

# ALERT

## Interest Rate Decline Presents Opportunities, Responsibilities

As a result of the dramatic decline in interest rates and certificate of deposit (CD) yields, investors seeking better returns are moving their investment monies into securities, longer-term bonds, and mutual funds that invest in securities or bonds. While this presents excellent opportunities for members to serve the needs of their customers, members also must be aware of the increased sales-practice and supervisory responsibilities that they have when dealing with such investors.

The financial press regularly reports on investors, accustomed to higher CD yields, having to look elsewhere for comparable yields. Such investors may, for instance, find the higher yields of a bond fund attractive in the face of a 4 percent return on a CD.

In such cases, members need to determine whether these investors

## Amplification

The December issue of the *Regulatory & Compliance Alert* noted that many corporate and municipal bond issuers were calling their bonds to take advantage of declining interest rates. The NASD cautioned members to quote the yield to first call rather than yield to maturity when discussing bonds with investors. At this time, the NASD would like to add a reminder to members that Municipal Securities Rulemaking Board Rule G-15 requires that customer confirmations be priced to first call, if such price is lower than the price to maturity.

fully understand the risks involved to their principal, should interest rates rise and the underlying value of the bond fund shares decline. These investors are often senior citizens who do not take into account or simply do not understand the risks they may be taking.

Members have a responsibility to weigh the suitability of switching investments for each customer. Members also must ensure that adequate disclosures are being made to customers. Moreover, the NASD believes that it is important for members to take aggressive action in reviewing and monitoring the activities of their sales forces in this area to safeguard against potential abuses.

The NASD is committed to addressing potential abusive sales practices involving customers on a timely basis. Therefore, district examiners will target customer investments that involve moving monies from maturing CDs or lower-yielding money market funds into bonds or equities, either directly or through mutual funds.

The NASD believes members  
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## NASD Expels Monarch Funding Corp., Fines It \$1.7 Million

The NASD has taken disciplinary action against Monarch Funding Corp.; Leo M. Eisenberg, the firm's owner and President; and Michael B. Eisenberg, a Vice President and Treasurer of another NASD member, Concorde Brokerage Corp.

Pursuant to an Offer of Settlement, made without admitting or denying the allegations, the NASD censured and expelled Monarch from membership in the NASD, censured Leo and Michael Eisenberg, and permanently barred both from associating in any capacity with any member firm. In addition, Monarch and both Eisenbergs were jointly and severally fined \$1.7 million.

The complaint involved activity during the initial public offering (IPO) and aftermarket trading of TeleDynamics, Inc., then a non-Nasdaq® over-the-counter (NNOTC) blind-pool security in which Monarch had acted as the sole underwriter.

The allegations of misconduct were based on findings that the firm,

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acting through Leo Eisenberg and others, manipulated the market of Tele-Dynamics securities.

The respondents dominated and controlled the market for the Tele-Dynamics securities and traded at artificially high prices despite the lack of legitimate market demand, according to the findings. As a result, Monarch, Leo Eisenberg, and others realized excess profits of at least \$535,000.

According to the NASD, this market manipulation occurred during the IPO and immediate aftermarket trading by Monarch, Leo Eisenberg, and Michael Eisenberg, among others, by fraudulently using a prospectus of Tele-Dynamics that was known by the respondents to contain material omissions and false and misleading statements and by making other misrepresentations, including price predictions, to customers purchasing the securities.

In addition, the complaint charged Monarch, Leo Eisenberg, and Michael Eisenberg with failure to disclose that Michael Eisenberg was a promoter of Tele-Dynamics, Inc., during the IPO and that he controlled the management of Tele-Dynamics during the relevant aftermarket trading. This allowed Michael Eisenberg to take from Tele-Dynamics \$200,000 that the company had received on the exercise of two million Tele-Dynamics warrants, the findings stated.

During the IPO, Monarch, through Leo Eisenberg and others, sold securities to accounts that were restricted from purchasing securities of a "hot issue." Monarch and Leo Eisenberg also failed to establish, maintain, and enforce written procedures for the matters described above, the findings stated.

As a result, the NASD found Monarch and the Eisenbergs violated the anti-fraud provisions of the federal securities laws and Article III, Section 18 of the Association's Rules of Fair Practice. These provisions prohibit the use of any manipulative, deceptive, or other fraudulent device in the purchase or sale of any security.

The NASD investigation was

carried out by its Anti-Fraud Department in Washington, D.C. and is part of a continuing nationwide effort by the NASD to eliminate trading and sales-practice abuses in penny stocks. The disciplinary action was taken by the NASD's Market Surveillance Committee, 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 securities laws.

In addition to taking this disciplinary action, the NASD provided assistance in a related criminal action taken by Michael Chertoff, U.S. Attorney for the District of New Jersey. In that criminal action, Leo Eisenberg pleaded guilty to securities fraud, racketeering, and other felonies in connection with manipulative schemes involving other over-the-counter securities.

## Executive Representative Designation Rule Change Approved

**T**he Securities and Exchange Commission (SEC) has approved an NASD rule change modifying the requirement that members appoint one executive representative to vote and act for the member in all affairs relating to the NASD. Under the change that takes effect April 15, 1992, a member may designate only a registered principal in the firm's senior management as its executive representative to the NASD.

Currently, the executive representative designated by the member also serves as the firm's contact person on the Form BD and in the Central Registration Depository (CRD). The current qualification requirements of executive representative are both broad and optional, and have led to the designation of persons with limited authority in their firms, the NASD asserts.

Since all important membership communications, including votes, are directed to these persons, the NASD

is concerned that important information may not reach the most appropriate person at the firm.

For insurance company members, the NASD recognizes that the person designated executive representative may be a middle manager in the insurance company but act as senior management of the company's securities activities. To accommodate these unique circumstances, the NASD may, on review, permit an insurance company to appoint as executive representative the most appropriate employee.

The person has to be registered as a principal and has to serve in an equivalent position to senior management in charge of the insurance company's securities operations.

To distinguish between the role of the member's executive representative and any other contact persons, the NASD will maintain the executive representative list separately from the firm's contact list in the CRD.

This step will assure that the executive representative receives all important NASD communications and that routine CRD notices go to the most appropriate person at the firm.

## Issuer-Prepared Reports Could Mean Trouble for Members

**T**he NASD Advertising Department reminds members to exercise caution when using issuer-produced sales brochures and advertising material. This is especially true of materials that list NASD broker/dealers or associated persons as "contacts."

Members are responsible if these materials fail to meet the advertising and sales literature standards set forth in the NASD's Rules of Fair Practice.

The NASD has found that many times these materials exaggerate and promise benefits to investors and fail to address the potential risks involved in the purchase of these securities, many of which are "penny stocks."

Although the literature subject to close review has involved penny-stock issues, it is often similar in format and style to similarly titled bulletins, such as EXPRESSgram,<sup>®</sup> INVESTORgram,<sup>®</sup> and PRE-DICTIONgram.<sup>®</sup> These bulletins feature articles with such headlines as *Profit Stampede, Investment Miracle Maker, Near Zero Financial Risk, On the Brink of Industry Stardom, Ground-Floor Investment Payoff, An Investment Legend in the Making, and The Ultimate 'Inside Trade.'*

The sections listing broker/dealer contacts are also similar in these publications. They usually include a boxed-in section titled "Investor Checklist" or "Investment Checklist" that contains several bulleted highlights of the offering. A stock comparison chart lists several industry-related issues with prices. The list ordinarily includes very successful, high-priced stocks with the particular penny-stock issue appearing last. This implies that the penny stock's performance will match that of the other securities listed with it.

Frequently, the NASD finds that member compliance personnel never have the opportunity to review such literature. Registered representatives appear to be using this material without internal approval, thinking such approval unnecessary since neither they nor their broker/dealer produced it.

According to the NASD Advertising Department, no registered representative should consent to the use of his or her name as a contact in such material unless it is approved internally in accordance with Article III, Section 35(b)(1) by a registered principal of the member or a person so designated by the member.

It remains the member's responsibility, the NASD adds, to ensure compliance with applicable advertising and sales-literature standards for any issuer-prepared reports listing the member or its registered personnel as contacts.

The following is a composite of what compliance personnel should look for when reviewing this type of misleading sales literature.

#### Investment Check List

- Three commuter routes acquired
- Five new routes scheduled for acquisition
- Fifteen late-model aircraft in service
- Transportation contracts being negotiated
- Safety and maintenance records above average
- Solid aviation-based management team with 50 years of experience

#### Operating Commuter Airlines Stock Comparison\*

Air Today	.....	\$17.95
Gone Tomorrow	.....	\$15.62
High Flying Ltd.	.....	\$13.41
Safe Landings	.....	\$10.52
Pilots 'R' Us	.....	way under \$1.00

\*Like these other companies, Pilots 'R' Us intends to provide top-notch service to commuters and others who need and deserve top-flight professional air service.

For the latest information, contact your broker or one of the following brokers familiar with Pilots 'R' Us. Pilots 'R' Us trades under the symbol PUS.

Bill Jenkins  
SecuritiesPlus  
1-800-BUY-SOON

Macon Rogers  
Dealmakers Ltd.  
1-800-ANY-TIME

Raleigh Haynesworth, II  
Wealth Creation Unlimited  
1-800-GET-RICH ext. QUICK

### NASD Summarily Suspend Oxford Capital Securities

The NASD summarily suspended Oxford Capital Securities, Inc., of New York City. The suspension followed the NASD's determination that Oxford's financial and operational difficulties were so severe that the NASD could not let the firm continue its membership and still provide safety for investors, creditors, and other members.

According to the NASD, Oxford failed to demonstrate compliance with certain financial and operational regulations, including the SEC's rules regarding net capital, customer protection, and books and re-

ords. Oxford had failed to record unregistered debt obligations on its books, and these obligations made the firm's net capital position deficient.

Furthermore, Oxford failed to make and keep its books and records current and failed to record certain of its bank accounts on its books.

In addition, Oxford received customer funds through the redemption of customers' mutual fund shares and variable annuities, failed to place them in a segregated account, and thereby failed to comply with the SEC's customer protection rule.

### Compliance Short Takes

■ The NASD has modified the Public Disclosure Program to eliminate the practice of notifying member firms and their associated persons of public inquiries for disciplinary history under the program. The action was taken to encourage broader customer usage of the program and to improve its overall effectiveness.

■ The NASD has adopted modifications to Form BD, the broker/dealer registration application form. Many of these changes stem from amendments to the federal securities laws, including addition of certain SEC cease-and-desist and fining powers. Others streamline the completion and data capture of information on the form. Categories for new types of business have been added, and the schedules for reporting ownership of a firm have been redesigned to allow for greater ease in determining firm ownership and control. Finally, a schedule for reporting branch offices has been changed to accommodate an electronic filing format, a future enhancement to the CRD system.

■ As a result of Board action, member service fees is the subject of a Notice in the February issue of *Notices to Members*. The Notice points out that NASD rules require service fees to "be reasonable and not unfairly discriminatory between customers." In addition, members must provide customers with adequate ad-

vance notice before implementing or changing a service fee. Members should notify customers of all service fees when accounts are opened and provide written notice 30 days before implementing or changing any service charge. Failure to do so could be construed as inconsistent with Article III, Section 1 of the Rules of Fair Practice. Finally, the Notice advises members that it is not appropriate to charge fees to customers for involuntary account transfers through the Automated Customer Account Transfer System (ACATS) caused by circumstances beyond the customer's control.

- Revised examination study outlines for the Investment Company Products/Variable Contracts Limited Principal Examination (Series 26) are now available through the NASD Member Services Phone Center at (301) 590-6500. The changes, approved by the SEC and effective April 1, 1992, reflect both regulatory and business changes in this segment of the industry. The two-hour examination has been expanded to 100 questions.

- The NASD has imposed a \$200 filing fee for Form 211 applications filed with the NASD pursuant to Schedule H, Section 4 of the NASD By-Laws for any NNOTC security to be quoted in any interdealer quotations medium. The fee is not refundable in the event that the member cannot satisfy the requirements of Schedule H, Section 4 or SEC Rule 15c2-11. As with any cost associated with making a market, this one must be paid by the member and cannot be passed along to the issuer or other parties.

- NASD members have overwhelmingly approved a proposal to amend the NASD By-Laws to permit summary suspensions of members or registered persons for failure to comply with a valid arbitration award. The measure must now be filed with the SEC for its approval. This authority, which the NASD currently has relative to a failure to pay fines, costs, and assessments, would be extended to situations when the arbitration award is not the subject of a mo-

tion to vacate or modify the award or when such a motion has been denied. The NASD views the measure as a means of alleviating the burden on districts' complaint dockets of referrals for failure to pay arbitration awards and a possible way to encourage timely payment of awards.

- The NASD is reviewing member comments on its proposed amendments to restrict member participation in unfair limited partnership rollup transactions and prohibit listing on the Nasdaq National Market of any security resulting from an unfair rollup transaction. The proposal is contingent on passage by Congress of the Limited Partnership Rollup Reform Act of 1991. That legislation includes, among other things, a mandate that the NASD develop rules to protect limited partners in rollup transactions.

## Members Vote on Market-Maker Short-Sale Rule Exemption

**I**ncluded in the NASD proposed short-sale rule now out for member vote is a provision to exempt qualified Nasdaq market makers from operation of the rule. As proposed, the short-sale rule will incorporate the following elements:

- The rule would be based on the inside bid as displayed for any Nasdaq National Market issue listed in The Nasdaq Stock Market.

- Short sales would be prohibited at or below the inside bid when the current inside bid is lower than the preceding inside bid.

- Qualified market makers (as defined) would be exempted from the provisions of the rule.

- Market makers could not use their exemption to bypass the rule for customer orders.

- Exemptions, where applicable, would track SEC Rule 10a-1 for short sales in exchange-listed securities.

- The rule would apply during normal, domestic market hours (i.e., 9:30 a.m. to 4 p.m., Eastern Time).

The NASD considers an exemption from the short-sale rule for qualified market-making activity fundamental to avoid disrupting traditional dealer activity. To this end, the NASD has proposed exemption criteria based on the amount of time at the inside bid or ask quotation, comparison of an individual market maker's spread to the average dealer spread in each stock, and frequency of dealer quotation updates without a corresponding execution in the security.

Using these components, a primary market maker in the Nasdaq system must, except as described below, satisfy *two* out of the three specific threshold standards:

- A market maker must maintain the best bid or best offer as shown in the Nasdaq system no less than 35 percent of the time.

- A market maker must maintain a spread no greater than 102 percent of the average dealer spread.

- No more than 50 percent of a market maker's quotation updates may occur without a trade execution of at least one unit (i.e., 100 shares) of trading.

Recognizing that overall volume is also indicative of quality market making, the NASD added a supplemental test based on proportionate volume. This test is met if a market maker accounts for 1 1/2 times its proportionate share of volume in the stock. In a stock with 10 market makers, for instance, each dealer's proportionate share should be 10 percent; therefore 1 1/2 times proportionate share would mean 15 percent of the overall volume.

Market makers meeting this test may be designated as a primary Nasdaq market maker if they also satisfy *one* of the three criteria set forth above. For example, if a market maker meets the bid or offer criterion but not the point-spread or quote-change criteria, then the market maker would have to meet the proportionate-volume test to qualify as a primary market maker.

The time frame for review of market-maker performance in each criterion under consideration would

be a calendar month. Compliance with the criteria would be tracked through Nasdaq, which would enable market makers to review their status in each criterion in each stock and would also provide members with notice of their compliance with the standards at set intervals.

### Underwriting Provisions

In addition, the proposal identifies situations that warrant special treatment, such as secondary offerings. In the NASD's view, the time period after secondary offerings have been announced is particularly sensitive to short-selling pressure. Thus, special time frames and eligibility criteria for primary market makers are warranted.

To be a primary market maker in stocks involved in secondary offerings, the market maker would have to register in the security before the announcement or filing of the registration statement for the secondary offering. Otherwise, the market maker must satisfy the criteria for 40 business days before becoming a primary market maker.

Separate criteria also would exist for other registration situations, such as for qualifying when registering in an existing security, in an initial public offering, or in a merger or acquisition situation. These special criteria permit market makers with a proven track record (e.g., they have primary market-maker status in 80 percent of the stocks they have registered in for the past year) to be granted the primary designation when they initiate quotations. If dealers cannot meet the 80 percent test, then other avenues set forth in the proposed rule permit them to qualify.

A Nasdaq market maker that does not satisfy the qualification criteria remains a market maker in Nasdaq. However, it is not a primary market maker in the stock and it cannot take advantage of the exemption from the short-sale rule. The NASD will provide a forum for review if market makers wish to request reconsideration of a determination that they fail to meet the primary market-maker standards. However, requests

for reconsideration will be limited to consideration of system failures, excused withdrawals, or related activity in derivative or convertible securities that may affect a market maker's compliance with the criteria.

## Manipulative Trading Leads to Fines, Bars, Suspensions

The NASD has taken disciplinary action against Robert L. Blake for manipulative trading between November 1988 and March 1989. At the time, Blake was associated with J.T. Moran & Co., a former NASD member, as a registered representative and the trader. Also named in the NASD's complaint were Edward K. Kirwan, Thomas I. Davis, Jr., Gordon Price, Bruce Olens, Robert Benedickson, Neil Litvin, and Miles F. Levites, all of whom were associated with other member firms.

Pursuant to their Offers of Settlement, in which they neither admitted nor denied the allegations of the complaint filed against them, the respondents agreed to the following sanctions:

- Blake: censure, \$75,000 fine, and a suspension in all capacities for five years;

- Kirwan: censure, \$100,000 fine, and a bar from associating with any member of the Association in any capacity;

- Davis: censure, \$20,000 fine, and a suspension for two years in all capacities;

- Price: censure, \$10,000 fine, and a bar from associating with any member of the Association in any capacity;

- Olens: censure, \$10,000 fine, and a bar from associating with any member of the Association in any capacity;

- Benedickson: censure, \$10,000 fine, and a suspension from association with any member in any principal capacity for six months;

- Litvin: censure, \$10,000 fine, and a suspension from association

with any member in any principal capacity for six months; and

- Levites: censure, \$7,500 fine, and a suspension from associating with any member in a principal capacity for nine months.

The respondents, in their Offers of Settlement, consented to findings consistent with the violations alleged in the complaint. The complaint charged that, during the period from on or about November 1988 through on or about March 1989, respondents Blake, Kirwan, and Davis, assisted in certain instances by respondents Price and Olens, violated Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder, and Article III, Sections 1, 5, and 18 of the Association's Rules of Fair Practice.

They did this, according to the complaint, by executing a series of transactions that included, among other things: parking stock in customer accounts; entering fraudulent quotations in the Nasdaq system; soliciting, arranging, and effecting matched orders and "wash sales"; soliciting, arranging, and effecting a series of transactions at the end of the day to "mark the close"; arranging and effecting a series of unauthorized transactions; arranging and effecting transactions in violation of the Federal Reserve Board's Regulation T; and executing and reporting of non-bona fide transactions and entering artificial quotations into the Nasdaq system. Section 18 of the NASD Rules is the anti-fraud rule, which prohibits the use of any manipulative, deceptive, or other fraudulent device in the purchase or sale of any security.

Moreover, the complaint alleged that respondent Kirwan violated Article III, Section 1 of the Association's Rules and Schedule C of the Association's By-Laws by failing to register with the NASD. The complaint also alleged that respondents Benedickson and Litvin failed to appropriately supervise Blake, and respondent Levites failed to appropriately supervise Davis, thereby violating Article III, Sections 1 and 27 of the Association's Rules.

The NASD's Market Surveil-

lance Department conducted the investigation that led to the filing of the complaint in this matter. These disciplinary proceedings and sanctions imposed are a part of the NASD's continuing commitment to address fraud and other abuses in the securities business.

## NASD Sanctions Two Former Employees of Member Firm

The NASD has taken disciplinary actions against two former employees of a member firm and, separately, against another firm. The first action was taken against Gary E. Bryant, the former President of Anderson, Bryant and Co., a broker/dealer located in Oklahoma City, Oklahoma, and Larry J. Phillips, a former registered representative of the firm, for misconduct relating to United Dental Care (UDC), Inc., a non-Nasdaq over-the-counter security.

Bryant was censured, suspended from association with any NASD member in any capacity for two years, and fined \$150,000. Phillips was censured, fined \$250,000, and barred from association with any NASD member in any capacity. Bryant has appealed the NASD decision to the SEC.

While the matter is being considered by the SEC, the sanctions entered against him are not in effect. The sanctions against Phillips were effective immediately.

The NASD found that Bryant and Phillips engaged in an unregistered distribution of UDC securities. As a result of a merger of UDC with a public shell company, Bryant received 200,000 shares of UDC issued in the name of his daughter, Phillips received one million shares, and two nominees with accounts at Anderson, Bryant received a total of 700,000 shares.

None of these shares were registered or exempt from registration, nor did the individuals pay for them. A

large number of these shares, as well as other unregistered shares of UDC, were sold into the marketplace without the benefit of a registration statement.

The NASD found that Bryant's receipt of the unregistered UDC shares represented consideration for his efforts in establishing and supporting an aftermarket in UDC by Anderson, Bryant to create a means for the nominees to sell their shares and thereafter remit a portion of the proceeds directly to the company.

The NASD also found that Bryant and Phillips made misrepresentations and omissions to customers, Bryant failed to disclose his receipt of stock, and Phillips made unwarranted price projections and other misrepresentations about UDC. They also failed to disclose that Phillips and UDC had a control relationship.

Furthermore, the NASD found that Bryant manipulated over a two-day period the per-share price of UDC from 50 cents to \$1, a price that was unrelated to UDC's business history, earnings, assets, or production, and was otherwise without justification.

Bryant also engaged in excessive markups, overcharging the firm's customers more than \$20,000, the findings stated. In addition, the Association found that Phillips gave customers written guarantees against loss and that Bryant failed to supervise Phillips adequately.

The NASD found that Bryant and Phillips violated, among other provisions, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Article III, Section 18 of the NASD's Rules of Fair Practice.

These provisions prohibit the use of any manipulative, deceptive, or fraudulent device in the purchase or sale of any security.

The NASD investigation in this matter was conducted by its Anti-Fraud Department and initially heard by the NASD's Market Surveillance Committee. The committee's findings as to Bryant and Phillips were affirmed on appeal to the National Business Conduct Committee.

## Yields (From Page 1)

are vitally concerned with safeguarding against such abuses and will keep the following questions in mind when serving these investors: Are these investments suitable? Do they meet the investment objectives and financial needs of the customers? Have the risks been fully and adequately disclosed? Members should review their compliance and supervisory procedures to make sure they focus on these important areas.

## Firms Suggest Changes to Response Proposal

Member responses to the NASD's request for comments on the use of negative-response letters by mutual funds are under review. The NASD had asked for comments on proposed amendments to Article III, Section 15 of the Rules of Fair Practice. The changes would permit the use of negative-response letters under very limited circumstances. The NASD Board of Governors, in an earlier *Notice to Members*, reminded members that using negative-response letters to facilitate an exchange of mutual fund shares may violate the provisions of Article III, Section 15 of the NASD Rules of Fair Practice.

Such a violation would occur if a member executed an exchange automatically for a nonreplier to the letter without prior written authority from the shareholder giving the member discretion over the account.

Following distribution of the Notice, the NASD received several comments asking for an exemption from the rule for the bulk transfer of money market mutual funds using negative-response letters in certain situations. Such instances are limited to mergers and acquisitions of funds, changes of clearing members, and exchanges of money market mutual funds used in sweep accounts where investment performance is not the pri-

mary reason for the exchange.

In these situations, firms often have to notify hundreds or even thousands of shareowners about the impending exchange. The overwhelming task of contacting each nonreplier to a negative-response letter for approval of the exchange would cause considerable time delays and add further cost to the exchange. There would also be certain specific disclosures required in the negative-response letter that could not be acted on by the member until at least 30 days after the mailing date.

## Interim Injunctive Relief Proposed For Intra-Industry Disputes

The NASD has filed for SEC approval proposals to provide for interim injunctive relief in arbitration proceedings involving intra-industry disputes. Initially, the rule would operate for a year, with the option to make it permanent at the end of that pilot period.

The measure would address the limited number of situations that require expedited treatment. As such, it would most frequently apply to raiding cases, in which employees of one firm leave to work for another firm, bringing with them customer accounts.

The proposal calls for authority to grant immediate and regular (within three to five days) injunctive relief. The NASD would provide notice of the hearing promptly after the filing of a request for an immediate injunctive order and, in the case of a request for a regular injunctive order, within three to five business days after a response is filed or is due to be filed, whichever comes first.

The filing of an answer by the respondent would be optional in applications for immediate relief. Thus, the hearing on the immediate injunction would proceed with or without the party's response, assuming that proof of service on that party has been submitted by the applicant. Applications for regular injunctive re-

lief, however, would require a response. The arbitrator would try to grant or deny the application within one business day after the hearing and record are closed in either situation.

This proposed change in the Code of Arbitration Procedure would require related amendments to other portions of the rules. Another Code amendment would preclude peremptory challenges to an arbitrator selected to determine whether an interim injunctive order should be issued.

Other changes would clarify the authority of the arbitrator to frame appropriate relief other than monetary as well as modify application of the surcharge for this service and authorize the arbitrators to assess this amount against a party other than the claimant.

The proposed modification would allow the surcharge to be assessed only against the party seeking the injunction, which may not be the claimant. Finally, a change to the Board's "Resolution Covering Failure to Act Under the Provisions of the Code of Arbitration Procedure" would provide for disciplinary action when a member or person associated with a member fails to comply with any interim order by an arbitrator.

## Members Support Changes to Communications Guidelines

According to their comments, members support the NASD's recent proposal to rescind its *Guidelines Regarding Communications With the Public About Investment Companies and Variable Contracts* (Guidelines). The proposal also amends Article III, Section 35 of the Rules of Fair Practice to include items from the Guidelines regarding disclosure about tax-free/tax-exempt returns, comparisons, and projections of performance.

Members look to the Guidelines for assistance in preparing advertising and sales literature used in the

sale of investment company shares. Since the NASD adopted the Guidelines in 1982, the SEC has adjusted its rules in this area in such a way as to render much of the content of the Guidelines obsolete.

The remaining content, except for the three areas cited above, is covered by the standards already set forth in Article III, Section 35 of the Rules of Fair Practice. For these reasons, the NASD has proposed rescinding the Guidelines and adding those three sections to Article III, Section 35, which governs communications with the public.

## Members Alerted To Previously Canceled Securities

The SEC recently advised the New York Stock Exchange, Inc. (NYSE) and the NASD that a potentially large number of canceled registered corporate bond certificates, which had been earmarked for destruction, are now reappearing in circulation.

A number of these canceled certificates are perforated, and some have been presented in recent days for sale and/or transfer, mainly by foreign customers.

Broker/dealers are advised to take whatever precautions necessary to protect themselves from possible loss, including examination of certificates for indication of cancellation and verification of certificate numbers with transfer agents and the Securities Information Center. The Depository Trust Company had previously issued three Important Notices, B#10, 271-91, dated November 22, 1991; B#10, 531-91, dated December 6, 1991; and B#11, 199-91, dated December 23, 1991, regarding this matter.

Members designated to the NASD that have questions concerning this Notice can call their local NASD district office.

NYSE-designated members should call their Finance Coordinator at the NYSE.

## NASD DISCIPLINARY ACTIONS

In November, December 1991, and January 1992, the NASD announced the following disciplinary actions against these firms and individuals. Publication of these sanctions alerts members and their associated persons to actionable behavior and to the penalties that may result.

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

**Tony Landers Bell (Registered Representative, Salinas, California)** was fined \$139,357.52 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Bell received \$23,357.52 from 96 insurance customers for the purchase of insurance and converted the funds to other purposes. In addition, Bell failed to respond to NASD requests for information.

**Donald Ellis (Registered Representative, Sparks, Nevada)** was fined \$78,500 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Ellis received a total of \$8,500 from a public customer for investment purposes but converted the funds for other purposes. Ellis also failed to respond to NASD requests for information.

**Joseph Stephen Fisher (Registered Representative, Danville, California)** was fined \$18,500. The sanction was imposed by the NASD's Board of Governors following an appeal of a decision by the District Business Conduct Committee (DBCC) for District 1. The sanction was based on findings that Fisher recommended to a public customer the purchase and sale of securities in 47 transactions without having reasonable grounds for believing that such recommendations were suitable for the customer considering her financial situation and investment objectives.

**Marc Alan Hughes (Registered Representative, Kenwood, California)** was fined \$72,500 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Hughes received from a public customer a \$2,500 check intended for the purchase of insurance. Hughes misappropriated and converted the proceeds to his own use and benefit. He also failed to respond to NASD requests for information.

**Kelly Michael Kersey (Registered Representative, Reno, Nevada)** 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, Kersey consented to the described sanctions and to the entry of findings that he misappropriated \$3,994 belonging to his member firm to his own use and benefit.

**Lanaco Securities Corporation (Burlingame, California) and Joseph Anthony Atencio (Registered Principal, Burlingame, California)** were fined \$10,000, jointly and severally, and Atencio was barred from association with any member of the NASD in a principal capacity. The sanctions were based on findings that the firm, acting through Atencio, filed false and inaccurate FOCUS Parts I and IIA reports and failed to file certain FOCUS Part IIA reports. In addition, the firm, act-

ing through Atencio, engaged in a securities business while failing to maintain minimum required net capital and neglected to give telegraphic notice to the NASD regarding its net capital deficiency.

Furthermore, Lanaco Securities, acting through Atencio, solicited public customers for the purchase of restricted stock in contravention of SEC Rule 144 and failed to establish written supervisory procedures to prevent this activity. The firm, acting through Atencio, also failed to carry a blanket fidelity bond.

**Arthur Joseph Lewis (Registered Representative, Beaverton, Oregon)** was fined \$25,000 and suspended from association with any member of the NASD in any capacity for one year. The sanctions were affirmed by the SEC following an appeal of a decision by the NASD's Board of Governors. The sanctions were based on findings that Lewis exercised effective control over an account of a public customer and recommended to the customer the purchase and sale of securities and options without having reasonable grounds for believing the recommendations were suitable considering the customer's financial situation and investment objectives.

**M.D. Advisors, Inc. (San Jose, California) and Matthew DeStaffany (Registered Principal, San Jose, California)** were fined \$10,000, jointly and severally. In addition, the firm was expelled from membership in the NASD, and DeStaffany was barred from association with any member of the NASD in any capacity. The sanctions were based on findings that the firm and DeStaffany failed to respond to NASD requests for information concerning promissory notes issued by the firm to its customers.

**James Edward Martin (Registered Representative, Dublin, California)** was fined \$10,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Martin failed to respond to NASD requests for information.

**Michael David Sweeney (Registered Representative, Spokane, Washington) and Michael Gregory Sweeney (Registered Representative, Spokane, Washington)** were fined \$5,000, jointly and severally, and ordered to disgorge \$14,521 to customers, jointly and severally. Michael Gregory Sweeney was also required to disgorge an additional \$2,742 to customers. Furthermore, the respondents were required to attend a staff interview regarding sales practices.

The sanctions were modified by the SEC following an appeal of a decision rendered by the NASD's Board of Governors. They were based on findings that Michael David Sweeney and Michael Gregory Sweeney exercised effective control over the accounts of public customers and recommended to such customers the purchase and sale of securities without having reasonable grounds for believing that such recommendations were suitable for the customers based on their investment objectives and needs.

**Layne Carpenter Williams (Registered Principal, Sonora, California)** was fined \$5,000 and suspended from association with any member of the NASD in any capacity for two weeks. Subsequent to his two-week suspension, Williams is suspended from association with any member of the NASD as a registered principal for one year and thereafter must requalify by examination before act-

ing in a principal capacity. The sanctions were based on findings that Williams participated in the offer and sale of limited partnership interests by means of false and fraudulent misrepresentations and omissions of material facts in contravention of SEC Rule 10b-5.

**William F. Wuerch (Registered Representative, Mercer Island, Washington) and Mark D. Thomason (Registered Principal, Kirkland, Washington).** Wuerch was fined \$25,000 and barred from association with any member of the NASD in a principal capacity. Thomason was fined \$5,000, barred from association with any member of the NASD in any principal capacity, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by examination in any capacity in which he seeks to function. The sanctions were affirmed by the SEC following an appeal of a decision by the NASD's Board of Governors. The sanctions were based on findings that Wuerch and Thomason engaged in private securities transactions without providing prior written notification to their member firm.

**Gilbert A. Zwetsch (Registered Representative, Spokane, Washington) and Terry S. Evans (Registered Principal, Liberty Lake, Washington)** were each fined \$15,000. Zwetsch was ordered to disgorge \$7,480, and Evans was ordered to disgorge \$2,790. In addition, they were suspended from association with any member of the NASD in any capacity for 60 days. The sanctions were affirmed by the SEC following an appeal of a decision by the NASD's Board of Governors.

The sanctions were based on findings that Zwetsch and Evans each purchased 200,000 shares of stock and, in connection with such purchases, failed to provide prior written notification to their member firm in contravention of the Board of Governors' Interpretation with respect to Private Securities Transactions, then in effect. In addition, Zwetsch and Evans, in soliciting retail customers to purchase the stock, failed to disclose the following: that Zwetsch and Evans had acquired large blocks of the stock at a price considerably lower than the price offered to customers, that any purchases by the customers might be covered in part by the sale of securities owned by the respondents, and that the respondents stood to gain financially from the customers' purchases of the stock.

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

**Adams Securities, Inc. (Las Vegas, Nevada), James William Adams (Registered Principal, Henderson, Nevada), and Daniel Bruce Perry (Registered Principal, Henderson, Nevada).** The firm was fined \$79,541, jointly and severally with Adams and Perry, and suspended for 60 days from engaging as a market maker. Adams and Perry were each fined an additional \$15,000 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 deci-



sion by the DBCC for District 2. The sanctions were based on findings that, in contravention of the Board of Governors' Interpretation with respect to the NASD's Mark-Up Policy, the firm, acting through Adams and Perry, engaged in the sale of securities to public customers in the secondary market at unfair prices. The markups on these transactions ranged from 17.65 to 100 percent above the firm's contemporaneous cost.

This case has been appealed to the SEC, and the sanctions are not in effect pending consideration of the appeal.

**American National Equities, Inc. (Encino, California), Ava Corrine Roth (Registered Representative, Calabasas, California), and James Joseph Hergenreter (Associated Person, Calabasas, California).** The firm was fined \$110,799, jointly and severally with Hergenreter, fined \$5,000 separately, and suspended from membership in the NASD for 90 days. Roth and Hergenreter were fined \$10,000 individually, and Hergenreter was suspended from association with any member of the NASD in any capacity for 90 days. In addition, Hergenreter must requalify by examination before reassociating with any NASD member firm. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 2.

The sanctions were based on findings that the firm, acting through Roth and Hergenreter, in contravention of the Board of Governors' Interpretation with respect to the NASD's Mark-Up Policy, engaged in sales of units of a limited partnership in the secondary market from its own account to private customers at unfair prices. The markups ranged from 11.24 to 54.4 percent above the firm's contemporaneous cost. Moreover, the firm failed to disclose on customer confirmations whether such purchases or sales were executed on a principal or agency basis, that the firm was a market maker, and that, in at least 75 transactions, the firm charged a commission in addition to the markup or markdown.

Also, in contravention of Schedule C of the NASD's By-Laws, Hergenreter was actively engaged in the management of the firm's securities business, and the firm allowed him to do so, without the benefit of registration with the NASD in any capacity.

**Lee Trevino Cavazos (Registered Representative, Mission Viejo, 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 Cavazos failed to respond to NASD requests for information regarding his termination from a member firm.

**Gilbert Martin Hair (Registered Representative, Newbury Park, California) and Vladimir Chorny (Registered Representative, Camarillo, California).** Hair was fined \$13,250, and Chorny was fined \$18,500. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 2. The sanctions were based on findings that Hair and Chorny participated in private securities transactions without giving prior written notification to their member firm.

Hair and Chorney have appealed this case to the SEC, and the sanctions are not in effect pending consideration of the appeal.

**Charles Patrick Hanlon (Associated Person, Chula Vista, 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 Hanlon became associated with a member firm when he was barred from asso-

ciation with any member of the NASD and was not eligible to become an associated person.

**J.D. Michael & Co. (La Jolla, California) and Michael Jon Renteria (Registered Principal, Westminster, Colorado).** The firm was expelled from membership in the NASD. The sanction against the firm was based on findings by the DBCC for District 2. Renteria submitted an Offer of Settlement pursuant to which he was fined \$3,000 and suspended from association with any member of the NASD in any capacity for seven days.

Without admitting or denying the allegations, Renteria consented to the described sanctions and to the entry of findings that the firm, acting through Renteria, sold designated securities to 18 public customers without seeking prior approval of each customer's account and without receiving the required written agreement from each customer that sets forth the identity and quantity of the securities being purchased. The findings also stated that Renteria failed to respond to NASD requests for information.

**Louis Robert Lund (Registered Representative, La Jolla, 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 Lund failed to respond to NASD requests for information regarding his termination from a member firm.

**Ely Jay Mandell (Registered Principal, Thousand Oaks, California)** was fined \$25,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Mandell failed to pay a \$34,980.67 New York Stock Exchange arbitration award.

**Radha Ramachandran Nayar (Registered Representative, Temecula, California)** was barred from association with any member of the NASD in any capacity. The sanction was based on findings that Nayar failed to pay a \$119,396.81 arbitration award.

**Gene Lester Roach (Registered Principal, Riverside, California)** was fined \$5,000, jointly and severally with a member firm; fined an additional \$289,000; and barred from association with any member of the NASD 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 2.

The sanctions were based on findings that Roach made improper use of the proceeds of a private offering. Specifically, he deposited \$169,000 of the funds into a separate securities account maintained at another firm in which he had beneficial ownership, deposited \$70,000 into his member firm's trading account, and paid himself a salary of at least \$29,500. None of these activities were identified in the use-of-proceeds section of the offering memorandum. In addition, when acting on behalf of a member firm, Roach effected securities transactions while failing to maintain its minimum required net capital.

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

**The Cambridge Group, Inc. (Los Angeles, California), Lawrence Jay Hold (Registered Representative, Santa Monica, California), Donald Patrick Hateley (Registered Principal, Los Angeles, California), and Wendy Joy Seretan (Registered Principal, Los Angeles, California).** The firm, Hateley, and Seretan were fined \$55,000,

jointly and severally. Hold was fined \$64,000 and suspended from association with any member of the NASD in any capacity for three months. The sanctions were affirmed by the SEC following an appeal of a decision by the NASD's Board of Governors.

The sanctions were based on findings that the firm, acting through Hateley and Seretan, paid or caused the payment of referral fees totaling \$49,437.50 for transactions in direct participation programs to Hold, who was associated but not registered with the firm. In addition, Hold engaged in private securities transactions without providing prior written notification to his member firm.

**Trans-Pacific Securities, Inc. (Riverside, California) and Dennis Marlin Good (Registered Principal, Riverside, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through Good, participated in contingent offerings of securities and failed to transmit funds received from public customers to separate escrow accounts promptly.

**Cynthia Robin Wert (Registered Representative, Ontario, California)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$15,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Wert consented to the described sanctions and to the entry of findings that she caused her member firm to issue a \$45,000 check from the joint account of two public customers without their knowledge or consent. To facilitate the issuance of the check, the NASD found that Wert entered the assistant branch manager's authorization code into a computer without his knowledge.

**Carl Everett Young, Jr. (Registered Principal, Glendale, California)** was fined \$3,500, jointly and severally with a member firm, 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 DBCC for District 2. The sanctions were based on findings that a member firm, acting through Young, allowed an individual to be associated with it but failed to obtain a required blanket fidelity bond. Moreover, Young embarked on a course of conduct to mislead the NASD staff with respect to whether the firm had obtained a blanket fidelity bond.

**Kathleen Annette Yott (Registered Principal, Torrance, California) and Donald J. Yott (Associated Person, Beverly Hills, California)** were each fined \$15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Kathleen and Donald Yott failed to respond to NASD requests for information concerning customer complaints.

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

**Val U. Barrutia (Registered Representative, Colorado Springs, Colorado)** submitted an Offer of Settlement pursuant to which he was fined \$6,320 and suspended from association with any member of the NASD in any capacity for 30 days. In addition, Barrutia must reimburse two customers \$13,680 and requalify by examination as a registered representative. Without admitting or denying

the allegations, Barrutia consented to the described sanctions and to the entry of findings that he made unsuitable recommendations to two public customers in order to induce them to purchase securities. Furthermore, Barrutia falsified two subscription documents relating to these purchases to conceal the fact that the customers did not meet the suitability standards required to purchase these securities, according to the findings.

**Gary Dennis Barton (Registered Principal, Englewood, Colorado), Steven Ernest Muth (Registered Representative, Aurora, Colorado), and George Theodore Hellen (Registered Representative, Littleton, Colorado)** submitted Offers of Settlement pursuant to which Barton was fined \$10,000 and suspended from association with any member of the NASD in any principal capacity for one year. Muth was fined \$2,500, suspended from association with any member of the NASD in any capacity for 10 business days, and suspended in any principal or ownership capacity for one year. In addition, Hellen was fined \$12,500 and suspended from association with any member of the NASD in any capacity for 10 business days.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Barton, Muth, and Hellen sold to public customers securities at prices that were unfair, in contravention of the NASD's Mark-Up Policy. According to the findings, markups on these transactions ranged from 25 to 75 percent over the prevailing market price of the securities. Moreover, the NASD determined that the respondents failed to inform investors of the excessive markups in connection with such transactions.

The findings also stated that Barton failed to establish, maintain, and/or enforce adequate written and unwritten supervisory procedures and granted a concession to a non-NASD member firm without obtaining assurances that the firm would comply with required NASD rules regarding its participation in a fixed-price offering. In addition, the NASD found that Muth and Hellen aided and abetted a scheme to manipulate the market price of a stock and sold unregistered securities to members of the public. Muth also engaged in outside business dealings without providing prior written notice to his member firm, according to the findings.

**Barry Alan Bates (Registered Principal, Aurora, Colorado)** submitted an Offer of Settlement pursuant to which he was fined \$1,000 and suspended from association with any member of the NASD in any capacity for five business days. Without admitting or denying the allegations, Bates consented to the described sanctions and to the entry of findings that he allowed a member firm to conduct a securities business while failing to maintain minimum required net capital.

**Philip S. Brown (Registered Representative, Denver, Colorado)** was fined \$3,000 and suspended from association with any member of the NASD in any capacity for two business days. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 3. The sanctions were based on findings that Brown executed unauthorized transactions in the joint accounts of public customers.

**Stephen Lawrence Brown (Registered Representative, Portland, Oregon)** submitted an Offer of Settlement pursuant to which he was suspended from association with any member of the NASD in any capacity for seven days. Without admitting or denying the allegations, Brown consented to the described sanction and to the entry of findings that he effected the purchase of securities in the account of two customers without their

knowledge or consent.

**Bruce H. Chandler (Registered Representative, Aurora, Colorado)** was fined \$10,000. The sanction was imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 3. The sanction was based on findings that Chandler effected transactions in the accounts of two public customers without obtaining the customers' prior authorization.

**David D. Curtis (Registered Representative, Casper, Wyoming)** was fined \$10,000 and suspended from association with any member of the NASD in any capacity for 30 days. In addition, Curtis must requalify by examination as a general securities representative. The sanctions were based on findings that Curtis guaranteed a public customer against loss in connection with the customer's purchase of stock. Curtis also engaged in private securities transactions without providing prior written notification to his member firm.

**David Steelsmith Elliott (Registered Principal, Bellevue, Washington)** was barred from association with any member of the NASD in any capacity. The sanction was imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 3. The sanction was based on findings that Elliott failed to pay a \$1,305 arbitration award.

**First Inland Securities, Inc. (Spokane, Washington) and Glen Lamoyne Ottmar (Registered Principal, Spokane, Washington)** submitted an Offer of Settlement pursuant to which they were fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that, in violation of SEC Rule 15c2-6, the firm, acting through Ottmar, effected numerous purchases of common stock in designated securities on behalf of retail customers prior to obtaining required suitability statements.

**First Investors Corporation (Seattle, Washington) and Howard A. Washburn (Registered Principal, Renton, Washington)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$25,000 and Washburn was fined \$10,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that First Investors failed to establish and maintain adequate written and unwritten supervisory procedures to detect and prevent the recommendation and sale of unsuitable investments to public customers. The findings also stated that Washburn failed to supervise two registered representatives properly to ensure their compliance with applicable NASD rules.

**James Albert Gillespie (Registered Representative, Portland, Oregon)** was fined \$20,000, barred from association with any member of the NASD in any capacity, and required to requalify by examination before again acting in any registered capacity. The sanctions were imposed by the NASD's Board of Governors on review of a decision by the DBCC for District 3. The sanctions were based on findings that Gillespie recommended to a public customer the purchase and sale of securities in the customer's account without having reasonable grounds for believing such recommendations were suitable considering her financial situation and needs. Gillespie also failed to respond to NASD requests for information.

**Ronald Alan Harry (Registered Representative, Salt Lake City, Utah)** was fined \$50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Harry made misrepresenta-

tions of material facts and failed to inform an investor of a material fact in order to induce the investor to purchase limited partnership interests. In addition, Harry exercised discretion in a public customer's account without obtaining prior written discretionary trading authority. Harry also forged, or caused to be forged, a customer's signature to certain documents.

**Mark Eugene Hennick (Registered Representative, Anchorage, Alaska)** was fined \$100,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Hennick recommended and effected unsuitable mutual fund transactions in the accounts of public customers. Specifically, he failed to utilize either rights of accumulation or letters of intent that would have allowed the customers to take advantage of lower break-point sales charges. In addition, Hennick engaged in short-term trading of mutual funds by recommending to customers and effecting the same-day purchase and sale of mutual fund shares. Hennick also engaged in switching (i.e., having customers sell one mutual fund and purchase another fund with the same investment objective). As a result of these activities, Hennick caused public customers to pay higher sales charges and commissions.

**Hutchinson Financial Corporation n/k/a Princeton American Equities Corporation (Phoenix, Arizona)** was fined \$10,000. The sanction was imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 3. The sanction was based on findings that the firm failed to pay a \$37,465 NASD arbitration award promptly.

**Lawrence Ward Johnson (Registered Representative, Spokane, Washington)** was fined \$6,000, suspended from association with any member of the NASD in any capacity for 90 days, and required to requalify by examination prior to acting again 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 3. The sanctions were based on findings that Johnson engaged in two private securities transactions without providing prior written notice to his member firm.

**Bradley M. Katz (Registered Representative, Boulder, Colorado)** was fined \$15,000. The sanction was based on findings that Katz effected an unauthorized securities transaction in a customer's account.

**Klaus Langheinrich (Registered Representative, Murray, Utah), Michael S. Langheinrich (Registered Representative, Salt Lake City, Utah), and Russell R. Haden (Registered Principal, Sandy, Utah).** Klaus Langheinrich was fined \$10,000. Michael Langheinrich was fined \$57,500 and barred from association with any member of the NASD in any capacity. Haden was fined \$20,000, barred from association with any member of the NASD as a registered principal, 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 DBCC for District 3. The sanctions were based on findings that Michael Langheinrich received from a public customer a \$10,000 check for the purchase of securities. He failed to apply the funds to the purchase and, instead, endorsed the check and deposited the money into a bank account under his control. Michael Langheinrich also failed to respond to NASD requests for information. In ad-

dition, Klaus and Michael Langheinrich accepted from public customers four checks totaling \$27,000 intended for the purchase of securities without providing prior written notification of these transactions to their member firm.

Moreover, Haden failed to enforce his member firm's supervisory procedures. Specifically, he allowed customer funds to be deposited into the firm's trading accounts and received funds totaling \$24,000 as capital contributed to the firm, in violation of the provisions of the firm's written supervisory procedures.

**John D. Knudson (Registered Representative, Evergreen, 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 Knudson participated in private securities transactions while failing to provide prior written notice to his member firm. Knudson also failed to respond to NASD requests for information.

**Theodore Joseph Meyer (Registered Representative, Redmond, Washington)** was fined \$10,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Meyer failed to pay a \$700 arbitration award.

**B. Douglas Petersen, Jr. (Registered Principal, Fort Collins, Colorado)** was fined \$109,860 and barred from association with any member of the NASD as a registered principal. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 3. The sanctions were based on findings that Petersen effected 108 principal transactions in the accounts of public customers at prices that were unfair based on all relevant circumstances. These circumstances include the fact that his former member firm effected 82 percent of all principal trades during this period and that the markups charged on these transactions ranged from 11.52 to 122.22 percent above the firm's contemporaneous cost for these securities.

**Richard Douglas Ryder (Registered Representative, Medford, Oregon)** was barred from association with any member of the NASD in any capacity. The sanction was based on findings that Ryder solicited public customers and accepted from them three checks totaling \$78,243.84 for investment purposes. Ryder negotiated and deposited these checks into an account in which he was a signatory. In addition, his member firm had no knowledge of these investments, nor were they developed or offered by the firm. Ryder also failed to respond to NASD requests for information.

**Randy Kenneth Schrader (Registered Representative, Boise, Idaho)** submitted an Offer of Settlement pursuant to which he was fined \$24,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Schrader consented to the described sanctions and to the entry of findings that he accepted a \$4,000 check from a public customer with instructions to deposit the funds into an Individual Retirement Account (IRA). Schrader failed to follow the customer's instructions and, instead, deposited the funds into his personal account.

**John W. Shaffer (Registered Representative, Phoenix, Arizona)** was fined \$25,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Shaffer falsified his member firm's books and records by causing new-account information for public customers to contain incorrect addresses in order to circumvent state securities laws. In addition, Shaffer induced customers to purchase

securities by making misrepresentations that included guarantees of profits and lack of risk. Shaffer also failed to respond to NASD requests for information.

**Dirk Edward Tinley (Registered Representative, Denver, Colorado)** 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 10 business days. Without admitting or denying the allegations, Tinley consented to the described sanctions and to the entry of findings that he effected unauthorized transactions in the accounts of public customers.

**Kenneth D. Todd (Registered Representative, Denver, 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 Todd failed to pay a \$9,704.11 arbitration award and failed to respond to NASD requests for information.

**Weldon Sullivan Carmichael & Company (Denver, Colorado) and Jumetta Gail Posey (Registered Principal, Denver, Colorado)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through Posey, conducted a securities business while failing to maintain minimum required net capital. In addition, the NASD found that the firm failed to maintain current books and records.

**Paul F. Wickswat (Registered Representative, Issaquah, Washington)** was fined \$15,000 and suspended from association with any member of the NASD in any capacity for 15 days. The sanctions were affirmed by the SEC following an appeal of a decision by the NASD's Board of Governors. The sanctions were based on findings that Wickswat exercised discretionary power in a customer's account without receiving prior written discretionary authorization from the customer or approval from his member firm. Wickswat also made unsuitable recommendations to a customer concerning sales of uncovered put options.

Wickswat's suspension commenced January 2, 1990 and concluded January 16, 1990.

**Mark Daniel Zura (Registered Representative, Denver, Colorado)** was fined \$10,000 and suspended from association with any member of the NASD in any capacity for 30 days. The sanctions were based on findings that Zura executed securities transactions in two accounts of a public customer without obtaining the customer's prior authorization and consent.

**Kevin Lloyd Bedford (Registered Representative, St. Louis, Missouri)** was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Bedford failed to respond to NASD requests for information concerning his termination from a member firm.

**William Joseph Brackmann (Registered Representative, Grandview, Missouri)** 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, Brackmann consented to the described sanc-

tions and to the entry of findings that he was instructed by a public customer to obtain a loan against the customer's life insurance policy and to use the proceeds to purchase an annuity. Brackmann, instead, obtained a \$19,565 cashier's check, deposited the check into his personal checking account, and converted the funds to his own use and benefit, according to the findings.

**Jerry Michael Irwin (Registered Representative, Kansas City, Missouri)** was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Irwin failed to respond to NASD requests for information concerning customer complaints.

**Glen Ellis McNeese (Registered Representative, Springfield, Missouri)** was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that McNeese failed to respond to NASD requests for information concerning his termination from a member firm.

**Candace Patricia Omlid (Registered Representative, Manchester, Missouri)** submitted an Offer of Settlement pursuant to which she was fined \$50,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Omlid consented to the described sanctions and to the entry of findings that, without the knowledge or consent of her member firm, she issued checks totaling \$138,651 to another representative, endorsed the checks, and deposited the funds in their joint bank account, thereby converting the funds of her member firm to her own use and benefit.

**Jeffrey Alan Schultz (Associated Person, Englewood, New Jersey)** was fined \$100,000 and barred from association with any member of the NASD 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. The sanctions were based on findings that Schultz engaged in a fraudulent scheme whereby he effected a series of purchase and sale transactions in high-yield corporate debt securities with broker/dealers and public customers at prices that were unfair, excessive, and detrimental to his employer member firm. Schultz knowingly entered into these transactions for the purpose of generating profits in accounts of relatives, friends, and acquaintances that resulted in substantial losses for his employer member. In addition, Schultz exercised discretionary authority in a public customer's account without submitting the customer's prior written authorization to his member firm.

**Summit Investment Corp. (Minneapolis, Minnesota), Robert H. Paymar (Registered Principal, Minneapolis, Minnesota), and Richard Stockness (Registered Representative, Minneapolis, Minnesota)** submitted an Offer of Settlement pursuant to which they were fined \$32,000, jointly and severally. In addition, the firm was prohibited from making markets in non-Nasdaq over-the-counter equity securities for one year beginning December 3, 1991. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Paymar, effected as principal sales of common stocks to public customers at prices that were unfair. The markups ranged from 9 to 100 percent above the prevailing market price. The NASD also found that Stockness accepted orders from public customers to purchase shares of a common stock when he knew that the prices charged to customers were unfair.

**Westonka Investments, Inc. (Minnetonka, Minnesota) and Timothy J. Friederichs (Registered Principal, Minnetrista, Minnesota)** submitted an Offer of Settlement pursuant to which they were fined \$50,000, jointly and severally, and the firm was prohibited from making markets in non-Nasdaq equity securities for two years starting December 30, 1991. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Friederichs, effected as principal sales of securities to public customers at prices that were excessive.

**District 5 - Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Oklahoma, and Tennessee**

**Robert A. Amato (Registered Representative, New Orleans, Louisiana), William C. Boehmer, Jr. (Registered Representative, Metairie, Louisiana), Charles D. Block, Jr. (Registered Representative, New Orleans, Louisiana), and Adrian Pellegrin (Registered Representative, Houma, Louisiana).** Amato was fined \$20,000, suspended from association with any member of the NASD in any capacity for four weeks, and required to requalify by examination as a registered representative. Boehmer, Block, and Pellegrin were each fined \$5,000, suspended from association with any member of the NASD in any capacity for one week, and required to requalify by examination as a registered representative.

The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 5. The sanctions were based on findings that, in contravention of the NASD's Mark-Up Policy, the respondents engaged in securities transactions with public customers at prices that reflected unfair markups in excess of 10 percent.

Amato, Boehmer, and Block have appealed to the SEC, and their sanctions are not in effect pending consideration of the appeals.

The suspension of Pellegrin began with the opening of business November 18, 1991, and concluded November 22, 1991.

**Richard A. Bailey (Registered Representative, Ada, Oklahoma)** 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 one week. Without admitting or denying the allegations, Bailey consented to the described sanctions and to the entry of findings that he made various misleading representations to public customers concerning securities purchases. Specifically, the findings stated that Bailey falsely represented to the customers that their investments were fully insured by the U.S. government.

Furthermore, the NASD determined that he failed to disclose to the customers that the net asset value of their shares could change significantly as interest rates fluctuated and that a portion of their dividends might constitute a return of capital. The NASD also found that Bailey made written guarantees to public customers and failed to obtain prior approval from his member firm before transmitting the written agreements or correspondence to the customers.

**John B. Bonifay (Registered Representative, Cordova, Tennessee)** was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Bonifay completed and signed a customer's name to an IRA application form on be-

half of the public customer. Bonifay also made purchase and sale transactions in the joint account of public customers without the knowledge or consent of the customers. In addition, Bonifay failed to respond to NASD requests for information.

**Gary Edward Bryant (Registered Principal, Costa Mesa, California) and Stephen Roger Lowry (Registered Representative, Doraville, Georgia).** Bryant was fined \$15,000 and required to requalify by examination as a general securities principal or to cease association with any member in any capacity. Lowry was fined \$12,000. The sanctions were based on findings that, while associated with a member firm, Bryant conducted a securities business at a time when the firm failed to maintain its required minimum net capital. Bryant also failed to supervise properly the activities of a registered representative to ensure compliance with the NASD's Mark-Up Policy. Furthermore, Lowry effected municipal securities transactions with retail customers as a principal at aggregate prices that were unfair.

**Thomas L. Hudman (Registered Representative, Oklahoma City, Oklahoma)** 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 one week. Without admitting or denying the allegations, Hudman consented to the described sanctions and to the entry of findings that he engaged in a practice of floating funds among his checking accounts at two local banks and his cash account at his member firm. Furthermore, the NASD found that this activity ultimately caused three checks that had been deposited into Hudman's account with his member firm to be returned due to insufficient funds.

**M. Leslie Jolly (Registered Representative, Girard, Kansas)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$1,000 and suspended from association with any member of the NASD in any capacity for three weeks. Without admitting or denying the allegations, Jolly consented to the described sanctions and to the entry of findings that she executed in the account of a public customer securities transactions that were approved by the customer's banker. Jolly failed to obtain a written power of attorney authorizing the banker to execute transactions in the customer's account, according to the findings.

In addition, the NASD found that Jolly exercised discretionary power in the account of the same customer without obtaining prior written authorization from the customer and prior written acceptance of the account as a discretionary account by her member firm.

**Rufus M. Langford, III (Registered Representative, Clinton, Mississippi)** 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, Langford consented to the described sanctions and to the entry of findings that he forged the signatures of 19 public customers in connection with their purchases of mutual funds or variable annuity contracts.

The NASD found that Langford received funds totaling \$86,433.94 from public customers for investment purposes and, instead, converted the funds to his own use without the knowledge or consent of the customers. The findings also stated that, in connection with the sale of a trust fund, Langford made misleading representations to public customers and provided the customers with written correspondence confirming such misrepresentations without obtaining prior approval from his member firm.

In addition, Langford failed to respond to NASD requests for information.

**MLB Investments, Ltd. (Denver, Colorado), Kenneth L. Lucas (Registered Principal, Englewood, Colorado), Jeffrey E. Modesitt, Sr. (Registered Principal, Littleton, Colorado), James W. Magner (Registered Representative, Denver, Colorado), Charles W. Day, Jr. (Registered Principal, Pensacola, Florida), Kristi D. Edwards (Registered Representative, Pensacola, Florida), Raymond R. Parmer, Sr. (Registered Representative, Mobile, Alabama), Kevin R. Smith (Registered Representative, Pensacola, Florida), Orville Baldrige, Jr. (Registered Representative, Pensacola, Florida), Jerry F. Wilson (Registered Representative, North Bergen, New Jersey), and Scott Schaeffer (Registered Principal, Holiday, Florida).**

The firm was fined \$15,000 and ordered to disgorge \$100,048.74 to the NASD, jointly and severally with Lucas, Modesitt, Magner, and Day. Lucas and Modesitt were also suspended from association with any member of the NASD in any principal capacity for one month. Magner and Day were suspended from association with any member of the NASD in any capacity for one month. In addition, Edwards, Parmer, Smith, Baldrige, and Wilson were suspended from association with any member of the NASD in any capacity for one week. Schaeffer was suspended from association with any member of the NASD in any capacity for one month and ordered to disgorge \$19,982.63 to the NASD. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 5.

The sanctions were based on findings that, in contravention of the NASD's Mark-Up Policy, the firm, acting through Magner, Day, Edwards, Parmer, Smith, Baldrige, Wilson, and Schaeffer, engaged in securities transactions with public customers on a principal basis at prices that were unfair. In addition, this activity was found to have been fraudulent in nature on the part of the firm, Magner, and Day.

Specifically, the respondents entered into purchase and sale transactions in a common stock that were not reasonably related to the current market price of the securities in that they imposed excessive markups ranging from 10 to 139 percent above the firm's contemporaneous cost. In conjunction with these transactions, the firm, acting through Magner, Day, Edwards, Schaeffer, Parmer, Smith, Baldrige, and Wilson, failed to disclose to investors that excessive markups and markdowns were charged. Furthermore, the firm, acting through Magner and Day, neglected to inform the investors that the firm dominated and controlled the market for the securities and that the prices charged were not determined by an active, competitive market.

Lucas and Modesitt failed to exercise reasonable and proper supervision over the other respondents in connection with the aforementioned activity. In addition, Lucas and Modesitt failed to establish, maintain, and enforce written procedures governing the imposition of markups and markdowns on principal transactions.

Lucas and Modesitt have appealed this action to the SEC, and their sanctions are not in effect pending consideration of the appeal.

**David A. Sabens (Registered Representative, Metairie, Louisiana)** was fined \$75,000 and barred from association with any member of the NASD 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 5. They were based on findings that Sabens made vari-

ous misrepresentations to public customers in connection with sales and concerning their investments. He also recommended and effected securities transactions in the accounts of public customers without having reasonable grounds for believing that the recommendations were suitable.

In addition, Sabens exercised discretionary power in the accounts of public customers and effected transactions in the customers' accounts without prior written authorization from the customers or written acceptance of the accounts as discretionary by his member firm. Furthermore, Sabens recommended that two customers open a joint account to purchase shares in an initial public offering in order to circumvent state securities rules. Sabens also engaged in unauthorized purchases and sales of securities in the account of a public customer.

**Jim A. Turley (Registered Representative, Dallas, Texas)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was suspended from association with any member of the NASD in any capacity for two weeks. Without admitting or denying the allegations, Turley consented to the described sanction and to the entry of findings that he guaranteed a public customer against losses in his securities accounts.

**U.S. Associates, Inc. (Little Rock, Arkansas), Rondell E. Loftin, Sr. (Registered Principal, Little Rock, Arkansas), Douglas F. Shivers (Registered Principal, Hot Springs, Arkansas), Ronald F. Davis (Registered Representative, Lonoke, Arkansas), John E. Shivers (Registered Principal, Maumelle, Arkansas), and Bobby J. Johnston (Registered Principal, Houston, Arkansas).** The firm was expelled from membership in the NASD. Loftin was fined \$40,000 and suspended from association with any member of the NASD in any principal capacity for two years and in any capacity for 30 days. Douglas Shivers was fined \$2,000 and suspended from association with any member of the NASD in any capacity for one month.

In addition, Davis was fined \$15,000 and suspended from association with any member of the NASD in any capacity for 60 days. John Shivers was suspended from association with any member of the NASD in any capacity for two years, and Johnston was suspended from association with any member of the NASD in any capacity for one year.

The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 5. The sanctions were based on findings that the firm, acting through Davis and Johnston, executed or caused to be executed certain government securities purchase and sale transactions with public customers and failed to disclose to the customers that the purchase and sale prices were artificially established and not reasonably related to the current market prices for the securities. Furthermore, the findings stated that the purchase and sale transactions represented a practice commonly known as adjusted trading by which the respondents offered one customer a security at a price higher than the market in order to allow the customer to avoid recognizing a loss on the sale. The firm recouped its loss by selling the same security to another customer at a price in excess of the current market price for such security. John Shivers knowingly and recklessly assisted in these fraudulent activities.

In addition, the firm, acting through Douglas Shivers, Davis, John Shivers, and Johnston, executed or caused to be executed certain government securities purchase and sale transactions with public customers at prices that included excessive markups and markdowns.

Furthermore, Loftin directly or indirectly controlled Douglas Shivers, Davis, John Shivers, and Johnston in connection with the above activities.

Douglas Shivers, Davis, and Johnston have appealed this case to the SEC, and their sanctions are not in effect pending consideration of the appeal.

**Thomas E. Watson (Registered Representative, Lexington, Kentucky)** was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Watson signed a public customer's name to checks totaling \$1,365 and converted the monies to his own use without the knowledge or consent of the customer. In addition, Watson failed to respond to NASD requests for information.

**Joyce N. Westmoreland (Registered Representative, Baton Rouge, Louisiana)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$15,000, suspended from association with any member of the NASD in any capacity for one year, and barred from association with any member of the NASD in any principal capacity. In addition, she must requalify by examination as a general securities representative. Without admitting or denying the allegations, Westmoreland consented to the described sanctions and to the entry of findings that she falsified her member firm's books and records. Specifically, the NASD found that she opened a securities account and effected transactions in the account without disclosing to her member firm that the beneficial owner of the account was her brother.

#### District 6 - Texas

**Richco Securities, Inc. (Dallas, Texas) and Hamilton Farrar Richardson (Registered Principal, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that, in connection with the contingent offer and sale of shares of common stock, the firm, acting through Richardson, failed to transmit investors' funds to an escrow account and caused investors' funds to be released to the issuer when the minimum number of shares had not been sold.

In a related offering, the NASD found that the firm, acting through Richardson, failed to return investors' funds when the appropriate event or contingency had not occurred. The NASD also found that the firm, acting through Richardson, failed to maintain its required minimum net capital and conducted a general securities business while Richardson acted in a general securities capacity without proper registration. Furthermore, the NASD determined that Richco failed to evidence supervision of at least 105 subscription documents received from investors in the private placements it sold and to maintain current written supervisory procedures.

**Curtis Delain Cloud (Registered Principal, Grapevine, Texas)** was fined \$525,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Cloud misappropriated and converted to his own use \$473,415 from public customers without the knowledge or consent of the customers. In addition, Cloud failed to respond to NASD requests for information.

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

**Addison Financial Services, Inc. (Palm Harbor, Florida) and William A. Maddox (Registered Principal, Clearwater, Florida)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$18,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Maddox, paid commissions to five associated persons prior to their effective registrations with the NASD.

The NASD also found that the firm, acting through Maddox, failed to notify the NASD of the loss of the firm's sole registered options principal. Furthermore, the findings stated that the firm continued to effect options trades after the termination of its registered options principal. In addition, the NASD determined that the firm, acting through Maddox, effected 43 opening options transactions, including 35 transactions in discretionary accounts, without supervision by a registered options principal and without reflecting on order tickets that discretion had been exercised.

**B C Financial Corporation (Atlanta, Georgia), Ricky Ervin Hartness (Registered Principal, Atlanta, Georgia), and David Stephen Disner (Registered Principal, Dunwoody, Georgia).** The firm was fined \$20,000, suspended from membership in the NASD for 30 days, and required to pay \$53,030.63 in restitution to public customers. The sanctions against the firm were based on findings by the DBCC for District 7. Separately, Hartness and Disner submitted Offers of Settlement pursuant to which Hartness was fined \$20,000 and barred from association with any member of the NASD in any capacity. Disner was fined \$5,000 and suspended from association with any member of the NASD in a principal capacity for 45 days.

In addition, Disner must disassociate himself from any involvement in the establishment of markup policies or guidelines at any member firm for a period of two years and from any involvement in discussions and/or decisions regarding which securities his current member firm acts as a market maker in or trades on a principal basis with retail customers.

Without admitting or denying the allegations, Hartness and Disner consented to the described sanctions and to the entry of findings that the firm, acting through Disner, effected as principal over-the-counter corporate securities transactions with public customers at prices that were unfair. The NASD also found that the firm, acting through Hartness and Disner, permitted Hartness to function as a general securities principal without being registered with the NASD as such. In addition, the firm conducted a securities business while failing to maintain its required minimum net capital. And the findings stated that Hartness caused the firm to file a materially inaccurate FOCUS Part I report with the NASD.

**Mirza Baig (Registered Representative, Springhill, Florida)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$1,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Baig consented to the described sanctions and to the entry of findings that he entered into an agreement with another individual by which that individual took a

qualification examination on Baig's behalf by representing himself as Baig.

**Clive F. Bamford (Registered Representative, Treasure Island, Florida)** was fined \$10,000 and suspended from association with any member of the NASD in any capacity for 30 days. The sanctions were based on findings that Bamford effected, or caused to be effected, the purchase and sale of shares of common stock in the accounts of public customers without the knowledge or consent of the customers.

**Scott Thomas Barrett (Registered Representative, Palm Harbor, Florida)** was barred from association with any member of the NASD in any capacity. The sanction was based on findings that Barrett obtained \$30,000 from a public customer by representing that the customer could get a higher return on the funds than she could get through her existing securities holdings if the customer loaned the funds to Barrett. Barrett had no factual basis for making such a representation.

**John Edward Chiesa (Registered Representative, West Palm Beach, Florida)** was fined \$5,000 and barred from association with any member of the NASD 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 7. The sanctions were based on findings that Chiesa failed to pay a \$1,350 arbitration award.

**Randy F. DeFilippis (Registered Representative, Elberon, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$4,000, suspended from association with any member of the NASD in any capacity for two years, and required to requalify by examination as a general securities representative. Without admitting or denying the allegations, DeFilippis consented to the described sanctions and to the entry of findings that he took a qualification examination on behalf of a registered representative and received \$2,000 in compensation from that person.

**Robert Keith Fetter (Registered Representative, Chamblee, Georgia)** was fined \$12,525, suspended from association with any member of the NASD in any capacity for 30 days, and ordered to reimburse his member firm \$2,700. In addition, Fetter must requalify by examination before acting in any registered capacity. The sanctions were based on findings that Fetter effected a series of unauthorized securities transactions for the securities accounts of public customers.

**First Eagle, Inc. (Englewood, Colorado), Barry Wayne Fortner (Registered Principal, Aurora, Colorado), and Terry Dale Bixler (Registered Principal, Aurora, Colorado).** The firm was fined \$100,000 and expelled from membership in the NASD, and Fortner was fined \$130,000 and barred from association with any member of the NASD in any capacity. The sanctions against the firm and Fortner were based on findings by the DBCC for District 7. Bixler 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, Bixler consented to the described sanctions and to the entry of findings that, in contravention of the NASD's Mark-Up Policy, the firm, acting through Fortner and Bixler, effected as principal for its own account over-the-counter sales of a common stock to public customers at prices that were unfair. In addition, the firm, acting through Fortner, failed to establish, maintain, and enforce written supervisory procedures.

**Gregory J. Francis (Registered Representa-**

**tive, Jacksonville, Florida)** was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that, without the knowledge or consent of a public customer, Francis instructed a member firm to change the address of the customer to a post office box over which he exercised control. Francis then instructed the member firm to issue two checks totaling \$5,450 to the same customer. Francis obtained the funds and converted the proceeds to his own use and benefit.

**Guardian International Securities Corp. (Hallandale, Florida) and Kenneth Cutler (Registered Principal, Miami, Florida).** The firm was fined \$5,000 and was required to pay \$26,412 in restitution to customers. Cutler was fined \$25,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that the firm, acting through Cutler, effected as principal for its own account over-the-counter sales of a common stock to public customers at prices that were unfair, with markups ranging up to 55 percent above the firm's contemporaneous cost.

**John J. Jobson (Registered Representative, Melbourne Beach, Florida)** 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, Jobson consented to the described sanctions and to the entry of findings that he received checks totaling \$4,000 from a public customer for investment purposes. Instead, the NASD found that Jobson negotiated the checks and remitted the proceeds in cash to a third party who then disappeared with the funds.

**Scott E. Jones (Registered Representative, Plantation, Florida)** 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. Without admitting or denying the allegations, Jones consented to the described sanctions and to the entry of findings that he prepared and provided to a public customer a profit-and-loss summary of transactions effected in the customer's account which represented that the customer had realized losses of approximately \$16,000 when, in fact, the customer's account had generated losses of about \$56,000.

The findings stated that Jones provided the same customer with a \$56,000 personal check intended to reimburse the customer for the losses in his account, but the check was returned due to insufficient funds. The NASD also found that Jones provided another public customer with a \$90,000 check and falsely represented to him that the check was issued from the customer's account by Jones' member firm when the customer's account actually did not have such funds in it and the check was returned due to insufficient funds.

In addition, without the knowledge or authorization of the same customer, the NASD determined that Jones obtained blank checks from the customer's personal checking account, completed them in amounts totaling \$191,421.25, and deposited the checks in the customer's account, but the checks were returned due to insufficient funds.

**Allen Gerard Koehler (Registered Principal, Palm Harbor, Florida)** was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Koehler remitted a \$2,539.82 personal check to his member firm for the purchase of securities in his securities account. Thereafter, Koehler intentionally withdrew funds from his bank account, which caused the check to be returned for

insufficient funds. In addition, Koehler failed to provide financial records requested by the NASD.

**Lauran Capital Corp. (Miami Lakes, Florida), Lauran Ida Hausdorff (Registered Principal, Boca Raton, Florida), and Abraham Daniels (Associated Person, Miami, Florida)** were each fined \$20,000. Hausdorff and Daniels were also barred from association with any member of the NASD in any capacity. The sanctions were based on findings that the firm, acting through Hausdorff, permitted Daniels to be associated with and act as a representative of the firm when he was not registered with the NASD, was subject to a disqualification, and had been denied readmission as a registered representative by the NASD's Board of Governors. Furthermore, Daniels represented himself as president of Lauran Capital without having a factual basis for making such representation. In addition, the firm, acting through Hausdorff, failed to respond to an NASD request for information.

**Russell E. McKinnon, II (Registered Representative, Treasure Island, Florida)** was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that McKinnon converted customer funds totaling \$20,000 to his own use and benefit without the knowledge or authorization of the customer. In addition, McKinnon failed to respond to an NASD request for information.

**Robert Bruce Orkin (Registered Principal, Boca Raton, Florida)** was fined \$15,000 and suspended from association with any member of the NASD in any principal capacity for 90 days. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 7. The sanctions were based on findings that a member firm, acting through Orkin, effected, as principal for its own account, over-the-counter sales of corporate securities to public customers at prices that were not fair.

Orkin has appealed this case to the SEC, and his sanctions are not in effect pending consideration of the appeal.

**Dominick C. Parlapiano (Registered Representative, Coral Gables, Florida)** 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. Without admitting or denying the allegations, Parlapiano consented to the described sanctions and to the entry of findings that he instructed his member firm to change the address of a public customer to an address over which he had control without the customer's knowledge or consent. Parlapiano then made requests to have checks totaling \$216,088.22 drawn on the customer's account and negotiated and converted the funds to his own use and benefit, according to the findings. Furthermore, the NASD found that, in order to prevent the customer from discovering the withdrawal of funds from the account, Parlapiano sent fictitious monthly account statements to the customer.

**Henry Michael Parnes (Registered Representative, Miami, Florida)** was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Parnes received from a public customer insurance premium payments totaling \$35,000 that he converted to his own use and benefit.

**Gerard Thomas Scholz (Registered Representative, Orlando, Florida)** was fined \$10,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Scholz failed to give his

member firm prompt written notice of his association as an officer of a Florida corporation. In addition, Scholz engaged in private securities transactions without providing prior written notice to his member firm.

**David W. Small (Registered Representative, Tampa, Florida)** was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Small caused the address of a public customer to be changed to reflect first his business address and then his personal address. Thereafter, Small caused his member firm to issue three checks totaling \$11,000 from the customer's life insurance policy, forged the customer's endorsement on the checks, and converted the funds to his own use and benefit without the knowledge or authorization of the customer. In addition, Small failed to respond to an NASD request for information.

**James Charles Tindell (Registered Principal, Atlanta, Georgia)** was fined \$10,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Tindell failed to respond to an NASD request for information concerning a customer complaint. Furthermore, as a condition for entering into a monetary settlement pertaining to the customer complaint, Tindell required the customer to agree not to cooperate in any investigation or potential disciplinary proceeding by any government or self-regulatory authority.

**James A. Waters (Registered Representative, Inman, South Carolina)** 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, Waters consented to the described sanctions and to the entry of findings that he converted customer funds totaling \$4,652.47 to his own use and benefit without the knowledge or consent of the customers.

**David E. Willis (Registered Principal, Lakeland, Florida)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000, jointly and severally with a former member firm, suspended from association with any member of the NASD in any capacity for 10 days, and required to requalify by examination as a principal. Without admitting or denying the allegations, Willis consented to the described sanctions and to the entry of findings that a former member firm, acting through Willis, effected securities transactions with public customers while failing to maintain its required minimum net capital. In addition, Willis, acting on behalf of the same firm, induced public customers to purchase mutual funds by means of a materially misleading and deceptive prospectus, according to the findings.

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

**Timothy E. Alexander (Registered Representative, Powell, Ohio)** was fined \$50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that, on behalf of public customers, Alexander submitted false or forged applications to his member firm for the purchase of annuity contracts. In addition, Alexander failed to respond to NASD requests for information.

**Jason T. Blount (Registered Representative, Monroe, Ohio)** was fined \$50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Blount forged 50 customer signatures on applications to purchase annuities without the knowledge or consent of the customers. He also submitted eight other applications to his member firm on behalf of fictitious customers. In addition, Blount failed to respond to NASD requests for information.

**Gerald L. Carnill (Registered Representative, Troy, Michigan)** 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, Carnill consented to the described sanctions and to the entry of findings that he engaged in the sale of securities to public customers while failing to give prior written notification to his member firm of his intention to engage in such activity.

**Richardson J. Caton, III (Registered Representative, Oakfield, New York)** 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, Caton consented to the described sanctions and to the entry of findings that he failed to pay in full an arbitration award of \$1,228 plus interest. In addition, Caton failed to respond to NASD requests for information.

**Gregory D. Funk (Registered Representative, Fort Wayne, Indiana)** was fined \$1,250 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Funk obtained from a public customer \$1,126.96 intended for the purchase of an insurance contract. Contrary to the customer's instructions and without the customer's knowledge or consent, Funk caused \$240.92 of the funds to be used to pay insurance premiums for four other individuals. This resulted in additional commission payments to Funk.

**Frank C. Gruska (Registered Representative, St. Cloud, Minnesota)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$15,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Gruska consented to the described sanctions and to the entry of findings that he sent to a public customer a statement falsely representing that he had sold a high-yield bond for the customer's account. Moreover, the NASD found that Gruska continued to send to the customer monthly statements purporting to show that the proceeds from the aforementioned sale had been invested into a mutual fund as instructed by the customer when, in fact, no such investment was made.

**William Kirby Johnson (Registered Representative, Knoxville, Tennessee)** 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 60 days. Without admitting or denying the allegations, Johnson consented to the described sanctions and to the entry of findings that he purchased two option contracts for the account of a public customer without the customer's knowledge or consent and in the absence of written or oral authorization to exercise discretion in the account. The NASD also found that Johnson failed to respond to NASD requests for information.

**Henry J. Karcher (Registered Representa-**

**tive, Sylvania, Ohio)** 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. Without admitting or denying the allegations, Karcher consented to the described sanctions and to the entry of findings that he converted to his own use and benefit customer funds totaling \$26,587.28 without the knowledge or consent of the customer.

**Thomas B. Kennedy (Registered Representative, Warren, Michigan)** was fined \$21,964 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Kennedy obtained \$1,964 in cash from public customers for the purchase of insurance policies. Kennedy failed to purchase the policies and, instead, misappropriated and converted the funds to his own use. In addition, Kennedy failed to respond to NASD requests for information.

**Cynthia L. Kline (Registered Representative, Pittsford, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$15,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Kline consented to the described sanctions and to the entry of findings that she failed to respond to NASD requests for information concerning her termination from a member firm.

**Lawrence J. Kouri (Registered Representative, Akron, Ohio)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$1,000 and suspended from association with any member of the NASD in any capacity for six months. Without admitting or denying the allegations, Kouri consented to the described sanctions and to the entry of findings that his member firm issued to a public customer a \$56.34 check that Kouri deposited in his personal bank account and converted to his own use without the knowledge or consent of the customer.

**Matanky Securities Corporation (Chicago, Illinois) and Barry B. Kreisler (Registered Principal, Chicago, Illinois)** were fined \$10,000, jointly and severally. These sanctions were affirmed by the SEC following an appeal of a decision by the NASD's Board of Governors. The sanctions were based on findings that the firm, acting through Kreisler, represented that limited partnership interests were offered on an "all-or-none" basis and that investors' funds would be refunded if the contingencies were not satisfied. All of the interests were not sold, yet the investors' funds were never refunded. Furthermore, the investors' funds were not properly transmitted to a separate escrow account and, in fact, the funds were expended from the partnership bank account before the contingencies were met.

In addition, the firm violated its voluntary restrictive agreement with the NASD in that it held funds received in connection with the aforementioned limited partnerships. The firm also effected securities transactions with public customers while failing to maintain sufficient net capital.

**J. Douglass Ryan (Registered Representative, Warren, Ohio)** submitted an Offer of Settlement 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, Ryan consented to the described sanctions and to the entry of findings that, in contravention of the Board of Governors' Interpretation concerning Private Securities Transactions, Ryan failed to provide prior written notification to his member firm that he sold promissory notes that

were issued by another firm. The NASD also found that the securities Ryan sold were not registered with the SEC.

**Peter W. Schellenbach (Registered Principal, Glencoe, Illinois)** was fined \$50,000, jointly and severally with a former member firm. In addition, Schellenbach was suspended from association with any member of the NASD in any capacity for 60 days; barred in any principal, supervisory, or managerial capacity; and prohibited from maintaining any proprietary interest in any nonpublicly traded member of the NASD. The sanctions were affirmed by the SEC following an appeal of a decision by the NASD's Board of Governors. The sanctions were based on findings that a former member firm, acting through Schellenbach, failed to prepare and maintain accurate books and records, effected transactions in securities while failing to maintain minimum required net capital, and prepared and filed inaccurate FOCUS Parts I and IIA reports for certain periods. The respondents also filed the firm's annual audited report late for one year and failed to file its audited financial statements the following year.

Schellenbach engaged in a pattern of activity designed to give the illusion that the firm was in compliance with net capital requirements by effecting purchases and subsequent resales of accounts receivable of the firm at month's end on four separate occasions. In addition, the firm, acting through Schellenbach, failed to establish, maintain, and enforce adequate written supervisory procedures. Moreover, they failed to review and provide evidence of approval in writing on all correspondence of its registered representatives pertaining to the solicitation or execution of securities transactions.

Schellenbach has appealed this case to the U.S. Court of Appeals, and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

**Robert H. Schreiber (Registered Principal, Westerville, Ohio)** submitted an Offer of Settlement pursuant to which he was fined \$15,000 and required to requalify by examination as a general securities principal. If Schreiber does not requalify within 90 days, he will be suspended from acting as a principal until he requalifies. Without admitting or denying the allegations, Schreiber consented to the described sanctions and to the entry of findings that, in contravention of the Board of Governors' Free-Riding and Withholding Interpretation, he purchased shares of a new issue that traded at a premium in the immediate aftermarket.

**Ronald E. Stoltzfus (Registered Representative, Ashland, Ohio)** 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, Stoltzfus consented to the described sanctions and to the entry of findings that he received a \$1,674 check from a public customer intended for payment of annual insurance premiums. Contrary to the customer's instructions and without the knowledge or consent of the customer, the NASD found that Stoltzfus deposited the funds into a bank account that he controlled. In addition, Stoltzfus failed to respond to NASD requests for information.

**Richard Harry Swanson (Registered Representative, Marion, Iowa)** submitted an Offer of Settlement 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, Swanson consented to the described sanctions and to the entry of findings that he received from public customers funds totaling

\$1,100 for investment purposes. Swanson failed to follow the customers' instructions and, instead, converted the funds to his own use and benefit. In addition, Swanson failed to respond to NASD requests for information.

**Fredric J. VanPelt (Registered Representative, Chippewa Lake, Ohio)** was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that VanPelt failed to respond to NASD requests for information concerning his termination from a member firm.

**August E. Zabel (Registered Representative, Green Bay, Wisconsin)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$100,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Zabel consented to the described sanctions and to the entry of findings that he obtained funds from at least 10 public customers for the purchase of insurance products. Without the customers' knowledge or consent, the NASD found that Zabel failed to purchase such products and used the funds for his own benefit. Zabel also failed to respond to NASD requests for information.

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

**Bradley & Company, Inc. (Potomac, Maryland)** and **Bruce F. Bradley (Registered Principal, Potomac, Maryland)** submitted an Offer of Settlement pursuant to which they were fined \$15,000, jointly and severally. Bradley was also suspended from association with any member of the NASD in any principal capacity for one month and required to requalify by examination before again becoming registered as a principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Bradley, effected securities transactions while failing to maintain minimum required net capital and failed to maintain in its books and records accurate net capital computations.

The findings also stated that the firm, acting through Bradley, filed inaccurate FOCUS Parts I and IIA reports and filed a Form BDW that stated inaccurately that the firm had ceased conducting a securities business when, in fact, it continued to conduct a securities business. The NASD further found that Bradley & Company was suspended from membership in the NASD for failing to file its annual audited report for 1987 but continued to conduct a securities business while suspended.

**B. Stephen Clay (Registered Representative, Annapolis, Maryland), John Duncan Bowsman (Registered Principal, Jacksonville, Florida), and James Everett Whittenberg, Jr. (Registered Principal, Crownsville, Maryland).** Clay was fined \$35,000 and barred from association with any member of the NASD in any capacity. The sanctions against Clay were based on findings by the DBCC for District 9. Bowsman and Whittenberg submitted an Offer of Settlement pursuant to which Bowsman was suspended from association with any member of the NASD in any principal capacity for five days, and Whittenberg was suspended from association with any member of the

NASD in any principal capacity for three days.

The sanctions were based on findings that Clay recommended to two customers the purchase of low-priced, speculative securities when he knew, or should have known, such securities were not suitable investments for the customers. In addition, Clay effected excessive securities transactions in these customers' accounts, generating gross commissions amounting to 33 and 37 percent of the customers' initial cash investments.

Without admitting or denying the allegations, Bowsman and Whittenberg consented to the described sanctions and to the entry of findings that they failed to supervise Clay's activities properly to prevent the aforementioned violations.

**David W. Cook, Jr. (Registered Representative, Greensburg, Pennsylvania)** submitted an Offer of Settlement pursuant to which he was fined \$1,500 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Cook consented to the described sanctions and to the entry of findings that he failed to respond to numerous NASD requests for information regarding customer complaints.

**Harry S. Davis, III (Registered Representative, Baltimore, Maryland)** was fined \$35,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that he misappropriated insurance premiums totaling \$4,882 from nine customers and failed to respond to NASD requests for information.

**Homestead Capital Corporation (Mechanicsburg, Pennsylvania)** and **Scott T. Mumma (Registered Principal, Carlisle, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$10,000, jointly and severally.

Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through Mumma, participated in three contingent offerings of limited partnership units and failed to transmit funds received from the sales of such units into an escrow account. According to the findings, the firm, acting through Mumma, released the aforementioned funds to issuers before the contingencies had been met and failed to return subscribers' funds when all units had not been sold by the termination date. Furthermore, the NASD determined that they attempted to alter the terms of one of the offerings by changing the nature of the contingency while failing to comply with the requirements established by the SEC to effect such changes.

The findings also stated that Homestead Capital, acting through Mumma, effected securities transactions when it failed to maintain minimum required net capital and failed to prepare an accurate general ledger, trial balance, and net capital computation. Moreover, the NASD found that the firm, acting through Mumma, filed inaccurate FOCUS Parts I and IIA reports and failed to give prompt telegraphic notice of the aforementioned net capital deficiencies until instructed to do so by the NASD.

**Harry B. Lentz III (Registered Representative, Hazleton, Pennsylvania)** was fined \$25,000 and barred from association with any member of the NASD 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 9. The sanctions were based on findings that Lentz forged the signatures of three public customers on insurance policy applications and submitted them to his member firm without the customers' knowledge or consent. Lentz also failed to respond to NASD requests for information.



**Princeton Financial Group, Inc.** (Princeton, New Jersey), **Anthony J. Pontieri** (Registered Principal, Spotswood, New Jersey), and **Jerry F. Shorhouse** (Registered Principal, Monmouth Junction, New Jersey) submitted an Offer of Settlement pursuant to which they were fined \$1 million, jointly and severally. In addition, the firm was expelled from membership in the NASD, and Pontieri and Shorhouse were 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 Shorhouse and Pontieri, effected as principal sales of non-Nasdaq over-the-counter securities to public customers at unfair and unreasonable prices, including markups of more than 10 percent above the firm's contemporaneous costs. According to the findings, the firm, acting through Shorhouse and Pontieri, engaged in acts, practices, and conduct that operated as a fraud and deceit on the purchasers of the aforementioned securities. The respondents made unsuitable recommendations to customers and made exaggerated projections concerning future price appreciation in the security, the findings stated.

The NASD also found that the firm, acting through Shorhouse and Pontieri, failed to make certain disclosures to customers concerning the securities, to contact and obtain the required quotations from other dealers in the security, and to indicate on order tickets for each transaction the name of the dealers contacted and the quotations received to determine the best interdealer market.

In addition, the NASD determined that the firm, acting through Shorhouse and Pontieri, failed to establish and maintain adequate written procedures in order to supervise its activities properly and failed to respond to NASD requests for information in a timely manner.

**John M. Reynolds** (Registered Representative, Gaithersburg, Maryland) was fined \$60,771 and barred from association with any member of the NASD in any capacity. The sanctions were affirmed by the SEC following an appeal of a decision by the NASD's Board of Governors. The sanctions were based on findings that Reynolds caused a customer to engage in excessive purchase and sale transactions with a frequency and volume of trading (more than \$1 million in purchases) that were inconsistent with the customer's financial situation and investment objective. In addition, Reynolds recommended and purchased securities for the same account that were primarily nondividend-paying growth stocks, while the customer's objectives and needs were for regular income and preservation of capital.

**Linda C. Talbott** (Registered Representative, Weston, West Virginia) was fined \$15,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Talbott failed to respond to NASD requests for information concerning a customer complaint.

**Gratian Michael Yatsevitch, III** (Registered Principal, Denver, Colorado), **Craig Tillman Zerbe** (Registered Principal, Falls Church, Virginia), **Michael Allen Whelchel** (Registered Representative, Great Falls, Virginia), and **Louis R. Cerasuolo, Jr.** (Registered Representative, Las Vegas, Nevada). Yatsevitch, Zerbe, and Whelchel submitted an Offer of Settlement pursuant to which Yatsevitch was fined \$25,000 and barred from association with any member of the NASD in any principal capacity. Zerbe was fined

\$9,500 and barred from association with any member of the NASD in any principal capacity. Whelchel was fined \$15,000 and suspended from association with any member of the NASD in any capacity for 30 days. Cerasuolo was fined \$1,000 and suspended from association with any member of the NASD in any capacity for 30 days. The sanctions against Cerasuolo were based on findings by the DBCC for District 9.

Without admitting or denying the allegations, Yatsevitch, Zerbe, and Whelchel consented to the described sanctions and to the entry of findings that a former member firm, acting through Yatsevitch and Zerbe, failed to make and preserve accurate books and records and conducted a securities business at times when it did not maintain minimum required net capital.

The NASD found that the firm, acting through Yatsevitch and Zerbe, filed inaccurate FOCUS Parts I and IIA reports and, in violation of the SEC's Customer Protection Rule, engaged in certain conduct including, among other things, failure to establish a Special Reserve Bank Account for the Exclusive Benefit of Customers. The firm, acting through Yatsevitch and Zerbe, maintained customer account forms that omitted required information and failed to reflect long or short position notations on order tickets, according to the findings. Furthermore, the NASD determined that Yatsevitch, Zerbe, and Whelchel disseminated to the public correspondence and sales literature containing false and misleading statements and that Yatsevitch and Zerbe failed to approve in writing and maintain a complete file of all correspondence, advertising, and sales literature. Moreover, the NASD found that Yatsevitch and Zerbe permitted individuals to conduct a general securities business without proper state registration.

The findings also stated that the firm, acting through Yatsevitch, changed its method of doing business in a manner that changed its exempt status under the Customer Protection Rule and began operations that disqualified it from continued exemptions under the rule without obtaining prior written approval of the NASD. In addition, the NASD determined that the firm, acting through Yatsevitch, failed to abide by the terms of its restrictive agreement with the NASD, failed to register a branch office promptly, and failed to complete or amend Uniform Applications for Securities Industry Registration (Form U-4) properly for certain of its registered persons.

Furthermore, the NASD found that the firm, acting through Yatsevitch, failed to maintain adequate supervisory procedures for its branch offices and off-site registered representatives, to supervise the activities of certain associated persons properly, to designate a current municipal securities principal, and to amend its Form BD promptly. Yatsevitch also allowed a statutorily disqualified individual to associate with the firm and permitted another individual to conduct business without proper registration, according to the findings.

The NASD found that Whelchel engaged in a general securities business in Maryland prior to becoming registered in that state. In addition, the NASD determined that Whelchel sold Treasury Interest Accrual Certificates and purchased Certificates of Accrual of Treasury Securities for a customer's account without obtaining the customer's authorization to effect the transactions.

The sanctions against Cerasuolo were based on findings that he sold to a public customer units in a direct participation program without being registered in a capacity that permitted him to sell such securities.

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

**Bruce J. Crabtree** (Registered Representative, Waterford, New York) was fined \$50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Crabtree converted customer funds to his own use and benefit by endorsing and depositing a \$10,700 IRA rollover check into his personal account. In addition, Crabtree failed to respond to NASD requests for information.

**John J. Egan** (Registered Representative, Brooklyn, New York) 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, Egan consented to the described sanctions and to the entry of findings that he misappropriated loan payments totaling \$1,250 from two public customers without the knowledge or consent of the customers.

**Gary Steven Lishnoff** (Registered Representative, Norwalk, Connecticut) was fined \$50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that, without a public customer's authorization, Lishnoff directed that a \$3,651.89 check be drawn on the customer's account. Lishnoff took possession of the check, forged the customer's endorsement, and cashed the check, thereby converting the proceeds to his own use and benefit. In addition, Lishnoff failed to respond to NASD requests for information.

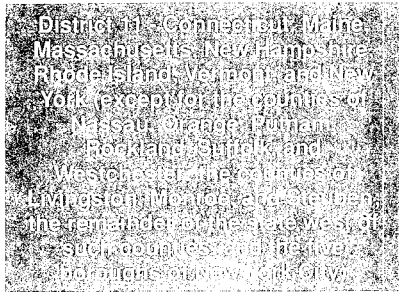
**Michael Paul McGowan** (Registered Representative, Guttenberg, New Jersey) submitted an Offer of Settlement pursuant to which he was suspended from association with any member of the NASD in any capacity for one year. Without admitting or denying the allegations, McGowan consented to the described sanction and to the entry of findings that he failed to pay a \$157.50 arbitration award in a timely manner.

**Alfred Arthur Napolitano** (Registered Representative, Stony Brook, New York) was fined \$5,000, suspended from association with any member of the NASD in any capacity for five business days, and required to requalify by examination as a general securities representative. If Napolitano does not requalify by examination, he will be suspended until such time as he has requalified. The sanctions were based on findings that Napolitano effected purchase transactions in the account of a public customer without the knowledge or consent of the customer. In addition, Napolitano failed to execute an order for the same customer to sell shares of common stock.

**Danny R. Silver** (Associated Person, Boca Raton, Florida) submitted an Offer of Settlement pursuant to which he was fined \$8,500 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Silver consented to the described sanctions and to the entry of findings that, in contravention of

the Board of Governors' Free-Riding and Withholding Interpretation. Silver failed to disclose he had a beneficial interest in an account that received shares of a new issue that traded at a premium in the immediate aftermarket.

**David J. Thornton (Registered Representative, Rahway, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$21,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Thornton consented to the described sanctions and to the entry of findings that he signed customers' signatures and altered documents in order to receive additional commissions without the knowledge or consent of the customers.



**Bison Securities, Inc. (Amherst, New York) and Michael Tripi (Registered Principal, Tonawanda, New York)** were fined \$90,000, jointly and severally, and the firm was suspended from membership in the NASD for six months. In addition, Tripi was suspended from association with any member of the NASD in any capacity for six months and required to requalify by examination as a principal. The sanctions were imposed by the NASD's Board of Governors following an appeal of a decision by the DBCC for District 11. The sanctions were based on findings that

the firm, acting through Tripi, effected sales of common stocks as principal with retail customers at prices that were unfair and unreasonable. The mark-ups on these transactions ranged from 60 to 100 percent above the prevailing market price of the securities. The firm and Tripi also executed with customers transactions in which the offsetting side of the trade was the firm's trading account. Bison and Tripi then sent to customers confirmations that indicated the transactions had been executed on a dual-agency basis when they actually were executed on a principal basis. Furthermore, the firm, acting through Tripi, failed to prepare and maintain accurate books and records and failed to file proper FOCUS Part IIA reports with the NASD.

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

**Leo R. Burns (Registered Representative, Leominster, Massachusetts)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$250,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Burns consented to the described sanctions and to the entry of findings that he misappropriated customer funds totaling \$243,500 that were invested in a limited partnership.

**Capital Shares, Inc. (North Providence, Rhode Island), Lawrence Caito (Registered Principal, Cranston, Rhode Island), and Terry D. Corsair (Registered Representative, Greenville, Rhode Island)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$50,000, jointly and severally. Also, Caito must take the NASD's Investment Company Variable Products Principal Examination, and Corsair must take the NASD's Investment Company and Variable Contracts Products Representative Examination.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Corsair, with undue frequency and without reasonable justification, recommended and caused the execution of transactions in the accounts of public customers involving the liquidation and reinvestment of mutual funds even though the recommendations were contrary to the best interest and welfare of the customers. In addition, the NASD found that the firm, acting through Caito, failed to enforce its supervisory procedures and to supervise the activities of Corsair.

**Raymond E. Shimkus (Registered Representative, Southborough, Massachusetts)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$150,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Shimkus consented to the described sanctions and to the entry of findings that, without the knowledge or consent of public customers, he withheld and misappropriated to his own use and benefit customer funds totaling \$160,000 that were intended for the purchase of an investment fund.

**Yankee Financial Group, Inc. (Bayshore, New York) and Richard F. Kresge (Registered Principal, Stamford, Connecticut)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$15,000, jointly and severally. In addition, Kresge must requalify by examination as a municipal securities principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Kresge, executed various municipal securities transactions as principal with customers at prices that were unfair and unreasonable. The NASD also found that the firm, acting through Kresge, allowed an associated person to engage in the investment banking or securities business of the firm prior to being effectively registered with the NASD.

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