

Notice To Members

National Association of Securities Dealers, Inc.

June 1992

Number 92-35

Suggested Routing:*

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| <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 Additions, Changes, and Deletions as of May 27, 1992

As of May 27, 1992, the following 62 issues joined the Nasdaq National Market, bringing the total number of issues to 2,863:

Symbol	Company	Entry Date	SOES Execution Level
SPTN	SportsTown, Inc.	4/22/92	1000
SMRT	Stein Mart, Inc.	4/22/92	1000
PXREZ	Phoenix Re Corporation (Dep. Shrs.)	4/23/92	200
SFWR	Software Etc. Stores, Inc.	4/23/92	1000
YONK	Younkers, Inc.	4/23/92	1000
CLZRW	Candela Lasers Corporation (Wts)	4/24/92	500
MSTR	Morningstar Group Inc. (The)	4/24/92	1000
OFIXF	Orthofix International N.V.	4/24/92	1000
RING	Ringer Corporation	4/27/92	500
BFRS	Ben Franklin Retail Stores, Inc.	4/28/92	500
SPCL	Spectrum Information Technologies, Inc.	4/28/92	1000
SPCLW	Spectrum Information Technologies, Inc. (Wts)	4/28/92	1000
LRNG	Learning Company (The)	4/29/92	1000
NIIZF	Neozyme II Corporation	4/29/92	1000
PRNI	Premiere Radio Networks, Inc.	4/29/92	1000
SOLO	Solo Serve Corporation	4/29/92	1000
GANL	Galey & Lord, Inc.	4/30/92	500
ICIX	Intermedia Communications of Florida, Inc.	4/30/92	1000
OTBC	On The Border Cafes, Inc.	4/30/92	1000
AIHI	Automotive Industries Holding, Inc. (CI A)	5/1/92	1000
MCOM	Metricom, Inc.	5/1/92	1000
ADLR	All For A Dollar, Inc.	5/5/92	1000
WINEA	Canandaigua Wine Company, Inc. (CI A)	5/5/92	500
WINEB	Canandaigua Wine Company, Inc. (CI B)	5/5/92	500
DIDIF	Destron/IDI, Inc.	5/5/92	500
MEDQ	MedQuist Inc.	5/5/92	1000

Symbol	Company	Entry Date	SOES Execution Level
ONBKP	ONBANCorp, Inc. (Pfd)	5/5/92	1000
ADVNB	ADVANTA Corp. (CI B)	5/6/92	1000
LIDA	Lida Inc. (CI A)	5/6/92	1000
STAC	Stac Electronics	5/7/92	1000
VLNC	Valence Technology, Inc.	5/7/92	1000
AMFS	American Funeral Services Corporation	5/8/92	1000
BKLE	Buckle, Inc. (The)	5/8/92	1000
PNBC	Princeton National Bancorp, Inc.	5/8/92	500
QDELW	Quidel Corporation (Wts)	5/12/92	1000
USAC	Universal Seismic Associates, Inc.	5/12/92	200
WEDC	Wedco Technology, Inc.	5/12/92	1000
ABFS	Arkansas Best Corporation	5/13/92	1000
BSNX	Basin Exploration, Inc.	5/13/92	500
THRT	TheraTech, Inc.	5/13/92	1000
BIOC	Biocircuits Corporation	5/14/92	1000
ENZY	Enzymatics, Inc.	5/14/92	1000
KRYS	Krystal Company (The)	5/14/92	1000
NATW	Natural Wonders, Inc.	5/14/92	1000
VMRK	VMARK Software, Inc.	5/14/92	1000
SMAC	SuperMac Technology, Inc.	5/15/92	1000
GGTI	GTI Corporation	5/18/92	1000
AWCSA	AW Computer Systems, Inc. (CI A)	5/19/92	1000
CVIS	Cardiovascular Imaging Systems, Inc.	5/19/92	1000
CMSI	Cryomedical Sciences, Inc.	5/19/92	1000
CBNK	Community Bancorp, Inc.	5/19/92	200
ICII	Imperial Credit Industries, Inc.	5/19/92	1000
JENN	Jennifer Convertibles, Inc.	5/19/92	1000
LUSA	Life USA Holding, Inc.	5/19/92	1000
MEOHF	Methanex Corporation	5/19/92	500
NVAL	National Vision Associates, Ltd.	5/19/92	1000
HBGI	Holson Burnes Group, Inc. (The)	5/20/92	1000
ODSI	Optical Data Systems, Inc.	5/21/92	1000
HMEC	Hall-Mark Electronics Corporation	5/22/92	1000
BTGCW	Bio-Technology General Corp. (12/19/95 Wts)	5/26/92	1000
BTGCZ	Bio-Technology General Corp. (5/7/96 Wts)	5/26/92	1000
MIFGY	Micro Focus Group Public Limited Company (ADR)	5/26/92	1000

Nasdaq National Market Symbol and/or Name Changes

The following changes to the list of Nasdaq National Market securities occurred since April 21, 1992:

New/Old Symbol	New/Old Security	Date of Change
TECUB/TECU	Tecumseh Products Company (CI B)/Tecumseh Products Company	4/23/92
ADVNA/ADVNB	ADVANTA Corp. (CI A)/ADVANTA Corp.	4/27/92
NCELW/NCELW	National Cellular Service, Inc. (7/15/92 Wts)/National Cellular Service, Inc. (5/14/92 Wts)	4/27/92
FNYB/FNYB	First New York Bank For Business/First New York Business Bank Corp.	4/28/92

New/Old Symbol	New/Old Security	Date of Change
EQIC/EQICB	Equitable of Iowa Companies/Equitable of Iowa Companies (CI B)	5/1/92
ATSI/HLIX	ATS Medical, Inc./Helix BioCore, Inc.	5/26/92
ACME/ACME	Acme Metals Inc./Acme Steel Company	5/26/92
LBNA/BOMA	Liberty Bancorp, Inc./Banks of Mid-America, Inc.	5/27/92
SMMT/SMMT	Summit Bancorp, Inc./Summit Savings Bank	5/27/92

Nasdaq National Market Deletions

Symbol	Security	Date
SLTN	Solelectron Corporation	4/21/92
MPSG	MPSI Systems Inc.	4/22/92
AXXXW	Artel Communications Corporation (Wts)	4/29/92
MEDC	Medical Care International, Inc.	4/29/92
MPLX	Mediplex Group, Inc. (The)	4/29/92
ECLAY	ECC Group plc (ADR)	4/30/92
CLBD	College Bound, Inc.	5/1/92
SECB	Security Bancorp, Inc.	5/1/92
MCHN	Merchants National Corporation	5/4/92
HALL	Hall Financial Group, Inc.	5/7/92
FMFS	F & M Financial Services Corporation	5/11/92
DVIC	DVI Health Services Corp.	5/14/92
DVICW	DVI Health Services Corp. (Wts)	5/15/92
GRIT	Grubb & Ellis Realty Income Trust	5/15/92
SULC	Sulcus Computer Corporation	5/20/92
MSYSW	Medical Technology Systems, Inc. (5/31/92 Wts)	5/22/92
PHRSQ	Paul Harris Stores, Inc.	5/22/92
IMMC	International Mobile Machines Corporation	5/26/92

Questions regarding this Notice should be directed to Kit Milholland, Senior Analyst, Market Listing Qualifications, at (202) 728-8281. Any questions pertaining to trade reporting rules should be directed to Bernard Thompson, Assistant Director, NASD Market Surveillance, at (301) 590-6436.

Board Briefs

Actions Taken by the NASD Board of Governors in May

■ **President's Report** — Several members of the NASD senior management staff recently traveled to Japan to attend meetings of the International Councils of Securities Associations (ICSA) and the NASD International Market Advisory Board (IMAB). The ICSA meeting covered issues such as capital adequacy standards, cross-border regulation of automated trading systems, and mutual recognition of registered representatives that engage in cross-border securities transactions. The IMAB meeting focused on expanding the 144A market in the United States for foreign issuers and providing trading opportunities for U.S. holders of foreign securities to participate in tender and exchange offers. The IMAB also received presentations of the state of the Japanese securities markets and possible reforms.

Strategic planning for the NASD is a dynamic process. To keep it on target, NASD management meets to review and analyze the external and internal environment in which it operates and to develop those key strategic initiatives that will be critical during the next three-year-planning horizon (1993-1995). The results of the most recent meeting held in April include a more streamlined vision statement, development of guiding principles on how to achieve the NASD's vision, identification of major corporate objectives, and a planning approach that recognizes not only the NASD's various business lines but also the discrete customers each line serves.

The technology migration program remains a major corporate activity as personnel and resources are committed to it. System testing which involves simulation of 400-, 600-, and 800-million share days to measure the flexibility and capacity of the proposed architecture and ease of configuration for future requirements is underway. The Nasdaq network migration is on schedule and will initially involve replacement of the Nasdaq Workstation[®] service and the communications network. To assist members during this transition the NASD is devel-

oping an ongoing communication plan to explain to members the migration and the milestones in place to measure its progress.

Last-sale reporting for regular Nasdaq equities begins June 15. Its impact on newspaper coverage of Nasdaq issues is difficult to assess but the additional data this action will make available should benefit investors. The short-sale rule is at the SEC with publication expected shortly. The rule itself no longer seems to be the primary point of controversy. Instead, it is the concept of qualified market makers (who will be eligible, for example) that is expected to generate comments at the SEC.

Among the regulatory issues the NASD is addressing are markups, investment advisers, and government securities regulation. The NASD recently published a special *Notice to Members 92-16* (April 1, 1992) detailing the major considerations members must keep in mind when determining appropriate markups and markdowns in retail transactions in equity securities. Congressional efforts to fashion acceptable amendments to the Government Securities Act are continuing, with two Senate bills passed that must now go into conference to iron out their differences and with markup on a House bill currently scheduled.

Investment adviser regulation is a growing issue that could have a significant impact on NASD members. The SEC has proposed an increase in its one-time \$150 investment adviser registration fee to an annual sliding scale fee of \$300 to \$7,000 for funding expanded examination efforts. In addition, the SEC has proposed adding to the Investment Advisers Act suitability, fidelity bonding, and the ability of an operator of a system for one-stop filing for advisers to charge reasonable fees to run the system. The NASD has recommended that the SEC have authority to delegate inspections of investment advisers affiliated with NASD members to the NASD, along with appropriate fee authority.

■ **Business Practices** — The Board has authorized filing with the SEC of an amendment to Appendix A of Article III, Section 30 of the Rules of Fair Practice that will substitute entirely for the current Appendix A. This amended Appendix A will closely track the language and structure of New York Stock Exchange (NYSE) Rule 431, and, in fact, the amendments will bring the NASD's margin rules into conformity with the NYSE's rules.

The NASD will soon propose amendments to clarify the respective obligations and supervisory responsibilities of clearing and introducing firms. As proposed, the rule would require clearing agreements that clearly allocate supervisory responsibility in areas such as opening, approving, and monitoring customer accounts; maintenance of books and records; and receipt and delivery of customer funds.

The clearing member would have to submit its agreement to the NASD for review and approval in the event there are any amendments related to the enumerated responsibilities. The clearing member also would have to submit an agreement if it enters into a new agreement with another introducing firm unless the clearing member is subject to review and approval pursuant to a comparable rule of a national securities exchange.

Although the introducing member would not need prior approval of an agreement, it would have to submit the agreement to the NASD in the event of changes to the enumerated responsibilities or if it should enter into a new clearing agreement with another clearing firm.

Pending SEC approval, employees and associated persons of a member may purchase the securities of issuers that wholly-own the employing member. As the rule now stands, employees, associated persons, potential employees (resulting from a merger, acquisition, or other business combination) and the immediate family of such parties may purchase securities issued by a member, parent of a member, or an issuer treated as a member or parent. However, such persons may not purchase the shares of the holding company that established or owns the member for which they work if it would violate the NASD's Free-Riding and Withholding Interpretation. With this amendment, employees and associated persons directly related to the issuer and its business could purchase the issuer's securities even though the issuer is not a member or parent.

The Board has approved, for submission to the SEC, an amendment to an earlier Schedule E filing. The latest filing would modify a proposed definition of an "institutional investor" as it applies to Rule 415 (or shelf) offerings by deleting the proposed reference to natural person. Thus, an institutional investor could be:

- A bank, savings and loan association, insurance company or registered investment company with total assets of at least \$100 million.
- A registered investment adviser with more than \$100 million under management.
- An entity whether corporation, partnership, trust, or otherwise with total assets of at least \$100 million.

Responding to an SEC request, the Board has approved an amendment to another earlier filing that proposed non-quantitative designation criteria for limited partnerships listing on the Nasdaq National Market System (Nasdaq/NMS). The original proposal would establish criteria in the areas of distribution of annual and interim reports, independent directors for corporate general partners, audit committees, shareholder meetings, quorums for meetings of limited partners, and the solicitations of proxies. The amendment addresses conflict of interest situations and would require each partnership listed on Nasdaq/NMS to conduct an appropriate review of all related party transactions on an ongoing basis and to use its audit committee (or comparable body) to review potential material conflict of interest situations.

■ **Arbitration** — The Board approved for filing with the SEC several changes to the Code of Arbitration. These measures would exclude as public arbitrators, individuals who are registered under the Commodities Exchange Act; are members of a registered futures association, or any commodities exchange; or are associated with such persons. In addition, the proposals clarify that a public arbitrator is to be appointed as the single arbitrator in small claims cases involving public customers. The current language refers to an arbitrator knowledgeable in the securities industry and leaves open the possibility that an individual with close industry ties might be selected as the sole arbitrator.

The measures also clarify that arbitrators have the authority to enforce orders they issue in conjunction with an arbitration proceeding and that disputes arising out of the employment or termination of employees of an associated person by or

with a member have to be submitted to arbitration.

The Board approved, for member vote, a proposed rule change concerning advertisements pertaining to collateralized mortgage obligations (CMOs). The proposal would require pre-use filing for CMO advertisements, similar to that for options advertising. The change would be in place for one year while the Fixed Income Securities Committee continued its review of regulatory issues related to the sale of CMOs.

■ **Markets** — The Board also approved for member vote and submission to the SEC a proposed rule that would require general securities members of the NASD to provide customers with periodic account statements. Under the proposal, each general securities member would have to send a statement of account containing a description of any securities positions, money balance, or account activity to each customer at least once every calendar quarter. The proposal defines the term “account activity” broadly to include all categories of activity that may occur in a securities account provided it relates to securities or funds in the possession or control of the member. Thus, the proposal exempts “\$25,000 broker/dealers” that clear through another member and do not hold customer funds or securities. Finally, the proposal permits the NASD to exempt members from the rule in the event of unforeseen effects and where the goal of customer protection and information can be met in an alternative manner.

The Board also endorsed in concept the proposal by the Ad Hoc High-Yield Bond Committee for the NASD to develop a quotation, transaction-reporting, and surveillance system for high-yield bonds. The proposal includes a number of recommended changes affecting the high-yield bond market to enhance surveillance and increase transparency. Among the changes are:

- Real-time display of quotations by dealers in top-tier, high-yield securities.
- Public batch reporting (high/low trading ranges and volume) of transactions in top-tier bonds — approximately 50 actively traded bonds — hourly during each trading day.
- Periodic (i.e., hourly) or day-end transmission to the NASD of timed audit trail information of all transactions in high-yield securities with trade reports that include, at a minimum, volume, price, and time of execution.

With the Board’s approval, the NASD will submit a letter to the SEC recommending that it expand its proposal to permit bidders for private foreign issuers to extend tender and exchange offers to U.S. shareholders without SEC registration and supporting the SEC’s companion proposal to permit foreign private issuers to extend rights offerings to U.S. shareholders without registration. In its letter, the NASD will ask the SEC to raise the threshold for both tender and exchange offer exceptions to situations where up to 30 percent of the outstanding recordholders reside in the U.S.

■ **Advisory Council Recommendations** — The Advisory Council, comprised of the chairmen of the District Business Conduct Committees and the Market Surveillance Committee, recently met and formulated the following recommendations, among others, to the Board.

- Review the SEC’s Fingerprint Rule 17f-2 to determine whether the current exemptions from fingerprinting requirements for certain segments of the securities industry are appropriate in today’s environment.
- Examine the NASD’s Free-Riding and Withholding Interpretation to ensure that its restrictions, definitions, and obligations are relevant in today’s market given the significant changes to the securities industry in recent years.
- Remind members that are affiliates of insurance companies of their obligation to disclose the substantive reasons for termination on Form U-5 and not simply state that the insurance company terminated the individual.
- Implement a standardized approach to awarding punitive damages in NASD arbitration proceedings.
- Purge the Central Registration Depository (CRD) of “minor” violations incurred by individuals and firms after a stated period of time during which no repeat violations have occurred and review the Temporary Agent Transfer (TAT) process to permit broader applicability.
- Amend, in the interest of fairness, the CRD to expunge actions levied against members or individuals that are found not guilty of the allegations set forth in the complaint action.
- Encourage the NASD to take an active leadership role in providing a forum to discuss with the various states current regulatory issues confronting both the NASD and state regulators.

Disciplinary Actions

National Association of Securities Dealers, Inc.

June 1992

Disciplinary Actions Reported for June

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 will begin with the opening of business on Monday, June 15, 1992. The information relating to matters contained in this Notice is current as of the fifth of this month. Information received subsequent to the fifth is not reflected in this publication.

FIRMS EXPELLED

O.R. Securities, Inc. (Chesterfield, Missouri) was expelled from membership in the NASD. The sanction was imposed by the NASD's National Business Conduct Committee (NBCC) on review of a decision by the District Business Conduct Committee (DBCC) for District 7. The expulsion was based on findings that the firm failed to pay an \$81,998 arbitration award and diverted the funds to another member firm.

FIRMS EXPELLED, INDIVIDUALS SANCTIONED

DWS Securities Corporation (Sonora, California), Stephen Michael Rangel (Registered Principal, Sonora, California), and Hugh Scott Liddle, Jr. (Registered Principal, Modesto, California) were fined \$425,000, jointly and severally, and required to make written offers of rescission to investors. Any amounts that the respondents can demonstrate have been paid to the customers will be applied against the fine. In addition, the firm was expelled from membership in the NASD, and Rangel and Liddle were barred from association with any member of the NASD in any capacity. The sanctions were imposed by the NASD's NBCC following an appeal of a decision by the DBCC for District 1. The sanctions were based on findings that the firm, acting through Rangel and Liddle, made fraudulent misrepresentations and omissions in connection with two private offerings.

The respondents have appealed this action to the Securities and Exchange Commission (SEC), and the sanctions, other than the expulsion and bars, are not in effect pending consideration of the appeal.

Eagan & Company, Inc. (San Francisco,

California) and James Robinson Eagan (Registered Principal, San Francisco, California). The firm was fined \$60,000 and expelled from membership in the NASD. James Eagan was fined \$110,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that the firm, acting through Eagan, failed to maintain accurate books and records, filed false and inaccurate FOCUS Parts I and IIA reports, and engaged in a securities business while failing to maintain its minimum required net capital. Moreover, the firm, acting through Eagan, failed to file FOCUS Part I reports on a timely basis and to file FOCUS Part IIA reports for certain months.

In addition, the firm, acting through Eagan, failed to transmit investors' funds received from a contingent offering of limited partnership interests into a separate escrow account and to return investors' subscriptions when the contingency was not met. Eagan also acted as principal of the firm without requalifying as a principal in contravention of a previous order imposed by the DBCC for District 1.

Kimbridge & Co., Inc. (Boca Raton, Florida) and C. Joseph Marino (Registered Principal, Boca Raton, Florida) were fined \$5,000, jointly and severally. In addition, the firm was expelled from membership in the NASD, and Marino was barred from association with any member of the NASD in any capacity. The sanctions were based on findings that the firm and Marino failed, jointly and severally, to pay a \$3,064 arbitration award and a \$100 filing fee.

Morgan Gladstone & Co., Inc. (Boca Raton, Florida) and Richard J. Gladstone (Regis-

tered Principal, Boca Raton, Florida). The firm was expelled from membership in the NASD. Gladstone was fined \$100,000 and barred from association with any member of the NASD in any capacity. In addition, the respondents must demonstrate that they have paid \$155,876 in restitution, jointly and severally, to public customers should they seek re-entry to the securities industry through the NASD's eligibility proceedings. The sanctions were imposed by the NASD's NBCC following an appeal of a decision by the DBCC for District 7.

The sanctions were based on findings that the firm, acting through Gladstone, effected principal transactions in over-the-counter corporate securities with public customers at prices that were unfair and unreasonable. The markups on these transactions ranged from 25 to 150 percent above the prevailing market price in contravention of the NASD's Mark-Up Policy. In addition, Gladstone failed to adequately supervise the activities of the firm's representatives to assure compliance with the NASD's rules and policies with respect to fair pricing.

The Riverview Corporation (Knoxville, Tennessee), Andrew E. Cafferky, Jr. (Registered Principal, Knoxville, Tennessee), and John M. Hancock (Associated Person, Knoxville, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was expelled from membership in the NASD. Cafferky and Hancock were each fined \$150,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Cafferky and Hancock, received \$68,278.50 from public customers for investment purposes. However, the NASD found that the funds were deposited in the firm's general operating account, commingled with the firm's own funds, and used, in part, to pay normal operating expenses of the firm without the knowledge or consent of the customers.

The NASD also found that the firm, acting through Cafferky and Hancock, failed to prepare accurate books and records, and engaged in a general securities business with public customers while failing to maintain its required minimum net capital. In connection with this activity, the NASD determined that the respondents also failed to give

telegraphic notice of the firm's failure to maintain its books and records and of its net capital deficiency. The findings also stated that the firm, acting through Cafferky and Hancock, engaged in a general securities business with public customers without proper registration as a broker/dealer with the SEC. According to the findings, the firm, acting through Cafferky and Hancock, failed to comply with the provisions of Article II, Section 3(b) of the NASD's By-Laws in that Hancock, an individual convicted of a felony, was associated with the firm.

In addition, the firm, acting through Cafferky and Hancock, conducted a general securities business with public customers residing in the state of Tennessee but failed to renew its registration with the Tennessee Securities Division, according to the findings. Also, the NASD found that Riverview, acting through Cafferky and Hancock, failed to file an audited financial statement, to pay its general assessment fees to the Securities Investor Protection Corporation in a timely manner, and to keep current and accurate its Uniform Application for Broker-Dealer Registration. Furthermore, the firm, acting through Cafferky and Hancock, failed to respond to NASD requests for information.

The findings also stated that Cafferky effected transactions in the accounts of public customers without the authorization, knowledge, or consent of the customers. Furthermore, in contravention of Schedule C of the NASD's By-Laws, the NASD determined that Hancock acted in the capacity of a general securities principal without being qualified and failed to be fingerprinted.

Whitehall Investment Securities, Ltd. (San Diego, California) and Melvin Lloyd Richards (Associated Person, San Diego, California). The firm was expelled from membership in the NASD, and Richards was fined \$15,000 and barred from association with any member of the NASD in any capacity. The sanctions were imposed by the NASD's NBCC following an appeal of a decision by the DBCC for District 2. The sanctions were based on findings that the firm allowed Richards, a statutorily disqualified individual, to associate with the firm when the firm knew he was ineligible to be an associated person.

FIRMS SUSPENDED, INDIVIDUALS SANCTIONED

Atlanta-One, Inc. (Irvine, California), Kevin Michael McCarthy (Registered Principal,

Newport Beach, California), and Thomas William Blodgett (Registered Principal, Irvine, California). The firm was fined \$100,000 and suspended from membership in the NASD for 30 days. McCarthy was fined \$75,000 and suspended from association with any member of the NASD in any capacity for 30 days. Blodgett was fined \$50,000 and suspended from association with any member of the NASD in any capacity for 30 days. In addition, McCarthy and Blodgett must requalify by examination before again acting in any capacity requiring qualification. Furthermore, the fines will be reduced by any amounts of restitution that the respondents have paid to customers.

The sanctions were imposed by the NASD's NBCC following an appeal of a decision by the DBCC for District 2. The sanctions were based on findings that the firm, acting through McCarthy and Blodgett, charged unfair commissions in 353 foreign-currency options transactions. Specifically, the respondents charged commissions ranging from \$50 to \$89 per options contract, which represented between 16 and 89 percent of the customers' investments.

The firm, McCarthy, and Blodgett have appealed this action to the SEC, and the sanctions are not in effect pending consideration of the appeal.

Century Capital Corp. of South Carolina (Greenville, South Carolina) and John W. Brown, III (Registered Principal, Travelers Rest, South Carolina) were fined \$10,000, jointly and severally, and Brown was suspended from association with any member of the NASD in any capacity for 30 days. In addition, the firm was suspended from effecting principal transactions with retail customers for 30 days and required to pay \$23,514 in restitution to public customers. The sanctions were imposed by the NASD's NBCC following an appeal of a decision by the DBCC for District 7. The sanctions were based on findings that, in contravention of the NASD's Mark-Up Policy, the firm, acting through Brown, effected principal transactions in common stocks with public customers at prices that were unfair. The markups on these transactions ranged from 5.63 to 133.33 percent above the prevailing market price.

The firm and Brown have appealed this action to the SEC, and the sanctions are not in effect pending consideration of the appeal.

FIRMS FINED, INDIVIDUALS SANCTIONED

Escalator Securities, Inc. (Palm Harbor, Florida) and Howard A. Scala (Registered Principal, Tarpon Springs, Florida) were fined \$50,000, jointly and severally. In addition, Scala was suspended from association with any member of the NASD in any capacity for one month and required to requalify by examination before acting in a registered capacity.

The sanctions were imposed by the NASD's NBCC following an appeal of a decision by the DBCC for District 9. The sanctions were based on findings that the firm, acting through Scala, effected principal sales of a non-Nasdaq, over-the-counter security to public customers at unfair prices, including markups ranging from 68.2 to 147.5 percent above the firm's contemporaneous costs.

Furthermore, the firm, acting through Scala, charged its customers \$33 per transaction in addition to the price of the securities disclosed in the prospectuses. In addition, the firm, acting through Scala, effected options transactions for public customers while failing to obtain required option-account information. The firm also failed to execute two mutual fund subscriptions promptly.

Escalator Securities and Scala have appealed this case to the SEC, and the sanctions are not in effect pending consideration of the appeal.

First Independence Group, Inc. (Garden City, New York), John Joseph Gremmo, III (Registered Principal, Babylon, New York), Frank Paul Giraldi (Registered Principal, East Norwich, New York), and Mark Steven Milana (Registered Representative, Dix Hills, New York). The firm was fined \$308,677.40, and Gremmo was fined \$10,000. Giraldi was fined \$62,000 and barred from association with any member of the NASD in a supervisory or principal capacity; Milana was fined \$40,000 and also barred from association with any member of the NASD in a supervisory or principal capacity. Both Giraldi and Milana are required to requalify by examination if they desire to function in a registered representative capacity. In addition, Giraldi and Milana are prohibited from maintaining a proprietary interest in any member of the NASD 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 sanctions against the firm, Giraldi, and Milana were imposed by the NASD's NBCC following an appeal of a decision by the DBCC for District 10. The sanctions were based on findings that, in contravention of the NASD's Mark-Up Policy, the firm, acting through Gremmo, Giraldi, 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 Giraldi, 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 Giraldi, failed to establish and implement supervisory procedures to detect and prevent the aforementioned violations.

Furthermore, the firm, acting through Giraldi, 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 Giraldi, also failed to report whether the trades establishing the highest price at which the firm sold and the 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's By-Laws.

The firm, Giraldi, and Milana have appealed this action to the SEC, and their sanctions, other than the bars in a supervisory or principal capacity, are not in effect pending consideration of the appeal. The sanctions against Gremmo are final.

PaineWebber Incorporated (New York, New York), John A. Day (Registered Representative, Birmingham, Alabama), Jerry W. Payne (Registered Principal, Germantown, Tennessee), David L. Arnold (Registered Representative, Birmingham, Alabama), and William D. East (Registered Representative, Birmingham, Alabama) submitted an Offer of Settlement pursuant to which the firm was fined \$75,000. Day was fined \$100,000 and barred from association with any member of the NASD in any capacity. Payne

was fined \$10,000, barred from association with any member of the NASD as a compliance registered options principal and senior registered options principal, and required to requalify by examination as a general securities principal. Arnold was fined \$5,000 and suspended from association with any member of the NASD in any capacity for six months, and East was fined \$15,000.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Day exercised discretionary power in the accounts of a public customer without obtaining prior written authorization from the trustees of the accounts and prior written acceptance of the accounts as discretionary by PaineWebber. The NASD also determined that Day executed six unauthorized options transactions in the same customer accounts. In addition, the NASD found that Day recommended and engaged in options purchase and sale transactions in the same customer accounts without having reasonable grounds for believing that such recommendations and resultant transactions were suitable for the customers based on their financial situations, objectives, and needs.

The findings also stated that Day failed to execute trades in a timely fashion in certain public-customer accounts. Specifically, he entered block transactions but failed to promptly provide PaineWebber's branch office with order allocation tickets, thereby preventing the firm from accurately determining the sequence of the block transactions. The NASD further determined that Arnold and East obtained personal loans from two public customers, and Day, Arnold, and East used the monies to finance certain block-order option transactions in their own accounts. Day and East failed to disclose to PaineWebber these activities and the fact that East was sharing the profits in his account with Day.

Furthermore, Day, Payne, and Arnold failed to respond to NASD requests for information. Also, the firm, acting through Payne, failed to establish, maintain, and enforce written supervisory procedures and failed to supervise Day, Arnold, and East reasonably and properly, according to the findings.

Wasatch Stock Trading, Inc. (Salt Lake City, Utah) and Matthew Ralph White (Registered Principal, Salt Lake City, Utah) submitted an Offer of Settlement pursuant to which the firm

was fined \$12,500, jointly and severally with other individuals. In addition, the firm agreed that it would require a registered principal, other than the firm's trader, to review trades entered in the trader's personal accounts and in the firm's trading accounts by any firm trader. Furthermore, the firm shall not take down inventory positions for registered representatives for six months. White was fined \$12,500 and suspended from association with any member of the NASD in any 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 White, engaged in a fraudulent scheme of "parking" securities at the end of the month in three accounts and repurchasing those securities into inventory at the beginning of the next month. The NASD determined that the respondents engaged in this scheme in order to generate capital for the firm, to conceal the firm's true financial condition, and to circumvent the net capital requirements.

The NASD also found that the firm failed to maintain sufficient funds in its Special Reserve Account for the Exclusive Benefit of Customers and conducted a securities business while failing to maintain its minimum required net capital. Moreover, the findings stated that the firm failed to supervise White's activities adequately in order to prevent the aforementioned parking scheme and failed to abide by the terms of its restriction agreement with the NASD to limit the number of customer securities positions.

FIRMS AND INDIVIDUALS FINED

Educators Financial Management, Inc. (Port Jefferson, New York) and **Matthew R. Leo** (Registered Principal, Mt. Sinai, 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 Leo, processed customer funds through the firm's operating account rather than through a Special Account for the Exclusive Benefit of Customers.

The NASD also found that the firm, acting through Leo, conducted a securities business while failing to maintain its required minimum net capi-

tal. In addition, the findings stated that the firm, acting through Leo, obtained a signature guarantee stamp of a commercial bank and utilized it to forge the required guarantee on customer mutual fund liquidation requests.

INDIVIDUALS BARRED OR SUSPENDED

Gail Frances Aird (Registered Representative, Delray Beach, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$75,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Aird consented to the described sanctions and to the entry of findings that she engaged in private securities transactions and failed to give written notice to her member firm of her intention to engage in such activities. The findings also stated that Aird failed to respond to NASD requests for information.

Garret Brian Auld (Registered Representative, Anderson, California) was fined \$5,000 and suspended from association with any member of the NASD in any capacity for one year. In addition, Auld must requalify by examination prior to becoming associated with any member firm and ordered to obtain the permission of the Statutory Disqualification Subcommittee of the NASD's NBCC prior to any future employment in the securities industry.

The sanctions were based on findings that Auld received from two public customers funds totaling \$35,131.72 for investment purposes and misappropriated the funds for other purposes. Auld also participated in private securities transactions with investors without providing prior written notification to his member firm.

Christopher John Boeckhaus (Registered Representative, Glendale, New York) was fined \$25,000 and barred from association with any member of the NASD in any capacity. In addition, Boeckhaus must demonstrate he has paid \$12,510 plus interest in restitution to public customers should he seek re-entry to the securities industry through the NASD's eligibility proceedings. The sanctions were based on findings that Boeckhaus effected purchase transactions in the accounts of public customers without the knowledge or consent of the customers.

James C. Boerkoel (Registered Representative, Fennville, Michigan) submitted a Letter of

Acceptance, Waiver and Consent pursuant to which he was fined \$50,000 and barred from association with any member of the NASD in any capacity. In addition, Boerkoel must submit proof of restitution totaling \$7,040.10 with any future application for association with a member firm.

Without admitting or denying the allegations, Boerkoel consented to the described sanctions and to the entry of findings that he submitted Disbursement Request Forms to his member firm requesting cash surrender checks from a public customer's life insurance policy. The NASD found that, without the customer's knowledge or consent, Boerkoel received two checks totaling \$7,040.10 made payable to the customer. According to the findings, Boerkoel endorsed these checks, deposited the monies into an account in which he had a beneficial interest, and used the proceeds for his personal benefit. The NASD also found that Boerkoel failed to disclose the aforementioned activities on a Uniform Application for Securities Industry Registration (Form U-4).

Larry Dean Brockway (Registered Principal, Willowick, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Brockway consented to the described sanction and to the entry of findings that he converted customer funds totaling \$305,836.68 to his own use and benefit by forging endorsements on checks and obtaining policy loans without the knowledge or consent of the public customers.

John J. Cody (Registered Representative, Glen Ellyn, Illinois) submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Cody consented to the described sanctions and to the entry of findings that he effected, or caused to be effected, seven transactions in the account of a public customer in the absence of written or oral authorization to exercise discretion in the account.

The findings also stated that Cody gave the same customer an account statement and confirmations that contained false information concerning certain purported transactions in the customer's account. In addition, the NASD found that Cody failed to follow a customer's instructions to pur-

chase 5,400 shares of stock, and, instead, bought only 1,700 shares. Moreover, the NASD determined that Cody delivered, or caused to be delivered, to this customer three confirmations representing that a total of 5,400 shares had been purchased when, in fact, only 1,700 shares had been purchased.

Earl Stanley Foster (Registered Principal, Covington, Kentucky) was fined \$7,500, jointly and severally with a member firm, and suspended from association with any member of the NASD in any capacity for one week. The sanctions were based on findings that a member firm, acting through Foster, engaged in a securities business while failing to maintain its required minimum net capital. Foster, acting on behalf of the same firm, also failed to register an individual with the NASD as a principal and allowed the person to serve as an officer of the firm. In addition, the firm, acting through Foster, failed to comply with its restriction agreement in that it changed its exemptive status without having obtained prior written approval from the NASD.

Robert Ralph Frega (Registered Representative, Wayne, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000 and barred from association with any member of the NASD in any capacity. In addition, Frega must demonstrate that he has paid \$5,000 in restitution to public customers should he seek re-entry to the securities industry through the NASD's eligibility proceedings. Without admitting or denying the allegations, Frega consented to the described sanctions and to the entry of findings that he received \$5,000 from three public customers for the purchase of various insurance policies. According to the findings, Frega failed to apply the monies as instructed and to return the funds to the customers.

James Michael Hudson (Registered Representative, Everett, Washington) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Hudson consented to the described sanctions and to the entry of findings that he executed unauthorized transactions on behalf of a public customer. According to the findings, these transactions were unsuitable for the customer based on her financial status, stated investment objectives, and

personal circumstances and needs.

The NASD also found that Hudson filled out for the same customer a new account form that contained false information. Moreover, the NASD determined that Hudson guaranteed this customer against loss and/or shared in losses in the customer's account.

Guy A. Imbrogno (Registered Representative, Ashtabula, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000 and barred from association with any member of the NASD in any capacity. In addition, Imbrogno must demonstrate that he has made restitution to his member firm should he seek re-entry to the securities industry through the NASD's eligibility proceedings. Without admitting or denying the allegations, Imbrogno consented to the described sanctions and to the entry of findings that he submitted to his member firm a payroll deduction form and enrollment forms, purportedly signed by public customers, for the purchase of annuities without the knowledge, authorization, or consent of the customers. In addition, Imbrogno failed to respond to NASD requests for information.

Kevin R. Janisko (Registered Representative, Suffield, Ohio) submitted an Offer of Settlement pursuant to which he was fined \$35,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Janisko consented to the described sanctions and to the entry of findings that he executed payroll deduction forms authorizing his member firm to receive funds from the paychecks of public customers without the authorization, knowledge, or approval of the customers. In addition, Janisko failed to respond to NASD requests for information.

Carole J. Leavell (Registered Representative, Huber Heights, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$25,000 and barred from association with any member of the NASD in any capacity. In addition, Leavell must demonstrate that she has paid \$3,905.25 in restitution to a public customer should she seek re-entry to the securities industry through the NASD's eligibility proceedings. Without admitting or denying the allegations, Leavell consented to the described sanctions and to the entry of findings that she received a \$3,905.25 check from a public customer for an annual pre-

mium payment on a variable life policy. Instead, Leavell deposited the check into her bank account, according to the findings.

Trevor Derek Ling (Registered Representative, Houston, Texas) and **Gregory Labadie Feste (Registered Representative, Houston, Texas)** were fined \$7,000, jointly and severally, and suspended from association with any member of the NASD in any capacity for one business day. The sanctions were based on findings that Ling and Feste exercised effective control over the accounts of a public customer. Furthermore, they recommended to this customer securities transactions that were unsuitable in view of the size and frequency of the transactions, the type of securities, and the customer's security holdings, financial situation, and needs.

Michael Markowski (Registered Principal, New York, New York) was fined \$50,000 and barred from association with any member of the NASD in any principal capacity and from maintaining a debt or equity interest in any member firm. In addition, he was suspended from association with any member of the NASD in any capacity for two years. The sanctions were imposed by the NASD's NBCC following an appeal of a decision by the Market Surveillance Committee.

The sanctions were based on findings that Markowski failed to respond to repeated written and oral requests for information made by the NASD concerning access to his member firm's books and records. Markowski also failed to provide the NASD with his current address.

John Charles Maucere (Registered Principal, Scotch Plains, New Jersey) was fined \$50,000, suspended from association with any member of the NASD in any capacity for six months, and barred from association with any member of the NASD in any principal capacity. In addition, Maucere was barred from holding an equity or debt interest in a broker/dealer. The sanctions were imposed by the NASD's NBCC following an appeal of a decision by the DBCC for District 10.

The sanctions were based on findings that Maucere, acting on behalf of a former member firm, engaged in two separate acts of parking securities to hide the firm's ownership of the securities and to enhance the net capital position of the firm, with the fraudulent intent of circumventing SEC Rule 15c3-1. Furthermore, the firm, acting through Maucere, effected securities transactions while fail-

ing to maintain its required minimum net capital. In addition, Maucere failed to disclose on his Uniform Application for Securities Industry Registration (Form U-4) that he had filed for personal bankruptcy. Maucere also failed to pay a \$1,615.72 arbitration award.

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

Alexander Geils Minella (Registered Principal, White Plains, New York), Parsons Eng (Registered Principal, Jackson Heights, New York), Michael Joseph Carber (Registered Representative, Carmel, New York), Joseph Charles Zaborowski (Registered Representative, Staten Island, New York), and Darren Leon Katz (Registered Representative, Staten Island, New York). Minella was fined \$1,795,000 and barred from association with any member of the NASD in any capacity, and Eng was fined \$1,365,000 and barred from association with any member of the NASD in any capacity. Carber was fined \$1,395,000 and barred from association with any member of the NASD in any capacity, and Zaborowski was fined \$230,000 and barred from association with any member of the NASD in any capacity. Katz was fined \$20,000, suspended from association with any member of the NASD in any capacity for five business days, and required to requalify by examination as a registered representative. In addition, Katz was required to make restitution to a public customer.

The sanctions were imposed by the NASD's NBCC following an appeal of a decision by the DBCC for District 10. They were based on findings that Minella and Eng instructed Carber, Zaborowski, and Katz to effect numerous transactions in the accounts of public customers without the knowledge, authorization, or consent of the customers. In order to make it appear that their firm was in better financial condition, Minella and Eng instructed representatives of their member firm to "park" securities in the accounts of public customers without the knowledge, authorization, or consent of the customers.

Carber and Zaborowski also failed to execute customer sell orders in that Minella directed them not to accept sell orders from customers unless they could find another customer to purchase the securities that were being sold. In addition, Minella, acting on behalf of a former member firm,

effected securities transactions while failing to maintain its required minimum net capital. Furthermore, Carber and Zaborowski failed to file amended Form U-4 applications for securities industry registration to disclose that they were the subject of investment-related, consumer-initiated complaints. Moreover, Minella failed to respond to NASD requests for information.

Charles David Murray (Registered Representative, Middletown, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000 and barred from association with any member of the NASD in any capacity. In addition, Murray must demonstrate that he has made restitution should he seek re-entry to the securities industry through the NASD's eligibility proceedings. Without admitting or denying the allegations, Murray consented to the described sanctions and to the entry of findings that he guaranteed to repay public customers the difference between the value of their combined accounts and \$210,000. Murray also exercised discretion in the account of a public customer without obtaining written discretionary authorization from the customer and without written acceptance of the account as discretionary by his member firm, according to the findings.

Lars Dean Omlid (Registered Representative, Manchester, Missouri) was fined \$5,000, suspended from association with any member of the NASD in any capacity for 90 days, and required to make restitution to his member firm. The sanctions were imposed by the NASD's NBCC following an appeal of a decision by the DBCC for District 4. The sanctions were based on findings that, without the knowledge or consent of his member firm, Omlid received checks totaling \$138,651 that were issued by another representative. The checks were endorsed, deposited in their joint bank account, and converted to personal expenses.

William F. Pemble (Registered Representative, Tucson, Arizona) submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Pemble consented to the described sanctions and to the entry of findings that he engaged in a private securities transaction without providing written notice to his member firm.

Richard R. Perkins (Registered Representative, Denver, Colorado) and **Michael D. Pittman**

(Registered Representative, Aurora, Colorado).

Perkins was fined \$97,500 and Pittman was fined \$44,500. In addition, Perkins and Pittman were suspended from association with any member of the NASD in any capacity for two years. The sanctions were imposed by the NASD's NBCC following an appeal of a decision by the DBCC for District 3.

The sanctions were based on findings that Perkins and Pittman caused securities transactions to be effected with retail customers at prices that were unfair, including markups ranging from 13.3 to 400 percent above the prevailing market price for these securities. In addition, Perkins caused the distribution of sales literature regarding such securities that contained misleading information or failed to contain material information. Specifically, the literature failed to discuss the risks involved, contained promissory statements, and failed to disclose that Perkins' firm was a market maker in the securities. Furthermore, Perkins failed to have this literature approved for use by his member firm prior to its distribution.

Perkins and Pittman have appealed this action to the SEC, and the sanctions are not in effect pending consideration of the appeal.

Robert Alan Pertzborn (Registered Representative, Ankeny, Iowa) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Pertzborn consented to the described sanctions and to the entry of findings that, without the knowledge or consent of public customers, Pertzborn forged the customers' names on applications for additional life insurance coverage and submitted the applications to his member firm. As a result, the customers' accounts were charged for additional life insurance premiums.

Stephen J. Porter (Registered Representative, Salt Lake City, Utah) was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Porter failed to provide information requested by the NASD's Market Surveillance Department in connection with its investigation into trading of a security.

Charles E. Raley (Registered Representative, Houston, Texas) 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, Raley consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without advising his member firm in writing or receiving written authorization to engage in such activity from his member firm.

Charles E. Reeves, Jr. (Registered Representative, Covington, Louisiana) submitted a Letter of Acceptance, Waiver and Consent 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, Reeves consented to the described sanctions and to the entry of findings that, while registered with a member firm, he sold certificates of deposit or deposit notes to public customers through another firm and accepted \$4,265 in compensation without providing written notice to his member firm.

Robert Morton Russell (Registered Representative, West Des Moines, Iowa) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000 and barred from association with any member of the NASD in any capacity. In addition, Russell must demonstrate that he has paid \$42,600 in restitution to all parties entitled should he seek re-entry to the securities industry through the NASD's eligibility proceedings. Without admitting or denying the allegations, Russell consented to the described sanctions and to the entry of findings that, through unauthorized address and ownership changes, and subsequent partial-surrender withdrawals from public customers' life insurance policies, he converted \$42,600 without the knowledge or consent of the customers.

Eric F. Schiros (Registered Representative, Cleveland, Ohio) was fined \$46,000 and barred from association with any member of the NASD in any capacity. In addition, Schiros must demonstrate that he has paid \$10,000 in restitution to a public customer should he seek re-entry to the securities industry through the NASD's eligibility proceedings. The sanctions were based on findings that Schiros directed the transfer of funds totaling \$10,000 from the securities account of a public customer to the bank account of another representative and thereafter converted the funds to his own use. In addition, Schiros failed to respond to NASD requests for information.

William R. Sheppard (Registered Princi-

pal, Parker, Colorado) was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Sheppard failed to provide information requested by the NASD's Market Surveillance Department in connection with its investigation into the trading of a security.

James Paul Stroth (Registered Representative, Greensburg, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$75,000 and barred from association with any member of the NASD in any capacity. In addition, Stroth must demonstrate that he has paid \$55,000 in restitution to public customers should he seek re-entry to the securities industry through the NASD's eligibility proceedings. Without admitting or denying the allegations, Stroth consented to the described sanctions and to the entry of findings that he misappropriated and converted to his own use customer funds totaling \$55,000.

Vincent Michael Varano (Registered Representative, Lake Hiawatha, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$50,000 and barred from association with any member of the NASD in any capacity. In addition, Varano must demonstrate that he has paid \$80,000 in restitution to public customers should he seek re-entry to the securities industry through the NASD's eligibility proceedings. Without admitting or denying the allegations, Varano consented to the described sanctions and to the entry of findings that he received \$80,000 from public customers to purchase municipal bonds. The findings stated that Varano failed to invest the funds as instructed and to return the monies to the customers.

Cyrus Veval (Registered Representative, Troy, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and suspended from association with any member of the NASD in any capacity for three business days. Without admitting or denying the allegations, Veval consented to the described sanctions and to the entry of findings that he prepared and delivered sales literature to the public without obtaining prior approval by a registered principal.

According to the findings, the literature contained exaggerated, promissory, and misleading statements. Specifically, it implied that the investment offered earnings of 16 percent or more and

failed to reflect any risks of fluctuating prices and the uncertainty of yield. The NASD also found that the sales literature implied that a prospectus was available, when one did not exist, and failed to identify the name of Veval's broker/dealer.

INDIVIDUALS FINED

Stephen Allen Hersh (Registered Principal, Howell, New Jersey) was fined \$20,000. The sanction was based on findings that a former member firm, acting through Hersh, utilized instrumentalities of interstate commerce to conduct a securities business while failing to maintain its required minimum net capital. In addition, Hersh was associated and functioned as a financial and operations principal of the same firm without proper registration with the NASD in that capacity.

Stanley Kim Hodges (Registered Representative, Provo, Utah) submitted an Offer of Settlement pursuant to which he was fined \$12,500. Without admitting or denying the allegations, Hodges consented to the described sanction and to the entry of findings that he recommended and executed the purchase of securities in the accounts of two public customers without having reasonable grounds for believing such recommendations were suitable for the customers considering their investment objectives. The NASD also found that Hodges executed seven unauthorized transactions in one of the two aforementioned customers' accounts.

Thomas Dale Kienlen (Registered Principal, Jasper, Oregon) was fined \$10,500 and required to requalify by examination in any capacity for which he seeks to register with the NASD. The sanctions were imposed by the NASD's NBCC following an appeal of a decision by the DBCC for District 3. The sanctions were based on findings that Kienlen recommended to a public customer an investment in a mutual fund that was managed and controlled by Kienlen. This recommendation was made without having reasonable grounds for believing such transaction was suitable for the customer considering his financial situation and investment needs.

CORRECTION

Les Thomas Livingston (Registered Principal, Portland, Oregon) and **Cletus Herman Niebur (Registered Principal, Beaverton, Oregon)** were suspended from association with any

member of the NASD as general securities principals. The May 1992 Disciplinary Actions section of *Notices to Members* erroneously stated that Livingston and Niebur were suspended from association with any member of the NASD in any principal capacities.

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

- Atlanta Securities & Investments, Inc.**, Atlanta, Georgia
- Elan Securities, Incorporated**, McLean, Virginia
- Key Biscayne Securities, Incorporated**, Key Biscayne, Florida
- R.B. Marich, Incorporated**, Denver, Colorado
- Westok Securities, Incorporated**, Irvine, California

FIRMS SUSPENDED

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

- General Bond & Share Co.**, Denver, Colorado (April 30, 1992)
- Holland Planning Group**, Suffern, New York (May 15, 1992)
- C.G. Lopp Securities, Inc.**, New York, New York (May 15, 1992)
- Newgrange Securities, Inc.**, New York, New York (April 30, 1992)

SUSPENSIONS LIFTED

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

- Hall, Curley & Co., Inc.**, New York, New York (May 11, 1992)
- Hartman Securities, Inc.**, Houston, Texas (April 22, 1992)

Worthington & Dunn Securities, Dallas, Texas (May 18, 1992)

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

- M. Dean Arkema, Denver, Colorado
- Robert G. Bacharach, Denver, Colorado
- Kingsley C. Barham, San Francisco, California
- George R. Beall, Jr., Littleton, Colorado
- Mark A. Cyphers, Worthington, Ohio
- Steven C. Dahl, North Miami, Florida
- Aymad A. Difrawi, Groveland, Florida
- Raymond H. Drahms, McLean, Virginia
- Chyle James Edic, Monroe, Washington
- Terry S. Evans, Liberty Lakes, Washington
- Arnold Fallon, Madison, Connecticut
- George L. Freeland, Key Biscayne, Florida
- Stephen A. Holloway, Los Angeles, California
- Rudy Marich, Denver, Colorado
- Michael A. Oliva, Jr., Irvine, California
- Patricia J. Prasad, Phoenix, Arizona
- Jeffrey Eric Rosen, Fort Lee, New Jersey
- Gilbert A. Zwetsch, Spokane, Washington

FIRMS FINED, INDIVIDUALS SANCTIONED BY NASD

The NASD has taken disciplinary actions against Madison Chapin Associates, Inc. (New York, New York), Mark Allen Bolender (Registered Principal, Dix Hills, New York), William Rubin Kelman (Registered Principal, New York, New York), Robert S. Ellin (Registered Principal, Los Angeles, California), Rita Malm (Registered Principal, Palm Beach Gardens, Florida), David Lee Stetson (Registered Representative, Roslyn, New York), and Robert W. Berg (Registered Representative, New York, New York).

The firm, Bolender, and Kelman were fined \$927,715, jointly and severally, and the firm and Bolender were fined an additional \$15,000, jointly and severally. In addition, Bolender and Kelman were each fined \$10,000, suspended from association with any member of the NASD in any capacity for six months, suspended from association with any member of the NASD as a general securities principal for two years, and required to requalify by examination in any capacity.

Ellin was fined \$27,455.50, suspended from association with any member of the NASD in any

capacity for three months, and required to requalify by examination in any capacity. Malm was fined \$15,000 and suspended from association with any member of the NASD in any principal capacity for 10 days, and Stetson was fined \$10,000 and required to requalify as a registered representative. Berg was fined \$20,412.50, suspended from association with any member of the NASD in any capacity for three months, and required to requalify by examination in any capacity.

The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 10 in New York. The sanctions were based on findings that the firm, acting through Bolender, Kelman, and Stetson, dominated and controlled the market in immediate secondary aftermarket activity in a non-Nasdaq over-the-counter security following its initial public offering by selling the common stock and warrants to customers from inventory at prices that were fraudulent and unfair. The excessive markups ranged from 11 to 779 percent above the prevailing market price. In addition, the findings stated that the firm, acting through Bolender, Kelman, Ellin, and Berg, refused and failed to execute orders for six customers.

The NASD also determined that Ellin and Berg executed transactions in the accounts of public customers without the authorization or consent of the customers. In addition, Ellin opened accounts for three other customers and failed to note on account documentation that the individuals were registered with another member firm. The NASD found that Malm, Bolender, and Kelman failed to establish and implement supervisory procedures to detect and prevent the violations relating to fraudulent and excessive markups, unauthorized trading, and failure to execute customer orders.

This action has been appealed to the SEC by Kelman, Ellin, Malm, and Berg, and their sanctions are not in effect pending consideration of the appeal.

NASD ANNOUNCES FOUR DISCIPLINARY ACTIONS

The NASD has taken four separate, significant disciplinary actions arising from cases filed by its Market Surveillance Committee.

First, the NASD expelled General Bond & Share Co., a member firm located in Denver, Colo-

rado, from membership in the Association and barred its owner, Samuel C. Pandolfo, from associating with any member in any capacity. They were also fined \$60,000, jointly and severally. General Bond and Pandolfo have appealed to the SEC, which has stayed the imposition of the foregoing sanctions pending its consideration of the matter.

The NASD found that General Bond and Pandolfo accepted more than \$25,000 from approximately 45 over-the-counter issuers in consideration for listing General Bond as a market maker in the National Quotation Bureau, Inc.'s "Pink Sheets." The NASD found that General Bond did not provide bona fide market-making services in these issues as evidenced by its lack of trading in the securities. In addition, General Bond and Pandolfo continued to accept payments from or on behalf of issuers after being advised by NASD staff that these payments were not permissible and after representing to the NASD they would not do so. The decision found that General Bond's and Pandolfo's practices "were in fact unethical, were undertaken by [them] in bad faith, and did in fact mislead market participants as to the relationship between [the firm] and individual issuers."

As a separate violation, the NASD also found that General Bond and Pandolfo failed to provide information that repeatedly was requested by the NASD pursuant to Article IV, Section 5 of its Rules of Fair Practice.

Second, the NASD sanctioned Whale Securities Co., LP of New York, New York and four associated persons, including William G. Walters, the firm's Chairman; Elliot J. Smith, Whale's Managing Director and President; Nicholas C. Anari, the firm's Financial and Operations Principal; and Robert S. Rosenfeld, a trader at the firm. Pursuant to a settlement and without admitting or denying the allegations, Whale, Walters, Smith, Anari, and Rosenfeld consented to the imposition of findings and sanctions. These include a financial sanction against Whale of \$615,000. The NASD has already collected \$292,500 from Whale, \$10,000 each from Walters and Smith, and \$5,000 each from Anari and Rosenfeld for a total of \$322,500. These payments were required within 10 days after approval of the settlement terms by the NASD. The balance of \$322,500 will be paid out by Whale over a period not to exceed two years.

In addition to the fines, Walters was suspended in any principal or supervisory capacity for

30 calendar days, Smith was suspended in any principal or supervisory capacity for 45 calendar days, Anari was suspended in any principal or supervisory capacity for 15 business days, and Rosenfeld was suspended in any capacity for 10 business days. Both Smith and Rosenfeld are also required to requalify by examination. Furthermore, Whale agreed to undertake several remedial measures designed to prevent a repetition of the alleged misconduct.

Whale was found to have violated various provisions of the Association's Rules of Fair Practice including Article III, Sections 2 and 18. The former provision requires that a broker/dealer have reasonable grounds for believing that any security recommendation is suitable for its customers. The latter provision prohibits the use of any manipulative, deceptive, or other fraudulent device in the purchase or sale of any security.

The sanctions are based on findings that Whale dominated and controlled the market in R.T. Acquisition Associates, Inc. (RTAC) common stock between April 2, 1990 and June 20, 1990 and in the Class A and Class B warrants between April 2, 1990 and July 12, 1990. RTAC had been underwritten by Whale in December of 1988. At all relevant times, the securities traded in the non-Nasdaq over-the-counter market. While dominating and controlling the market in RTAC, Whale, acting through its trader Rosenfeld, charged excessive markups and markdowns in excess of 10 percent in approximately 50 transactions in common stock, and charged excessive markups and markdowns in the Class A and Class B warrants in excess of 10 percent in approximately 120 transactions. The markups in RTAC common stock, Class A warrants, and Class B warrants ranged from 10 percent to 67 percent above the firm's contemporaneous cost, while the markdowns ranged from 10 percent to 30 percent below the firm's contemporaneous sales.

In addition, Whale, through the actions of its present and former registered representatives, were alleged to have engaged in a series of improper sales practices, including unauthorized trading, excessive trading in customer accounts, and the use of nominee accounts with respect to RTAC securities. Walters, Smith, and Anari are alleged to have failed to establish, maintain, and enforce written supervisory procedures concerning compliance with NASD guidelines for charging markups and mark-

downs as well as procedures concerning sales practices.

In the third action, the NASD announced findings and sanctions against R.B. Marich, Inc., a former member located in Denver, Colorado and 11 individuals associated with the firm. These include Rudy Marich, the firm's President; John Harmann, the firm's Executive Vice President and Compliance Director; Craig Norton and Bonita Schroder-Crockett, traders at the firm; and Shirley A. Garrity, Arnold Fallon, Guy Robert LaBone, Ronald Sparkman, David Charles Green, Keith Allen Remson, and Gene Anthony Hochevar, all of whom functioned as registered representatives at the firm. The firm was fined \$145,755, suspended as a market maker for six months in non-Nasdaq securities, and prohibited for one year from participating in any initial public offering where the offering price is less than \$3 per share.

In addition to sanctioning the firm, Harmann was suspended for 90 days from associating with any member in any capacity, Norton was fined \$12,305 and suspended for 10 days from associating with any member in any capacity, Crockett was fined \$10,555 and suspended for 10 days from associating with any member in any capacity, and Rudy Marich was fined \$12,000 and suspended for 15 days from associating with any member in any capacity. Garrity, Fallon, LaBone, Sparkman, Green, Remson, and Hochevar were each fined \$5,000 and suspended for five days in all capacities. All of the individuals were required to requalify by examination as registered representatives except Harmann, who was required to requalify as a principal. Rudy Marich was required to requalify as both a representative and a principal.

The decision was based on a determination that R.B. Marich, acting through its traders, Norton and Crockett, together with the knowing and substantial assistance of Harmann, dominated and controlled the aftermarket in two blind pools underwritten by the firm, High Sierra Acquisitions, Inc. and Magellan Corp. Excessive markups in the two securities totaled nearly \$100,000.

The registered representatives were found to have charged unfair prices to certain of their customers who purchased High Sierra and/or Magellan. Although the registered representatives were not charged with knowledge of the markup amounts, they determined the gross commission on trades and were paid portions of these gross com-

missions. In all of these trades, the representatives received in excess of 10 percent of the total amount of the trade, and in a number of instances 30 percent to 50 percent or more of the total price paid by the retail customer to purchase the security was shared between Marich and the registered representative. Regarding the conduct of the registered representatives, the decision stated that "when a registered representative's gross commission is excessive, the price paid by the customer is obviously unfair." Moreover, the decision emphasized that "a registered representative does not function merely as a salesperson. He or she is a securities professional operating in a highly regulated environment, the rules of which that representative is bound to know and follow."

Harmann, Garrity, LaBone, Green, and Hochevar have appealed to the SEC. While the matter is being considered by the SEC, the sanctions against them are not effective.

In the fourth action, the NASD announced findings and sanctions against Adams Securities, Inc. (Las Vegas, Nevada), James W. Adams (Registered Principal, Henderson, Nevada), and Daniel B. Perry (Registered Principal, Henderson, Nevada). The firm and James Adams were fined \$600,000, jointly and severally. Furthermore, James Adams was fined an additional \$25,000 and suspended from association with a member of the NASD in any capacity for two years. Perry was

also fined \$25,000, suspended from association with any member of the NASD in any capacity for one year, and required to requalify by examination.

These sanctions were imposed by the NASD's NBCC following an appeal of a decision by the Market Surveillance Committee. The sanctions were based on findings that, in contravention of the NASD's Mark-Up Policy, the firm, acting through Adams and Perry, sold securities to its retail customers in principal transactions at unfair prices. The markups on these transactions were excessive and fraudulent and ranged from 12.5 percent to 600 percent above the prevailing market price. In addition, the firm and Adams failed to establish, maintain, and enforce adequate supervisory procedures.

The firm, Adams, and Perry have appealed this case to the SEC and the sanctions are not in effect pending consideration of the appeal.

The NASD investigations were carried out by its Anti-Fraud and Market Surveillance Departments and are part of a continuing nationwide effort by the NASD to eliminate trading and sales-practice abuses in non-Nasdaq and low-priced securities. The Market Surveillance Committee, which initiated these disciplinary cases, is a national committee responsible for maintaining the integrity of the Nasdaq and the non-Nasdaq markets and for disciplining members that fail to comply with relevant NASD rules and federal securities laws.

For Your Information

National Association of Securities Dealers, Inc.

June 1992

Vermont Increases Agent, Broker/Dealer Fees Effective July 1

Effective July 1, 1992, Vermont will increase its agent and broker/dealer fees. Agent registration, transfer, and renewal fees will rise from \$30 to \$45. Broker/dealer registration and renewal fees

will go from \$200 to \$250. If you have any questions regarding these changes, call the NASD Member Services Phone Center at (301) 590-6500.

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

To increase direct individual investment, the National Association of Investors Corporation (NAIC) is conducting an "Own Your Share of America" campaign. This promotional effort is intended to encourage people to become direct owners of the common stock of publicly traded companies. The campaign will run every June for five years beginning this month.

The NASD supports NAIC's efforts because The Nasdaq Stock MarketSM is the market of individual investors — they own 60 percent of Nasdaq[®] securities by market value, and their par-

ticipation in this market is growing. According to recent survey data, between 1985 and 1990 the number of individual investors in Nasdaq securities jumped from 8.3 to 11.1 million, an increase of 32.4 percent.

If you or your firm would like more information on the program, call or write to: NAIC, P.O. Box 220, Royal Oak, MI 48068, (313) 543-0612.

