written notice of this activity to his member firm.

John Robert Schwenger (Registered Representative, Denver, Colorado) was ordered to pay \$65,000 in restitution to a member firm, fined \$10,000 with the proviso that the fine can be reduced by any amount paid to a firm in restitution. suspended from association with any NASD member firm in any capacity for 15 business days, and ordered to requalify by examination before becoming associated with any NASD member in any capacity. The NBCC

imposed the sanctions following review of a Seattle District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Schwenger exercised discretion in the account of a public customer without obtaining prior written discretionary trading authority. In addition, Schwenger recommended securities and options transactions in the same customer's account without having reasonable grounds for believing that such recommendations were suitable for the customer in view of the size, frequency, and nature of the recommended transactions, and the customer's financial situation, circumstances, and needs.

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

November Actions

Robyn Lynn Ruppert O'Leary (Registered Representative, St. Louis, Missouri) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, O'Leary consented to the described sanction and to the entry of findings that on several occasions, she sent written communications to public customers that contained material misstatements or omissions of facts, unwarranted claims and opinions, and failed to make certain disclosures including the risks involved. In addition, the NASD found that O'Leary recommended and executed sales of shares of a growth fund and purchases of a common stock for the securities accounts of public customers without having reasonable grounds for believing that the recommendations were suitable in view of the nature and size of the recommended transactions and the customers' investment objectives, financial situations, and needs.

LeAnn Bobleter Sargent (Registered Representative, Minneapolis, Minnesota) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$31,250 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sargent consented to the described sanctions and to the entry of findings that she misused the funds of a public customer by depositing a \$6,250 check intended for a securities transaction into her personal bank account without the customer's knowledge or consent. In addition, the findings stated that Sargent failed to respond to an NASD request for information.

December Actions

Bobby Richard Hsia (Registered Representative, Lenexa, Kansas) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for two weeks. Without admitting or denying the allegations, Hsia consented to the described sanctions and to the entry of findings that he established securities accounts for a public customer at two member firms other than his member firm without giving prior written notice to his member firm. In addition, the NASD found that Hsia misused customer funds totaling \$55,290.46 by depositing the funds into a bank account under his control and subjecting the funds to claims by his creditors.

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

January Actions.

Westonka Investments, Inc. (Minnetonka, Minnesota) and Timothy Joel Friederichs (Registered Principal, Minnetonka, Minnesota) submitted an Offer of Settlement pursuant to which they were fined \$50,000, jointly and severally. Friederichs was also suspended from association with any NASD member in any capacity for seven days and required to requalify by examination as a general securities principal. Without admitting or denying the allega-

tions, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Friederichs, sold shares of a common stock that were not registered with the SEC pursuant to Section 5 of the Securities Act of 1933, or exempt from registration. Furthermore, the NASD found that the firm, acting through Friederichs, failed to meet the exemptive requirements of SEC Rule 144 in the aforementioned sales transactions.

Robert Douglas Ziller (Registered Representative, Rochester, Minnesota) 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 30 days. Without admitting or denying the allegations, Ziller consented to the described sanctions and to the entry of findings that he signed six customers' names to change-of-dealer forms to facilitate the transfer of the customers' accounts from one brokerage firm to another without express permission, although the customers had agreed to the transfer.

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

November Actions

Wendell D. Belden (Registered Principal, Tulsa, Oklahoma) submitted an Offer of Settlement pursuant to which he was fined \$25,000. Without admitting or denying the allegations, Belden consented to the described sanction and to the entry of findings that he provided the general public with misleading sales literature that omitted and misstated material facts, and failed to meet applicable standards. Furthermore, the NASD found that this sales literature was used prior to obtaining written supervisory approval and was not submitted to the NASD Advertising Department within 10 days of its first use. The findings also stated that Belden distributed to the general public sales literature that did not clearly set forth the name of a registered broker/dealer. In addition, the NASD determined that, in violation of the provisions of Article I of Schedule C of the NASD By-Laws, Belden advertised, operated, and effected securities transactions through an unregistered broker/dealer.

Nazmi C. Hassanieh (Registered Representative, Memphis, Tennessee) was barred from association with any NASD member in any capacity. The NBCC imposed the sanction following appeal of a New Orleans DBCC decision. The sanctions were based on findings that Hassanieh recommended that public customers invest in a limited partnership without having reasonable grounds for believing that such recommendation was suitable based on their investment objectives, financial situations, and needs. In addition, Hassanieh failed to respond to NASD requests for information. Hassanieh has appealed this action to the SEC, and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

Mark A. Hollis (Registered Representative, Headland, Alabama) was fined \$25,000, barred from association with any NASD member in any capacity, and required to pay restitution to the appropriate party. The sanctions were based on findings that Hollis received \$538 from public customers as payment toward various insurance policies and failed to submit the funds to his member firm, thereby converting the funds to his own use without the customers' knowledge or consent. In addition, Hollis failed to respond to NASD requests for information.

John R. Johnston (Registered Principal, Ada, Oklahoma) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for three months and suspended in any principal capacity for one year. Without admitting or denying the allegations, Johnston consented to the described sanctions and to the entry of findings that he allowed an associated person to manage and participate in the affairs of a former member firm when he knew, or should have known, that the individual was not qualified as a principal in accordance with Schedule C of the NASD By-Laws.

Jeffrey H. Krisman (Registered Representative, Tulsa, Oklahoma) 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 \$22,255.44 in restitution to his former member firm. Without admitting or denying the allegations, Krisman consented to the described sanctions and to the entry of findings that he caused seven checks totaling \$21,868 to be issued from the account of a public customer and converted the funds to his own use and benefit without the customer's knowledge or consent. In addition, the NASD found that Krisman failed to respond to NASD requests for information.

Timothy P. Looney (Registered Principal, Shreveport, Louisiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$120,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Looney consented to the described sanctions and to the entry of findings that he received five checks totaling \$74,508.94 from a public customer for the purpose of purchasing a fixed annuity and, instead, converted the funds to his own use and benefit without the customer's knowledge or consent. In addition, the NASD found that Looney failed to respond to NASD requests for information.

A.C. Masingill & Associates, Inc. (Knoxville, Tennessee), Arthur C. Masingill, Jr. (Registered Principal, Knoxville, Tennessee), Jeffrey R. Sharp (Registered Representative, Knoxville, Tennessee), and Gaines C. Walker (Registered Representative, Knoxville, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$30,000 and suspended from NASD membership for six months. Masingill and Sharp were each fined \$7,500 and Masingill was suspended from association with any NASD member in any capacity for six months. In addition, Sharp was suspended from association with any NASD member in any capacity for 90 days and Walker was fined \$5,000 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 in violation of Sections 5(a) and 5(b) of the Securities Act of 1933, the firm, acting through Sharp and Walker, sold or caused to be sold to eight public customers certificates of deposit that were debt instruments of a foreign bank that were neither registered pursuant to Section 6 of the Act nor exempt from registration under Sections 3 and 4 of the Act. They also failed to provide the purchasers with any prospectus, offering, or disclosure documents. In this activity, the NASD found that the firm, acting through Sharp and Walker, neglected to exercise or perform adequate due diligence by failing to conduct a reasonable review and investigation into the operations of the offering bank, the nature of its business, and the manner in which the proceeds of the offering would be invested. Furthermore, the findings stated that the firm, acting through Sharp and Walker, failed to obtain full and complete financial statements of the bank in question and to conduct effective due diligence as to whether the aforementioned certificates of deposit were securities, and if so, whether they were subject to registration under federal or state securities laws.

In addition, the NASD determined that the firm, acting through Sharp and Walker, sold certificates of deposit to public customers when they should have known that such securities were unsuitable for these customers in light of the customers' investment objectives. Also, the NASD found that Sharp and Walker communicated to customers and made untrue statements of material fact regarding the securities sold without a sufficient basis for formulating a belief. According to the findings, the firm, acting through Masingill and Sharp, failed to give or send to customers written confirmation of transactions, including a disclosure of the capacity in which they were acting, and the amount of remuneration received. The findings also stated that the firm, acting through Masingill and Sharp, failed to prepare, maintain, and preserve accurate books and records and computations of net capital, and engaged in a securities business while failing to maintain its required minimum net capital. Furthermore, the findings stated that the firm, acting through Masingill and Sharp, submitted inaccurate FOCUS Part II Reports and failed to comply with its restriction agreement with the NASD.

The NASD found that the firm, acting through Masingill, submitted an audited financial statement which inaccurately presented the firm's net capital, and they failed to give immediate telegraphic notice to the proper regulatory authorities that the firm's books and records were not current, its net capital was less than the minimum required by SEC Rule 15c3-1, and that the firm had failed to comply with the other requirements of SEC Rule 17a-11. Furthermore, the firm, acting through Masingill, failed to amend its broker/dealer application for membership to reflect a change in its clearing agreement and failed to establish, maintain, and enforce an adequate system of supervision outlining the types of business conducted by the firm and the activities of its registered representatives. In addition, the firm and Masingill allowed Sharp to act in a principal capacity without proper registration.

Larry L. Simmons (Registered Representative, Oklahoma City, Oklahoma) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was suspended from association with any NASD member in any capacity for six months and required to qualify by examination as a general securities representative. Without admitting or denying the allegations, Simmons consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to or approval from his member firm.

The NASD also found that Simmons recommended and engaged in purchase transactions for shares of a limited partnership for the custodial accounts of a public customer without having reasonable grounds for believing that these recommendations and resultant transactions were suitable for the customer on the basis of her financial situation, investment objectives, and needs.

Garry R. Winsett (Associated Person, Fairhope, Alabama) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from association with any NASD member in any capacity and required to pay \$68,000 in restitution to the appropriate parties. Without admitting or denying the allegations, Winsett consented to the described sanctions and to the entry of findings that he failed to amend his Uniform Application for Securities Industry Registration and Transfer (Form U-4) to reflect an investigation by the State of Georgia. In addition, the NASD found that Winsett failed to notify his member firm in writing that he maintained a personal securities account with another member firm, and failed to notify the other firm that he was employed by his member firm.

Jerry N. Wood (Registered Representative, Tulsa, Oklahoma) 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 \$890,000 in restitution to the appropriate parties. Without admitting or denying the allegations, Wood consented to the described sanctions and to the entry of findings that he caused checks totaling \$1,275,263 to be issued from the accounts of 22 public customers. Thereafter, the findings stated that Wood endorsed and deposited the checks into his personal checking account, thereby converting the funds to his own use and benefit without the customers' knowledge or consent.

The findings also stated that Wood forged the signatures of two public customers to letters of authorization in order to direct funds into two other customer accounts, and altered the account statement of a public customer in an effort to conceal an apparent conversion of funds. In addition, the NASD found that Wood failed to respond to NASD requests for information.

December Actions

Linden D. Barnette (Registered Representative, Tuscaloosa, Alabama) 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 two weeks. Without admitting or denying the allegations, Barnette consented to the described sanctions and to the entry of findings that he endorsed the names of three public customers on checks for the purpose of purchasing new insurance policies without their prior written consent.

Michael J. Bishop (Registered Representative, Memphis, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000. Without admitting or denying the allegations, Bishop consented to the described sanction and to the entry of findings that he exercised discretion in the account of an institutional customer without obtaining prior written authorization from the customer or prior written acceptance of the account as discretionary by his member firm.

John P. Goldsworthy (Registered Representative, Metairie, Louisiana) 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 15 days. Without admitting or denying the allegations, Goldsworthy consented to the described sanctions and to the entry of findings that he became registered as an investment adviser even though his member firm's written supervisory procedures did not permit district agency representatives to become registered or to act in the capacity of an investment adviser.

The NASD also found that Goldsworthy formed a company but failed to update his Form U-4 to reflect his outside business activities. In addition, the NASD determined that Goldsworthy failed to notify his member firm in writing that he had opened an account with another member firm and to give written notice to the member firm where he opened the account that he was affiliated with his member firm.

William R. McCarty, Jr. (Registered Principal, Nashville, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$60,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, McCarty 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 subject customers and prior written acceptance of the accounts as discretionary by his member firm.

In addition, the NASD found that McCarty recommended and engaged in margin transactions in the account of a public customer without having reasonable grounds for believing that the recommendations and resultant transactions were suitable for the customer based on her financial situation, investment objectives, and needs.

Rankin R. Rawlings (Registered Representative, McComb, Mississippi) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000. Without admitting or denying the allegations, Rawlings consented to the described sanction and to the entry of findings that he exercised discretion in the joint account of public customers without obtaining their prior written authorization or receiving prior written acceptance of the account as discretionary by his member firm. In addition, the NASD found that Rawlings failed to mark the order tickets for the subject transactions as discretionary, in contravention of SEC Rule 17a-3(a)(6).

Bernard L. Smith, III (Registered Principal, Oxford, Mississippi) submitted an Offer of Settlement pursuant to which he was fined \$200,000, barred from association with any NASD member in any capacity, and required to pay \$2.4 million in restitution to the appropriate parties. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that he engaged in the sale of shares in an unregistered mutual fund. The NASD also found that Smith induced two public customers to purchase shares of the mutual fund by means of fraudulent and deceptive devices and contrivances by misrepresenting the nature of the fund. Furthermore, the findings stated that, in the aforementioned activity, Smith engaged in private securities transactions without prior written notice to and approval from his member firm.

The findings also stated that Smith caused checks totaling \$60,000 to be issued as loans on insurance policies held by a public customer, deposited the checks into a checking account he controlled, and converted the funds to his own use and benefit without the customer's knowledge or consent. In addition, the NASD determined that Smith caused a \$17,466.35 check from the account of a public

customer to be sent to a post office box under his control, deposited the check into a checking account he controlled, and converted the funds to his own use and benefit. In an attempt to conceal this activity, the NASD found that Smith prepared and sent a fictitious account statement to the customer.

Margaret W. Stalnaker (Associated Person, Elkins, West Virginia) was fined \$45,000, barred from association with any NASD member in any capacity, and required to pay \$8,835 in restitution to the appropriate parties. The sanctions were based on findings that Stalnaker failed to disclose, when completing a Form U-4, her indictment by a Mississippi Grand Jury for willful, unlawful, and felonious embezzlement of funds. Stalnaker also obtained from public customers checks totaling \$8,835 intended for payment of shares of a common stock and, instead, converted the proceeds to her own use and benefit without the customers' knowledge or consent. In addition, Stalnaker forged, or caused to be forged, the name of one of the aforementioned payees on a check, thereby, converting the proceeds to her own use and benefit.

January Actions

Thomas E. Graves, III (Registered Representative, Nashville, Tennessee) submitted an Offer of Settlement 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, Graves consented to the described sanctions and to the entry of findings that he initiated an excessive amount of trading activity often referred to as "churning" or "overtrading" in the account of a public customer without having reasonable grounds for believing that such trading activity was suitable based on the customer's financial situation, investment objectives, and needs. In addition, the NASD found that Graves executed 10 unauthorized securities transactions in the same customer's account.

District 6—Texas

November Actions

Douglas Drake Alcalá (Registered Representative, Seattle, Washington) was fined \$5,000, suspended from association with any NASD member in any capacity for 60 days, and required to pass an appropriate qualifying examination before becoming associated with any NASD member. The sanctions were based on findings that Alcalá recommended securities transactions for the account of public customers without having reasonable grounds for believing that such recommendations were suitable for the customers in light of their financial situations, needs, and investment objectives.

Jamie Gail Clingman (Registered Principal, Decatur, Texas) was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay \$44,095 in restitution to a member firm or customers. The sanctions were based on findings that Clingman voided 12 checks issued to public customers for payment of interest and principal on investment notes owned and redeemed by the customers. Clingman then reissued replacement checks totaling \$44,095 listing herself as payee and converted the proceeds to her own use and benefit without the customers' knowledge or consent.

Michael Joseph Kearns (Registered Representative, Houston, Texas) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Kearns failed to respond to NASD requests for information concerning a customer complaint.

Kemper Securities Group, Inc. (Chicago, Illinois) submitted an Offer of Settlement pursuant to which the firm was fined \$10,000. Without admitting or denying the allegations, Kemper consented to the described sanction and to the entry of findings that the firm failed to properly and adequately supervise a registered representative to assure compliance with the NASD Rules of Fair Practice.

T. L. Smith Securities, Inc. (Fort Worth, Texas) and **Thad Lasley Smith (Registered Principal, Fort Worth, Texas)** were fined \$10,000, jointly and severally. The sanc-

tion was based on findings that the firm, acting through Smith, permitted seven individuals associated with the firm to sell securities without proper qualification or registration with the NASD. The firm, acting through Smith, also purchased and sold municipal securities without having a qualified municipal securities principal registered with the NASD.

In addition, the firm, acting through Smith, failed to establish and maintain adequate written supervisory procedures. Also, the firm, acting through Smith, deposited the check of a public customer into the firm's operating account rather than a Special Reserve Account for the Exclusive Benefit of Customers, in violation of the SEC's Customer Protection Rule 15c3-3.

Joseph Herschel Stafford (Registered Representative, Houston, Texas) was fined \$25,000, barred from association with any NASD member in any capacity, and required to pay \$8,000 in restitution to a public customer. The sanctions were based on findings that Stafford recommended to a public customer the purchase and sale of securities without having reasonable grounds for believing that such recommendations were suitable for the customer based upon her financial situation and needs. In addition, Stafford failed to respond to NASD requests for information.

Kelly Sutton (Registered Principal, Flower Mound, Texas), John Y. Cole (Registered Representative, Dallas, Texas), Robert R. Romero (Registered Principal, Pflugerville, Texas), and Robyn L. Reagan (Registered Representative, Dallas, Texas) submitted Offers of Settlement pursuant to which Sutton was fined \$10,000, Cole was fined \$15,000, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify by examination as a general securities representative. Romero was fined \$15,000, suspended from association with any NASD member in any capacity for 10 days, and required to requalify by examination as a general securities principal. In addition, Reagan was fined \$20,000, suspended from association with any NASD member in any capacity for 20 days, and required to requalify by examination as a general securities representative.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Sutton, Cole, Romero, and Reagan executed or caused to be executed unauthorized transactions in the accounts of public customers without their knowledge or consent. The findings also stated that Cole, Romero, and Reagan engaged in high-pressure sales tactics with respect to sales solicitations made to public customers. In addition, the NASD found that Reagan failed and refused to execute promptly the instructions of a public customer to sell securities.

December Actions

William Bernard Anderson, III (Registered Representative, Dallas, Texas) 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 activities at a member firm.

Bryan Gregory Blakeman (Registered Representative, Houston, Texas) was fined \$30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Blakeman executed options transactions in the account of a public customer without the customer's knowledge or consent. In addition, Blakeman failed to respond to NASD requests for information.

Roy Michiel Capshaw (Associated Person, Kaufman, Texas) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Capshaw failed to respond to NASD requests for information concerning the books and records of a former member firm.

John Wayne Ezell (Registered Representative, Arlington, Texas) submitted an Offer of Settlement pursuant to which he was fined \$15,000, suspended from association with any NASD member in any capacity for 15 days, and ordered to disgorge \$35,077.69. Without admit-

ting or denying the allegations, Ezell consented to the described sanctions and to the entry of findings that he recommended the purchase and sale of securities to public customers without having reasonable grounds for believing that such recommendations were suitable for the customers based on their financial situations and needs, and fraudulently induced the purchase of securities by such public customers.

Ala Jasim Kadhim (Registered Principal, Fort Worth, Texas) was fined \$100,000, barred from association with any NASD member in any capacity, and required to pay \$26,320 in restitution to his former member firm and its customers. The sanctions were based on findings that Kadhim made unauthorized use of, and converted to his own use and benefit, securities belonging to his member firm and its customers.

V.F. Minton Securities, Inc. (Fort Worth, Texas), Vernon F. Minton (Registered Principal, Fort Worth, Texas), and Joseph W. Bishop (Registered Representative, Grapevine, Texas) The firm was debarred from applying for reinstatement of its NASD membership and Minton was suspended from association with any NASD member in any principal capacity for six months. Bishop was fined \$100,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a Dallas DBCC decision.

The sanctions were based on findings that the firm, acting by and through Bishop, executed or caused to be executed, unauthorized purchases of a common stock in the accounts of customers. Furthermore, the firm, acting through Bishop, sold the stock to customers, promised them that the stock would soon rise in price, represented that they would only have to pay for transactions if they realized a profit, and promised that the firm would purchase another stock from such customers at above-market prices. In addition, the firm, acting through Minton and Bishop, failed to comply with and circumvented a 90-day freeze imposed by their clearing firms on customer accounts pursuant to Reg 220.8(c) of Regulation T issued by the Board of Governors of the Federal Reserve System after the customers failed to pay for purchases of a common stock.

Joseph W. Ronecker (Registered Representative, El Paso, Texas) was fined \$120,000, barred from association with any NASD member in any capacity, and required to pay \$83,449.49 in restitution to public customers. The sanctions were based on findings that Ronecker made improper use of customer funds totaling \$83,449.49 which he obtained under the false pretext that such funds were to be invested in annuities and mutual funds through his member firm when, in reality, he converted the funds to his own use and benefit. In addition, Ronecker failed to respond to NASD requests for information.

James Richard Sawyer (Registered Representative, Victoria, Texas) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Sawyer failed to respond to NASD requests for information concerning his alleged receipt and use of customer funds.

Charles William Schmitz (Registered Representative, Dallas, Texas) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Schmitz failed to respond to NASD requests for information concerning customer complaints.

John Eric Schmitz (Registered Principal, Dallas, Texas) submitted an Offer of Settlement pursuant to which he was fined \$5,000, suspended from association with any NASD member in any capacity for 14 days, and suspended from association with any NASD member in any principal capacity for two years. Without admitting or denying the allegations, Schmitz consented to the described sanctions and to the entry of findings that a member firm, acting through Schmitz, failed to maintain its books and records. The NASD also found that they offered and sold fractional, undivided interests in a common stock using an offering memorandum that failed to disclose that another corporation under common control with the firm was selling the same securities on different terms and conditions. In addi-

tion, the findings stated that the firm, acting through Schmitz, sold these securities without a registration statement being in effect with the SEC and failed to deposit promptly customer checks received from the aforementioned sale into an escrow account.

Furthermore, the NASD determined that Schmitz, acting for the firm, failed to file advertising materials with the NASD and made false and misleading statements in its advertising. The findings also stated that the firm, acting through Schmitz, used instrumentalities of interstate commerce to effect transactions in nonexempt securities while failing to maintain its required minimum net capital.

Smetek, Van Horn & Cormack, Inc. (Houston, Texas) and **Peter P. Smetek, Jr. (Registered Principal, Sugar Land, Texas)** submitted an Offer of Settlement pursuant to which they were fined \$15,000, jointly and severally and each suspended from underwriting public offerings for 30 days. Smetek is also required to requalify 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, acting through Smetek, used instrumentalities of interstate commerce to effect transactions in nonexempt securities while failing to maintain its required minimum net capital. The NASD also found that the firm, acting through Smetek, failed to maintain its books and records and to include the firm's security inventory in its FOCUS Part I report.

In addition, the NASD determined that the firm, acting through Smetek, failed to file its FOCUS Part IIA report and conducted a securities business while failing to have a financial and operations principal associated with the firm. Furthermore, the findings stated that the firm, acting through Smetek, failed to file Forms U-5 with the Central Registration Depository within 30 days of the resignation of the firm's financial and operation principals and failed to file telegraphic notice of its net capital violations.

Leon William Snearly, Jr. (Associated Person, Arlington, Texas) submitted an Offer of Settlement pursuant to which he was fined \$10,000. Without admitting or denying the allegations, Snearly consented to the described sanction and to the entry of findings that he acted in the capacity of a registered representative of a member firm without being registered.

Sovereign Asset Management, Inc. (Dallas, Texas) and **Austin Starke Taylor, III (Associated Person, Dallas, Texas)** submitted an Offer of Settlement pursuant to which they were fined \$2,500, jointly and severally. The firm was suspended from NASD membership for five days and Taylor was suspended from association with any NASD member in any capacity for five 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 Taylor, engaged in the offer and sale of securities to public customers when its NASD membership was not effective and while representing in writing to NASD staff that it had not and would not engage in such activities until its membership was effective.

The NASD also found that the firm, acting through Taylor, sold nonexempt securities while failing to maintain its required minimum net capital and failed to promptly transmit customer checks to an escrow account in connection with the purchase of limited partnership interests. In addition, the NASD determined that the firm, acting through Taylor, permitted unregistered persons to become associated with the firm and to offer and sell securities to its customers.

Avery Don Trumbo (Registered Representative, Dallas, Texas) submitted an Offer of Settlement pursuant to which he was fined \$10,000, barred from association with any NASD member in any capacity, and ordered to disgorge \$46,735. Without admitting or denying the allegations, Trumbo consented to the described sanctions and to the entry of findings that he effected unauthorized securities transactions and engaged in excessive trading in customer accounts. The NASD also found that Trumbo made unsuitable recommendations concerning the purchase and sale of securities to customers.

In addition, the NASD determined that Trumbo exercised inappropriate discretionary power and authority over

and in customer accounts and induced securities transactions by customers through the use of manipulative, deceptive, and fraudulent devices or contrivances. Furthermore, the findings stated that Trumbo made improper use of customer funds and securities and recommended the purchase of unsuitable option contracts to public customers.

January Actions

Dallas/Park Cities Securities, Inc. (Dallas, Texas), Charles Royce Goodbread (Registered Principal, Dallas, Texas), Jeremy Steven Cohen (Registered Principal, Dallas, Texas), and Eddie Harold Landers (Registered Principal, Fort Worth, Texas) submitted an Offer of Settlement pursuant to which the firm and Goodbread were fined \$10,000, jointly and severally and agreed to refrain from the sale, on a principal basis, of securities at prices below \$10 per share for one year. The firm was also suspended from NASD membership for seven days and required to pay \$5,110 in restitution to public customers. Goodbread was suspended from association with any NASD member in any capacity for 15 days and required to requalify by examination as a principal.

Cohen was fined \$5,000, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by examination as a principal. In addition, Cohen was required to pay \$12,345 in restitution to public customers. Landers was fined \$10,000 and suspended from association with any NASD member in any principal capacity for five business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Goodbread and Cohen, effected corporate securities transactions as principal with retail customers at prices that were not fair and reasonable, in violation of the NASD's Mark-Up Policy. The NASD also found that Goodbread and Cohen failed to supervise adequately and properly the activities of registered representatives of the firm concerning markups.

Furthermore, the NASD determined that the firm and Landers, acting by and through Goodbread and Cohen, operated a branch office of another member firm without registering said branch office with the NASD and without listing it upon the membership roll of the NASD. In addition, the findings stated that the firm, acting through Goodbread, maintained the registrations of three individuals who were inactive in the securities business at the firm for more than one year.

Jason Dru Dvorin (Registered Principal, Plano, Texas) was suspended from association with any NASD member as a general securities principal until he qualifies as an introducing broker/dealer financial and operations principal or a financial and operations principal. The sanction was based on findings that Dvorin, acting for a member firm, failed to keep current books and records and failed to file its annual audited report. In addition, the firm, acting through Dvorin, failed to file its FOCUS Part IIA report on time.

Paul Eugene Hendricks (Registered Representative, Monroe, Louisiana) was fined \$5,000, suspended from association with any NASD member in any capacity for three years, and required to pay \$1,300 in restitution to his member firm. The sanctions were based on findings that Hendricks effected transactions in and induced securities transactions by means of manipulative, deceptive, or other fraudulent devices or contrivances by forging purported customer applications to purchase annuities in order to obtain commissions of approximately \$1,298 from his member firm.

Debra Cain McAllister (Associated Person, Quitman, Texas) was fined \$23,675 and barred from association with any NASD member in any capacity. The sanctions were based on findings that McAllister obtained from four public customers \$735 in payment of automobile insurance premiums. Contrary to the instructions of the customers, the findings stated that McAllister deposited the funds in a bank account in which she had an interest or controlled or otherwise retained the funds for her own use and benefit without the knowledge or consent of the customers. In addition, McAllister failed to respond to NASD requests for information.

Texas American Securities Corporation (Dallas, Texas) was expelled from NASD membership. The sanction was based on findings that the firm effected securities transactions while failing to maintain its required minimum net capital. The firm also failed to meet the requirements stated in an offering memorandum by depositing a check received from an affiliate into an escrow account to make it appear that the required number of securities had been sold, and then instructed the bank holding the escrow account to disburse the balance of such account into an operating account for the benefit of the affiliate.

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

November Actions

Richard P. Durant (Registered Representative, Jacksonville, Florida) was fined \$120,000, barred from association with any NASD member in any capacity, and required to pay \$47,000 in restitution to his member firm. The sanctions were based on findings that Durant withdrew \$47,000 from an annuity owned by a public customer and converted the funds to his own use and benefit without the customer's knowledge or consent. In addition, Durant failed to respond to an NASD request for information.

Douglas G. Powell (Registered Representative, West Palm Beach, Florida) was fined \$45,000, barred from association with any NASD member in any capacity, and required to pay \$4,683 in restitution to public customers. The sanctions were based on findings that Powell effected the purchase of shares of a common stock for the joint securities account of public customers without their knowledge or consent. In addition, Powell failed to respond to an NASD request for information.

Gloria Mae Smith (Registered Representative, Ocala, Florida) was fined \$100,000, barred from association with any NASD member in any capacity, and required to pay \$34,318.47 in restitution to her member firm. The sanctions were based on findings that Smith directed her member firm to issue 40 checks totaling \$34,318 from the life insurance policies of public customers and directed that the checks be sent to a post office box that she maintained and controlled. Smith then negotiated said checks by forging the customers' signatures and applied the proceeds to her own use and benefit.

Allen Dewitt Suggs, Jr. (Registered Representative, Middleburg, Florida) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Suggs failed to respond to an NASD request for information concerning the discrepancies between a written statement that he previously provided to the NASD staff and his sworn testimony given during a related proceeding in state court.

Samuel L. Williams (Registered Principal, Pompano Beach, Florida) was fined \$125,000, barred from association with any NASD member in any capacity, and required to pay \$195,625.22 in restitution to a public customer. The sanctions were based on findings that Williams prepared, maintained, and provided to 32 public customers false securities position and activity statements. In addition, Williams received from a public customer \$195,625.22 intended for investment purposes and, instead, converted the funds to his own use and benefit without the customer's knowledge or consent. Williams also failed to respond to NASD requests for information.

December Actions

Melvyn Edward Albin (Registered Representative, Mt. Dora, Florida) was fined \$20,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of an Atlanta DBCC decision. The sanctions were based on findings that Albin effected the purchase of units for the account of a public customer while knowing that the customer did not have sufficient funds for the purchase. In an effort to avoid a sellout, Albin obtained, completed, and signed a check drawn on the same customer's account for payment of such transaction without the customer's knowledge or consent.

In addition, Albin failed to respond to an NASD request for information. Albin has appealed this action to the SEC, and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

January Actions

None

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

November Actions

Charles N. Edmonds (Registered Representative, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,500 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Edmonds consented to the described sanctions and to the entry of findings that he participated in a private securities transaction while failing to notify his member firm of his intention to engage in such activities.

Paul F. Fomby (Registered Principal, Chicago, Illinois) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Fomby failed to respond to NASD requests for information concerning the alleged use of \$295 from members of the public.

Edwin H. Haw, Jr. (Registered Representative, Chicago, Illinois) was fined \$57,500 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a Chicago DBCC decision. The sanctions were based on findings that Haw received six checks totaling \$7,910 from his member firm, made payable to a public customer. Haw failed to deliver the checks to the customer, forged the customer's signature to the checks, and used the funds for his personal use and benefit. In addition, Haw failed to respond to NASD requests for information.

Barbara Robinson Hoganson (Registered Representative, Aurora, Illinois) was fined \$900 and suspended from association with any NASD member in any capacity for six months with the proviso that she be credited for the period during which she did not function in any registered capacity (as such, her suspension has been served). The NBCC imposed the sanctions following appeal of a Chicago DBCC decision. The sanctions were based on findings that Hoganson obtained \$300 in cash from a public customer's bank by generating an account withdrawal form without the customer's knowledge or consent. Hoganson then signed a bank officer's initials to complete the withdrawal, deposited \$250 of the funds in an account in which she had an interest or controlled, and retained the \$300 for her own use and benefit until a later date.

Jean J. Hunter (Registered Representative, Chicago, Illinois) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Hunter received from a public customer \$180 in cash with instructions to purchase an insurance policy. Hunter failed to follow said instructions and used the funds for some purpose other than to benefit the customer. In addition, Hunter failed to respond to NASD requests for information.

Investment Planning, Inc. (Dubuque, Iowa), Erwin J. Hafeman (Registered Principal, Dubuque, Iowa), John L. Finn (Registered Principal, Dubuque, Iowa), and John K. Finn (Registered Principal, Dubuque, Iowa). The firm was fined \$10,000, suspended from membership in the NASD for 10 business days, prohibited from engaging in principal transactions with customers for 30 days, and required to participate in a staff interview. Also, the District Committee must approve the firm's business plan before it engages in principal transactions with customers. Hafeman was fined \$30,000, suspended from association with any NASD member in any capacity for 90 days, barred from association with any NASD member in a principal capacity, and required to requalify by examination as

a representative. J.K. Finn and J.L. Finn were each fined \$10,000, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify by examination as general securities representatives.

The SEC affirmed the sanctions following appeal of an August 1990 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that the firm, acting through Hafeman, J. K. Finn, and J. L. Finn, sold corporate and municipal bonds as principal to customers at unfair and unreasonable prices with markups over the wholesale market price on the corporate bonds ranging from 4 to 7.26 percent and from 4 to 5.99 percent on the municipal bond transactions.

Douglas Lee Parker (Registered Representative, Iron River, Michigan) was fined \$70,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Parker, on three occasions, received from public customers funds totaling \$37,000 intended for investment purposes. Instead of purchasing the securities as instructed by the customers and without their knowledge or consent, Parker deposited the funds in a bank account he controlled, retained the monies, and used the proceeds for his own benefit until a later date. In addition, Parker failed to respond to NASD requests for information.

Larry Samples (Registered Representative, Ypsilanti, Michigan) was fined \$170,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Samples received from a public customer a \$50,000 check with instructions to use the funds to purchase shares of stock. Samples failed to follow the customer's instructions, deposited the funds in an account in which he had a beneficial interest, and used the funds for some purpose other than for the benefit of the customer. Samples also failed to respond to NASD requests for information.

Michael Schklar (Registered Representative, Carmel, Indiana) was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Schklar purchased and sold options for the accounts of public customers without their knowledge or consent and in the absence of written or oral authorization to exercise discretion in the customer accounts. Schklar also failed to respond to NASD requests for information.

Jeffrey R. Schultz (Registered Representative, Toledo, Ohio) was fined \$100,000, barred from association with any NASD member in any capacity, and required to pay \$15,438 in restitution to a public customer. The sanctions were based on findings that Schultz misappropriated \$10,438 from three public customers and received \$5,000 from another public customer for the purchase of shares of a mutual fund which were never purchased. In addition, Schultz failed to respond to NASD requests for information.

Henry Clarence White (Registered Representative, Cleveland, Ohio) was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay \$5,000 in restitution to a public customer. The sanctions were based on findings that White misappropriated and converted to his own use customer funds totaling \$5,000. In addition, White failed to respond to NASD requests for information.

December Actions

Frank J. Custable, Jr. (Registered Representative, Glendale Heights, Illinois) was fined \$100,000 and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of an April 1992 NBCC decision. The sanctions were based on findings that Custable executed unauthorized transactions in the accounts of public customers. In addition, Custable used deceptive or fraudulent practices to induce customers to pay for securities. Specifically, Custable guaranteed the customers a profit and informed them that they could get a quick return on their money when, in fact, the company had suffered financial hardships and its stock had been delisted.

Thomas John Stiener (Registered Representative, Union Lake, Michigan) submitted an Offer of Settlement pursuant to which he was fined \$8,000 and suspended from association with any NASD member in any capacity for five business days. In addition, Stiener must requalify by examination as a registered representative. Without admitting or denying the allegations, Stiener consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in customer accounts. Stiener also failed to respond timely to NASD requests for information.

January Actions

Anthony M. DeGrazier (Registered Representative, Ada, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$13,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, DeGrazier consented to the described sanctions and to the entry of findings that he participated in private securities transactions and outside business activities while failing to give written notice or prompt written notice of his intention to engage in such activities to his member firm.

John Kevin Dennee (Registered Representative, Fairport, New York), Bernard Raymond Schmitt (Registered Representative, Smyrna, Georgia), Stanley James Siciliano (Registered Representative, Rochester, New York), Jeffrey David Brown (Registered Representative, Aurora, Colorado), Joel Edward Snow (Registered Principal, Littleton, Colorado), David John Eckert (Registered Representative, Rochester, New York), and Jeffrey Harold Supinsky (Registered Principal, Massapequa, New York) submitted an Offer of Settlement pursuant to which Dennee was fined \$15,000, suspended from association with any NASD member in any capacity for 30 days, and barred from association with any NASD member in a principal capacity. Schmitt, Siciliano, and Supinsky were each fined \$10,000 and suspended from association with any NASD member in any capacity for 15 days.

Brown was fined \$15,000 and suspended from association with any NASD member in any capacity for 30 days, and Snow was fined \$10,000 and barred from association with any NASD member in any capacity. Eckert was fined \$5,000, suspended from association with any NASD member in any capacity for 90 days, and required to requalify by examination as a general securities representative. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Dennee, Schmitt, Siciliano, Brown, Snow, Eckert, and Supinsky engaged in abusive and coercive sales practices that misled and defrauded the investing public by disseminating sales scripts to registered representatives of their member firm and encouraging, directing, or requiring the representatives to use the scripts, or language substantially similar to that in the scripts.

The findings also stated that Dennee, Schmitt, Siciliano, Brown, Snow, Eckert, and Supinsky failed to maintain and enforce supervisory procedures designed to enable them to supervise properly the activities of the associated persons working in branch offices of their member firm to assure compliance with applicable securities laws, rules, and regulations, and with the rules of the NASD relating to the appropriate solicitation of customers. Brown's suspension commenced December 1, 1993, and concluded December 30, 1993.

Charles Gregory Heins (Registered Representative, Bloomington, Illinois) was fined \$35,000, barred from association with any NASD member in any capacity, and required to pay \$14,385.68 in restitution less any amounts he has already paid to a member firm. The sanctions were based on findings that Heins signed the name of a public customer and the names of two non-existent individuals purported to be the children of the customer to dividend surrender forms. He then submitted the dividend surrender forms to his member firm for the purpose of obtaining \$61,900 and applied the dividends to purchase a variable annuity life insurance policy for the customer without the customer's knowledge or consent.

Andre D. Johnson (Registered Representative, Chicago, Illinois) was fined \$10,000, suspended from association with any NASD member in any capacity for five business days, and required to requalify by examination as a representative within 90 days or cease to function in such a capacity until he requalifies. The sanctions were based on findings that Johnson executed unauthorized transactions in the accounts of public customers in the absence of written or oral authorization to exercise discretion in the accounts. In addition, Johnson failed to execute promptly a customer's order to sell stock.

Network 1 Financial Securities, Inc. (Red Bank, New Jersey), Richard D. O'Reilly (Registered Principal, Ocean, New Jersey), William R. Hunt, Jr. (Registered Principal, Robbinsville, New Jersey), Bruce C. Rothenberg (Registered Representative, Lancaster, New York), and Shahen Bedrosian (Registered Representative, Niagara Falls, New York) submitted an Offer of Settlement pursuant to which the firm was fined \$17,500, jointly and severally with O'Reilly, and fined \$17,500, jointly and severally with Hunt. Hunt was also suspended from association with any NASD member in any capacity for 21 days and required to requalify by examination as a general securities principal. O'Reilly was suspended from association with any NASD member in any capacity for 45 days and required to requalify by examination as a general securities principal. Rothenberg was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. In addition, Bedrosian was fined \$2,500 and suspended from association with any NASD member in any capacity for 20 days.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, O'Reilly, Hunt, Rothenberg, and Bedrosian distributed shares of common stock to members of the public when they knew, or reasonably should have known, that no registration statement had been filed with the SEC for the distribution of such securities, and that no exemption from registration for such transactions was available. The NASD also found that the firm, Rothenberg, and Bedrosian committed fraud in the offer and sale of these securities by making untrue statements of material facts, omitting to state material facts, and engaged in courses of conduct that operated as a fraud or deceit upon the persons who purchased the securities.

The findings also stated that the firm, O'Reilly, Hunt, Rothenberg, and Bedrosian, failed to disclose to customers who purchased the same securities sold by an individual at the firm either orally or in writing at or before the completion of the transactions that this individual was a control person of the issuer of the stock, and at the same time controlled the firm's branch office. Moreover, the NASD found that the firm, O'Reilly, and Hunt failed to register this individual as a principal or a general securities representative but allowed him to associate with the firm when he was statutorily disqualified and made payments of commission-related compensation to the individual, even though he was not registered at the time of compensation. Furthermore, the findings stated that the firm, O'Reilly, and Hunt failed to supervise adequately by not establishing, maintaining, or enforcing procedures. In addition, the NASD found that Rothenberg failed to respond to NASD requests for information.

Michael John Polansky, Sr. (Registered Representative, Hickory Hills, Illinois) was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay \$3,813.66 in restitution to a member firm. The sanctions were based on findings that Polansky obtained checks totaling \$3,331.50 from the insurance policies of a customer by signing her name to disbursement request forms that he submitted to his member firm without the customer's knowledge or consent. Thereafter, Polansky received and retained the funds for his own use and benefit.

In addition, Polansky obtained \$2,332.34 from the same customer in the form of cash withdrawals from her insurance policies by signing the customer's name to disbursement request forms and submitting them without her knowledge or consent. Polansky then caused the funds obtained with the forms to be used to purchase insurance policies for the customer and to pay premiums on her other policies without her knowledge or consent. Furthermore, Polansky obtained cash totaling \$482.16 from the same

customer as payment of insurance premiums, failed to deposit the payments with his member firm or to follow the customer's instructions and, instead, retained the funds for his own use and benefit. Polansky also failed to respond to NASD requests for information.

Donna I. Schmehl (Registered Representative, Antioch, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay \$9,732.76 in restitution to customers. Without admitting or denying the allegations, Schmehl consented to the described sanctions and to the entry of findings that she signed the names of public customers on disbursement request forms resulting in disbursements from their insurance policies totaling \$9,732.76 without the customers' knowledge or consent. According to the findings, Schmehl then deposited the funds, or caused them to be deposited, in an account in which she had a beneficial interest.

Mark P. Shain (Registered Representative, North Collins, New York) submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Shain consented to the described sanction and to the entry of findings that he withdrew \$34,900 of the cash value of a public customer's insurance policy without the knowledge or consent of the customer and converted the funds to his own use. In addition, the findings stated that Shain failed to respond to NASD requests for information.

Starboard Capital Corp. (Williamsville, New York) and Casimer J. Jaszewski (Registered Principal, Ontario, Canada) were fined \$10,000, jointly and severally, and suspended from engaging in the securities business until they honor an NASD arbitration award or for at least five business days. The sanctions were based on findings that the firm, acting through Jaszewski, failed to pay a \$10,969.43 NASD arbitration award.

Charles E. Yenglin (Associated Person, Lake City, Michigan) submitted an Offer of Settlement pursuant to which he was fined \$45,000, barred from association with any NASD member in any capacity, and required to pay \$5,498.91 in restitution to customers. Without admitting or denying the allegations, Yenglin consented to the described sanctions and to the entry of findings that he obtained checks totaling \$4,348.91 from his member firm made payable to customers but failed to forward the checks to the customers. Instead, the NASD found that he used the funds for purposes other than to benefit the customers. Furthermore, the findings stated that he submitted disbursement request forms for two public customers without their knowledge or consent. This resulted in a disbursement of a total of \$1,150 from said customers' insurance policies. Yenglin obtained the checks made payable to the customers, but failed to forward the checks to the customers and used the funds for some purpose other than to benefit the customers. Yenglin also failed to respond to NASD requests for information.

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

November Actions

Carole Muller Borowski (f/k/a Carole Muller) (Registered Representative, Washington, D.C.) submitted an Offer of Settlement wherein she was suspended from association with any NASD member in any capacity for two months. Without admitting or denying the allegations, Borowski consented to the described sanction and to the entry of findings that, to generate commissions, she effected mutual fund investments in a customer's account. According to the findings, she then margined mutual fund shares in the same customer's account to purchase more mutual fund shares, which practice was unsuitable for the customer.

Reginald E. Brown (Registered Representative, Monroeville, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Brown consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information concerning customers' insurance policies.

Ernest A. Cipriani, Jr. (Registered Representative, Ellsworth, Pennsylvania) was fined \$3,000 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 Cipriani received from a public customer \$647.20 in cash intended for payment of insurance premiums. Cipriani retained the monies and failed to remit the funds to his member firm. Cipriani has appealed this action to the SEC, and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

Michael T. Fornal (Registered Representative, Alexandria, Virginia) was fined \$120,000, barred from association with any NASD member in any capacity, and ordered to pay restitution to customers for the funds he converted. The sanctions were based on findings that Fornal converted \$531,990 received from public customers to his own use and benefit through forged documents, unauthorized wire transfers, and misrepresentations. Fornal also failed to respond to NASD requests for information.

Joseph R. Mulally (Registered Representative, Sinking Spring, Pennsylvania) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Mulally forged the endorsement of an insurance customer on a \$2,563.28 check and deposited the check to his own bank account without the customer's authorization or consent. Mulally also failed to respond to NASD requests for information.

Stephen L. Shinham (Registered Representative, Frederick, Maryland) submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Shinham consented to the described sanctions and to the entry of findings that he prepared and submitted to his member firm a false statement disclosing that an individual witnessed a customer's signature on two insurance policy applications, when, in fact, Shinham knew that the individual had not witnessed these signings. In addition, the findings stated that Shinham induced the same individual to sign and submit to his member firm a statement falsely attesting that she witnessed the customer's signature on the two insurance policy applications.

James G. Wagner (Registered Representative, Elkton, Maryland) was fined \$35,000 and barred from association with any NASD member in any capacity. The fine will be reduced by any amount which Wagner can demonstrate, to the satisfaction of the NASD, that he has paid in restitution to a customer. The sanctions were based on findings that Wagner exercised discretion in the account of a public customer without obtaining prior written authorization from the customer and without having the discretionary account accepted in writing by his member firm. In addition, these transactions were excessive in size and frequency in view of the nature and financial resources of the account. Moreover, Wagner guaranteed the customer against past and future losses in his securities account and failed to respond to NASD requests for information.

Jody L. Williams (Registered Representative, Virginia Beach, Virginia) was fined \$25,000, barred from association with any NASD member in any capacity, and ordered to pay restitution to the parties whose funds he converted. The sanctions were based on findings that Williams withdrew \$450 from a public customer's account and converted the funds to his own use and benefit. Williams also failed to respond to NASD requests for information.

Karen A. Yoos (Associated Person, Baltimore, Maryland) was fined \$7,500 and barred from association with any NASD member in any capacity. The NBCC affirmed the sanctions following appeal of a Washington,

D.C., DBCC decision. The sanctions were based on findings that Yoos submitted to a public customer four falsified mutual fund statements for the customer's custodian accounts reflecting transactions that had not yet occurred.

December Actions

Bernard J. Hartken, III (Registered Representative, Erie, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined \$25,000 and suspended from association with any NASD member in any capacity for one month. In addition, Hartken must requalify by examination before again becoming a registered representative. Without admitting or denying the allegations, Hartken consented to the described sanctions and to the entry of findings that he engaged in private securities transactions while failing to provide prior written notice of such activities to his member firm.

January Actions

None

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

November Actions

Elizabeth Bidwell (Registered Representative, Miller Place, New York) was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay \$5,807.72 in restitution to her member firm. The sanctions were based on findings that Bidwell caused disbursement request forms purportedly signed by public customers to be presented to her member firm requesting the full cash surrender value of the customers' insurance policies. This activity caused her member firm to issue checks totaling \$5,807.72 that Bidwell negotiated for her own account and benefit. In addition, Bidwell failed to respond to NASD requests for information.

Yosik Chu (Registered Representative, Teaneck, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$29,250, barred from association with any NASD member in any capacity, and required to pay \$4,500 in restitution to his member firm. Without admitting or denying the allegations, Chu consented to the described sanctions and to the entry of findings that he secured an \$850 policy loan from a public customer's life insurance policy and retained the funds for his own use and benefit. In addition, the NASD found that Chu received \$5,000 in cash from public customers which he retained for his own use and benefit.

S.D. Cohn & Co., Inc. (New York, New York) and Sidney D. Cohn (Registered Principal, East Williston, 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 sanctions and to the entry of findings that the firm, acting through Cohn, conducted a securities business while failing to maintain its required minimum net capital. In addition, the NASD found that the firm, acting through Cohn, failed to comply with the provisions of the NASD's rule concerning written supervisory procedures and failed to comply with its restriction agreement with the NASD.

Michael J. Keen (Registered Representative, Hackensack, New Jersey) was fined \$30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Keen executed unauthorized transactions in the accounts of public customers without their knowledge or consent. In addition, Keen failed to respond to NASD requests for information.

Derek J. Leigh (Registered Representative, New York, New York) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that during the course of a Series 7 examination it was determined that Leigh impersonated an individual scheduled for the exam who paid him \$1,000 to

take the exam on his behalf. In addition, Leigh failed to respond to an NASD request for information.

The Nikko Securities Co. International, Inc. (New York, New York), Ryouzuke Suzuki (Associated Person, New York, New York), Stephen A. Axilrod (Registered Principal, New York, New York), Masumi Yamaguchi (Registered Principal, New York, New York), and Tominari Miyuki (Associated Person, Tenafly, New Jersey) submitted a Letter of Acceptance, Waiver and Consent 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 in contravention of Schedule C of the NASD By-Laws, Suzuki, Axilrod, Yamaguchi, and Miyuki acted in the capacity of general securities principals without being properly registered and approved. In addition, the NASD found that the firm, acting through Suzuki and Yamaguchi, failed to comply with NASD rules concerning certain supervisory procedures.

Joseph H. O'Brien, II (Registered Principal, New York, New York) was fined \$5,000, barred from association with any NASD member in any capacity, and required to pay \$7,500 in restitution to a public customer. The NBCC imposed the sanctions following appeal of a New York DBCC decision. The sanctions were based on findings that O'Brien withdrew \$15,000 from the account of a public customer and converted the funds to his own use and benefit without the customer's authorization, knowledge, or consent. O'Brien has appealed this action to the SEC, and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

Douglas J. Quick, Jr. (Registered Representative, Lindenhurst, New York) was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Quick forged the signature of a public customer on a letter of authorization causing the transfer of \$9,400 from the customer's securities account to Quick's personal account. To conceal this activity, Quick forged a change of address request form for the same customer and presented it to his member firm to assure that the customer did not receive a monthly statement of account.

Alfred J. Small (Registered Representative, Glen Cove, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$11,000, suspended from association with any NASD member in any capacity for 30 days, and required to pay \$5,500 in restitution to a public customer within 30 days or be barred in any capacity until restitution is completed. Without admitting or denying the allegations, Small consented to the described sanctions and to the entry of findings that he executed three unauthorized transactions in the joint account of public customers without their knowledge or consent. Small's registration was revoked for failure to pay restitution. The revocation is in effect until he has completed restitution.

Peter Theodorellis (Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$55,000, barred from association with any NASD member in any capacity, and required to pay \$32,233 in restitution to public customers. Without admitting or denying the allegations, Theodorellis consented to the described sanctions and to the entry of findings that he executed 104 unauthorized transactions in the joint account of public customers without their knowledge or consent. In addition, the NASD found Theodorellis forged the signatures of the same customers to an option agreement and approval form and a margin agreement.

Jon J. Vargo (Associated Person, Edison, New Jersey) submitted an Offer of Settlement pursuant to which he was fined \$10,000, barred from association with any NASD member in any capacity, and required to pay \$20,537.50 in restitution to public customers. Without admitting or denying the allegations, Vargo consented to the described sanctions and to the entry of findings that he solicited and received checks totaling \$20,537.50 from public customers for the purchase of shares of a common stock, deposited the checks into the bank account of a company other than his member firm, and failed to issue written notification of the

purchase or to return the funds to the customers. In addition, Vargo failed to register or qualify as a general securities principal while being actively involved in the management of a member firm.

Robert T. Williams (Registered Representative, Holbrook, New York) was fined \$30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Williams executed unauthorized transactions in the accounts of public customers without their knowledge or consent. In addition, Williams failed to respond to NASD requests for information.

December Actions

First Independence Group, Inc. (Garden City, New York), Frank Paul Giraldo (Registered Principal, East Norwich, New York), and Mark Steven Milana (Registered Representative, Dix Hills, New York). The firm was fined \$308,677.40, and Giraldo was fined \$62,000 and barred from association with any NASD member in a supervisory or principal capacity. Milana was fined \$40,000 and barred from association with any NASD member in a supervisory or principal capacity. Both Giraldo and Milana are required to requalify by examination if they desire to function in a registered representative capacity. In addition, Giraldo and Milana are prohibited from maintaining a proprietary interest in any NASD member other than a noncontrolling interest in a member whose shares are publicly traded and subject to the reporting requirements of Section 12 of the Securities Exchange Act of 1934.

The SEC affirmed the sanctions following appeal of a March 1992 NBCC decision. The sanctions were based on findings that, in contravention of the NASD's Mark-Up Policy, the firm, acting through Giraldo and Milana, engaged in a course of conduct that operated as a fraud on customers. The firm was not a market maker in any of the securities it sold to customers, and all transactions were effected on a riskless principal basis.

The prices at which the securities were sold included excessive and fraudulent markups ranging from 11.11 to 188.46 percent above the firm's contemporaneous cost for the securities. The NASD also found that the firm, acting through Giraldo, failed to disclose on customer confirmations the amount of the markups charged by the firm as required by SEC Rule 10b-10. In addition, the firm, acting through Giraldo, failed to establish and implement supervisory procedures to detect and prevent the aforementioned violations.

Furthermore, the firm, acting through Giraldo, failed to report through the non-Nasdaq reporting system the highest price at which it sold and the lowest price at which it purchased a common stock, as well as the total volume of purchases and sales executed in the stock. The firm, acting through Giraldo, also failed to report whether the trades establishing the highest price at which the firm sold and lowest price at which the firm purchased the same common stock represented an execution with a customer or with another broker/dealer, as required by Schedule H of the NASD By-Laws.

The firm, Giraldo, and Milana have appealed this action to the United States Court of Appeals for the Second Circuit, and the sanctions, other than the bars in a supervisory or principal capacity, are not in effect pending consideration of the appeal.

Lew Lieberbaum & Co., Inc. (Garden City, New York) and Seymour S. Burack (Registered Representative, Staten Island, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Burack, failed to exercise proper supervision over the activities of a registered representative.

James Anthony Morrill (Registered Representative, Saratoga Springs, New York) was fined \$10,000 and barred from association with any NASD member in any capacity. However, the bar may be reduced to a three-day suspension in any capacity if Morrill demonstrates that he has fully satisfied the arbitration award. The NBCC imposed the sanctions following appeal of a New York DBCC decision. The sanctions were based on findings that

Morrill failed to pay a \$14,278.78 NASD arbitration award. Morrill has appealed this action to the SEC, and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

Stanford Kenneth Sokoloff (Registered Representative, Staten Island, New York) was fined \$11,262.41. The sanctions were based on findings that Sokoloff failed to disclose on his Form U-4 that he had pleaded guilty to unlawful use of a credit card and forgery. In addition, Sokoloff engaged in a securities business with a member firm while subject to a statutory disqualification.

James Igor Weiss (Registered Representative, New York, New York) submitted an Offer of Settlement pursuant to which he was fined \$2,500 and ordered to disgorge \$14,280 to public customers. Without admitting or denying the allegations, Weiss 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 unfair and unreasonable in that the total markup charged represented approximately 50 percent of the total cost to the customer.

January Actions

Ronald J. Dimura (Registered Representative, Middlesex, New Jersey) 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, Dimura consented to the described sanctions and to the entry of findings that he submitted a forged amended application form and loan request form to his member firm on a customer's insurance policy. In addition, the NASD found that Dimura forged the same policyholder's signature and requested a \$1,326.87 loan against his existing traditional life insurance policy to pay the originating premium on a new life insurance application without the knowledge or consent of the customer.

David Paul Durko, Jr. (Registered Representative, Brick, New Jersey) was suspended from association with any NASD member in any capacity for five business days. The sanction was based on findings that Durko failed to pay a \$5,000 NASD arbitration award.

Adam Burton Fox (Registered Representative, Parlin, New Jersey) was barred from association with any NASD member in any capacity. The sanction was based on findings that Fox induced a public customer to purchase warrants by misrepresenting the trade and exercise prices, and by stating that the customer could make an immediate profit from the purchase. In addition, Fox failed to respond to NASD requests for information.

Christopher Gedney (Registered Representative, Mahopac Falls, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay \$11,231.52 in restitution to a member firm. Without admitting or denying the allegations, Gedney consented to the described sanctions and to the entry of findings that he forged the signatures of insurance customers on cash surrender checks totaling \$11,231.52, endorsed the checks, and deposited the funds into his family checking account.

Young S. Lee (Registered Representative, Mineola, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lee consented to the described sanctions and to the entry of findings that, in contravention of Article IV, Section 5 of the Rules of Fair Practice, he refused to appear before the NASD for an on-the-record interview concerning the circumstances surrounding his employment by, and termination from, a member firm.

John L. Pitts (Registered Representative, North Babylon, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay \$4,663.26 in restitution to a member firm. Without admitting or denying the allegations, Pitts consented to the described sanctions and to the

entry of findings that he secured loans totaling \$5,084.07 from a customer's life insurance policy without the customer's knowledge and retained the funds for his own use and benefit. The NASD also found that Pitts forged a customer's signature on a \$1,000 policy loan check which he converted to his own use and benefit.

In addition, the findings stated that Pitts deposited a \$3,185 check payable to and endorsed by a public customer into his personal bank account without the customer's consent or knowledge. Furthermore, the NASD determined that Pitts converted a customer's life insurance policy surrender check in the amount of \$1,308.76 to his own use and benefit.

Carlos Reconc (Registered Representative, Elizabeth, New Jersey) 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, Reconc consented to the described sanctions and to the entry of findings that he used \$1,972.08 from cash surrender checks of two insurance customers to pay the monthly premiums on unrelated policyholders' accounts without the knowledge or consent of the customers.

James M. Russen, Jr. (Registered Representative, Middle Island, New York) was fined \$50,000 and suspended from association with any NASD member in any capacity for 30 business days. The SEC affirmed the sanctions following appeal of an October 1992 NBCC decision. The sanctions were based on findings that Russen executed unauthorized transactions in the accounts of four public customers at four different member firms.

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

November Actions

None

December Actions

John A. Malach (Registered Representative, Rochester, New York) was fined \$20,000 and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of a June 1992 NBCC decision. The sanctions were based on findings that Malach failed to respond to NASD requests for information concerning customer complaints and his termination from a member firm.

January Actions

Edward A. Rizzo (Registered Representative, McGraw, New York) was fined \$8,500 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Rizzo forged two customer signatures, co-endorsed two cash surrender checks totaling \$3,478.65, and converted the proceeds to his own use and benefit without the knowledge or consent of his member firm and customers. In addition, Rizzo failed to respond to NASD requests for information.

Market Surveillance Committee

November Actions

Roger J. Lange & Co., Inc. (Paris, Illinois), Roger J. Lange (Registered Principal, Brocton, Illinois), John H. Mathues (Registered Principal, Lake Zurich, Illinois), and Richard F. Duell (Registered Representative, Buffalo Grove, Illinois) submitted an Offer of Settlement pursuant to which the firm and Lange were fined \$250,000, jointly and severally. The firm was expelled from NASD membership and Lange was barred from association with any NASD member in any capacity. Mathues and Duell were each fined \$15,000 and suspended from association with any NASD member in any capacity for 10 consecutive business days. In addition, Mathues was required to pay \$10,537.16 in restitution to customers and Duell was

required to pay \$16,060.01 in restitution to customers.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm and Lange willfully violated Section 5 of the Securities Act of 1933 by offering and selling unregistered shares of a common stock to public customers. In addition, the findings stated that the firm and Lange charged their customers fraudulently excessive markups and markdowns in 205 principal transactions involving the aforementioned common stock. The firm's markups and markdowns, ranging from 10 to 63 percent, were calculated from the inside quotes on the OTC Bulletin Board[®].

According to the findings, Lange, Duell, and Mathues also charged their retail customers unfair prices in the same stock, in that the gross credits compared to the dollar amounts of the transactions were patently excessive with the charges ranging from 10 to 50 percent of the total cost to customers. The NASD also determined that the firm, Lange, Duell, and Mathues effected retail sales of the same stock, a designated security, without completing certain forms before the sales as required by Securities and Exchange Commission (SEC) Rule 15c2-6, (the cold call rule). Moreover, the NASD found that the firm and Lange failed to report certain price and volume information for the firm's daily trading in this common stock and allowed the solicitation of customers for purposes of effecting principal trades in the common stock. Finally, the NASD determined that the firm, Lange, and Mathues failed to establish, implement, and enforce reasonable supervisory measures to detect these violations.

December Actions

Andrew J. McGowan (Registered Representative, Sewaren, New Jersey) 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 three years. Without admitting or denying the allegations, McGowan consented to the described sanctions and to the entry of findings that he effected 145 fictitious end-of-day transactions in 17 securities.

Pacific Southern Securities, Inc. (Denver, Colorado), Gerald M. Schechter (Registered Principal, Englewood, Colorado), and William P. Snow (Registered Principal, Arvada, Colorado). The firm and Schechter were fined \$50,000, jointly and severally and required to jointly and severally pay \$124,065.20 in restitution to public customers. Schechter was also fined an additional \$50,000, suspended from association with any NASD member in any capacity for six months, suspended from association with any NASD member in any principal or supervisory capacity for two years, and required to qualify by examination as a general securities representative. Snow was fined \$50,000 and barred from association with any NASD member in any capacity. The NBCC imposed the sanctions following appeal of a Market Surveillance Committee decision.

The sanctions were based on findings that the firm, acting through Schechter, effected transactions in, and induced others to effect transactions in, securities at prices that were not reasonably related to the prevailing market price of the securities. The firm, acting through Schechter, also engaged in deceptive and fraudulent devices and contrivances in the securities and sold shares of the common stocks to its retail customers with markups ranging from 11 to 89 percent over the prevailing market price. In addition, Snow failed to appear at two scheduled interviews with NASD staff in connection with the aforementioned activity.

January Actions

R. H. Damon & Co., Inc. (New York, New York), Damon D. Testaverde (Registered Principal, Staten Island, New York), and Ronald I. Heller (Registered Principal, Orangeburg, New York) submitted an Offer of Settlement pursuant to which the firm was fined \$30,000 and required to pay \$57,671.30 in restitution and interest to public customers. Testaverde and Heller were each fined \$20,000, suspended from association with any NASD member in any capacity for two weeks, and suspended from association with any NASD member in any principal capacity for two 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 Testaverde, and Heller, failed to remove itself from the market in a common stock during a distribution and, in fact, actively bid for and purchased the stock causing the price of the security to rise. In addition, the findings stated that the firm failed to establish, maintain, and enforce adequate procedures to ensure compliance with Securities and Exchange Commission (SEC) Rule 10b-6. Furthermore, the NASD found that the firm and Heller violated Schedule C of the NASD By-Laws in that Heller failed to register properly as a principal while he was acting in that capacity.

John G. Harmann (Registered Principal, Aurora, Colorado), Shirley A. Garrity (Registered Representative, Denver, Colorado), David C. Green (Registered Representative, Denver, Colorado), Gene A. Hochevar (Registered Representative, Boulder, Colorado), and Guy R. LaBone (Registered Representative, Lakewood, Colorado). Harmann was suspended from association with any NASD member in any capacity for 90 days and required to requalify by examination as a principal. Garrity, Green, Hochevar, and LaBone were each fined \$5,000, suspended from association with any NASD member in any capacity for five days, and required to requalify by examination as a registered representative. The SEC affirmed the sanctions following appeal of a January 1992 National Business Conduct Committee (NBCC) decision.

The sanctions were based on findings that, with the knowledge and substantial assistance of Harmann, a former member firm dominated and controlled the aftermarket in two blind pools underwritten by the firm with excessive markups ranging from 10 to 266 percent above the firm's contemporaneous cost, totaling nearly \$100,000. Garrity, Green, Hochevar, and LaBone were found to have charged unfair prices to certain of their customers who purchased the securities. These respondents determined the gross commission on trades and were paid portions of these gross commissions. In all of these trades, Garrity, Green, Hochevar, and LaBone received in excess of 10 percent of the total amount of the trade, and in a number of instances, 30 percent or more of the total price paid by the retail customer to purchase the security was shared between the firm and the registered representative. Furthermore, Harmann failed to provide firm personnel with adequate supervision in connection with this activity.

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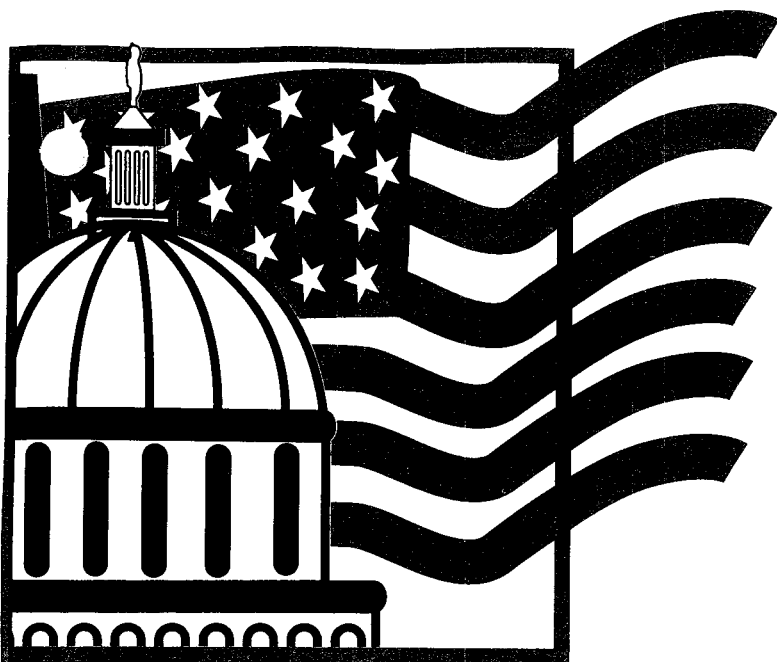
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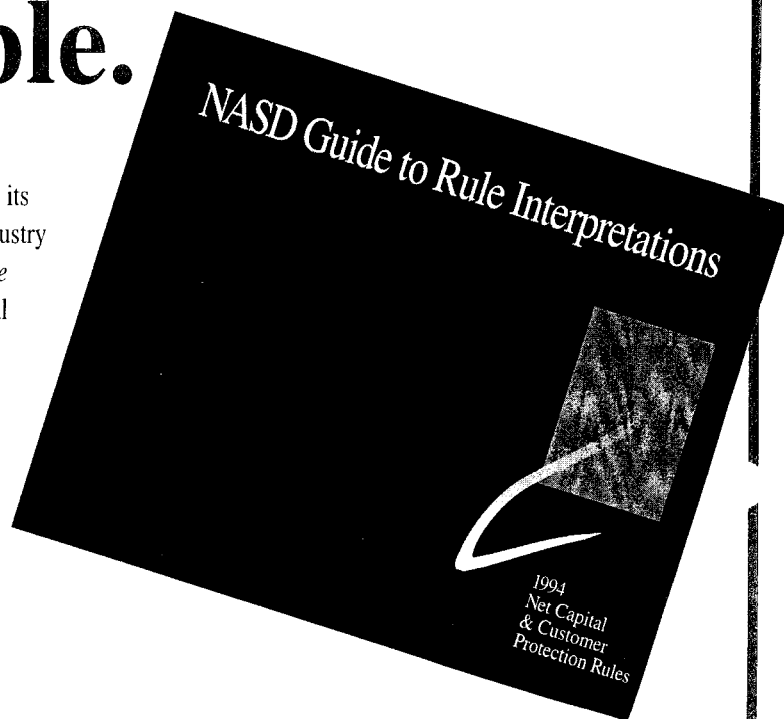
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