

# Notice To Members

National Association of Securities Dealers, Inc.

December 1990

## Number 90 - 79

### Suggested Routing:\*

- |   |  |                                       |   |
|---|--|---------------------------------------|---|
| <input checked="" type="checkbox"/> Senior Management | <input type="checkbox"/> Internal Audit                | <input type="checkbox"/> Operations   | <input checked="" type="checkbox"/> Syndicate |
| <input checked="" type="checkbox"/> Corporate Finance | <input checked="" type="checkbox"/> Legal & Compliance | <input type="checkbox"/> Options      | <input type="checkbox"/> Systems              |
| <input type="checkbox"/> Government Securities        | <input type="checkbox"/> Municipal                     | <input type="checkbox"/> Registration | <input type="checkbox"/> Trading              |
| <input type="checkbox"/> Institutional                | <input type="checkbox"/> Mutual Fund                   | <input type="checkbox"/> Research     | <input type="checkbox"/> Training             |

\*These are suggested departments only. Others may be appropriate for your firm.

## REQUEST FOR COMMENTS

**Subject: Receipt of Differential Compensation for Soliciting Proxies in Partnership Roll-Ups;  
Last Date for Comments: January 15, 1991**

### EXECUTIVE SUMMARY

The NASD requests comments on a proposed amendment to Appendix F under Article III, Section 34 of the Rules of Fair Practice ("Appendix F") that would prohibit member firms from receiving differential compensation contingent on investor votes in connection with their solicitation of consents in partnership roll-up transactions. The text of the proposed amendment follows this notice. The NASD is also interested in receiving comment on any regulatory alternatives to the proposed amendment.

### BACKGROUND

The NASD's Direct Participation Programs/Real Estate Committee, a national standing committee of the Board of Governors, has reviewed certain issues relating to NASD members' activities in connection with the roll-up of existing limited partnerships into new publicly traded limited partnerships, real estate investment trusts, or corporations.

In particular, the Committee reviewed the use of differential compensation plans that provide for

NASD members soliciting limited partners in a roll-up to receive a commission only when the investor votes "yes" on the proposed transaction. The NASD is concerned that the payment for "yes" votes raises a conflict of interest, or appearance of a conflict of interest, since such a compensation arrangement may give members an incentive to recommend approval of the transaction.

A typical differential compensation arrangement provides for members to receive a commission, generally around 2 percent, for soliciting "yes" votes from limited partners to approve a roll-up transaction. No payments are made for "no" votes. In addition, members do not receive these commissions if a sufficient number of "yes" votes is not received to consummate the transaction. Members also sometimes receive engagement fees, financial advisory fees, and/or fees for providing fairness opinions in connection with roll-up transactions.

On October 3, 1990, the House Subcommittee on Telecommunications and Finance opened hearings in Washington, D.C., on various investor protection, fairness, and disclosure issues related to the roll-up of limited partnerships.

The subcommittee indicated its intention to convene a series of hearings to determine whether

legislative or regulatory action is necessary to curb perceived abuses in the roll-up area.

Such perceived abuses relate to the fees earned by general partners and their affiliates in connection with roll-up transactions, poor after-market performance of entities resulting from a roll-up, the lack of dissenters' rights for limited partners opposed to a roll-up, the accuracy and adequacy of disclosure documents provided to investors considering a roll-up, as well as differential compensation arrangements providing payment to brokers only when soliciting "yes" votes.

The NASD believes that the appropriate legislative or regulatory bodies should address concerns relating to investor protection, aftermarket performance, fairness, and disclosure in connection with roll-ups. The issue of differential compensation, however, presents an immediate issue to the NASD. The Board of Governors is concerned about members' receipt of payment only for "yes" votes when soliciting limited partners considering approval of a roll-up transaction, particularly in light of the above-referenced investor protection, aftermarket performance, fairness, and disclosure concerns relating to these transactions.

The Board questioned whether members should be paid only for soliciting "yes" votes when it is unclear whether such "yes" votes are in the best interests of investors. The Board determined that it may be more appropriate for members to receive a solicitation fee based on delivering any vote, "yes" or "no," as compensation for their solicitation efforts.

Therefore, the Board of Governors accepted the Direct Participation Programs/Real Estate Committee's recommendation to request membership comment on a proposed amendment to Appendix F under Article III, Section 34 of the Rules of Fair Practice. The proposed amendment would prohibit the receipt by a member of differential compensation in a roll-up transaction that is tied to the solicitation of "yes" votes only from limited partners, irrespective of the form of entity resulting from the roll-up (i.e., a partnership, real estate investment trust, or corporation).

#### REQUEST FOR COMMENT

The NASD is requesting comment on the proposed amendment itself as well as specific comment on several unresolved issues relating to the proposed amendment and roll-ups.

First is the question of whether the 2 percent commission creates a conflict of interest sufficient to sway members to solicit "yes" votes when the member believes the roll-up transaction is inappropriate or disadvantageous to its clients.

Second, if payments for "yes" votes are prohibited, should members be permitted to receive commissions contingent on a sufficient number of "yes" votes being received to approve the transaction? If members know they will be compensated only if the transaction is approved, despite the fact that they can receive compensation for "yes" and "no" votes, there might still exist an incentive to recommend that limited partners vote "yes."

Third, members are requested to comment on whether viable alternatives exist that would address the differential compensation question without adopting a prohibition on its receipt. Commenters are encouraged to propose other methods of regulating this practice. Alternatives include (1) expanding or modifying the disclosure requirements relating to differential compensation and (2) requiring the soliciting broker-dealer to affirmatively inform the limited partner of the potential receipt of differential compensation.

\* \* \* \* \*

The NASD Board of Governors encourages comment from all members and other interested persons. Comments should be directed to:

Mr. Lynn Nellius, Secretary  
National Association of  
Securities Dealers, Inc.  
1735 K Street, NW  
Washington, DC 20006-1506.

Comments must be received **no later than January 15, 1991**. Comments received by this date will be considered by the NASD's Direct Participation Programs/Real Estate Committee, other appropriate standing committees, and the NASD Board of Governors. If the Board approves the proposed amendment to Appendix F, it must be filed with and approved by the Securities and Exchange Commission before becoming effective.

Questions concerning this notice may be directed to Richard J. Fortwengler, Associate Direc-

tor, or Carl R. Sperapani, Assistant Director, Corporate Financing at (202) 728-8258.

**PROPOSED AMENDMENT TO APPENDIX F  
UNDER ARTICLE III, SECTION 34  
OF THE NASD RULES OF FAIR PRACTICE**

(Note: New language is underlined.)

Appendix F

Sec. 1.

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Sec. 6.

Solicitation of Consents

No member shall be permitted to receive differential compensation based upon a limited partner's approval of the transaction in connection with a member's solicitation efforts in a reorganization or roll-up of a direct participation program, irrespective of the form of entity resulting from the roll-up (i.e., a partnership, real estate investment trust or corporation).

# Notice To Members

National Association of Securities Dealers, Inc.

December 1990

## Number 90 - 80

### Suggested Routing:\*

- Senior Management
- Corporate Finance
- Government Securities
- Institutional

- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund

- Operations
- Options
- Registration
- Research

- Syndicate
- Systems
- Trading
- Training

\*These are suggested departments only. Others may be appropriate for your firm.

## Subject: SEC Approval of Risk Management Functions of the Automated Confirmation Transaction Service

### EXECUTIVE SUMMARY

On October 26, 1990, the Securities and Exchange Commission (SEC) approved the risk management functions of the Automated Confirmation Transaction (ACT) service. ACT risk management began operating Monday, October 29, and allows clearing firms to set daily purchase and sale trading thresholds for their correspondent executing broker-dealers, establishes a "super cap" calculation and "blockbuster" trade value, and allows clearing firms to monitor more closely the activities of their correspondents. The NASD also filed service charges for the risk management service with the SEC; those fees became effective November 1, 1990. Starting the week of November 26, 1990, the ACT service also began comparing trades in listed or Consolidated Quotation Service (CQS) stocks.

### BACKGROUND

For the past few months, self-clearing firms have been participating in the NASD Automated Confirmation Transaction (ACT) service. The ACT

service provides for on-line comparison of telephone-negotiated trades within minutes of executing the trade. In addition, ACT reports eligible trades to the tape and, at the end of the trading day, sends all locked-in trades to the National Securities Clearing Corporation (NSCC).

In order to establish ACT as the industry standard for reporting and comparing equity transactions in The Nasdaq Stock Market, the SEC has mandated that all broker-dealers participate in the service.

ACT same-day comparison provides many benefits to all parties concerned — clearing firms and their correspondents (introducing brokers), market makers, and order-entry firms.

Among the features ACT provides are same-day comparison for matching of purchases and sales; on-line browsing of open and locked-in trades; ability to clean up open trades directly from a browse screen; off-line, end-of-day aggregate match processes; T+1 "as of" trade entry; and clearing-firm risk management capabilities. The NASD also offers access to the ACT Service Desk for firms executing an average of five or fewer trades per day.

Finally, on November 26, 1990, over-the-counter transactions in listed stocks began being compared through ACT.

## HOW ACT OPERATES

After completing a trade in a Nasdaq/NMS, other Nasdaq, or listed CQS security, each participant reports trades to the ACT system through a Nasdaq Workstation<sup>SM</sup> terminal or Computer-to-Computer Interface (CTCI). The custom-designed ACT menu leads the Workstation user through entry (via a short form entry in the dynamic quote partition or a longer entry format in a separate ACT partition) as the trade report is entered as either a market maker or an order-entry firm. These entries are explained in detail in the *ACT User Guide*.

Reported trades are subject to continuous attempts to match with the other side. When two sides match, they are locked in and sent at the end of the day to NSCC, where contract sheets are produced.

All market makers are required to submit Nasdaq/NMS and listed trades within 90 seconds, and all other Nasdaq trades within 15 minutes after execution of the trade.

Order-entry firms must respond within 20 minutes of execution either by entering their version of the trade or by using the "Accept" or "Decline" functions available on the ACT browse screen.

Open trades may be canceled by using the browse screen or by CTCI entry, and locked-in trades may be broken using the browse screen. However, in order to break a locked-in trade, "break" entries must be submitted by both the buyer and seller.

At the end of the trading day, all locked-in trades are sent to the NSCC, and all open trades become eligible for the end-of-day aggregate match. Trades with the same parties, security identifier, and price, but with different volumes are combined, matched, and sent to the NSCC. At times, this aggregate process may result in one or more locked-in trades being sent to clearing and another open trade with the unmatched volume remaining in the ACT system. This open trade then becomes available for reconciliation through ACT on T+1.

The ACT 2 (T+1) cycle allows a final cleanup of all open trades remaining from trade day. Firms may use the ACT 2 browse function to enter "as of" entries in order to effect a match, or they may "Accept," "Decline," or "Cancel" trades from the previous day. Entry of ACT 2 "as of" trades can be accomplished until 1 p.m., and ACT browse up-

dates until 2:30 p.m. on T+1.

At the end of the ACT 2 cycle, a second aggregate match is attempted on the remaining open trades. When this is completed, all remaining open trades that were entered into the ACT system on trade date are **automatically locked in** and sent, as such, to NSCC. All open "as of" trades, however, are deleted from the ACT file.

## ACT RISK MANAGEMENT

Since ACT accelerates the comparison cycle and creates locked-in trades, clearing firms gain extensive risk management capabilities to monitor the activities of their correspondents.

Using ACT Risk Management, clearing firms can choose to monitor purchase and sale activity, establish dollar thresholds for the trading day, examine large trades, establish and delete clearing relationships, and develop an internal data base through a real-time data feed of correspondent activity.

### Thresholds

ACT calculates separate purchase and sale dollar totals for each executing broker. These running totals are compared against a purchase and sale threshold established by the clearing firm for each of its correspondents. When executing brokers' totals reach 70 percent of the assigned threshold, an alert message is transmitted to the clearing and executing firms. A second message is sent if an executing broker exceeds its threshold. The clearing firm can reset thresholds any time during the trading day and has the option of setting unlimited thresholds.

### Super Cap Limits

As an additional feature, the ACT Risk Management process calculates the totals of compared locked-in trades for each correspondent. This figure will be related to a "Super Cap" total, which is twice the assigned threshold but never less than \$1 million.

If a correspondent broker's locked-in trades exceed the Super Cap amount, the ACT system will place a designated mark next to all of its quotes (if the firm is a market maker), and will cause all trades greater than \$200,000 to be held for 15 minutes for clearing-firm approval. Trades not approved in this 15-minute time period will be rejected and sent back to the contra party.

Once the Super Cap is penetrated, it is the responsibility of the clearing firm to either raise the threshold, thus resetting the Super Cap for that correspondent, or to delete the clearing arrangement, thereby ceasing to act for that correspondent.

### Blockbuster Trades

As an additional feature, all trades of \$1 million or more so-called "blockbuster trades" will be subject to clearing-firm approval. The trade report will be held for a 15-minute time frame in order to allow the clearing broker an opportunity to examine the trade details. If during the 15-minute "held" period the clearing firm does not actively reject the trade, it will be processed and matched like any other ACT trade report. Clearing firms, however, have the option of bypassing blockbuster trade processing for designated correspondents.

### ACT Risk Management Features for Clearing Firms

All correspondent trade activity may be monitored from a special Clearing Firm Browse screen designed specifically to allow these firms the ability to "see" locked-in and open trade reports entered into the ACT system. A separate display permits the clearing firm to monitor and update correspondent threshold limits and also provides the means to cancel a specific clearing relationship.

An additional feature is available to clearing firms with a CTCI interface. These firms are able to receive a real-time data feed of all trade detail and comparison activity of its correspondents. This will allow the clearing firm to create an internal data base if the clearing firm is interested in developing more intensive risk management procedures for its correspondents.

### ACT FEE STRUCTURE

The following fee structure applies to the ACT service:

- **Compared Trades** — \$.0125 per 100 shares (minimum 400 shares or \$.05 and maximum 7,500 shares or \$.9375).

- **Query Charge** — \$.25 per query. The first accept or decline processed is free, and a query is defined as entering a new parameter (i.e., stock symbol or market-maker identifier).

- **Late Fees** *will not be charged.*

- **ACT 2 Input Fees** — \$.25 per trade, in addition to comparison charge.

- **ACT Only Terminal Fees** — \$50 per month. (Defined as a terminal set-up for ACT only usage; that is, it is *not* being charged for any other Nasdaq service, such as Level 2/3 or Trade Acceptance and Reconciliation Service.

- **CTCI Fee** — \$500 per month per line.

- **Service Desk** — \$50 per month.

- **Clearing-Firm Risk Management** — \$.02 per side and \$15 per month per correspondent.

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**Subject: Amendments to the Code of Procedure to Change the Disciplinary Process and Provide That Decisions of the National Business Conduct Committee Are Final Actions of the NASD**

### EXECUTIVE SUMMARY

The Securities and Exchange Commission (SEC) has approved amendments to the NASD Code of Procedure that make two changes in the Code to the disciplinary process that reduce the burden that this process imposes on the National Business Conduct Committee (NBCC) and the Board of Governors. The amendments provide that the decisions of the NBCC are the final decisions of the NASD in disciplinary cases and do not require action of the full Board to become effective. The amendments also provide that hearings panels (unless the parties otherwise agree) consist exclusively of current or former Governors associated with members, and they eliminate the requirements that a current Governor serve on every hearing panel.

The text of the amendments follows this notice.

### BACKGROUND

The amendments were approved for solici-

tion of member comment by the NASD Board of Governors (Board) at its meeting on March 16, 1990. The proposed amendments were published for comment as part of *Notice to Members 90-19* on April 1, 1990. After consideration of member comment, the Board at its meeting May 14, 1990, adopted the proposed amendments and authorized their filing with the SEC.

The SEC approved the amendments on October 18, 1990. The amendments make two substantive changes to the Code: NASD National Business Conduct Committee (NBCC) hearing panels can consist exclusively of current or former Governors associated with members. Decisions of the NBCC will be final decisions of the NASD, unless called for review by the Board, at the request of one or more Governors. Miscellaneous amendments to Articles I, II, III, IV, IX, and X to the Code of Procedure are also included.

### SUMMARY OF AMENDMENTS

The NBCC, a committee of the Board composed solely of Governors, is responsible for reviewing actions of the District Business Conduct Committees (DBCCs) and the Market Surveillance Committee (MSC), developing enforcement policy and recommending to the Board the adoption or

amendment of rules relating to the business conduct of NASD members.

As amended, Article III, Section 2(d) of the NASD Code of Procedure requires that hearing panels (unless the parties otherwise agree) consist exclusively of current or former Governors associated with members, and eliminates the requirement that a current Governor serve on every hearing panel. This will permit the NBCC, in the cases it deems appropriate, to appoint hearing panels consisting of a current Governor and a former Governor and to appoint hearing panels consisting exclusively of former Governors. Panels so constituted would continue to provide respondents a hearing before experienced and respected members of the industry. All cases before the NBCC, regardless of the composition of the hearing panel, would continue to be reviewed by the full NBCC.

As amended, Article III, Sections 6 and 7 provides that the decisions of the NBCC are the final decisions of the NASD in disciplinary cases and do not require action of the full Board to become effective. Under this amendment, the Board will review only those specific decisions of the NBCC that it calls for review on the request of one or more Governors.<sup>1</sup> This limits the time commitment required from all Governors with respect to decisions by the NBCC without limiting the right of the Board to review an NBCC decision when one or more Governors believe such review is appropriate.

This change reflects the importance of the NBCC and recognizes the quality and consistency of its decision making. It makes appeals to the SEC the sole recourse of respondents seeking to challenge a decision of the NBCC unless one or more Governors request review by the Board.

### MISCELLANEOUS CHANGES

Article I, Section 2 of the Code of Procedure (which defines terms used in the Code) has been amended by adding definitions of "Extended Proceedings" and "Extended Proceeding Committee" to conform to definitional changes made to Article III, Section 2 that were previously approved by the Commission. Minor amendments have been made to Sections 2(c), (e), and (f) of Article III of the Code of Procedure to clarify that NBCC review includes written briefs, if submitted. The text of the amendments contains further miscellaneous

technical changes that the NASD encourages members to review.

Questions regarding this notice may be directed to Norman Sue, Jr., Assistant General Counsel, Office of General Counsel, at (202) 728-8117.

## AMENDMENTS TO THE CODE OF PROCEDURE

(Note: New text is underlined; deleted text is in brackets.)

### ARTICLE I

#### Application and Purpose of Code Definitions

Sec. 2. (a) Unless otherwise provided, terms used in the Code of Procedure shall have the meaning as defined in Article I of the By-Laws and Article II, Section 1 [I] of the Rules of Fair Practice.

\* \* \* \* \*

(c) The term "Market Surveillance Committee" means the [is a standing] committee of the Corporation or Board [of Governors] which is responsible for handling alleged violations of applicable rules of the Corporation concerning trading of securities, including applicable rules involving quotations, transaction execution and reporting, trading practices and insider trading as well as other such matters assigned [delegated] to it by the Board [of Governors].

(d) The term "National Business Conduct Committee" means the [is a standing] committee of the Board [of Governors] which is authorized to exercise powers assigned [delegated] to it by the Board in connection with disciplinary and other matters.

(e) An "Extended Hearing" is a hearing under Article II, Section 4 [or Article III, Section 2(a)] of the Code of Procedure that is so designated by a District Business Conduct Committee[,] or the Market Surveillance Committee[,]. An "Extended Proceeding" is a proceeding under Article III, Sections 2(h) and (i) of the Code of Procedure that is so designated by [or] the National Business Conduct Committee.

<sup>1</sup>The amendments make parallel amendments to Article IX with respect to the decisions of the Nasdaq Hearing Review Committee.



(f) An "Extended Hearing Committee" is a committee constituted as provided in the Code of Procedure to sit as a hearing panel for an Extended Hearing. An "Extended Proceeding Committee" is a committee constituted as provided in the Code of Procedure to sit as a panel for an Extended Proceeding.

(g) The term "NASDAQ Hearing Review Committee" means the committee of the Corporation or the Board which is responsible for handling matters regarding persons aggrieved by the operations of the NASDAQ System, NASDAQ qualifications and related issues.

**ARTICLE II**

**Disciplinary Actions by the District Business Conduct Committees, the Market Surveillance Committee and Others  
Venue**

Sec. 5. (c) In the event the Committee considering a complaint is changed, the complaint shall be processed to completion by the Committee to which the complaint was transferred. In the event the boundaries [of one or more] or number of districts should be changed, any complaint pending in a district shall be processed to completion by the District Business Conduct Committee for the newly constituted district which would have had jurisdiction had the complaint been filed subsequent to the effective date of the number or boundary changes.

\* \* \* \* \*

**Acceptance, Waiver and Consent and Summary Complaint Procedures**

Sec. 10. A Committee may, prior to issuance of a complaint under Section 1 of this Article, impose disciplinary penalties pursuant to the procedures set forth under this Section 10.

**Acceptance, Waiver and Consent of the Respondent**

(a) If the Committee has reason to believe a violation has occurred and the member or associated person does not dispute the violation, the Committee may suggest that the member or associated person submit a letter containing an acceptance of a finding of violations, a waiver of all rights of appeal to the National Business Conduct

Committee (and any review thereof by the Board of Governors), the Securities and Exchange Commission and the courts or to otherwise challenge or contest the validity of the Order issued if the letter is accepted, and a consent to the imposition of sanctions. The letter shall describe the act or practice engaged in or omitted; the rule, regulation or statutory provision violated; and the sanction to be imposed therefore. If the Committee then concludes that the Letter of Acceptance, Waiver and Consent is appropriate and should be accepted, it shall be submitted to the National Business Conduct Committee. If the letter is accepted by the National Business Conduct Committee, it shall become final and shall constitute the complaint, answer and decision in the matter. If the letter is rejected by [either] the Committee or the National Business Conduct Committee, any acceptances, waivers and consents contained therein shall not be considered in any further complaint action which may be taken against the member or associated person.

\* \* \* \* \*

**Summary Complaint Procedure**

(b)(4) Acceptance by a respondent of an offer as described above shall constitute the respondent's admission of the violations, acceptance of the sanction and a waiver of all rights of appeal to the National Business Conduct Committee (and any review thereof by the Board of Governors), the Securities and Exchange Commission and the courts or to otherwise challenge or contest the validity of the decision, and the complaint and related documents shall constitute the Committee's decision and the record in the case. Receipt of respondent's acceptance by the Committee shall conclude the proceedings as of the date the acceptance is received, without further notice to the respondent, under the conditions stated in the offer, subject to paragraphs (5) and (6).

\* \* \* \* \*

**Settlement Procedure**

Sec. 11. (c) Every Offer of Settlement shall be in writing and shall contain in reasonable detail:

\* \* \* \* \*

(5) a waiver of all rights of appeal to the National Business Conduct Committee (and any review thereof by the Board of Governors), the Securities and Exchange Commission and the courts or to otherwise challenge or contest the validity of the Order issued if the Offer of Settlement is accepted.

\* \* \* \* \*

**Complaints Directed by the Board  
[of Governors] or the  
National Business Conduct Committee**

Sec. 12. The National Business Conduct Committee and the Board [of Governors] shall each have the authority when (on the basis of information and belief) [it is] of the opinion that any act, practice or omission of any member of the Corporation or of any person associated with a member of the Corporation is in violation of any rule, regulation or statutory provision, to file a complaint with a Committee against such member or such person associated with a member or to instruct any Committee to do so, and any such complaint shall be handled in accordance with this Article.

**ARTICLE III**

**Review of Disciplinary Actions  
[and Proceedings Before]  
by the National Business  
Conduct Committee**

and the Board [of Governors]

Sec. 1.(a) If a Committee shall take any disciplinary action against any member, or shall dismiss any complaint, as herein provided, such action or dismissal shall be subject to review by the National Business Conduct Committee [Board of Governors] on its own motion within 45 calendar days after the date of the decision. Any such action or dismissal shall also be subject to review upon application by any person aggrieved thereby, filed within 15 calendar days after the date of the decision. Application to the National Business Conduct Committee [Board of Governors] for review, or the institution of review by the National Business Conduct Committee [Board of Governors] on its own motion, shall operate as a stay of any such action or dismissal, until a decision is rendered by the National Business Conduct Committee pursuant to Section 6 of this Article or by

the Board in cases of discretionary review pursuant to Section 7 of this Article [of Governors upon such review as hereinafter provided].

(b) If a respondent or any aggrieved person who has made application to the National Business Conduct Committee [Board of Governors] for a review shall withdraw the appeal without a determination by the National Business Conduct Committee [Board of Governors] on the merits thereof, the National Business Conduct Committee [Board of Governors] shall have an additional period of 45 calendar days subsequent to the withdrawal in which to determine whether it shall review the matter on its own motion.

**Proceedings [Before the Board]**

Sec. 2.(a) In the case of an appeal or call for review, the party seeking review may request a hearing. If a party desires a hearing, it should be requested in his application for review. A party subject to a call for review may request a hearing within fifteen (15) calendar days of notification of the call for review. If a request is made, a hearing shall be granted, subject to the limitations of Section 2(f) below. In the absence of a request for a hearing, the National Business Conduct Committee [Board of Governors] may have any matter set down for a hearing.

\* \* \* \* \*

(c) If a hearing is not held, the matter shall be considered on the basis of the record before the Committee, and written briefs, if submitted [as applicable]. For purposes of this section, the record before the Committee shall include the complaint, respondent's answer, the transcript of the Committee hearing, any exhibits reviewed by the Committee, and the Committee decision.

(d) Unless otherwise consented to by the parties, all hearings shall be held before a hearing panel, and all on-the-record reviews shall be conducted by a review panel, appointed by the National Business Conduct Committee consisting of two or more persons, all of whom are current or former Governors associated with members of the Corporation[, at least one of whom shall also be a current or former member of the Board of Governors].

(e) A hearing on review by the National Business Conduct Committee [Board] shall consist of oral arguments limited to a total period of thirty

(30) minutes each for argument and response by respondent and for argument and response by complainant, unless extended by the hearing panel in its discretion for good cause shown. The National Business Conduct Committee's [Board's] review shall be limited to consideration of oral arguments, written briefs, if submitted [as applicable], and the record before the Committee. A record of the hearing shall be kept in all cases.

(f) Any application for review of a matter in which the party seeking review did not participate in the proceedings before the Committee but shows good cause for the failure to participate, shall normally be dismissed by the National Business Conduct Committee [Board] and remanded to the Committee for further proceedings. If the party seeking review did not participate in the proceedings before the Committee and does not show good cause for failure to participate, the matter shall be considered by the National Business Conduct Committee [Board] on the basis of the record before the Committee, including written briefs if submitted to the National Business Conduct Committee [Board], as applicable]. For purposes of this paragraph, failure to participate shall mean failure to file an answer or otherwise respond to a complaint or failure to appear at a hearing pursuant to Article II, Section 4 of this Code. A party seeking review who failed to request a hearing before a Committee pursuant to Article II, Section 4 of this Code, shall be permitted to have a hearing on review as provided in this section.

(g) Any application for review as to which the party seeking review fails to advise the National Business Conduct Committee [Board] of the basis for seeking review, or otherwise fails to provide information or submit a written brief in response to a request, may be dismissed as abandoned and the decision of the Committee shall become the final disciplinary action of the Corporation for purposes of Section 8 of this Article [Association action].

\* \* \* \* \*

(j[1]) The hearing or on-the-record review panel shall present its recommended findings and sanctions to the National Business Conduct Committee, [.] [The National Business Conduct Committee shall make its recommended findings and sanctions to the Board of Governors] which shall make the final determination.

### **Evidence in National Business Conduct Committee Proceedings**

Sec. 3. (a) A party to the National Business Conduct Committee's [Board's] review may apply to the National Business Conduct Committee [Board] for leave to adduce additional evidence. If the party provides notice of the intention to introduce such evidence no later than ten (10) days prior to the date of the hearing, identifies and describes the evidence, and satisfies the burden of demonstrating that there was good cause for failing to adduce it before the Committee and that the evidence is material to the proceeding, the National Business Conduct Committee [Board] may, in its discretion, permit the evidence to be introduced into the record on review or may remand the case to the Committee for further proceedings in whatever manner and subject to whatever conditions the National Business Conduct Committee [Board] considers appropriate. On its own motion, the National Business Conduct Committee [Board] may direct that the record on review be supplemented with such additional evidence as it may deem relevant.

(b) Where leave to adduce additional evidence is granted, the Corporation staff or the complainant, if other than a Committee, and the respondent shall make available to the National Business Conduct Committee [Board] hearing or review panel and to the parties all documentary evidence which was not part of the record before the Committee no later than five (5) business days before the hearing.

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### **Powers of the National Business Conduct Committee [Board] on Review**

Sec. 4. In any proceeding to review any disciplinary action taken or dismissed by a Committee, the National Business Conduct Committee [Board of Governors] may affirm, dismiss, modify or reverse dismissals with respect to each of the Committee findings or remand the matter with appropriate instructions to the Committee. The National Business Conduct Committee [Board of Governors] may affirm, increase, or reduce any sanction, or impose any other fitting sanction.

### **Decision of the National Business Conduct Committee [Board]**

Sec. 5.(a) In any proceeding to review any disciplinary action taken by a Committee or a dismissal by a Committee if the National Business Conduct Committee [Board of Governors] determines that a violation alleged in the complaint has occurred, it shall issue a written decision which shall set forth:

- (1) the act or practice which the respondent has been found to have engaged in or omitted;
- (2) the rule, regulation, or statutory provision which such act or omission to act is deemed to violate;
- (3) the basis upon which the findings are made; and
- (4) the sanction imposed and the reason therefor.

#### **Notification of Decision; Final Disciplinary Action**

Sec. 6. Unless a matter is called for discretionary review by the Board pursuant to Section 7 of this Article, the decision of the National Business Conduct Committee shall constitute final disciplinary action for purposes of Section 8 of this Article, and t[T]he complainant, the respondent and the member of the Corporation with whom the respondent is presently an associated person shall be promptly notified and sent a copy of any written decision rendered by the National Business Conduct Committee [Board of Governors]. In the event of discretionary review by the Board, the decision of the Board shall constitute final disciplinary action for purposes of Section 8 of this Article, and the complainant, the respondent and the member of the Corporation with whom the respondent is presently an associated person shall be promptly notified and sent a copy of any written decision rendered by the Board.

#### **Discretionary Review by the Board**

Sec. 7. Determinations of the National Business Conduct Committee may be reviewed by the Board solely upon the request of one or more Governors. Such review, which may be undertaken solely at the discretion of the Board, shall be in accordance with resolutions of the Board governing the review of National Business Conduct Committee determinations. In reviewing any determination of the National Business Conduct Committee, the Board may affirm, dismiss, modify or reverse dismissals with respect to each of the National Busi-

ness Conduct Committee determinations or remand the matter with appropriate instructions to the National Business Conduct Committee or any Committee. The Board may affirm, increase, or reduce any sanction, or impose any other fitting sanction. Discretionary review by the Board shall operate as a stay of any action or dismissal by the Committee and any determinations of the National Business Conduct Committee, until a decision is rendered by the Board.

#### **Application to SEC for Review**

Sec. 8[7]. In any case where either the complainant or the respondent feels aggrieved by any final disciplinary action taken by the National Business Conduct Committee or Board [of Governors], such person may make application for review to the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934, as amended. The member of the Corporation with whom the respondent is presently an associated person shall be notified promptly of any application for review to the Securities and Exchange Commission.

### **ARTICLE IV**

#### **Imposition of Sanctions and Costs Sanctions**

Sec. 1. In any proceeding relating to disciplinary actions involving members and associated persons, a Committee, the National Business Conduct Committee or the Board of Governors may impose any sanction it deems appropriate as set forth in Article V, Section 1, of the Rules of Fair Practice or in the applicable By-Law or rule of the Corporation which was the subject of the complaint.

#### **Costs of Proceedings**

Sec. 2. In any disciplinary action, the member or associated person shall bear such part of the costs of the proceedings as the Committee, the National Business Conduct Committee or Board of Governors deems fair and appropriate under the circumstances.

\* \* \* \* \*

### **ARTICLE IX**

#### **Procedures on Grievances Concerning the Automated Systems Review by the**

**NASDAQ Hearing Review Committee [Board]**

Sec. 6. The decision shall be subject to review by the NASDAQ Hearing Review Committee [Board of Governors] on its own motion within 45 calendar days after issuance of the written decision. Any such decision shall also be subject to review upon application of any person aggrieved thereby, filed within 15 calendar days after issuance. The institution of a review, whether on application or on the initiative of the NASDAQ Hearing Review Committee [Board], shall not operate as a stay of the decision.

**Findings of the NASDAQ Hearing Review Committee [Board] on Review**

Sec. 7. Upon consideration of the record, and after such further hearings as it shall order, the NASDAQ Hearing Review Committee [Board] shall affirm, modify, reverse, dismiss, or remand the decision. The NASDAQ Hearing Review Committee [Board] shall set forth specific grounds upon which its determination is based.

**Discretionary Review by the Board**

Sec. 8. Determinations of the NASDAQ Hearing Review Committee may be reviewed by the Board solely upon the request of one or more Governors. Such review, which may be undertaken solely at the discretion of the Board, shall be in accordance with resolutions of the Board governing the review of NASDAQ Hearing Review Committee determinations. The Board shall affirm, modify or reverse the determinations of the NASDAQ Hearing Review Committee or remand the matter to the NASDAQ Hearing Review Committee with appropriate instructions. The institution of discretionary review by the Board shall not operate as a stay of the decision.

**Application to Commission for Review**

Sec. 9[8]. In any case where a person feels aggrieved by any decision [of the Board of Governors taken] issued pursuant to Section 7 or Section 8 of this Article, the person may make application for review to the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934, as amended.

**ARTICLE X**

**Miscellaneous  
Grounds of Disqualification to  
Participate in Proceedings**

Sec. 1. No member of the Board [of Governors], National Business Conduct Committee, any Committee or [any] other committee or subcommittee governed by this Code shall in any manner, directly or indirectly, participate in the determination of any matter substantially affecting his interest or the interests of any person in whom he is directly or indirectly interested. In any such case the particular member shall disqualify himself, or shall be disqualified by the Chairman of the [any such] Board, National Business Conduct Committee, or any such Committee or other committee or subcommittee governed by this Code.

**Reports and Examination of  
Books and Records**

Sec. 2. For the purpose of any examination[, ] or determination as to any proceeding pursuant to this Code, any hearing panel, Committee, other committee or subcommittee governed by this Code, the National Business Conduct Committee or the Board [of Governors], and [or] any duly authorized agent or agents thereof [of any such hearing panel, Committee or Board], shall have the right to require any member, [or] person associated with a member, or person no longer associated with a member when such person is subject to the Corporation's jurisdiction, to report, either informally or on the record, orally or in writing with regard to any examination, determination or hearing, and to examine the books and records of any such member or person [associated with a member].

**Rulings on Procedural Matters**

Sec. 3. Except as otherwise provided by this Code, the Board, National Business Conduct Committee or any hearing panel, Committee or [Board] other committee or subcommittee governed by this Code shall have discretion to make rulings on all motions and other matters arising during the course of its proceedings (including without limitation, the presence of witnesses after completion of their testimony and of other persons not parties to the proceeding) which require resolution during the proceeding.

# Notice To Members

National Association of Securities Dealers, Inc.

December 1990

**Number 90 - 82****Suggested Routing:\***

- |   |  |                                       |                                    |
|---|--|---------------------------------------|------------------------------------|
| <input checked="" type="checkbox"/> Senior Management | <input type="checkbox"/> Internal Audit                | <input type="checkbox"/> Operations   | <input type="checkbox"/> Syndicate |
| <input type="checkbox"/> Corporate Finance            | <input checked="" type="checkbox"/> Legal & Compliance | <input type="checkbox"/> Options      | <input type="checkbox"/> Systems   |
| <input type="checkbox"/> Government Securities        | <input type="checkbox"/> Municipal                     | <input type="checkbox"/> Registration | <input type="checkbox"/> Trading   |
| <input type="checkbox"/> Institutional                | <input type="checkbox"/> Mutual Fund                   | <input type="checkbox"/> Research     | <input type="checkbox"/> Training  |

\*These are suggested departments only. Others may be appropriate for your firm.

**Subject: Inclusion of Non-SRO Arbitration Forum as an Alternative Forum in Predispute Arbitration Agreements.****EXECUTIVE SUMMARY**

The NASD Board of Governors has approved a resolution recommending that members consider including a non-SRO arbitration forum in predispute arbitration agreements with customers.

**BACKGROUND**

In a letter dated May 10, 1990, Richard G. Ketchum, Director of the Division of Market Regulation of the Securities and Exchange Commission (SEC), requested that the NASD, as well as other securities industry self-regulatory organizations (SROs), consider whether the industry's SROs should amend their rules to require broker-dealers' predispute arbitration contracts with investors to include arbitration fora in addition to those ad-

ministered by the securities industry.

At the recommendation of the NASD National Arbitration Committee and in response to the SEC's request, the NASD Board of Governors approved a resolution at its September 1990 meeting recommending that members consider including a non-SRO arbitration forum in predispute arbitration agreements with customers. Consistent with its view that SRO rules should not mandate contractual terms between members and their customers, the Board's recommendation in this regard is not mandatory. But it is intended to alert members to the existence and availability of non-SRO arbitration fora which, although not subject to oversight by the SEC, are available for the resolution of controversies arising in the securities industry.

Questions concerning this notice may be directed to Norman Sue, Jr., Office of General Counsel, at (202) 728-8117.

# Notice To Members

National Association of Securities Dealers, Inc.

December 1990

## Number 90 - 83

### Suggested Routing:\*

- Senior Management
- Corporate Finance
- Government Securities
- Institutional

- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund

- Operations
- Options
- Registration
- Research

- Syndicate
- Systems
- Trading
- Training

\*These are suggested departments only. Others may be appropriate for your firm.

## Subject: Christmas Day and New Year's Day — Trade Date-Settlement Date Schedule

The schedule of trade dates-settlement dates below reflects the observance by the financial community of Christmas Day, Tuesday, December 25, 1990, and New Year's Day, Tuesday, January 1, 1991. All securities markets will be closed on Tuesday, December 25, 1990, and Tuesday, January 1, 1991.

Trade Date	Settlement Date	Reg. T Date*
Dec. 17, 1990	24	27
18	26	28
19	27	31
20	28	Jan. 2, 1991
21	31	3
24	Jan. 2, 1991	4
25	Markets Closed	—
26	3	7
27	4	8
28	7	9
31	8	10
Jan. 1, 1991	Markets Closed	—
2	9	11

These settlement dates should be used by brokers, dealers, and municipal securities dealers for purposes of clearing and settling transactions pursuant to the NASD Uniform Practice Code and Municipal Securities Rulemaking Board Rule G-12 on Uniform Practice.

Questions regarding the application of these settlement dates to a particular situation may be directed to the NASD Uniform Practice Department at (212) 858-4341.

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

# Notice To Members

National Association of Securities Dealers, Inc.

December 1990

## Number 90 - 84

### Suggested Routing:\*

- |  |  |  |   |
|--|--|--|---|
| <input type="checkbox"/> Senior Management     | <input checked="" type="checkbox"/> Internal Audit | <input checked="" type="checkbox"/> Operations | <input type="checkbox"/> Syndicate          |
| <input type="checkbox"/> Corporate Finance     | <input type="checkbox"/> Legal & Compliance        | <input type="checkbox"/> Options               | <input checked="" type="checkbox"/> Systems |
| <input type="checkbox"/> Government Securities | <input type="checkbox"/> Municipal                 | <input type="checkbox"/> Registration          | <input checked="" type="checkbox"/> Trading |
| <input type="checkbox"/> Institutional         | <input type="checkbox"/> Mutual Fund               | <input type="checkbox"/> Research              | <input type="checkbox"/> Training           |

\*These are suggested departments only. Others may be appropriate for your firm.

## Subject: Nasdaq National Market System (Nasdaq/NMS) Additions, Changes, and Deletions As of November 13, 1990

As of November 13, 1990, the following 13 issues joined Nasdaq/NMS, bringing the total number of issues to 2,609:

Symbol	Company	Entry Date	SOES Execution Level
UNIV	Universal International, Inc.	10/12/90	1000
GLBCW	Great Lakes Bancorp, A Federal Savings Bank (Wts)	10/15/90	500
HLIX	Helix BioCore, Inc.	10/16/90	1000
NEOZZ	Neozyme Corporation	10/24/90	1000
PTMLY	Palmer Tube Mills Limited	10/24/90	200
RATNZ	Ratners Group plc (Pfd)	10/29/90	500
BOSP	Bank of San Pedro	11/6/90	500
FSEI	FIRST SEISMIC Corporation	11/6/90	1000
LUFK	Lufkin Industries, Inc.	11/6/90	200
SHOEW	Millfeld Trading Co., Inc. (1/22/94 Wts)	11/6/90	500
SHOEZ	Millfeld Trading Co., Inc. (7/22/92 Wts)	11/6/90	500
RADFD	Rada Electronics Industries Limited	11/6/90	1000
VCRT	VideOcart, Inc.	11/6/90	1000

### Nasdaq/NMS Symbol and/or Name Changes

The following changes to the list of Nasdaq/NMS securities occurred since October 12, 1990:

New/Old Symbol	New/Old Security	Date of Change
NUCOL/NUCOL	Nucorp, Inc. (10/31/92 Wts)/Nucorp, Inc. (10/30/90 Wts)	10/23/90
NUCOW/NUCOW	Nucorp, Inc. (6/30/93 Wts)/Nucorp, Inc. (6/30/91 Wts)	10/23/90
EROQ/ISEC	ENVIROQ Corp./InsituformSoutheast Corp.	11/1/90
JHSL/JHSL	John Hanson Bancorp, Inc./John Hanson Savings Bank, F.S.B.	11/1/90



New/Old Symbol	New/Old Security	Date of Change
SEAB/SEAB	Seaboard Bancorp, Inc./Seaboard Savings & Loan Association	11/1/90
APPN/ZMOS	ZyMOS Corporation/ZyMOS Corporation	11/1/90
IMATW/IMATW	Imatron, Inc. (2/10/91 Wts)/Imatron, Inc. (11/12/90 Wts)	11/6/90
FSVA/FSVA	Fidelity Savings Bank/Fidelity Savings Association	11/7/90

### Nasdaq/NMS Deletions

Symbol	Security	Date
TLAM	Tony Lama Company, Inc.	10/16/90
NIKE	NIKE, Inc. (CI B)	10/17/90
ASKI	ASK Computer Systems, Inc.	10/23/90
ARIG	American Reliance Group, Inc.	10/23/90
FAMB	1st American Bancorp Inc.	10/25/90
GNEX	Genex Corporation	10/30/90
GNEXP	Genex Corporation (Pfd)	10/30/90
IRON	Ironstone Group, Inc.	10/30/90
PAHC	Pioneer American Holding Corp.	10/30/90
TONE	One Bancorp (The)	10/31/90
CODSE	Corporate Data Sciences, Inc.	11/1/90
DRTK	Duratek Corporation	11/2/90
RELY	Ingres Corporation	11/2/90
PNBT	Planters Corporation (The)	11/5/90
CALLA	Cellular Information Systems, Inc. (CI A)	11/9/90
NWNL	NWNL Companies, Inc. (The)	11/12/90

Questions regarding this notice should be directed to Kit Milholland, Senior Analyst, Market Listing Qualifications, at (202) 728-8281. Questions pertaining to trade reporting rules should be directed to Leon Bastien, Assistant Director, NASD Market Surveillance, at (301) 590-6429.

# Notice To Members

National Association of Securities Dealers, Inc.

December 1990

**Number 90 - 85****Suggested Routing:\*** Senior Management Corporate Finance Government Securities Institutional Internal Audit Legal & Compliance Municipal Mutual Fund Operations Options Registration Research Syndicate Systems Trading Training

\*These are suggested departments only. Others may be appropriate for your firm.

**Subject: SIPC Trustee Appointed for Carolina First Securities Group**

On October 31, 1990, the United States District Court for the Middle District of North Carolina appointed a Securities Investor Protection Corporation (SIPC) trustee for:

Carolina First Securities Group  
514 South Stratford Road  
Winston-Salem, North Carolina 27103

Members may use the "immediate close-out" procedures as provided in Section 59(i) of the NASD's Uniform Practice Code to close out open over-the-counter contracts. Also, Municipal Securi-

ties Rulemaking Board Rule G-12(h) provides that members may use the above procedures to close out transactions in municipal securities.

Questions regarding the firm should be directed to SIPC trustee:

L. Bruce McDaniel, Esquire  
DeBank McDaniel Holbrook & Anderson  
Lafayette Square  
4942 Windy Hill Drive  
P.O. Box 58186  
Raleigh, North Carolina 27658  
(919) 872-3000.

# Disciplinary Actions

National Association of Securities Dealers, Inc.

December 1990

## Disciplinary Actions Reported for December

The NASD is taking disciplinary actions against the following firms and individuals for violations of the NASD Rules of Fair Practice, securities laws, rules, and regulations, and the rules of the Municipal Securities Rulemaking Board. Unless otherwise indicated, suspensions began with the opening of business on Monday, December 3, 1990. The information relating to matters contained in this notice is current as of the 20th of the month preceding the date of the notice. Information received subsequent to the 20th is not reflected in this publication.

### FIRMS EXPELLED

**Individual's Securities Ltd. (Melville, New York)** was expelled from membership in the NASD. The sanction was imposed by the NASD's Board of Governors following an appeal of a decision by the District Business Conduct Committee for District 12. The penalty was based on findings that the firm failed to honor a \$3,500 arbitration award.

**Lowenthal Financial Services, Inc. (New York, New York)** was expelled from membership in the NASD. The sanction was based on findings that Lowenthal failed to honor a \$1,615.72 arbitration award.

### FIRMS SUSPENDED, INDIVIDUALS SANCTIONED

**Das A. Borden & Associates (Muscle Shoals, Alabama)** submitted an Offer of Settlement pursuant to which the firm was suspended from membership in the NASD until it demonstrates that the arbitration award in this matter has been fully satisfied. Without admitting or denying the allegations, Das A. Borden & Associates consented to the described sanction and to the entry of findings that it failed to pay the remaining \$19,656 sum of a \$26,824 arbitration award.

### FIRMS FINED, INDIVIDUALS SANCTIONED

**Blunt Ellis & Loewi, Incorporated (Milwaukee, Wisconsin)** and **Roger Lowell Wilkie (Registered Principal, Leawood, Kansas)** submitted an Offer of Settlement pursuant to which the firm and Wilkie were fined \$50,000, jointly and severally. Wilkie was suspended from association with any member of the NASD in a principal

capacity for 30 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Blunt Ellis, acting through Wilkie, failed to supervise properly the activities of a registered representative to ensure compliance with applicable rules and regulations.

**Cartwright & Goodwin, Inc. (New York, New York)** and **Stephen Goodwin (Government Securities Principal and Registered Representative, New York, New York)** submitted an Offer of Settlement pursuant to which the firm and Goodwin were fined \$25,000, jointly and severally. Goodwin was suspended from association with any member of the NASD in any capacity for 20 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that, in contravention of its restriction agreement, the firm, acting through Goodwin, modified its business activities and participated in at least two municipal underwritings without first receiving the NASD's approval. The NASD also found that the firm, acting through Goodwin, failed to maintain required minimum net capital, failed to file an annual audited report, and conducted a municipal securities business without a municipal securities principal. In addition, the findings stated that the firm, acting through Goodwin, failed to respond fully to NASD requests for information.

**Swartwood, Hesse Inc. (New York, New York)** and **T. Marshall Swartwood (Registered Principal, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$10,000, jointly and several-

ly, and Marshall Swartwood was suspended from association with any member of the NASD in a principal capacity for 10 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 Marshall Swartwood, failed to discharge supervisory obligations concerning a statutorily disqualified individual.

### INDIVIDUALS BARRED OR SUSPENDED

**John J. Abbott (Registered Representative, Webster, New York)** was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that, on several occasions, Abbott forged the signatures of public customers on forms that authorized the conversion of their existing adjustable-premium term insurance policies into whole life or enhanced whole life policies without the knowledge or consent of the customers.

**Anthony W. Armiger (Registered Representative, Greenbelt, Maryland)** was fined \$45,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Armiger effected unauthorized purchase transactions in the accounts of public customers and misappropriated funds totaling \$25,000 received from another public customer that were intended for investment purposes. Armiger also failed to respond to NASD requests for information.

**David E. Buckner (Registered Representative, Memphis, Tennessee)** was fined \$15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Buckner executed a transaction in a customer's account, borrowed \$20,000 of the proceeds, and failed to repay the customer.

**John H. Fowkes (Registered Representative, Morgantown, West Virginia)** submitted an Offer of Settlement pursuant to which he was fined \$5,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Fowkes consented to the described sanctions and to the entry of findings that he received a \$5,049 check from a public customer to pay a premium on a life insurance policy, altered the customer's endorsement on the check, and deposited the check into his own

bank account.

**Charles C. Hall (Registered Representative, Chesterland, Ohio)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Hall consented to the described sanctions and to the entry of findings that he used customer funds to purchase a variable appreciable life insurance policy without the customer's authorization.

**H. Christopher Hunt (Registered Representative, Collingswood, New Jersey)** was fined \$25,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Hunt received from 26 public customers a total of \$1,392.14 in premiums for insurance policies and converted the funds to his own use and benefit. He also failed to respond to NASD requests for information.

**Stephen Dennis Jones, II (Registered Representative, Falls Church, Virginia)** was fined \$10,000 and barred from association with any member of the NASD in any capacity with a right to reapply after two years in a non-supervisory, non-proprietary capacity. The sanctions were imposed by the NASD's Board of Governors on review of a decision by the District Business Conduct Committee for District 10. The sanctions were based on findings that Jones effected unauthorized purchases of municipal bonds for the accounts of two customers and submitted false new-account forms to his member firm for these customers without their authorization.

**James Curtis King (Registered Representative, Marion, Ohio)** submitted an Offer of Settlement pursuant to which he was fined \$10,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, King consented to the described sanctions and to the entry of findings that he misappropriated customer funds totaling \$1,457 by submitting to his member firm false surrender forms that purported to record the customers' applications to obtain loans on their insurance policies. The NASD also found that King submitted to his member firm false surrender forms indicating that a customer wanted the cash value of two insurance policies. In addition, the findings stated that King received \$2,000 from a

public customer to purchase an annuity contract, failed to follow the customer's instructions, and instead applied for a life insurance policy and paid premiums with the funds.

**Paul Melvin Knight (Registered Representative, New Smyrna Beach, Florida)** was barred from association with any member of the NASD in any capacity. The sanction was based on findings that Knight failed to honor a \$3,000 arbitration award.

**James F. Lawler (Registered Representative, New Milford, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$30,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Lawler consented to the described sanctions and to the entry of findings that, through the use of fraudulent addresses, he took control of a public customer's account, including funds totaling \$6,000, and effected two purchase transactions in the account without the knowledge or consent of the customer.

**Richard William Lounsbury (Registered Representative, San Francisco, California)** submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any member of the NASD in any capacity for two weeks. Without admitting or denying the allegations, Lounsbury consented to the described sanctions and to the entry of findings that he recommended and effected, in the account of a public customer, a series of short-term purchases and sales of corporate and utility bonds, corporate income funds, government bond mutual funds, municipal investment trusts, and municipal bond mutual funds without having reasonable grounds for believing that the recommendations were suitable considering the customer's financial situation and investment needs.

**Craig W. Nicolson (Registered Representative, Denver, Colorado)** was fined \$50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Nicolson made misstatements on an application for securities industry registration (Form U-4), opened an account for a customer without the customer's authorization, and provided his member firm with false information on the customer's new-account data sheet. In addition, Nicolson effected 20 unauthorized transac-

tions in the same customer's account, misled the customer concerning activity in his account, and engaged in excessive trading in the account. Nicolson made improper use of the customer's funds in that he received and endorsed a \$2,000 check from the customer intended for investment purposes, instructed the customer to wire funds totaling \$3,000 to an account that belonged to Nicolson, and never deposited any of the money into the customer's securities account. Also, Nicolson engaged in a securities business prior to the effectiveness of his registration with the NASD.

**Edward S. Polster (Registered Representative, Highland Heights, Ohio)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Polster consented to the described sanctions and to the entry of findings that he offered and sold to the public unregistered nonexempt securities in the form of undivided interests in five oil and gas wells. The findings also stated that, in contravention of the Board of Governors' Interpretation with respect to Private Securities Transactions, Polster failed to provide prior written notification of such sales to his member firm.

**Daniel A. Reynolds, III (Registered Representative, Corry, Pennsylvania)** was fined \$50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Reynolds forged the signatures of public customers on requests for the redemption of mutual funds shares and on the redemption checks, which totaled \$21,621.24. He then converted the funds to his own use and benefit. Reynolds also forged a customer's signature on an application for the purchase of shares in a mutual fund and failed to respond to an NASD request for information.

**Bradley A. Sandlin (Registered Principal, Kenner, Louisiana)** and **Jann E. Sandlin (Registered Principal, Kenner, Louisiana)** were both fined \$15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Bradley and Jann Sandlin failed to respond to NASD requests for information concerning a customer complaint.

**Jann E. Sandlin (Registered Representative, Kenner, Louisiana)** was fined \$5,000

and suspended from association with any member of the NASD in any capacity for 30 days. The sanctions were based on findings that Sandlin exercised discretionary power in a public customer's account without prior written authorization from the customer and without written acceptance of the account as discretionary by her member firm.

**Warren Schreiber (Registered Principal, New York, New York and Richard Daniello (Registered Principal, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which Schreiber was fined \$20,000 and suspended from association with any member of the NASD in a principal capacity for 10 business days. Daniello was fined \$5,000 and suspended from association with any member of the NASD in a 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 a former member firm, acting through Schreiber and Daniello, failed to comply with the terms of its restriction agreement with the NASD and permitted an individual to effect securities transactions without proper registration with the NASD. The findings also stated that, in connection with six new customer accounts, Schreiber and Daniello, acting on behalf of a former member firm, failed to obtain the signatures of the registered representative introducing the accounts and the member or officer accepting the accounts for the member. In addition, the NASD found that the respondents failed to establish, maintain, and enforce written supervisory procedures.

**Gary Tucker (Registered Representative, New York, New York)** submitted an Offer of Settlement pursuant to which he was fined \$5,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Tucker consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

**Jerry Lee Wallace (Registered Representative, Marietta, Georgia)** was fined \$7,500 and suspended from association with any member of the NASD in any capacity for 30 days. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the District Business Conduct Committee for District 7. They were based on findings that Wallace engaged in private securities transactions without

providing prior written notice to his member firm.

**Brian Harry Zilke (Registered Principal, San Diego, California)** was fined \$15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Zilke failed to respond to NASD requests for information concerning a customer complaint.

**FIRMS EXPELLED FOR FAILURE TO PAY FINES AND COSTS IN CONNECTION WITH VIOLATIONS**

**Abron Securities Corporation**, Seattle, Washington

**Commonwealth Securities of Utah**, Salt Lake City, Utah

**Independent Resources Securities, Inc.**, Biloxi, Mississippi

**Investment & Product Analysis Corporation of America, Inc.**, Indianapolis, Indiana  
**Transco Securities**, Ft. Lauderdale, Florida

**INDIVIDUALS WHOSE REGISTRATIONS WERE REVOKED FOR FAILURE TO PAY FINES AND COSTS IN CONNECTION WITH VIOLATIONS**

Raymond E. Agenbroad, Lyons, Colorado  
George H. Baldwin, Tiburon, California  
Robert Brand, Bayonne, New Jersey  
Steven A. Capozzo, Brentwood, California  
Wong Kwaig F. Choy, Coral Springs, Florida  
Stephen J. Ciriaco, Sr., Sunrise, Florida  
Daniel P. Costanzo, Oceanport, New Jersey  
Oren D. Dinkel II, Hollywood, Florida  
Scott E. Fitzpatrick, Denver, Colorado  
Randall J. Fleck, Tampa, Florida  
Kim G. Girdner, Sandy, Utah  
Allen Green, Kew Gardens, New York  
Marlen V. Johnson, Salt Lake City, Utah  
Richard W. Lounsbury, San Francisco, California

John B. Lowery, Memphis, Tennessee  
Antonio F. Martinez, Tracy, California  
Charles M. Mitchell, Sr., Gulfport, Mississippi  
Abron H. Moore III, Auburn, Washington  
Bruce C. Perrotta, Margate, Florida  
Rakif R. Plotkin, Palm Harbor, Florida  
Stephen J. Porter, Salt Lake City, Utah  
Keith A. Remson, Riverview, Florida  
Asad A. Shah, Indianapolis, Indiana  
William D. Sommers, W. Palm Beach, Florida  
David R. Strother, Shreveport, Louisiana

Robert L. Sullivan, Little Rock, Arkansas  
Nancy L. Wickham, Encinitas, California

**PHILADELPHIA-AREA BROKERS, FIRM  
FINED \$750,000 BY THE NASD**

The NASD announced a disciplinary action taken by the District Business Conduct Committee for District 11 against Lloyd Securities, Inc., a former securities dealer located in Cheltenham, Pennsylvania, and its officers Michael W. Lloyd and Warren C. Nachmann.

The NASD's actions were based on findings that Lloyd Securities, acting through Lloyd and Nachmann, made improper use of \$182,000 in customer funds by causing those funds to be withdrawn from accounts at another securities dealer and deposited in the personal bank account of Nachmann without the authorization or permission of the customers. The NASD also found that they had engaged in business while failing to maintain a required minimum level of net capital, falsely recorded assets not owned by the corporation,

falsely reported the firm's net capital to regulatory authorities, and failed to give required telegraphic notice of deficient net capital to the Securities and Exchange Commission and the NASD. In addition, the NASD found that Lloyd and Nachmann had violated its rules by failing to provide information in connection with the NASD's investigation.

The NASD fined Lloyd and Nachmann \$250,000 each and barred them from association with any securities dealer. Lloyd Securities, whose membership in the NASD had been revoked May 31, 1990, for nonpayment of a fine imposed in a prior disciplinary proceeding, was fined \$250,000.

This proceeding and the sanctions are part of the NASD's continuing commitment to address fraud and other abuses in the securities industry. The investigation was conducted by the NASD's District 11 office in Philadelphia. The disciplinary action was taken by the NASD's District 11 Business Conduct Committee, which consists of 12 executives of securities firms.