

ALERT

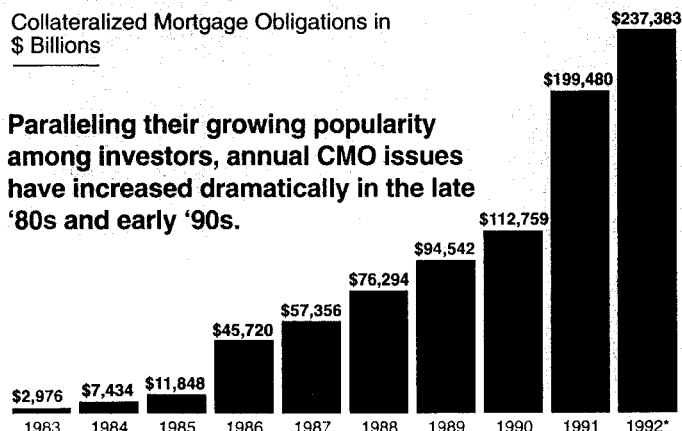
National Association of Securities Dealers, Inc.

Volume 6, Number 4 December 1992

New Amendments Require Prefiling of CMO Advertising

Collateralized Mortgage Obligations in \$ Billions

Paralleling their growing popularity among investors, annual CMO issues have increased dramatically in the late '80s and early '90s.



*1992 totals through September 30. Figures are the total CMOs issued per year that are backed by GNMA, FNMA, or FHLMC collateral. Source: First Boston Corp.

Members must now prefile advertisements concerning Collateralized Mortgage Obligations (CMOs) issued by a corporation or U.S. government agency, according to an amendments to the NASD's Rules of Fair Practice. The

amendments, effective November 16, 1992, will be reviewed after one year to evaluate effectiveness.

The NASD introduced the amendments to Article III, Section 35 because of increasing complaints about misleading language in CMO advertising. CMO advertisements are generally brief and highlight the investment's strong points: expected high yields, safety, government guarantees of repayment, and liquidity.

With declining interest rates, many *Continued, page 7*

NASD[®] Fines, Suspends Trader For "Marking the Close" Violations

The NASD[®] fined and suspended a New Jersey trader for artificially influencing the closing market price for securities traded in The Nasdaq Stock Market.SM

John G. Genovese, a registered principal from Jersey City reported 74 fictitious and 56 substantive transactions in 26 Nasdaq National Market[®] securities at or near the close of the market between February 15 and October 23, 1990.

Acting in his capacity as a trader at a member firm, he attempted to "mark the close" in all 130 transactions. Such activity is a violation of Article III, Sections 1 and 18 of the NASD's Rules of Fair Practice. The NASD also found that the fictitious transactions violated Article III, Section 5 of the NASD's

Rules of Fair Practice and Schedule D of the Association's By-Laws.

Based on the findings, Genovese was fined \$150,000, suspended from association with any NASD member in any capacity through June 30, 1993, and suspended from acting directly or indirectly as a Nasdaq[®] market maker until June 30, 1996.

Alerted to Genovese's actions by automated systems that monitor Nasdaq, the Market Surveillance Department conducted an investigation and presented its findings to the Market Surveillance Committee, which initiated the disciplinary action (*see related story, page 12*). □

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Editorial

NASD Shifts Emphasis in Securities Industry Regulation

by John Pinto, Executive Vice President, NASD Compliance

NASD disciplinary actions more than doubled in the four years that closed out the last decade. Reaching a high of 1,081 in 1989, they have also stayed near that record in the two years since, and will likely pass a thousand again when 1992 numbers are finally tallied. At the same time, NASD-assessed fines nearly doubled in the past two years. Do these figures signal that more violations are occurring?

Not at all. In fact, the vast majority of our members and their associated persons have the best interests of the investing public high in their priorities and operate in compliance with the myriad of securities laws, rules, and regulations.

A more likely cause for such notable increases in disciplinary actions, fines and other sanctions is the shifting NASD emphasis regarding how to regulate increasingly complex and expanding securities markets most effectively.

Charged with protecting the public interest while promoting member compliance with "high standards of commercial honor and just and equitable principles of trade," the NASD has made specific, fundamental changes over the past several years affecting both the style and scope of its regulatory methods. As a result, the NASD devotes more and more investigative attention to member sales and trading practices. This increased emphasis in recent years has by design served to strengthen both *remedial* and *preventive* compliance by all securities firms.

When it comes to self-regulatory organizations (SROs) like the NASD, publicity seems to dwell all too often on the

remedial measures, such as large fines, suspensions, and bars, at the expense of preventive ones. To be sure, enforcement is an effective deterrent to misconduct in the securities industry, but reinforcing proper business conduct through education, training and communication remains an equally important NASD goal.

NASD Examiners Adjust Examination Focus

In the past, NASD examinations tended to be broad in scope, covering virtually all aspects of a member's business, with a great deal of emphasis on the general financial condition of each firm. Routine examinations carried out by the 14 NASD district offices used to concentrate on every type of business a firm performed. As these activities became more complex, however, the NASD refocused its examinations for greater efficiency and effectiveness.

Consequently, individual district staffs now are given the authority to decide what specific area(s) of a firm's business to focus on during an examination. District staff can determine where a firm's primary business is, waive certain

New Advertising Question & Answer Feature

(see page 6)

Beginning with this issue of *NASD* Regulatory & Compliance Alert*, readers will notice a new and regular question and answer format, "Ask The Analyst," created to help members and their associated persons become more familiar with advertising rules and regulations. Please feel free to send us your advertising questions and comments!

routine parts of an examination, and concentrate on the main thrust of a firm's business, whether it's options, municipals, penny stocks, or any other.

In 1993, the NASD will go a step further by establishing a new cycle examination program that takes greater advantage of the national District office structure, empowering individual District staffs with even greater flexibility and responsibility to develop an examination plan. These geographically dispersed professionals are uniquely qualified and knowledgeable about the members—as well as the prevalent regulatory practices and problems—in their specific jurisdictions. After all, who knows better the regulatory

Probably the most frequent sales and trading practice violation—markups—relates directly to another subject of intense scrutiny, the penny stock industry. We've focused a tremendous amount of attention on both penny stocks and markups because of the significance of the violations occurring there. A few years ago, the NASD collected a \$2.05 million fine—to my knowledge, the largest fine ever paid to any SRO—for fraudulent markups in penny stock transactions.

As a result, the penny stock industry will remain a primary focus. The NASD will continue to conduct intensive annual sales-practice exams of firms specializing in such stocks. With

and increasingly popular types of investment.

Lower yields on short-term investments such as CDs have forced investors out of safer, guaranteed investments and into high-yielding and often riskier vehicles, such as Collateralized Mortgage Obligations (CMOs) and bond mutual funds. We examine member sales practices and supervisory efforts to ensure that investors are properly informed of any additional risks.

There have been instances where CD investors, expecting similar levels of safety, moved money into CMOs only to see their principal shrink. In

Year	1985	1986	1987	1988	1989	1990	1991	1992
Actions Taken	427	488	796	870	1,081	1,044	1,031	1,008*

*1992 figure is projected through the end of the year, actual 1992 actions taken through 9/30/92 is 756.

Actions taken by the NASD's District Business Conduct Committees and the Market Surveillance Committee have more than doubled in the past seven years.

priorities in, for example, Massachusetts than our Boston district office? By charging the Boston and other district offices with developing their own annual regulatory and examination plan, the NASD can better address localized areas of concern while also creating a uniform examination program nationwide for all our districts.

One consequence of our local examiners concentrating on member sales practice and of self-supervision has been a change in the types of violations uncovered. Now NASD enforcement cases more often involve egregious sales-practice misconduct—misrepresentation, unauthorized trades, unsuitable advice, unfair pricing, fraudulent markups, and churning—that leads to stronger sanctions, including larger monetary fines, orders of restitution to harmed parties, suspensions, bars, and expulsions.

the help of the Penny Stock Reform Act and the requirement of a risk disclosure document distributed to all penny stock investors *before* an investment is made, regulators have adopted a "get tough" policy toward penny stock fraud. Beginning in 1993 the NASD will engage in a joint effort with the Securities and Exchange Commission (SEC)—and interested state regulators—to examine how well firms are adhering to the new penny stock disclosure rules adopted by the SEC pursuant to the Penny Stock Reform Act.

Newer, Popular Investments Require Increased Supervision

As investors look for higher levels of income in a declining interest-rate environment—and as the investment industry looks to meet those needs—our examiners also have heightened their scrutiny of sales practices for newer

response, the NASD now requires adequate disclosure of the inherent risks of CMOs and other such investments. With CMOs in particular, new advertising rules and guidelines—such as the recent member requirement to pre-file CMO advertisements—ensure proper disclosure to investors. Members have also been alerted to the need to heighten their own internal supervision of sales activities and suitability standards. This attention to self-supervision not only promotes better awareness among investors and NASD members, but also reduces the potential for abuses

Promoting Education Among Members Remains Key

Member education and awareness remain the keys to our all-important preventive efforts. A better educated, more informed member will be better equipped to establish its own self-

regulatory procedures, maintain high standards of conduct, and thereby reduce the need for NASD enforcement actions.

We continually explore, therefore, new ways to improve communication with our membership. Through two national conferences and several local seminars organized by our District offices, our members can now interact with the NASD while also getting familiar with topical issues such as markup policies, net capital requirements, Small Order Execution System (SOES)SM trading, CMOs, and many other regulatory concerns. Publications, such as the one you are now reading, keep NASD members abreast of securities industry regulation and further our basic goal of preventive education.

Another important educational tool will soon be available to members —

Advertising

Avoid Improper References to Nonmember Entities

Based on material filed with the NASD Advertising Department, it appears that the practice of using nonmember names in advertising and sales literature continues to cause confusion among the membership.

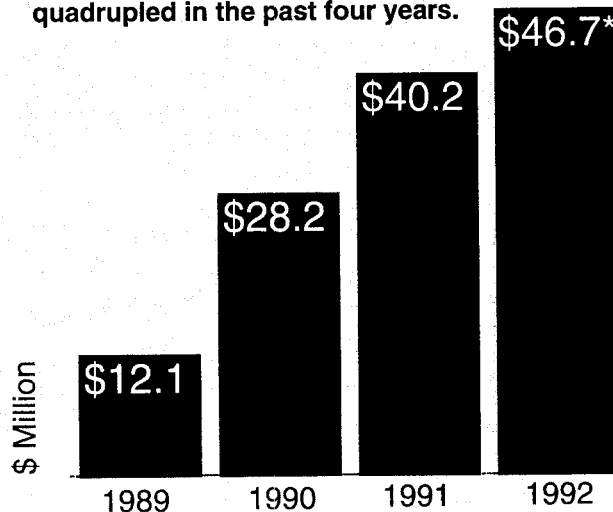
Article III, Section 35(f) of the NASD Rules of Fair Practice (amended on June 1, 1991) establishes standards for the use and disclosure of member names in public communications. Specifically, the 1991 amendment addresses confusion caused by commu-

NASD Sanction Guidelines. These guidelines, developed by the NASD National Business Conduct Committee, serve as guidelines in instances where violations of a similar nature have occurred. But because determining sanctions in specific cases can involve

any number of mitigating factors—such as breadth of the violation, frequency, egregious nature, intent, and the violator's past history—this publication, as its name implies, are *guidelines* for sanctions without establishing pre-set penalties. Publishing these broad guidelines, we expect, will show how seriously violations are treated by our business conduct committees and act as a deterrent to potential violators.

We expect as well that all of our refocused efforts—through examination, enforcement, and education—will result in better awareness among our members and their associated persons of the standards of proper conduct while accomplishing our primary function—protecting the best interests of all investors. □

As more serious sales and trading violations have been uncovered, NASD-assessed fines have nearly quadrupled in the past four years.



*As of October 31, 1992.

nications that list both NASD member firm names and nonmember names. Generally, members have made significant improvements in this area; however, some misunderstanding remains regarding the criteria for using fictitious or non-member names.

NASD members with registered representatives affiliated with bona fide legal entities — such as insurance agencies, registered investment advisers, or certified financial planning firms — may identify the names of these other busi-

nesses in their communications only if all relevant provisions of Article III, Section 35(f) are satisfied. The rule does not permit fictitious names in communications that are not bona fide legal entities, such as those often given to branch offices by registered representatives staffing the location, when no other business is conducted.

Members with questions regarding this issue can contact the Advertising Department at (202) 728-8330. □

Guide to Locating Advertising and Sales Literature Rules

In reviewing member advertising and sales literature, the Advertising Department staff generally refers to NASD, Municipal Securities Rulemaking Board (MSRB), and SEC advertising rules and guidelines. The following is a list of applicable rules and regulations that can be referenced.

NASD Rules

Approval and Filing Requirements and Standards for All Communications With the Public, Including Proper Broker/Dealer Identification

Article III, Section 35, NASD Rules of Fair Practice

Paragraph 2195, NASD Manual (page 2156)

Approval and Filing Requirements and Standards for Government Securities Advertising and Sales Literature

Section 8, NASD Government Securities Rules

Paragraph 2428, NASD Manual (page 2267)

Notice to Members 92-59 regarding SEC approval of amendments requiring members to prefile Collateralized Mortgage Obligation (CMO) advertisements

Restrictions On Advertising Non-Branch Office Locations

Article III, Section 27(g)(2), NASD Rules of Fair Practice

Paragraph 2177, NASD Manual (page 2110)

Notice to Members 92-18 regarding SEC approval of amendments to the definition of branch office

Approval and Filing Requirements and Standards for All Options-Related Communications With The Public

Article III, Section 35A, NASD Rules of Fair Practice

Paragraph 2195A, NASD Manual (page 2174)

Notice To Members 91-62 regarding SEC approval of advertising standards for options-related communications

SEC Rules

The "Tombstone Advertising Rule"

SEC Rule 134, Securities Act of 1933
Paragraph 5281, NASD Manual (page 5041) CFR 230.124

The "Generic Advertising Rule" for Mutual Funds and Other Investment Company Securities

SEC Rule 135a, Securities Act of 1933
Paragraph 5282, NASD Manual (page 5045) CFR 230.135a

The "Omitting Prospectus Rule" for Mutual Funds and Other Investment Company Securities

SEC Rule 482, Securities Act of 1933
Paragraph 5283, NASD Manual (page 5055) CFR 230.482

The "Sales Literature Rule" for Performance of Open-End Mutual Funds and Variable Annuities

SEC Rule 34b-1, Investment Company Act of 1940
Paragraph 5284, NASD Manual (page 5057) CFR 270.34b-1

Other Rules

Approval Requirements and Standards for Municipal Securities Sales Material

Rule G-21, MSRB Rules
Paragraph 3601, MSRB Manual (page 4955)

Requirements for Identifying Securities Investor Protection Corporation (SIPC) Membership in Advertising

Article 11, Section 4, By-Laws of SIPC
Available from Advertising Department staff

Guidelines

NASD Fixed Income Committee Guidelines for CMO Bond Advertising

Notice to Members 92-27 regarding CMO advertising by NASD members

Guidelines for Government Securities Advertising

Available from Advertising Department staff

Guidelines for Discount Brokerage Service Communications

Available from Advertising Department staff

“ASK THE ANALYST”

Because the NASD Advertising Department receives many questions from members on a variety of topics — and through any number of forums — we will regularly provide the following question-and-answer format in each issue of *NASD Regulatory & Compliance Alert (RCA)*. We believe this format will enhance our overall communication with you, responding to individual questions while also informing the membership-at-large about both common and specialized advertising and sales literature topics.

We invite members to “*Ask the Analyst*” any question concerning advertising and sales literature. While we cannot guarantee that all questions will be published, we will respond to all questions — either through *RCA* or by directly contacting you. If you have any suggestions or comments, please don’t hesitate to contact us. We look forward to hearing from you.

NASD Vice President Clark Hooper recently fielded the following questions at an Insurance Affiliated Broker/ Dealer Forum held in Milwaukee.

Q. Are members usually required to pay additional filing fees when the NASD Advertising staff requests that advertising material needing substantial revisions be resubmitted?

A. Yes. The NASD may request resubmission for any number of reasons, including, but not limited to the following: the recommended revisions were substantial enough to change the entire meaning of the material; a visual impact may be changed and judgment as to whether the revised material is in compliance must be re-examined; or, although revisions were advised, specific language was not suggested by the analyst and resubmission of the revised language is necessary.

Q. Can registered representatives use independent rating services such as Morningstar and Standard & Poor’s, when selling mutual funds?

A. When the sales literature is preceded or accompanied by a prospectus, this practice is permitted. Of course, the sales material should

describe the criteria used to arrive at a specific rating.

Q. Can an agent give “client specific” fund performance figures without adding the one-, five-, and ten-year average annual returns and fund disclosures?

A. Yes. However, hypothetical performance cannot be provided in this manner. As long as the performance is being “reported” to a client who owns the mutual fund shares, and not “solicited” for sale, standardized performance figures are not necessary.

Q. May one member use, without refiling, sales literature virtually identical to another member’s if that piece has already been filed with and approved by the NASD?

A. Yes. Members may use, without refiling, material already filed with and approved by the NASD Advertising staff. However, when using already-filed sales material:

- It must be relevant and not be misleading in the current market environment; and
- The member must ensure that, among other things, any statistical data is updated.

Also, the originally-approved material — and its accompanying NASD comment letter — should be maintained with the second firm’s sales material in its advertising file.

Q. Are issuer-distributed mutual funds subject to the same advertising rules (482, 134) as NASD members?

A. Yes. Rules 482 and 134 are Securities and Exchange Commission rules and must be adhered to by all registered mutual funds, regardless of whether the distributor is a member of the NASD.

Please send your comments, suggestions, and questions to:

**NASD Advertising Department
1735 K Street, NW
Washington, DC 20006
Attn: “Ask the Analyst”** □

CMOs, continued from page 1

NASD members have stepped up marketing efforts on CMOs that offer higher yield opportunities than short-term investment vehicles, such as certificates of deposit (CDs) and money market funds. Increasing concerns regarding the complexity of CMOs, however, have resulted in closer attention to how they are advertised by members. Often CMO advertisements inadequately distinguish individual CMO issues. For example, whether a CMO is interest only or principal only can affect substantially its prepayment predictability or volatility. In many instances, interest-only and principal-only CMO investments offer higher yields, but the associated prepayment risks leave many investors in a losing situation.

The interest only and principal only characteristics of CMOs are particularly relevant, given the current interest rate environment where many individuals are repaying mortgages. In a declining

interest rate environment, mortgage holders tend to pay off old mortgages to refinance at more attractive rates. Consequently, principal-only CMO investors get their principal back early and have to reinvest at lower-than-expected interest rates. Interest-only CMO investors lose, too, as their investment can be totally dependent on the income stream derived from mortgages. Consequently, mortgage prepayments may leave interest-only investors with a halted income stream and, in many cases, a total investment loss.

The amendments should further assist an investor's understanding of CMOs. The pre-filing amendment follows an NASD recommendation (first reported in the May 1992 issue of Notice to Members) that CMO advertising comply with certain minimum standards. Noting the increasing popularity of CMOs as an investment alternative, the NASD Fixed Income Securities Committee recommended that standard-

ized disclosure for CMOs should include a prominent final maturity date of the security, describe the initial issue tranche, disclose the fact that changes in prepayments may significantly affect yield and average life, and exclude any comparisons to CDs or any other investment vehicle.

Members are reminded that so-called "tombstone" advertisements of CMOs, which are corporate securities registered under the Securities Act of 1933, are excluded from this filing requirement (see Article III, Section 35 (c)(6)(F) of the Association's Rules of Fair Practice). Such advertising is limited in content to the provisions of SEC Rule 134, located in paragraph 5281 in the *NASD Manual*, and must otherwise comply with the standards set forth in Article III, Section 35(d).

For more information on these amendments, see *Notice to Members 92-59* (November 1992). □

Fredric Roberts Named Chairman, Peter Madoff Is Vice Chairman

NASD Elects New Chairman, Board of Governors

Corporate finance specialist Frederic M. Roberts was newly elected as Chairman of the NASD Board of Governors, along with new Vice Chairman Peter B. Madoff. In addition, the NASD announced five new governors-at-large and various other NASD officials at the Board's meeting in mid-November.

"This is a time of tremendous change in the financial services industry and capital markets generally," says Roberts, who moves up from his position as Chairman of the NASD National Business Conduct Committee (NBCC). "The new Board will be focusing its energies on ensuring that the NASD and Nasdaq, as industry leaders, anticipate that change and, in doing so, continue to develop, operate, and regulate markets that are the most liquid, efficient, and fair."

Beginning in January 1993, Roberts and the other new Board members will head the NASD's 5,200 member firms and 429,000 registered industry professionals. Roberts, the president of F. M. Roberts & Company, Inc. in Los Angeles, California, will succeed outgoing Chairman Charles B. Johnson, president of California-based Franklin Distributors Inc. and its parent company Franklin Resources, Inc.

Roberts founded F. M. Roberts & Company in 1980, after serving as a corporate finance executive at Lehman Brothers, Loeb Rhodes & Co., and E. F. Hutton & Co. The company offers specialized services in corporate finance, private placements, public offerings, mergers and acquisitions, financial restructuring, and corporate advisory services.

Madoff has been with New York City-based Bernard L. Madoff Investment Securities for over 20 years and is currently its executive managing director. He has also served the NASD as its District 10 Committee Chairman, Intermarket Trading System Committee Chairman, and as a member of the Trading and Options Committees.

Succeeding Roberts as NASD NBCC Chairman is Robert Kleinberg, Executive Vice President and General Counsel of Oppenheimer & Co., Inc. The NBCC's new Vice Chairman is William R. Rothe, a Managing Director and Head of Nasdaq/OTC Trading at the Baltimore investment banking firm of Alex. Brown & Sons Incorporated.

The Board also elected five new Governors-at-Large to three-year terms: Bert C. Roberts, Jr., chairman and chief

executive officer of MCI Communications Corporation; John W. Rogers, Jr., president and founder of Chicago-based Ariel Capital Management, Inc.; Charles R. Schwab, chairman and founder of Charles Schwab & Company, Inc.; A. A. Sommer, Jr., a partner at Morgan, Lewis & Bockius of Washington, D.C. and SEC Commissioner from 1973-1976; and Madelon DeVoe Talley, an author, investment consultant, and trustee of the New York State Teachers' Retirement System.

District Elections

The following five individuals were elected to three-year terms on the Board through the individual district election process:

John E. Schmidt, Regional Managing Director and Resident Branch Manager of the First Boston Corporation in San Francisco, California; District 1.

Ian B. Davidson, Chairman and Chief Executive Officer of D.A. Davidson & Co. and DADCO; District 3.

James S. Holbrook, Jr., President and Chief Executive Officer of Sterne, Agee & Leach, Inc., in Birmingham, Alabama; District 5.

Parks H. Dalton, Chairman and Chief Executive Officer of Interstate/Johnson Lane, Dalton in Charlotte, North Carolina; District 7.

Richard G. McDermott, Jr., President of Chapdelaine & Company in New York City; District 10. □

COMPLIANCE SHORT TAKES

Associated persons of members must inquire of selling customers whether an order is a long or short sale and then note as such on any sales ticket, as required by Article III, Section 21(b)(i) of the NASD's Rules of Fair Practice. If a short sale, the member must make an *affirmative determination* that it will either receive delivery of the security from the customer — or borrow the security on behalf of the customer — for its delivery by settlement date.

The NASD regularly reviews members' short-sale procedures for compliance with the Board of Governors' Interpretation of the Prompt Receipt and Delivery of Securities (Interpretation) in Article III, Section 1 of the NASD Rules of Fair Practice. According to Section (b)(2)(a) of the Interpretation, no member shall *accept* a short-sale order for any customer — including retail, institutional, and hedge fund customers — in any security *unless* the member makes an affirmative determination that it will receive delivery of the security from the customer, or that it can borrow the security on behalf of the customer for delivery by settlement date. This requirement does not apply, however, to transactions in corporate debt securities. With regard to equity securities, this interpretation exempts from the affirmative determination requirement *only* bona fide market-maker transactions which result in fully hedged or arbitrated positions. To rectify any possible confu-

sion by members, please note that this inquiry/recordkeeping requirement clearly applies to institutional and hedge fund customers. □

Members or their associated persons could accept individual gifts or gratuities valued at up to \$100 if the SEC approves an amendment to Article III, Section 10(a) of the NASD Rules of Fair Practice.

That rule covers how members or their associated persons reward, or are rewarded by, persons or companies related to the member's business. The NASD last adjusted the gratuity rule eight years ago, when it raised the cap to \$50 from \$25. □

Sanctioned members or associated persons will no longer pay a monthly service charge on monetary penalties paid in installments if the SEC approves a NASD proposed rule change.

Currently, sanctioned members or associated persons who pay their penalties in installments are charged a 10 percent monthly service charge. In reviewing its procedures for assessing and collecting fines on an installment basis, the NASD determined that it would be more effective to assess interest on the unpaid balance (the rate of interest initially set at the

prime rate of a designated money center bank plus 3 percentage points) and to require execution of a promissory note. □

Automated Confirmation Transaction (ACTSM) service rules have been amended to require that NASD members note the time of execution through ACT on any late-trade report, i.e., one reported after 90 seconds. As part of a program to report trades accurately, this measure requires SEC approval before it takes effect.

The NASD also plans to submit for SEC approval a measure that codifies members' obligation to submit full and complete trade details when using ACT. These trade-by-trade data are critical to the NASD's market surveillance program because they form the basis for its transaction audit trail.

"To ensure adequate compliance with its statutory responsibility, the NASD must have access to time of execution in all Nasdaq securities," said Jim Cangiano, Vice President, Market Surveillance. "It is necessary to enhance on-line monitoring for compliance with all rules to provide the ability to respond immediately to inquiries by market makers, Nasdaq companies, and public investors."

The NASD will modify the "short" ACT form for reporting trade data to permit input of execution time.

FCC Issues Cold-Calling Rule

In accordance with the Telephone Consumer Protection Act of 1991, the Federal Communications Commission (FCC) issued a cold-calling rule that went into effect on December 20. The rule establishes procedures to eliminate unwanted telephone solicitations to residences and regulates the use of automatic telephone dialing systems, pre-recorded or artificial voice messages, and telephone facsimile machines.

In particular, any firm that solicits customers or sales by means of cold calls must now abide by the following:

- **Time-of-day restrictions.** No cold calls may be made before 8 a.m. or

after 9 p.m. at the called party's location.

- **Do-not-call lists.** Firms must establish and maintain a do-not-call list. If called parties request that no further cold calls be made to them, their names must be added to the do-not-call list.
- **Identification requirements.** Persons making cold calls must provide the called party with the name of the caller, the person or organization on whose behalf the call is being made, and a telephone number and address at which the caller may be contacted.

- **Established procedures.** Firms must have a written policy concerning cold calling and the do-not-call lists.
- **Training requirements.** All personnel must be trained concerning cold-calling rules and the existence and use of do-not-call lists.

The new FCC rule excludes calls made to parties with whom the caller has an established business relationship and calls for which the calling party has received prior express invitation or permission. Members are urged to determine which requirements of the new rule, if any, apply to their particular businesses and to take whatever compliance actions are necessary. □

NASD Protects Investors With New Rollup Rules

The NASD recently approved new rules to establish specific criteria for NASD member participation in partnership rollups and to prohibit the Nasdaq National Market from listing any rollup securities that fail to meet such criteria. The NASD must still submit the proposal to the Securities and Exchange Commission for final approval.

"These rules would provide greater protection to customers of NASD members who bought partnerships in the 1980s," said Joseph R. Hardiman, NASD President and Chief Executive Officer. "The proposed rules would protect customers, if rollup securities are to be offered by NASD-affiliated broker/dealers, by ensuring that investors have alternatives so that they are not automatically locked into the rollup."

Rollups combine or reorganize one or more limited partnerships, directly or indirectly, so that investors in the original partnership(s) receive new securities or securities in another entity in exchange for their partnership interests. Partnerships are unincorporated businesses based on contractual relationships between two or more persons who share risks and profits.

Under the new rules, general partners or sponsors proposing a rollup must provide limited partners with alternatives to participation in the rollup before NASD members may participate in rollups and prior to the rollup can qualify for listing on Nasdaq. The alternatives to investors must include either: the right to receive compensation based on an appraisal of partnership assets; the right to receive or retain a security with rights, privileges, and preferences similar to their partnership

units; or other comparable rights.

The rules would also preclude NASD member participation in rollup transactions and listing on Nasdaq, where: the terms of the transaction unfairly reduce or abridge investor voting rights; investors bear an unfair portion of the costs of the rollup transaction; and, the conversion of general partner or sponsor compensation resulting from the rollup is unrestricted. "This is the third initiative taken by the NASD to address issues affecting partnership investors," Hardiman said. In August 1991, new NASD rules took effect that prohibit members from receiving compensation for obtaining only "yes" votes from limited partners in approving rollups. In March of this year, the NASD filed a proposal with the SEC that would require tougher criteria for partnerships intending to list on the Nasdaq National Market. □

RECENT SEC RULE INTERPRETATIONS

The SEC's Division of Market Regulation (DMR) periodically releases interpretations of specific questions that member firms have regarding financial operations rules. The following interpretations were released earlier this year.

Regarding SEC Rule 11d-1

In a new issue underwriting that utilizes a prime broker, neither the prime broker nor the executing broker are permitted to extend credit within 30 days of the new issue if either one was an underwriter.

□

Regarding Net Capital Impact of Awards, Settlements, etc.

Court Judgments—An adverse judgment against a member, at minimum, is a contingent liability and should be included in aggregate indebtedness. However, in some circumstances, such as an award from a jury, the amount of the award would be an immediate charge to capital unless there is an opinion from outside counsel which is found by the NASD and Securities and Exchange Commission to provide strong justification that the award will not stand after appeal. If a bond is required to be posted with the appeal, the cost of the bond would be a capital charge. Also, should the bond be collateralized by an asset of the member, the carrying value would be treated as a deduction from net worth.

Arbitration Awards—A capital charge is required at the time of the award.

Offers of Settlement with Regulators or Others—When a member makes an offer of settlement, a capital charge must be made, usually in the form of a reserve. If the offer is refused, the reserve entry is reversed.

When confronted with these situations, we recommend that members contact the local NASD District office and discuss the proper net capital treatment under each particular set of circumstances.

□

Regarding Valuation of Nasdaq Securities in Inventory

With the adoption of real-time trade reporting for Nasdaq Small-Cap Market™ stocks, newspapers now report last sale of all Nasdaq securities rather than bid/ask quotes. The closing price should be used to value both long and short positions when computing net worth. (Nasdaq National Market® system and listed securities are also valued in this manner.)

□

Regarding 15c3-1 Appendix C (Consolidations)

Not only must each broker or dealer which is included in a consolidated computation of net capital be in compliance with the net capital requirements to which it is subject without the benefit of the consolidation, but only the amount(s) in excess of the X17a-11 (early warning) levels(s) of each broker or dealer can be utilized in the consolidated computation. If a futures commission merchant is part of the consolidation, the early warning level would be 7 percent of segregation (reserve) items.

□

Regarding Savings and Loan Certificates of Deposit (CDs) in Book-Entry Form

These forms of CDs may be considered as being in a good control location only if the member has obtained a "no lien" letter similar to the kind required from banks holding 15c3-3 securities or deposits.

□

Regarding Prompt Return of Unearned Wrap Fees, Investment Advisory Fees, etc.

Many members offer their customers fee-related services. Some contracts for these services permit a partial refund of fees if the customer terminates the arrangement before the entire fee is earned. Such unearned fees would not be covered by SIPC and, therefore, should not be included as a credit item in the 15c3-3 Reserve Computation. The DMR, however, cautions that if an unearned fee is not promptly returned to a customer when requested, that unearned fee may be considered a free credit raising the member's capital requirement and making a 15c3-3 exemption unavailable.

Violations

NASD Action Upheld on Restriction Agreement Violations by Successor Members

The SEC affirmed sanctions against Colorado-based First Choice Securities Corporation and its president, Gregory F. Walsh, for opening two branch offices in violation of restriction agreement which the NASD had entered into with First Choice's predecessor firm, Plum Creek Securities, Inc. The SEC affirmed the NASD's findings that First Choice accepted Plum Creek's restrictions by accepting its benefits of pre-existing NASD membership.

Following the appeal, the firm was forced to close those branch offices for which it has not received specific written approval to open from the NASD. In addition, the firm and Walsh were

fined \$10,000 jointly and severally.

The NASD found that in violation of the restriction agreement, First Choice Securities — acting through Walsh — opened two branch offices without obtaining prior approval from the NASD District 3 Office in Denver. The findings stated that Plum Creek was incorporated in 1985 and became a member of the NASD on February 12, 1986. On January 12, 1989, the firm entered into a restriction agreement with the NASD in which it agreed, among other things, that it would not "open any branch offices without obtaining prior approval from the District office." In February, 1989,

Plum Creek was transferred to a new group of principals and the firm changed its name to First Choice Securities Corporation. The NASD granted this request and First Choice assumed Plum Creek's membership as a successor organization.

First Choice requested that it be released from the restriction agreement, asserting that it was not bound by Plum Creek's actions. Despite an NASD denial of this and subsequent requests, First Choice opened two branch offices without first obtaining approval from the NASD District Office. □

SEC Affirms NASD Sanctions Against Former Blinder, Robinson Officials

In the most significant markup policy and practice decision issued by the SEC since a case involving Alstead Dempsey and Company, Inc., in 1984, the SEC affirmed in October 1992 NASD sanctions against five former officials of Colorado-based penny stock firm Blinder, Robinson & Co., Inc.

A 1988 NASD decision had found Blinder, Robinson officials Meyer Blinder, John J. Cox, Steven B. Theys, Harold W. Gorden, and Anthony J. Beshara responsible for charging unfair and fraudulently excessive markups to the firm's customers in the sale of common stock for Telephone Express Corporation (Telephone Express). Consequently, the NASD censured all five respondents, suspended them from association with any NASD member in any capacity for 90 days, and fined

them \$250,000. On appeal, the SEC affirmed the findings and sanctions, which began for Blinder, Cox, Theys, and Beshara on November 2, 1992. The SEC granted Gorden a 60-day stay of the sanctions pending his appeal to the Federal Court of Appeals.

The NASD action centered on a Blinder, Robinson initial public offering of 30 million shares (at a penny per share) of Telephone Express stock — an over-the-counter stock. The firm underwrote the offering and sold it entirely to its own customers. The NASD and SEC found that during the first month of aftermarket trading, Blinder Robinson dominated and controlled the market for Telephone Express, and that in over 1,300 sales of the stock to its customers, the firm charged egregious markups of from 11

to 150 percent. NASD rules require firms to charge customers reasonable and fair markups, generally not more than 5 percent of the prevailing market price.

The NASD and SEC rejected the respondents' argument that the firm's ask quotations were prevailing market prices. According to the SEC, it was highly improbable that any competitive market in the stock could have developed away from Blinder Robinson. The SEC also held that since Blinder Robinson's bid and ask quotations for the stock were not subject to competition from other dealers, the firm's contemporaneous cost in purchasing the stock was a better measure of the prevailing market price at all relevant times. □

NASD Disciplines Member, President for Misleading Practices

A Louisiana-based NASD member was expelled, and its president suspended, for distributing misleading sales literature to prospective investors, according to the findings of the NASD District Business Conduct Committee in New Orleans.

Graham Securities Corporation of Covington, Louisiana — and its president, Pete G. Theo — violated the NASD's Rules of Fair Practice by distributing material that omitted essential disclosures. Graham Securities was expelled from the NASD and paid a fine of \$250,000. In addition, the firm demonstrated that it entered into settlements with various customers for an amount totaling approximately \$5 million. The NASD also suspended Theo for six months from October 19, 1992, barred him from association with any NASD member in any principal capacity, and he paid a fine of \$25,000.

Without admitting or denying the allegations, both Graham Securities and Theo agreed to the sanctions arising from their promotion of oil and gas partnerships — the *Prudential-Bache Energy Growth Funds* and the *Prudential-Bache Energy Income Funds* — between April 1985 and September 1989. The NASD found that Graham Securities, acting through Theo:

- Distributed marketing materials to Prudential-Bache Securities, Inc. that did not present a balanced description of certain features of one fund.
- Distributed written information to one fund's limited partners which failed to disclose the portion of cash distributions that consisted of return of capital.
- Failed to ensure that one fund's performance information was adequately

disclosed in certain written materials.

- Failed to ensure that one fund's prospectus disclosed a prior business relationship with a bank and, as such, failed to disclose a potential conflict of interest.
- Failed to provide in marketing materials information about one fund's illiquidity.
- Distributed *Income Funds* publications that failed to discuss the associated risks of those funds and, therefore, failed to provide an adequate basis for investing in the funds.

In addition, the NASD found that Graham Securities, acting through Theo, did not ensure that certain Graham Securities associates were properly registered with the NASD. □

Members Urged to Monitor for "Marking the Close"

The NASD's Market Surveillance Committee (MSC) urges all members to review their compliance procedures and take measures to educate traders and salespersons against illegally affecting a security's closing share price, otherwise known as "marking the close."

In several recent disciplinary proceedings, the MSC imposed significant sanctions on firms and their associated persons for marking the close. The conduct cited in these cases involved intentional and illegal attempts to influence a closing share price of the security involved.

While many of the recent disciplinary actions involved fictitious trade reports,

still others demonstrated a pattern of actual or deliberate close-of-day trading designed to influence closing share prices of certain stocks. In those instances, traders or salespersons attempted to artificially influence a closing price because of inventory positions in particular securities, margin difficulties in personal or customer accounts, or substantial personal or customer holdings in a stock.

To discourage traders and salespersons from such practices, the NASD suggests that members regularly review their trading activities for such abuses. Members should particularly consider their firm's size and degree of trading activity when assessing the adequacy of current compliance procedures. Since

the daily activity of larger firms is often significantly higher, the NASD believes those firms should consider implementing automated exception report systems, which can be especially effective at detecting unusual, end-of-day trading patterns.

In reviewing marking-the-close cases, the MSC will continue to examine closely a firm's compliance and supervisory systems and consider whether those systems are adequate given the firm's size and scope of business.

If you have any questions or need further information, please contact Michael J. King, Counsel, Market Surveillance at (301) 590-6445. □

NASD Acts on Appeals in Three Cases

The NASD announced three separate disciplinary actions regarding cases appealed to the NASD National Business Conduct Committee.

Wash, Matched Trades

In one action, Wakefield Financial Corporation of New York City and Alexander G. Minella of White Plains, New York were fined \$225,000, jointly and severally. Wakefield was expelled from the NASD and Minella was barred from associating with any member in any capacity. Kelly Trading Co. of New York City and Keith Minella of Westport, Connecticut were also fined \$200,000, jointly and severally. Kelly Trading was expelled from membership in the Association and Minella was barred from associating with any member in any capacity.

The sanctions were based on findings that both firms and the Minellas, together with others, intentionally traded securities of Weaver Arms Corp. by means of manipulative, deceptive, and other fraudulent devices. The respondents executed wash trades (where no change in beneficial ownership results); and matched trades (where a purchase or sell order is entered with knowledge that a corresponding order with substantially the same size, price, and timing had been or would be entered) which constituted approximately 75 percent of the trading volume for Weaver Arms and created a false appearance concerning its activity and liquidity. As market makers in Weaver Arms, Wakefield and Kelly Trading engaged in arbitrary pricing for the stock — reflected by fluctuating price quotations — that were not justified by trading activity or other plausible explanations.

Blank-Check Offering

In a second action, Bagley Securities Inc. and its president, Edward D. Bagley, were fined \$162,262 jointly and severally. The Salt Lake City-

based firm was also expelled from the NASD and Bagley was barred from associating with any member in any capacity. In addition, Thomas Gregg Holloway of Charleston, South Carolina and Paul Surmay of Marietta, Georgia were fined \$200,000 and \$25,000, respectively. Holloway and Surmay were also barred from associating with any member in any capacity.

Their sanctions were based on findings that Bagley Securities, Bagley and Holloway engaged in manipulative, deceptive, and other fraudulent practices while buying and selling units of Quantus Capital, Inc., an OTC "penny stock," during its initial public offering and in after-market trading. Quantus was a "blank check" offering underwritten by Bagley Securities, in which 99 percent of the units were placed with the firm's own customers. Bagley Securities dominated and controlled the market in Quantus, and raised and supported the price at artificially high levels despite the fact that the offering was not fully subscribed and the firm had a substantial long position in the units during the aftermarket. No corporate developments had justified a price increase of over 100 percent from the public offering price on the first day of trading and such arbitrary pricing continued subsequently. For his part, Bagley executed trades with another broker/dealer at prices removed from contemporaneous retail prices to create the appearance of inter-dealer interest in Quantus and to justify higher prices being charged to customers. The retail interest in Quantus occurred at the firm's Florida branch offices operated by Holloway and another individual.

Bagley admitted that because he loaned \$100,000 to finance the start up of those branch offices, he delayed taking action against the branch offices for the excessive markups. Customers were overcharged more than \$43,000 when Bagley Securities, Bagley, and

Holloway sold units with markups ranging from 18 to 121 percent above the prevailing market price. Holloway failed to respond to NASD mandatory requests for information. Surmay misrepresented Quantus' business, failed to inform customers that Quantus was a "blind pool," and illegally guaranteed profits from purchases of Quantus units.

Fraudulent Markups

In the third action, Royce Park Investments, Inc., of Englewood, Colorado was expelled from the NASD and its president, Steven B. Theys, of Castle Rock, Colorado, was barred from associating with any member in any capacity and fined \$50,000. The sanctions were based on findings that Royce Park underwrote an initial public offering for LBO Capital Corp. units, an over-the-counter "blank check" offering, placing over 90 percent of the underwriting with its own customers. In aftermarket trading, Royce Park — acting through Theys — dominated and controlled the market in the security such that no independent competitive market existed. In 99 transactions, LBO units were sold to the firm's retail customers at fraudulently excessive markups ranging from 10 to 33 percent. Theys appealed the decision to the SEC.

The NASD investigations were carried out by its Anti-Fraud Department and are part of a continuing nationwide effort by the NASD to eliminate trading and sales practice abuses. The Market Surveillance Committee, which initiated the cases, is responsible for maintaining the integrity of the Nasdaq and the over-the counter securities markets, and for disciplining members that fail to comply with NASD rules and federal securities laws. □

NASD DISCIPLINARY ACTIONS

In August, September, and October 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

August Actions

First Honolulu Securities, Inc. (Honolulu, Hawaii) and **Charles Frederick Jacobson (Registered Principal, Honolulu, Hawaii)** were fined \$12,900, jointly and severally. The NBCC imposed the sanction following an appeal of a decision by the DBCC for District 1. The sanction was based on findings that the firm, acting through Jacobson, sold corporate securities and corporate bonds from its own account to public customers at unfair and unreasonable prices. The firm and Jacobson have appealed this action to the SEC, and the sanctions are not in effect pending consideration of the appeal.

Thomas Michael Legan (Registered Principal, San Francisco, California) was fined \$2,500 and suspended from association with any member of the NASD in any capacity for two years. The sanctions were based on findings that Legan entered into a furniture lease agreement in his firm's name without authorization. Legan also failed to respond to NASD requests for information.

Richfield Securities, Inc. (Englewood, Colorado), Philip James Davis (Registered Principal, Littleton, Colorado), and John Brent Aldred (Registered Principal, Reno, Nevada). The firm was fined \$30,133.97 and suspended from membership in the NASD for one year. Davis was fined \$30,133.97, and Aldred was fined \$17,633.97. In addition, Davis and Aldred were suspended from association with any member of the NASD in any capacity for one year and required to requalify by examination before becoming associated with any NASD member firm.

The National Business Conduct Committee (NBCC) imposed the sanctions following an appeal of a decision by the District Business Conduct Committee (DBCC) for District 1. The sanctions were based on findings that the firm, acting through Davis and Aldred, charged its customers unfair and unreasonable prices on the sale of common stock and failed to disclose the markups to the customers. The markups on these transactions ranged from 6.7 to 300 percent above the firm's contemporaneous cost for the securities, in contravention of the Interpretation of the Board of Governors concerning NASD Mark-Up Policy. Also, the firm, acting through Davis, failed to establish and implement adequate written supervisory procedures to detect and prevent the above activity.

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

Darrell Jay Williams (Registered Representative, Los Gatos, California) was fined \$20,000, suspended from association with any member of the NASD in any capacity for one year, and required to requalify by examination as a general securities representative. The SEC affirmed the sanctions following appeal of a decision by the NBCC. The sanctions were based on findings that Williams participated in a private securities transaction involving the purchase of an unsecured promissory note without giving prior written notice to his member firm. Williams also failed to respond to NASD requests for information.

September Actions

None

October Actions

Theodore Edmond Thomas (Registered Principal, Danville, California) was barred from association with any member of the NASD in any capacity. The sanction was based on findings that, in financing or refinancing numerous properties owned by limited partnerships previously underwritten by his member firm, Thomas diverted \$1,899,003 of loan proceeds to other limited partnerships that were sold by his member firm without disclosure to the limited partners. In addition, Thomas, acting through his member firm, sold units of various limited partnership offerings and failed to deposit funds received from investors into an escrow account.

Larry Lamont Ziebell (Registered Representative, Sunnyvale, California) was fined \$53,044.76 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Ziebell received from a public customer a \$3,044.76 check intended for the purchase of insurance and misappropriated the proceeds for other uses.

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)

August Actions

Russell Arnold Biggs (Registered Principal, Valinda, California) was fined \$72,000 and barred from association with any member of the NASD in any capacity. Biggs may reduce the fine by paying \$7,000 in restitution to a public customer. The sanctions were based on findings that Biggs received from a public customer a \$7,000 check to purchase stock. Biggs deposited it into a bank account under his control and converted the proceeds. In addition, Biggs failed to respond to NASD requests for information.

Golden Shamrock, Inc. (Monrovia, California) and **William Wesley Tanner (Registered Principal, Arcadia, California)** were each fined \$20,000. In addition, the firm was expelled from membership in the NASD and Tanner was barred from association with any member of the NASD in any capacity. The sanctions were based on findings that the firm, acting through Tanner, failed to respond to NASD requests for information regarding an investigation of both the firm's net capital and a customer complaint filed against Tanner.

Michael Scott Long (Registered Representative, San Diego, California) was fined \$2,264,048 and barred from association with any member of the NASD in any capacity. However, he may apply to remove the bar by completely satisfying an arbitration award. The sanctions were based on findings that Long failed to pay a \$2,239,048 arbitration award.

Toluca Pacific Securities Corp. (Burbank, California), Steven Richard Friedman (Registered Representative, Los Angeles, California), and Peter J. H. Blowitz (Registered Principal, Studio City, California) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm and Blowitz were fined \$10,000, jointly and severally. In addition, Friedman was fined \$40,000 and suspended from association with any member of the NASD in any capacity for 120 days.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Friedman paid remuneration to an individual in connection with the inducement of purchases and sales of securities by public customers when Friedman knew, or should have known, that this individ-

ual had been suspended and was disqualified from registering with the SEC or the NASD.

The findings also stated that the firm, acting through Blowitz, failed to establish or maintain a system to supervise Friedman and to enforce written procedures to prevent the aforementioned activity.

Toluca Pacific Securities Corp. (Burbank, California) and **Peter J. H. Blowitz (Registered Principal, Studio City, California)** were fined \$148,500, jointly and severally. This fine may be reduced by the amount of restitution they make to customers.

The sanction was based on findings that the firm, acting through Blowitz, engaged in the sale of common stock and warrants to customers in the secondary market at unfair prices in contravention of the Interpretation of the Board of Governors with respect to NASD Mark-Up Policy. Such sales resulted in markups ranging from 5.5 to 142 percent above the prevailing market price.

September Actions

None

October Actions

Erik Dewitt Jackson (Registered Representative, Moreno Valley, California) was fined \$41,393 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Jackson accepted from a public customer two checks totaling \$1,393 intended for the purchase of insurance. Jackson failed to purchase any insurance. Instead, he endorsed the checks, deposited the funds into a bank account under his control, and converted the monies to his own use. In addition, Jackson failed to respond to NASD requests for information.

Lloyd Charles Krein (Registered Representative, Irvine, California) was fined \$54,495 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Krein charged public customers unfair commissions on foreign currency options transactions.

Michael John McIntyre (Registered Representative, Oceanside, California) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and suspended from association with any member of the NASD in any capacity for seven days. Without admitting or denying the allegations, McIntyre consented to the described sanctions and to the entry of findings that he engaged in outside business activities and a private securities transaction without notifying his member firm.

Morgan, Callahan & Co., Inc. (Santa Monica, California) and **Richard John Callahan, Jr. (Registered Principal, Venice, California).** The firm was expelled from membership in the NASD and fined \$70,000, jointly and severally with Callahan. In addition, Callahan was fined an additional \$59,400 and barred from association with any member of the NASD in any capacity.

The sanctions were based on findings that Callahan received from a public customer \$9,400 for the purchase of securities. He failed to purchase such securities and, instead, deposited the funds into a bank account under his control and converted the monies. In addition, the firm and Callahan failed to respond to NASD requests for information.

Furthermore, the firm, acting through Callahan, participated in a best-efforts offering and recommended to public customers the purchase of its stock without having reasonable grounds for believing that such recommendations were suitable for the customers. Moreover, Callahan received remuneration for such purchases when he knew and understood that certain terms of the offering were unsuitable for the customers.

Cabin Wayne Parker (Registered Representative, Corona Del Mar, California) submitted an Offer of Settlement pursuant to which he was fined \$10,000.

Without admitting or denying the allegations, Parker consented to the described sanction and to the entry of findings that, in violation of Regulation T of the Federal Reserve Board, and without the knowledge or consent of his member firm, Parker loaned a public customer \$45,000 for the purpose of trading securities in his account maintained at Parker's member firm. The findings also stated that Parker solicited and received from the same customer a \$20,000 loan without the knowledge or consent of Parker's member firm.

Manuel Mendoza Tiangha (Registered Representative, Redondo Beach, California) was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Tiangha failed to respond to NASD requests for information concerning his termination from a member firm and customer complaint.

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

August Actions

Donald P. Damaso (Registered Representative, Phoenix, Arizona) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000 and barred from association with any member of the NASD in any capacity. In addition, Damaso must pay \$41,100 plus interest in restitution to customers. Without admitting or denying the allegations, Damaso consented to the described sanctions and to the entry of findings that he used \$41,100 in customer funds for his own benefit. The findings also stated that Damaso misrepresented the value of a customer's account.

David Joseph Dambro (Registered Representative, Aurora, Colorado) was fined \$2,500 and required to pay \$10,060 in restitution to a customer. In addition, Dambro must requalify by examination before acting in any capacity requiring registration. The NBCC imposed the sanctions following appeal of a decision by the DBCC for District 3. The sanctions were based on findings that Dambro recommended and purchased securities for the account of a public customer without having reasonable grounds for believing such recommendation was suitable for the customer.

Dambro has appealed this action to the SEC, and the sanctions are not in effect pending consideration of the appeal.

Ronald L. Russo (Registered Principal, Richmond, Virginia) was fined \$2,000 and suspended from association with any NASD member in any capacity for 30 days. In addition, Russo must requalify by examination as a general securities representative after his suspension and as a general securities principal before acting in such capacity. The NBCC imposed the sanctions following appeal of a decision by the DBCC for District 3. The sanctions were based on findings that Russo engaged in a private securities transaction without obtaining his firm's prior written authorization.

September Actions

Patrick J. Allen (Registered Principal, Denver, Colorado) was fined \$20,000 and suspended from association with any member of the NASD in any principal capacity for 30 days. In addition, Allen must requalify by examination in any principal capacity. The sanctions were based on findings that Allen caused a new member applicant to conduct a securities business before the effective date of its membership with the NASD and allowed a representative to engage in a securities business before being registered with the same firm.

Furthermore, in contravention of the SEC's Customer Protection Rule, Allen held customer funds totaling \$1,147,400 in the firm's bank account when the firm was prohibited from doing so. Moreover, Allen failed to record the aforementioned bank account on the firm's books and records.

Covey and Co., Inc. (Salt Lake City, Utah) and **David E. Nelson (Registered Principal, Salt Lake City, Utah)** were fined \$10,000, jointly and severally. In addition, Nelson must requalify by examination as a financial and

operations principal (FINOP) and the firm was required to replace Nelson as the firm's FINOP with another qualified person who is approved by the NASD.

The National Business Conduct Committee (NBCC) imposed the sanctions following appeal of a decision by the District Business Conduct Committee (DBCC) for District 3. The sanctions were based on findings that the firm, acting through Nelson, failed to compute its net capital and reserve requirement accurately and to file an accurate assessment report. In addition, the firm, acting through Nelson, failed to update a registered representative's Form U-4 to report disciplinary action taken against the individual by the state of Utah.

Furthermore, the firm, acting through Nelson, failed to evidence the review of seven options transactions by a registered options principal and failed to maintain adequate written supervisory procedures.

Edward B. Daroza, Jr. (Registered Principal, Redmond, Washington) was fined \$15,000, suspended from association with any member of the NASD in any capacity for six months, and barred from association with any member of the NASD in any principal capacity. In addition, he must requalify by examination as a registered representative.

The sanctions were affirmed by the SEC following appeal of a decision by the NBCC. The sanctions were based on findings that a former member firm, acting through Daroza, effected securities transactions while failing to maintain its required minimum net capital. In addition, Daroza deceived and misled his clearing firm by establishing two fictitious customer accounts that he used to effect a series of securities transactions for his former member firm.

Ronald Elrie Lamott (Registered Representative, Hayden Lake, Idaho) was fined \$15,000 and suspended from association with any member of the NASD in any capacity for 90 days. The sanctions were based on findings that Lamott engaged in a private securities transaction without providing prior written notice to his member firm.

Robert James McBride (Registered Representative, Ellgenc, Oregon) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$7,500 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, McBride consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without informing his member firm.

Brian Gerard Oliver (Registered Representative, Boulder, Colorado) 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, Oliver consented to the described sanctions and to the entry of findings that he mishandled a customer's funds.

Richard Clyde Watters (Registered Representative, Yakima, Washington) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$75,000 and barred from association with any member of the NASD in any capacity. In addition, Watters must pay \$46,377 in restitution to his former member firm.

Without admitting or denying the allegations, Watters consented to the described sanctions and to the entry of findings that he received from a public customer a \$21,000 check intended for payment on an insurance policy. The NASD found that Watters failed to remit the sum for its intended purposes. Instead, he deposited the check to his personal account and made monthly payments on the policy. In addition, the NASD found that Watters effected unauthorized loans against customers' insurance policies, endorsed the loan checks, and deposited the \$27,500 in his personal agent account.

The NASD also determined that Watters received \$5,000 cash from a customer for the purchase of a single premium policy, failed to remit the sum for its intended use, and opened a policy requiring quarterly premium payments. Watters made two payments, according to the findings, and then issued policy loans to cover additional

premium payments. Furthermore, the NASD found that Watters received a \$5,000 check from another public customer to open an insurance policy that required no further premiums from the customer but failed to remit the sum for its intended use. Instead, the findings stated that Watters endorsed the check to his agent account, remitted \$2,500 to establish a policy with a larger face amount to receive a greater commission, and allowed \$13,000 in policy loans to be issued to cover subsequent premiums required by the policy.

October Actions

American Asset Management Corp. (Salt Lake City, Utah) and **Karyl Eugene Harkins, Jr. (Registered Principal, Sandy, Utah)**. The firm was fined \$20,000, jointly and severally with Harkins and expelled from membership in the NASD. Harkins was also barred from association with any member of the NASD in any capacity. The sanctions were based on findings that the firm, acting through Harkins, failed to respond to NASD requests for information and to file certain FOCUS Part I reports on a timely basis. In addition, the firm failed to file its FOCUS Parts I and IIA reports for certain periods.

Marlon D. Andersen (Registered Representative, North Ogden, Utah) was fined \$81,090 and barred from association with any member of the NASD in any capacity. However, the fine may be reduced by the amount of restitution he makes to the member or to any affected customer not reimbursed by the firm.

The sanctions were based on findings that Andersen received funds totaling \$15,210 from unauthorized loans that he caused to be taken out against insurance policies belonging to public customers and failed to use these funds for the benefit of the customers. Moreover, Andersen caused a customer's insurance policy to be surrendered without authorization and used the \$13,380 proceeds check for his own benefit. Furthermore, Andersen received from a public customer a \$2,500 check intended for investment in the customer's individual retirement account but never used the funds as instructed by the customer.

Andersen also altered account records and loan applications for these customers to reflect his own current or former addresses.

James L. Begbie (Registered Representative, Denver, Colorado) was fined \$48,465, suspended from association with any member of the NASD in any capacity for 30 days, and required to requalify by examination in any capacity in which he will function. The sanctions were based on findings that Begbie exercised discretion in a customer account without obtaining prior written discretionary trading authority. In addition, he made unsuitable recommendations to three public customers.

Stephen Earl Cayou (Registered Principal, Lakewood, Colorado) and **Jeffrey Roy Skinner (Registered Representative, Golden, Colorado)** submitted an Offer of Settlement pursuant to which they were each fined \$7,500 and suspended from association with any member of the NASD in any capacity for 15 days. Without admitting or denying the allegations, Cayou and Skinner consented to the described sanctions and to the entry of findings that they failed to respond to NASD requests for information and operated an unregistered broker/dealer. The NASD also determined that Cayou and Skinner failed to inform their member firm of their participation in a private securities transaction.

Robin Allan Heiney (Registered Representative, Aurora, Colorado) was fined \$10,000 and barred from association with any member of the NASD in any capacity. The NBCC imposed the sanctions following an appeal of a decision by the DBCC for District 3. The sanctions were based on findings that Heiney failed to respond to NASD requests for information concerning his termination from a member firm.

Richard J. Hettler (Registered Representative, Fort Collins, 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 Hettler failed to respond to NASD requests for information regarding two customer complaints.

Jay Frederick Keeton (Registered Representative, Seattle, Washington) was fined \$25,000 and barred from association with any member of the NASD in any capacity. The SEC affirmed the sanctions following an appeal of a decision by the NBCC. The sanctions were based on findings that Keeton sold units in general partnerships that he formed, for the purpose of purchasing private placement stock, to investors without providing written notice to his member firm.

In addition, Keeton sent threatening correspondence to a corporation with the intent of coercing the company into meeting his demands for compensation relating to the purchase of its common stock by an investor. In connection with a firm's pending application for NASD membership, Keeton also submitted a Form BD that failed to disclose that he was the managing partner of three general partnerships involved in securities investments.

San Marino Securities, Inc. (Salt Lake City, Utah), Garth Orson Potts (Registered Principal, Salt Lake City, Utah), and Mark Edwards Eames (Registered Principal, Salt Lake City, Utah). The firm and Potts were fined \$20,000, jointly and severally, and Potts was barred from association with any member of the NASD in any capacity. In addition, the firm and Eames were fined \$10,000, jointly and severally and Eames was suspended from association with any member of the NASD in any capacity for five business days. Furthermore, the firm was fined \$5,000, jointly and severally with another registered representative.

The sanctions were based on findings that the firm, acting through Potts, failed to establish and maintain adequate written supervisory procedures and an adequate supervisory system. Potts also failed to respond to an NASD request for information and approved two letters sent to clients that contained false and misleading statements. Furthermore, Eames, acting on behalf of the firm, created and sent to clients a brochure that was misleading.

In addition, the firm, acting through a registered representative, failed to maintain its required minimum net capital.

Dale Dwight Schwartzenhauer (Registered Representative, Sandy, Oregon) was fined \$50,000, suspended from association with any member of the NASD in any capacity for 30 days, and required to requalify by examination. The SEC affirmed the sanctions following an appeal of a decision by the NBCC. The sanctions were based on findings that, to raise capital for a corporation, Schwartzenhauer engaged in private securities transactions without his member firm's prior written approval.

Moreover, Schwartzenhauer purchased restricted or control stock from customers, issuers, or officers of issuers and then sold a substantial portion of these shares to public customers. In these transactions, Schwartzenhauer also failed to obtain his employer's written approval. Furthermore, in contravention of the NASD's Mark-Up Policy, Schwartzenhauer charged excessive markups on sales of corporate securities to public customers.

Charles D. Tom (Registered Representative, Issaquah, Washington) was suspended from association with any member of the NASD in any capacity for one year. The SEC affirmed the sanction following an appeal of an NBCC decision. The sanction was based on findings that Tom executed options transactions in the joint account of two public customers without obtaining the customers' prior written discretionary trading authority and without his member firm's written acceptance of the account as discretionary. In addition, Tom guaranteed these customers against losses in their account.

Derek H. Yamada (Registered Principal, Denver, Colorado) and William J. Caltabiano, Jr. (Registered Representative, Massapequa Park, New York). Yamada was fined \$50,000 and an additional \$100,915.62, jointly and severally with his member firm and another registered representative, and barred from association with any member of the NASD in any capacity. Caltabiano was fined \$16,511.20 and ordered to requalify by examination before acting in any capacity

requiring registration. In a separate NASD action, Yamada was fined \$50,000 and barred from association with any member of the NASD in any capacity.

These sanctions were based on findings that a member firm, acting through Yamada and Caltabiano, effected principal sales or caused customer orders to be received and processed for purchases of securities at unfair and unreasonable prices. The markups on these trades ranged from 5.44 to 100 percent over the firm's contemporaneous cost for the securities, in contravention of the NASD's Mark-Up Policy. Moreover, Yamada and Caltabiano failed to disclose to customers that the prices charged were unfair and unreasonable.

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

August Actions

James Edward Dusso (Registered Representative, Rochester, Minnesota) submitted an Offer of Settlement pursuant to which he was fined \$1,000 and barred from association with any member of the NASD in any capacity. In addition, Dusso must pay \$87.50 in restitution to a public customer prior to re-entering the securities industry through the NASD's eligibility proceedings. Without admitting or denying the allegations, Dusso consented to the described sanctions and to the entry of findings that he endorsed an \$87.50 dividend check made payable to a public customer and converted the proceeds to his own use and benefit without the customer's knowledge or consent.

Thomas G. Kibler (Registered Representative, Circle Pines, Minnesota) was fined \$15,000, suspended from association with any member of the NASD in any capacity for 30 days, and required to requalify by examination as a registered representative. The NBCC imposed the sanctions following appeal of a decision by the DBCC for District 4. The sanctions were based on findings that Kibler executed transactions involving a common stock in the accounts of three public customers without their authorization.

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

Thomas Lee McAfee (Registered Representative, St. Charles, Missouri) submitted an Offer of Settlement pursuant to which he was fined \$45,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, McAfee consented to the described sanctions and to the entry of findings that he submitted fictitious insurance policy applications for six public customers who neither authorized nor paid for such applications. In addition, McAfee failed to respond to NASD requests for information.

Don Eugene Wood (Registered Representative, Chesterfield, Missouri) submitted an Offer of Settlement pursuant to which he was fined \$18,601 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Wood consented to the described sanctions and to the entry of findings that without the knowledge or consent of a public customer, he signed the customer's name to account agreements and effected unauthorized transactions in the customer's account.

September Actions

Jasper Perry Dotson, III (Registered Representative, St. Paul, Minnesota) submitted an Offer of Settlement pursuant to which he was fined \$10,000, barred from association with any member of the NASD in any capacity, and required to pay restitution to public customers. Without admitting or denying the allegations, Dotson consented to the described sanctions and to the entry of findings that in contravention of the Board of Governors Interpretation with Respect to Fair Dealing with Customers, he purchased and sold securities for the accounts of five public customers without their knowledge or consent.

Gregory Thomas Smith (Registered Representative, Webster Groves, Missouri) submitted an Offer of

Settlement 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, Smith consented to the described sanctions and to the entry of findings that he engaged in private securities transactions with public customers without providing prior written notification to his member firm. The NASD also found that Smith made misrepresentations and income projection comparisons, in the aforementioned transactions, that did not include any risk disclosure language.

In addition, the NASD determined that Smith purchased shares of a common stock without the customer's knowledge or consent.

October Actions

Chapman Securities, Inc. (Wichita, Kansas), Michael David Relihan (Registered Principal, Wichita, Kansas), and Jeffrey Dean Lee (Registered Principal, Wichita, Kansas) submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$25,000, jointly and severally. In addition, the firm was suspended from membership in the NASD for five days, and Relihan and Lee must requalify by examination as general securities principals or cease association with any member firm in that 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 Relihan and Lee, conducted a securities business while failing to maintain its required minimum net capital.

Heiner & Stock, Inc. (Minneapolis, Minnesota), Randall R. Heiner (Registered Principal, Medina, Minnesota), and Thomas E. Bullock (Registered Representative, Coon Rapids, Minnesota). The firm and Heiner were fined \$25,000, jointly and severally, and Heiner was barred from association with any member of the NASD in any principal capacity. Bullock was fined \$4,000 and suspended from association with any member of the NASD in any capacity for five business days. The National Business Conduct Committee (NBCC) imposed the sanctions on review of a decision by the District Business Conduct Committee (DBCC) for District 4.

The sanctions were based on findings that the firm, acting through Heiner, effected principal sales of common stock to public customers at prices that were unfair and unreasonable. The markups on these transactions ranged from 5 to 150 percent above the prevailing market price. Bullock also participated in the aforementioned sale to public customers at prices that he should have known were unfair and unreasonable but failed to disclose this fact to the customers.

Terri Lynn Gent (Registered Representative, Overland Park, Kansas) was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Gent failed to respond to an NASD request for information concerning a Letter of Caution.

Jeffrey Andrew Murray (Registered Representative, Minneapolis, Minnesota) was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Murray failed to respond to NASD requests for information concerning his termination from a member firm.

Protective Group Securities Corporation (Eden Prairie, Minnesota), Richard James Cochrane (Registered Principal, Edina, Minnesota), and Martin Melvin Fiterman (Registered Principal, Minnetonka, Minnesota) were fined \$17,500, jointly and severally. In addition, Fiterman was fined \$5,000. The NBCC imposed the sanctions on review of a decision by the DBCC for District 4. The sanctions were based on findings that the firm, acting through Cochrane and Fiterman, participated in the sales of unregistered securities without an applicable exemption from the registration requirements of the Securities Act of 1933. Furthermore, the firm, acting through Cochrane and Fiterman, sold the aforementioned securities to customers at prices that were unfair and unreasonable.

In addition, Fiterman executed transactions for the accounts of public customers on a discretionary basis without obtaining written authorization from the customers and written acceptance of the accounts as discretionary by his member firm. Also, in contravention of SEC Rule 10b-10, the firm, acting through another individual, failed to disclose on customer confirmations the amount of remuneration it received on riskless principal transactions.

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

Westonka Investments, Inc. (Minnetonka, Minnesota) and Timothy Joel Friederichs (Registered Principal, Minnetrista, Minnesota) submitted an Offer of Settlement pursuant to which they were fined \$51,260, 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 Friederichs, effected corporate securities transactions as principal at prices that were unfair and unreasonable, in contravention of the Interpretation of the Board of Governors with respect to the NASD's Mark-Up Policy.

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

August Actions

James D. Chestnut (Registered Representative, Louisville, Kentucky) was barred from association with any member of the NASD in any capacity. The sanction was based on findings that Chestnut bought and sold index options in his own account without obtaining the required approval of his branch office manager and without paying for these transactions. Furthermore, Chestnut entered margin trades for public customers without having reasonable grounds for believing that such transactions were suitable for the customers.

In addition, Chestnut exercised discretion in the accounts of the same customers without their prior written authorization or written acceptance of the accounts as discretionary by his member firm. Chestnut also failed to respond to NASD requests for information.

Lawrence J. Dumestre, Jr. (Registered Principal, Baton Rouge, Louisiana) submitted an Offer of Settlement pursuant to which he was barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Dumestre consented to the described sanction and to the entry of findings that he received from public customers checks totaling \$498,000 for investment in a partnership for which Dumestre was a managing general partner. The findings stated that instead of investing the funds, Dumestre deposited them into his own accounts and thereafter could not account for a portion of the funds adequately.

The NASD also found that Dumestre received funds from public customers for the purchase of municipal bonds and failed to pay for the bonds promptly. Instead, he deposited the funds into his own bank accounts and subsequently paid for the bonds out of these accounts, thereby converting the monies to his own use without the customers' knowledge or consent. The findings further stated that Dumestre did not tell his member firm of his status as a managing general partner in a partnership or of his ownership and business involvement with another company. According to the findings, Dumestre also failed to amend his U-4 to disclose a default judgment against him and failed to respond to NASD requests for information.

Laurence B. Gates (Registered Representative, Nashville, Tennessee) 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, Gates consented to the described sanctions and to the entry of findings that, to circumvent firm procedures, he opened an investment club account at his member firm in the name of an individual who was not in the investment club. He also failed

to ensure that his wife's account was designated employee-related.

The NASD also found that Gates failed to inform his member firm that another individual had misappropriated investment club funds. In addition, the findings stated that Gates failed to secure option agreements from members of the investment club and as a result, they were not approved to trade options, due diligence was not performed by a registered options principal, and financial information was not verified for each individual.

Jeffery W. King (Registered Representative, Dunedin, 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 King induced public customers to divert \$2,000 of their investment funds into a personal loan to him by promising an inordinately high rate of return. In addition, King completed an IRA application for a public customer and forged the customer's name on the application without the customer's knowledge or consent. King also failed to respond to NASD requests for information.

Kenneth Lodge, Sr. (Registered Representative, Baton Rouge, Louisiana) was fined \$30,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Lodge received misappropriated insurance premium payments from public customers of approximately \$1,799.50. Lodge also failed to respond to NASD requests for information.

Terry L. Meeks (Registered Representative, Ashland City, Tennessee) was fined \$50,000 and barred from association with any member of the NASD in any capacity. In addition, Meeks is required to pay \$129,371.45 in restitution to public customers before re-entering the securities industry through the NASD's eligibility proceedings. The sanctions were based on findings that without the customers' knowledge or consent, Meeks solicited and misappropriated for his own use \$129,371.45 in customer funds intended for investment in a company that he owned and controlled. In addition, Meeks failed to respond to NASD requests for information.

M. Douglas Nelson (Registered Representative, Tulsa, Oklahoma) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000 and suspended from association with any member of the NASD in any capacity for one month. Without admitting or denying the allegations, Nelson consented to the described sanctions and to the entry of findings that he exercised discretionary power in the accounts of public customers without obtaining their prior written authorization or his firm's prior acceptance of the accounts as discretionary. In addition, the NASD found that Nelson made recommendations to public customers without having reasonable grounds for believing that such transactions were suitable for the customers and initiated an excessive amount of trading activity in customer accounts.

William K. Sherrill (Registered Principal, Scottsboro, Alabama) was fined \$30,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Sherrill failed to file FOCUS Parts I, II, and IIA Reports and a Uniform Request for Broker-Dealer Withdrawal (Form BDW) with the NASD on behalf of a former member firm. Sherrill also failed to file a Form U-5 to disclose his termination from the same firm. In addition, Sherrill failed to respond to NASD requests for information.

September Actions

Martin J. Favis (Registered Principal, Ormond Beach, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Favis consented to the described sanction and to the entry of findings that he charged \$11,056.38 in personal expenses to his member firm's corporate charge account and paid for the charges with funds from a branch office checking account. In addition, the findings stated that Favis charged \$1,903.69 in business expenses to the same corporate charge account and paid for those charges with a branch office check. He

also submitted expense forms to his member firm and was reimbursed for the same charges.

Michael S. Lawyer (Registered Representative, Memphis, Tennessee) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and suspended from association with any member of the NASD in any capacity for three months. Without admitting or denying the allegations, Lawyer consented to the described sanctions and to the entry of findings that he failed to provide his member firm with written notice of his outside business activities.

Gene McCartney (Registered Principal, Berryville, Arkansas) 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, McCartney consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to and approval from his member firm. The findings also stated that McCartney made misrepresentations to public customers concerning their investment in a common stock.

In addition, the NASD found that McCartney recommended and sold a common stock to a public customer without having reasonable grounds for believing that such recommendations were suitable for the customer. Furthermore, the findings stated that McCartney sold unregistered common stocks and failed to provide written notice to his member firm of his affiliation with another company. McCartney also failed to respond to NASD requests for information.

Louis H. McPeters, Jr. (Registered Representative, Wartburg, Tennessee) submitted an Offer of Settlement pursuant to which he was fined \$50,000, barred from association with any member of the NASD in any capacity, and required to pay \$720,000 in restitution to public customers. Without admitting or denying the allegations, McPeters consented to the described sanctions and to the entry of findings that he received from public customers checks totaling \$720,000 made payable to a fictitious entity that McPeters controlled. Furthermore, the findings stated that McPeters converted the funds to his own use and benefit without the customers' knowledge or consent. The NASD also found that McPeters engaged in private securities transactions without providing prior written notification to his member firm. In addition, McPeters failed to respond to NASD requests for information.

Jeffery A. Meyers (Registered Representative, Oklahoma City, Oklahoma) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$50,000, barred from association with any member of the NASD in any capacity, and required to pay \$5,500 in restitution to public customers. Without admitting or denying the allegations, Meyers consented to the described sanctions and to the entry of findings that he converted customer funds totaling \$5,500 to his own use and benefit without the customers' knowledge or consent. In addition, Meyers failed to respond to an NASD request for information.

October Actions

David L. Armstrong (Registered Representative, Norman, Oklahoma) was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Armstrong failed to amend his Uniform Application for Securities Industry Registration or Transfer (Form U-4) to reflect the filing of a criminal charge against him. In addition, Armstrong failed to respond to NASD requests for information.

Leonard P. Bogdan, Jr. (Registered Representative, Nashville, Tennessee) submitted an Offer of Settlement pursuant to which he was barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Bogdan consented to the described sanction and to the entry of findings that he failed to provide written notice to his member firm concerning his affiliations with, and the compensation he received from, other firms. The NASD found that Bogdan solicited and executed orders in the accounts of public

customers prior to the effective date of his registration with the NASD. The findings also stated that Bogdan engaged in private securities transactions without providing prior written notice to his member firm and provided investors with an offering memorandum that contained material misrepresentations.

According to the findings, Bogdan exercised discretion in the accounts of public customers without their prior written authorization and without his firm's prior written acceptance of the accounts as discretionary. In addition, the NASD determined that Bogdan recommended and engaged in transactions in the accounts of public customers without having reasonable grounds for believing that such recommendations and resultant transactions were suitable for the customers based on their financial situations, investment objectives, and needs.

Richard A. Bridge, Jr. (Registered Representative, Mobile, Alabama) was fined \$40,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Bridge remitted a check to a public customer as reimbursement for trading losses sustained in the customer's account. Bridge received \$20,000 from another public customer to buy mutual fund shares that he failed to purchase. Instead, he converted the funds to his own use without the customer's knowledge or consent. Furthermore, Bridge mailed fictitious account statements reflecting an investment that had not been made for this customer.

Bridge also used misleading business cards and stationery and purchased a telephone directory advertisement that failed to indicate that the sale of various financial instruments would be made through a member firm. In addition, Bridge failed to respond to NASD requests for information.

Thomas R. Collins (Registered Representative, Norman, Oklahoma) was fined \$30,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Collins received from six public customers \$1,816 intended for automobile insurance premium payments. Collins failed to submit the monies to his member firm. Instead, he converted the funds to his own use without the customers' knowledge or consent. In addition, Collins failed to respond to NASD requests for information.

William E. Gallaher (Registered Principal, 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 one week. Without admitting or denying the allegations, Gallaher consented to the described sanctions and to the entry of findings that he failed to exercise proper supervision over the handling of a new account at his member firm.

Joseph E. Griffin, Jr. (Registered Representative, Tupelo, Mississippi) 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, Griffin consented to the described sanctions and to the entry of findings that he forged the signature of a registered representative on a \$222.87 commission check, deposited the check into his personal business account, and converted the funds to his own use and benefit without the representative's knowledge or consent.

Cheryl B. Hagler (Registered Representative, Huntsville, Alabama) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$100,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Hagler consented to the described sanctions and to the entry of findings that she withdrew \$50,900 from the account of public customers and converted the funds to her own use and benefit.

Sidney C. Milsaps (Registered Representative, Knoxville, Tennessee) was fined \$200,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Milsaps obtained checks totaling \$164,000 drawn on the

accounts of public customers, forged endorsements on the checks, and deposited the monies into his personal checking account, thereby converting the funds to his own use and benefit. In addition, he failed to respond to NASD requests for information.

Johnny W. Ray, Sr. (Registered Principal, Birmingham, Alabama) was barred from association with any member of the NASD in any capacity. The sanction was based on findings that in connection with the solicitation of funds from public customers for investments, Ray failed to give full and adequate disclosure to the customers regarding the identity or financial status of such investments. Ray also failed to maintain a current Uniform Application for Broker-Dealer Registration (Form BD) for his member firm. In addition, he failed to respond to NASD requests for information.

David D. Reeves (Registered Representative, Little Rock, Arkansas) was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Reeves executed unauthorized option transactions in the accounts of two public customers. Reeves also failed to maintain current information on his Uniform Application for Securities Registration or Transfer (Form U-4). In addition, he failed to respond to NASD requests for information.

District 6—Texas

August Actions

William Neale Kirshner (Registered Representative, Corpus Christi, Texas) was fined \$105,000 and barred from association with any member of the NASD in any capacity. In addition, Kirshner may reduce the fine by repaying a loan he received in connection with this action. The NBCC imposed the sanctions following appeal of a decision by the DBCC for District 6. The sanctions were based on findings that Kirshner engaged in private securities transactions without providing prior written notice to his member firm.

September Actions

None

October Actions

James Linn Cooper (Registered Representative, Groves, Texas) was fined \$60,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Cooper recommended the purchase and sale of securities to a public customer without having reasonable grounds for believing that such recommendations were suitable for the customer. In addition, Cooper failed to respond to an NASD request for information.

Jeffrey Christopher Milton (Registered Representative, Houston, Texas) was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Milton failed to respond to an NASD request for information concerning his termination from a member firm.

Dennis Wayne Swanzey (Registered Representative, Hurst, Texas) was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Swanzey failed to respond to an NASD request for information concerning his termination from a member firm.

Walbridge Securities, Inc. n/k/a Aztec Securities, Inc. (Fort Worth, Texas) and Ridge Bradley McMichael (Registered Principal, Fort Worth, Texas) were fined \$1,000, jointly and severally. In addition, the firm was suspended from membership in the NASD for 90 days, and McMichael was suspended from association with any member of the NASD in any capacity for 90 days. McMichael must also requalify as a direct participation programs principal or in any other principal capacity. Should McMichael fail to requalify during his suspension period, the firm shall continue to be suspended from membership until McMichael becomes requalified by appropriate principal examination or until the firm has

employed another person, other than McMichael, who shall be qualified as a principal.

The sanctions were based on findings that the firm, acting through McMichael, permitted a statutorily disqualified person to act in the capacity of a registered representative of the firm without being qualified or registered. In addition, McMichael failed to supervise the activities of the same individual to prevent him from soliciting public customers and from acting as a registered representative.

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

August Actions

Adams, Block & Coe Securities, Inc. (Ft. Lauderdale, Florida) and Michael Wechsler (Registered Principal, Boca Raton, Florida) were fined \$50,000 and expelled from membership in the NASD. Wechsler was fined \$10,000, suspended from association with any member of the NASD in any capacity for 14 days, and required to requalify by examination as a general securities principal or municipal securities principal. The sanctions were based on findings that the firm engaged in non-bona fide month-end sales and repurchases of its municipal bond inventory to conceal its ownership and to avoid, for financial reporting and net capital purposes, the haircut required by the Securities and Exchange Commission (SEC). In addition, Wechsler failed to adequately supervise the firm's proprietary trading activities.

The firm also failed to maintain accurate books and records, filed materially inaccurate FOCUS Parts I and II Reports, and failed to maintain its required minimum net capital. The firm also overdrew an operating account to make a required deposit to its Special Reserve Bank Account for the Exclusive Benefit of Customers. Furthermore, the firm, acting through Wechsler, failed to deposit customer subscription funds in a separate bank trust account or bank escrow account in connection with a contingent offering of units.

Randy I. Allen (Registered Representative, Charleston, South Carolina) was fined \$4,166.65, suspended from association with any member of the NASD in any capacity for two years, and required to requalify by examination in any registered capacity. The NBCC imposed the sanctions following appeal of a decision of the DBCC for District 7. The sanctions were based on findings that Allen caused a \$833.33 dividend check to be issued on an insurance policy of a public customer. The check was sent to an address other than that of the customer. Allen obtained the check, forged the customer's endorsement, and converted the proceeds to his own use and benefit without the customer's knowledge or authorization.

Allen's suspension began June 15, 1992 and will end June 15, 1994.

Michael W. Glazer (Registered Representative, New York, New York) was fined \$7,500 and barred from association with any member of the NASD in any capacity. The NBCC imposed the sanctions following appeal of a decision by the DBCC for District 7. The sanctions were based on findings that on two separate occasions, Glazer paid a registered representative \$2,000 to impersonate Glazer and to take and pass the Series 24 examination on his behalf.

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

Kevin Francis Hauser (Registered Representative, Doraville, Georgia) was fined \$22,427 and suspended from association with any member of the NASD in any capacity for one business day. The fine may be reduced by any amounts that Hauser demonstrates that he has repaid to a public customer. The NBCC imposed the sanctions following appeal of a decision by the DBCC for District 7. The sanctions were based on findings that Hauser recommended the purchase of growth stocks on margin to a public customer without having reasonable grounds for

believing that the recommendations were suitable for the customer.

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

William David McKenzie (Registered Representative, Winter Haven, Florida) was fined \$20,000 and barred from association with any member of the NASD in any capacity. The NBCC imposed the sanctions following appeal of a decision by the DBCC for District 7. The sanctions were based on findings that McKenzie converted to his own use a \$9,000 check received from a public customer.

September Actions

William H. Carmon, Jr. (Registered Representative, Burlington, North 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, Carmon consented to the described sanctions and to the entry of findings that he prepared and submitted to his member firm 28 variable annuity applications on behalf of real and fictitious customers without their knowledge or authorization to generate a \$7,367.83 commission payment to himself.

Linda L. Leigh (Registered Representative, Palm Harbor, Florida) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$5,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Leigh consented to the described sanctions and to the entry of findings that she failed to pay an \$8,946 arbitration award.

Allan R. Stingley (Registered Representative, Lawrenceville, Georgia) submitted an Offer of Settlement pursuant to which he was barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Stingley consented to the described sanction and to the entry of findings that he engaged in a private securities transaction without providing written notification to his member firm. The findings also stated that Stingley became a director of a corporation and failed to provide written notification of such employment to his member firm. The NASD also found that Stingley provided a public customer with a security summary statement wherein he misrepresented the market price for a security. In addition, Stingley failed to honor an NASD request for information.

October Actions

David John Bernstein (Registered Principal, Youngstown, New York) was fined \$12,500 and required to requalify by examination as a general securities principal or representative before acting in either capacity. The sanctions were based on findings that Bernstein engaged in private securities transactions with public customers without providing prior written notice to his member firm.

Robert Wayne Faglier (Registered Representative, Thomson, Georgia) was fined \$20,000, barred from association with any member of the NASD in any capacity, and must pay \$6,912.24 in restitution to his member firm. The sanctions were based on findings that Faglier requested loans totaling \$6,912.24 against the cash value of life insurance policies of public customers and converted the funds to his own use and benefit without the customer's knowledge or authorization.

Gene Clark Foland (Registered Representative, Ft. Lauderdale, Florida) was fined \$5,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Foland failed to pay a \$2,063 arbitration award.

Guardian International Securities Corp. (Miramar, Florida), Jaime Santiago Gomez (Registered Principal, Miramar, Florida), Louis Jerry Sitaras (Registered Principal, Hollywood, Florida), and Kenneth Cutler (Registered Principal, Miami, Florida) The firm was fined \$100,000 and expelled from membership in the NASD, and Gomez was fined \$50,000 and barred from association with any member of the NASD in any capaci-

ty. Sitaras was fined \$25,000 and barred from association with any member of the NASD in any capacity, and Cutler was fined \$25,000. In addition, the firm and Gomez must pay \$20,674, jointly and severally in restitution to public customers, and, the firm, Gomez and Sitaras must pay \$529,322, jointly and severally in restitution to public customers.

The sanctions were based on findings that the firm, acting through Gomez, Sitaras and Cutler, effected as principal for its own account, over-the-counter sales of a common stock to public customers at prices that were unfair. The markups on these transactions ranged up to 278 percent over the prevailing market price, in contravention of the NASD's Mark-Up Policy. The firm, acting through Gomez, Sitaras and Cutler, also participated in an unregistered distribution of this same stock to public customers; in contravention of Securities and Exchange Commission (SEC) Rule 10b-6, bid for and/or purchased shares for an account in which it had a beneficial interest; and, in addition, the firm, acting through Gomez and Sitaras, failed to disclose, in writing, to its customers purchasing the stock that it was participating, and had a financial interest, in the distribution of the stock. The aforementioned activity constitutes a manipulative, deceptive or fraudulent device or contrivance by the firm, Gomez and Sitaras, in connection with its customers' purchases of the stock.

The firm, acting through Gomez, also effected principal sales of another common stock to public customers at unfair prices with markups ranging up to 100 percent over the prevailing market price. The firm, acting through Gomez, failed to comply with its restrictive agreement with the NASD and effected transactions in non-exempt securities while failing to maintain its required minimum net capital. Furthermore, the firm, acting through Gomez, failed to accurately prepare its books and records, filed materially inaccurate FOCUS Parts I and II reports, and failed to give telegraphic notice with regard to the net capital and record keeping deficiencies. The NASD also found that the firm, acting through Gomez, failed to establish, maintain and/or enforce a supervisory system and written procedures and failed to promptly notify the NASD that its sole registered options principal was terminated. The firm, acting through Gomez, published and sent to its customers a newsletter, which failed to meet applicable standards governing a member's communications with the public. Moreover, the firm, acting through Gomez, failed to respond to NASD requests for information.

Charles B. Hasty (Registered Principal, Stone Mountain, Georgia) was fined \$26,350, barred from association with any member of the NASD in any capacity, and ordered to pay \$1,270 in restitution to public customers. The sanctions were based on findings that Hasty obtained and negotiated commission checks made payable to other employees totaling \$510 without their knowledge or authorization. Hasty also received from a public customer \$760 intended for investment in a money market fund and converted the funds to his own use and benefit. In addition, Hasty failed to respond to an NASD request for information.

Edmund Francis Konczakowski (Registered Representative, Pompano Beach, Florida) was fined \$20,000, suspended from association with any member of the NASD in any capacity for one year, and required to requalify by examination as a registered representative. The sanctions were based on findings that Konczakowski effected the purchase of shares of a common stock in the account of a public customer without the customer's knowledge or consent.

Christopher P. Mussenden (Registered Representative, Sarasota, Florida) was fined \$50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Mussenden converted customer funds totaling \$12,156.50 to his own use and benefit. In addition, Mussenden failed to respond to an NASD request for information.

Charles Gerard Patterson (Registered Representative, Tampa, Florida) submitted an Offer of Settlement pursuant to which he was fined \$10,000, suspended from

association with any member of the NASD in any capacity for five days, and must pay \$20,000 in restitution to public customers. Without admitting or denying the allegations, Patterson consented to the described sanctions and to the entry of findings that he recommended the purchase of securities to public customers without having reasonable grounds for believing that such recommendations were suitable for the customers. In addition, the NASD found that Patterson effected the sale of shares of common stock for the account of the same customers without their knowledge or consent.

Ted R. Starling (Registered Representative, Brooklet, Georgia) was fined \$50,000, barred from association with any member of the NASD in any capacity, and must pay \$306,021.38 in restitution to public customers. The sanctions were based on findings that Starling solicited and accepted checks totaling \$306,021.38 from public customers, deposited the checks in his personal bank account, and applied the proceeds to his own use. In addition, Starling failed to respond to an NASD request for information.

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

August Actions

Brett S. Briggs (Registered Principal, Chicago, Illinois) was suspended from association with any member of the NASD in any principal capacity. The August 1992 Disciplinary Actions section of the *Notice to Members* erroneously stated that Briggs was suspended from association with any member of the NASD in any capacity.

Stephen C. Browere (Registered Representative, Chicago, Illinois) submitted an Offer of Settlement pursuant to which he was fined \$12,500. Without admitting or denying the allegations, Browere consented to the described sanction and to the entry of findings that he recommended to and purchased for public customers interests in limited partnerships without having reasonable grounds for believing that such recommendations were suitable for the customers.

Michael O. Emerick (Registered Representative, Columbus, Ohio), Jerry W. Turner (Registered Representative, Xenia, Ohio), Susan M. Timmerman (Registered Representative, Portsmouth, Ohio), Robert E. Seaquist (Registered Representative, Powell, Ohio), Richard A. Poe (Registered Representative, Grove City, Ohio), Stephen H. Gotwals (Registered Representative, Dublin, Ohio), and Carl F. McKee (Registered Representative, Columbus, Ohio) submitted Offers of Settlement pursuant to which they were each barred from association with any member of the NASD in any capacity. In addition, Emerick was fined \$100,000, Turner was fined \$60,000, Timmerman was fined \$50,000, Seaquist and Poe were each fined \$40,000, and Gotwals and McKee were each fined \$10,000.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they sold shares of a common stock without providing prior written notification of such sales to their member firm. In addition, the findings stated that the respondents were not properly registered with the NASD.

Augusto Pinto (Registered Representative, Depew, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$42,000 and barred from association with any member of the NASD in any capacity. In addition, Pinto must pay \$1,900 in restitution to public customers prior to seeking re-entry to the securities industry through the NASD's eligibility proceedings. Without admitting or denying the allegations, Pinto consented to the described sanctions and to the entry of findings that he requested and obtained disbursement of loan proceeds from his member firm totaling \$1,900 concerning the insurance contracts of public customers without their knowledge or consent. In addition, Pinto failed to respond to NASD requests for information.

Helen Z. Rydzynski (Registered Representative, Buffalo, New York) submitted an Offer of Settlement pursuant to which she was fined \$10,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Rydzynski consented to the described sanctions and to the entry of findings that she failed to pay a \$44,000 arbitration award.

Kenneth L. Watt (Registered Principal, Findlay, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$430,000 and barred from association with any member of the NASD in any capacity. In addition, Watt must demonstrate that he has paid \$260,238 in restitution to public customers before seeking re-entry to the securities industry through the NASD's eligibility proceedings. Without admitting or denying the allegations, Watt consented to the described sanctions and to the entry of findings that he misappropriated and converted to his own use customer funds totaling \$260,238. In addition, Watt failed to respond to NASD requests for information.

September Actions

Larry Wayne Bowling (Registered Principal, Clearwater, Florida) and Stephen Ray Reash (Registered Principal, Lafayette, Indiana) submitted an Offer of Settlement pursuant to which they were each fined \$25,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that a former member firm, acting through Bowling and Reash, withdrew funds from the escrow accounts of six contingent offerings before all units were sold in bona fide transactions. In addition, the NASD found that the firm, acting through Bowling and Reash, failed to comply with the provisions of the offering memoranda in seven offerings in which the firm oversold units to investors.

Furthermore, the NASD found that the firm, acting through Bowling and Reash, failed to escrow funds in six contingency offerings, in contravention of the terms of its restrictive agreement with the NASD, and failed to maintain a record of the dates customers' funds were forwarded to escrow accounts. The findings also stated that the firm, acting through Bowling and Reash, failed to maintain its required minimum net capital and Bowling and Reash failed to respond to NASD requests for information.

Mark Jeffrey Epps (Registered Representative, Flint, Michigan) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$22,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Epps consented to the described sanctions and to the entry of findings that he obtained from a public customer a \$1,210.05 check representing the proceeds of her Individual Retirement Account (IRA) with instructions to invest the funds in an IRA at his member firm. Contrary to the customer's instructions, the NASD found that Epps deposited the check in a bank account in which he had an interest, and retained the funds for his own use and benefit until a later date when he returned the funds to the customer.

Thomas J. Farmar, Jr. (Registered Representative, Oak Park, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$75,000, barred from association with any member of the NASD in any capacity, and required to pay \$20,000 in restitution to a public customer.

Without admitting or denying the allegations, Farmar consented to the described sanctions and to the entry of findings that he received from a public customer \$20,000 with instructions to use the funds to purchase short-term treasury bills. The NASD found that Farmar failed to follow the customer's instructions and used the funds for purposes other than to benefit the customer. The findings also stated that Farmar engaged in private securities transactions while failing to give prior written notice to his member firm that he intended to engage in such activities.

Ledrew W. Farrow, Jr. (Registered Representative, Powell, Ohio) submitted an Offer of Settlement pursuant to which he was fined \$50,000, barred from association with any member of the NASD in any capacity, and required to pay restitution to a public customer. Without admitting or denying the allegations, Farrow consented to the described sanctions and to the entry of findings that he opened a margin account for a public customer and transferred securities from her cash account to her margin account without the customer's knowledge or consent.

Furthermore, the findings stated Farrow purchased shares of a penny stock for the same customer's cash account, and transferred funds from the customer's margin account to pay for the purchase without her knowledge or consent. In addition, the NASD determined that one of the aforementioned transactions was an "in-house agency cross" between the customer's and Farrow's accounts.

Donald Fry (Registered Representative, Kendallville, Indiana) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$75,000 and barred from association with any member of the NASD in any capacity. In addition, he must pay \$40,000 in restitution to a public customer. Without admitting or denying the allegations, Fry consented to the described sanctions and to the entry of findings that he obtained from a public customer a \$40,000 check intended for investment purposes. The NASD determined that Fry deposited the funds in his personal bank account and used the monies for his personal benefit.

Kellie A. Moore (Registered Representative, East Liverpool, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which she was fined \$22,000, barred from association with any member of the NASD in any capacity, and required to pay \$1,545.25 in restitution to a public customer. Without admitting or denying the allegations, Moore consented to the described sanctions and to the entry of findings that she misappropriated and converted to her own use \$1,545.25 in customers' insurance premiums.

Robert Pasky III (Registered Representative, Rockford, Illinois) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Pasky consented to the described sanction and to the entry of findings that he received from a public customer three checks totaling \$6,306.50 to pay premiums on a life insurance policy, but deposited the funds in his personal bank account and kept at least \$3,128.50 for his personal benefit.

John George Pearce (Registered Principal, Wilson, New York) 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 one day. Without admitting or denying the allegations, Pearce consented to the described sanctions and to the entry of findings that he engaged in three private securities transactions without providing prior written notice to or obtaining written authorization from his member firm. Pearce's suspension commenced September 30, 1992.

Morgan Charles Penn (Registered Representative, Canal Winchester, Ohio) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$75,000, barred from association with any member of the NASD in any capacity, and required to pay \$37,600 in restitution to public customers. Without admitting or denying the allegations, Penn consented to the described sanctions and to the entry of findings that he misappropriated and converted to his own use customer funds totaling \$37,600 through fictitious transactions in mutual funds, one note, and one variable annuity.

William C. Psetas (Registered Representative, Saginaw, Michigan) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Psetas consented to the described sanctions and to the entry of

findings that he participated in a private securities transaction without providing written notice of these activities to his member firm.

James G. Rogers (Registered Representative, Bellville, Illinois) submitted an Offer of Settlement pursuant to which he was fined \$120,000, barred from association with any member of the NASD in any capacity, and required to pay \$80,000 in restitution to public customers.

Without admitting or denying the allegations, Rogers consented to the described sanctions and to the entry of findings that he received from public customers two checks totaling \$80,000 to purchase bonds. According to the findings, Rogers used the funds for purposes other than the benefit of the customers. The NASD also found that Rogers failed to respond to NASD requests for information.

October Actions

John D. Caraway (Registered Representative, Lisle, Illinois) was fined \$8,500 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Caraway signed a customer's name to a disbursement request form resulting in a disbursement of \$48.30 from the customer's insurance policy. Caraway applied the funds to purchase a second life insurance policy for the same customer and signed his name to the application. The above activity was conducted without the customer's knowledge or consent. In addition, Caraway failed to respond to NASD requests for information.

Donald Roger Fisher (Registered Representative, Lake Zurich, Illinois) was fined \$3,000 and suspended from association with any member of the NASD in any capacity until he has fully paid a \$60,116 NASD arbitration award. The sanctions were based on findings that Fisher failed to pay the aforementioned award.

Fisher's suspension commenced September 9, 1992, and concluded October 20, 1992, upon compliance.

Wayne Frederick Gorsek (Registered Representative, Springfield, Illinois) was fined \$2,500 and suspended from association with any member of the NASD in any capacity for five business days. The sanctions were based on findings that Gorsek submitted a Form U-4 for registration with a member firm but failed to disclose a felony conviction and to accurately disclose the years that he attended high school.

William A. Henry, Jr. (Registered Representative, Panama, New York) was fined \$70,000 and barred from association with any member of the NASD in any capacity. The fine may be reduced by submission of proof of payment of restitution. The sanctions were based on findings that Henry misappropriated and converted to his own use and benefit customer funds totaling \$14,794.70. In addition, Henry failed to respond to NASD requests for information.

Michael Richard Johnson (Registered Representative, Wauwatosa, Wisconsin) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$3,000 and suspended from association with any member of the NASD in any capacity for one day. Without admitting or denying the allegations, Johnson consented to the described sanctions and to the entry of findings that he recommended to public customers that they exchange one insurance product for a similar product offered by a company Johnson represented that was not an insurance affiliate of his member firm. The NASD found that, in connection with such activities, Johnson failed to give prompt written notice to his member firm of his outside business activities with other insurance companies.

David M. Lichniak (Registered Representative, Elyria, Ohio) was fined \$40,000 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 knowledge or consent, Lichniak executed and submitted a salary reduction form concerning the customer's premium payment on a fixed annuity. In addition, Lichniak failed to respond to NASD requests for information.

Anthony J. Morrell (Registered Representative, Rochester, New York) was fined \$35,000 and barred

from association with any member of the NASD in any capacity. The fine may be reduced by any amounts that Morrell pays in restitution. The sanctions were based on findings that Morrell misappropriated and converted to his own use insurance premium payments totaling \$5,910.48 received from public customers. In addition, Morrell 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

August Actions

Tommy Allen Carson (Registered Representative, Lynchburg, Virginia) was fined \$9,000 and barred from association with any member of the NASD in any capacity. The NBCC imposed the sanctions following appeal of a decision by the DBCC for District 9. The sanctions were based on findings that Carson misappropriated \$6,000 in customer funds. Specifically, Carson deposited in his business account three customer checks and two payments intended for deposit in the customer's individual retirement account (IRA) and used the monies for his own benefit. Moreover, in an attempt to conceal his activities, Carson provided three documents to the customer that contained false information.

Mark E. Mattis (Registered Representative, Erie, Pennsylvania) submitted an Offer of Settlement 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, Mattis consented to the described sanctions and to the entry of findings that he converted to his own use and benefit checks received from public customers totaling \$115,875.48.

Patrick M. Olson (Registered Representative, Lancaster, Pennsylvania) was fined \$20,000 and barred from association with any member of the NASD in any capacity. The NBCC imposed the sanctions following an appeal of a decision by the DBCC for District 9. The sanctions were based on findings that Olson submitted 56 unauthorized or fictitious insurance applications to his member firm.

September Actions

Amen Salim Kahwajy, Jr. (Registered Representative, Chesterfield, Virginia) was fined \$30,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Kahwajy misappropriated funds totaling \$27,211 from two public customers and failed to respond to NASD requests for information.

October Actions

Joseph L. Amos (Registered Principal, Knoxville, Tennessee) was fined \$25,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Amos failed to respond to numerous NASD requests for information in a timely manner concerning three customer complaints and made unsuitable recommendations to two public customers.

Michael S. Duffy (Registered Representative, Baltimore, Maryland) was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Duffy failed to respond to NASD requests for information concerning certain transactions allegedly effected by him for the accounts of public customers.

David J. Falatko (Registered Representative, West Pittsburgh, Pennsylvania) 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, Falatko consented to the described sanctions and to the entry of findings that he received from public customers insurance premium payments totaling \$371.90 which he failed to remit to his member firm. The NASD

also found that Falatko failed to respond to NASD requests for information.

Warren R. B. Feitig (Registered Representative, Richmond, Virginia) was fined \$50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Feitig effected unauthorized transactions in the accounts of public customers and failed to respond to NASD requests for information.

Ezra Grayman (Registered Principal, Springfield, New Jersey) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and required to requalify by examination as a general securities principal. Without admitting or denying the allegations, Grayman consented to the described sanctions and to the entry of findings that a former member firm, acting through Grayman, purchased common stock from customers as principal at prices that were unfair and unreasonable with markups ranging from 13.3 to 20 percent above the prevailing market price of the security.

The NASD also found that, in contravention of the Board of Governors' Free-Riding and Withholding Interpretation, a former member firm, acting through Grayman, sold shares of a new issue that traded at a premium in the secondary market to a restricted account.

Traci A. Holland (Registered Representative, Huntingdon, Pennsylvania) was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Holland failed to respond to NASD requests for information concerning the alleged mishandling of insurance applications and premiums.

Michael C. James (Registered Representative, Beverly Hills, Maryland) was fined \$50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that James prepared, processed, and submitted to his member firm at least 25 administrative/financial change forms for public customers. He forged the customers' signatures on the forms thereby increasing the amount of each customer's investment in a fixed annuity. As a result of this activity, James received at least \$2,816.61 in commissions.

Leslie L. Murphy (Registered Representative, Uniontown, Pennsylvania) was fined \$50,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Murphy received from a public customer three checks totaling \$2,507.18 intended as payment of insurance premiums and received five checks totaling \$5,183.72 issued by his member firm to another customer. However, Murphy cashed the checks and retained the proceeds for himself. In addition, he failed to respond to an NASD request for information.

David M. Smith (Registered Representative, Lancaster, 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, Smith consented to the described sanctions and to the entry of findings that he forged a registered representative's endorsement on a \$310.94 payroll check issued by his member firm. According to the findings, Smith negotiated the check, and retained the proceeds for his own use and benefit.

William R. Wohlers (Registered Representative, Keedysville, Maryland) was fined \$25,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Wohlers executed unauthorized transactions in the accounts of public customers.

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)

August Actions

Mostafa Badakhshan (Registered Principal, New York, New York) 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 years. Without admitting or denying the allegations, Badakhshan consented to the described sanction and to the entry of findings that he failed to comply with his member firm's restriction agreement. The NASD found that Badakhshan failed to prepare and maintain his member firm's books and records and to maintain the firm's required minimum net capital.

The findings also stated that Badakhshan failed to prepare and file the firm's FOCUS Part IIA report in a timely manner and subsequently filed an inaccurate FOCUS Part IIA report. Furthermore, the NASD determined that Badakhshan failed to give telegraphic notice of the firm's undercapitalization on a timely basis and to file a FOCUS Part IIA report within 24 hours thereafter, on behalf his member firm.

Gary A. Baxter (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, Baxter consented to the described sanctions and to the entry of findings that his wife endorsed and deposited into her account for Baxter's own use and benefit a \$1,200 check payable to a public customer.

Philip Jay Cooper (Registered Representative, Bronx, New York) submitted an Offer of Settlement pursuant to which he was fined \$7,500 and suspended from association with any member of the NASD in any capacity for 15 business days. Without admitting or denying the allegations, Cooper consented to the described sanctions and to the entry of findings that he executed transactions in the accounts of public customers without their prior authorization, knowledge, or consent.

F.B. Horner & Associates, Inc. (New York, New York) and **Fred B. Horner (Registered Principal, New York, New York)** were fined \$99,201.20, jointly and severally. The SEC affirmed the sanction following the appeal by the firm and Horner of a decision issued by the NASD's NBCC. The sanction was based on findings that the firm, acting through Horner, made two sales of zero coupon bonds to an institutional customer at prices that were unfair. The excessive markups on the transactions were 8.09 and 6.91 percent above the prevailing market price. This action has been appealed to the U.S. Court of Appeals for the second circuit, and the sanction is not in effect pending consideration of the appeal.

Anthony Gardini (Registered Representative, West Islip, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$2,500 and suspended from association with any member of the NASD in any capacity for two weeks. Without admitting or denying the allegations, Gardini consented to the described sanctions and to the entry of findings that the signatures of public customers on SEC Rule 15c2-6 agreements authorizing the purchase of shares of a designated security were apparently forged.

Garry P. Hoffman (Registered Representative, Port Jefferson Station, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$32,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Hoffman consented to the described sanctions and to the entry of findings that he submitted two false loan requests totaling \$8,500 on insurance policies and a change of address for a public customer without the knowledge or consent of the customer. The NASD also found that Hoffman misappropriated customer funds totaling \$7,038.72 representing a customer's cash surrender value of his insurance policy. In addition, Hoffman forged the signatures of these customers on three checks and deposited the funds for his own use and purpose.

Keith Landau (Registered Representative, N. Edison, New Jersey) 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, Landau consented to the described sanctions and to the entry of findings that he executed unauthorized purchase transactions in a designated security in the accounts of public customers. Further, the customers' signatures on the required suitability agreements were apparently forged.

Raul R. Marinuzzi (Associated Person, New York, New York) 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 30 days. Without admitting or denying the allegations, Marinuzzi consented to the described sanctions and to the entry of findings that during the course of a Series 7 examination, he was found to have notes containing material relevant to the examination.

Marinuzzi's suspension commenced with the opening of business on April 1, 1992 and concluded at the close of business on April 30, 1992.

Richard Puzo (Registered Principal, Mahwah, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$7,500, jointly and severally with a member firm, suspended from association with any member of the NASD in any capacity for one day, and required to requalify by examination as a direct participation program principal. Without admitting or denying the allegations, Puzo consented to the described sanctions and to the entry of findings that in three direct participation program offerings, a member firm, acting through Puzo, deposited customer funds into a segregated bank account instead of promptly transmitting the funds to a bank escrow account.

The NASD also found that the firm, acting through Puzo, disbursed funds to the general partner before receiving and depositing the minimum funds needed to achieve the offerings' respective stated contingencies. In addition, the firm, acting through Puzo, failed to maintain its required minimum net capital and failed to comply with the firm's restriction agreement.

Donald Rae Sams (Registered Representative, New York, New York) was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Sams failed to respond to NASD requests for information concerning a customer complaint.

Shearson Lehman Brothers, Inc. (New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was fined \$20,000. Without admitting or denying the allegations, Shearson consented to the described sanction and to the entry of findings that in contravention of the Free-Riding and Withholding Interpretation, the firm effected the sales of "hot issues" to investment partnerships/hedge funds without obtaining the names or business connections of all individuals having a beneficial interest in the accounts.

The NASD also found that in contravention of Schedule E of the NASD By-Laws, Shearson effected sales of the stock of its parent company to discretionary accounts without obtaining its customers' prior specific written approval. In addition, the NASD determined that the firm failed to disclose on confirmations of principal retail transactions the price reported to Nasdaq, and did not disclose the markup/markdown to customers.

Ernest Pyle Werlin (Registered Principal, Englewood, New Jersey) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$40,000. Without admitting or denying the allegations, Werlin consented to the described sanction and to the entry of findings that in contravention of the Board of Governors Free-Riding and Withholding Interpretation, he purchased for his own account shares of a new issue that traded at a premium in the immediate aftermarket.

Robert Bruce Whittemore (Registered Principal, Brandford, Connecticut) was fined \$20,000 and barred from association with any member of the NASD in any principal capacity. The sanctions were based on findings that Whittemore arranged for and allowed an individual who was subject to a disqualification and not properly

registered, to become associated with Whittemore's member firm, engage in the investment banking and securities business, and act in capacities that required registration with the NASD. In addition, Whittemore failed to enforce the written supervisory procedures of his member firm.

September Actions

Barrett Day Securities, Inc. (New York, New York), David Berger (Registered Principal, Roslyn, New York), and Barry Leonard Schwartz (Registered Principal, Huntington, New York) submitted an Offer of Settlement pursuant to which they were fined \$20,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that in contravention of Securities and Exchange Commission (SEC) Rule 15c2-6, the firm, acting through Berger and Schwartz, effected sales of designated securities with customers whose accounts had not been approved for trading in designated securities and for whom a written agreement to the transactions had not been obtained.

The findings also stated that the firm, acting through Berger and Schwartz, failed to maintain an adequate supervisory system and written supervisory procedures. In addition, NASD found that in contravention of the Board of Governors Free-Riding and Withholding Interpretation, the firm, acting through Berger and Schwartz, purchased shares of a new issue that traded at a premium in the immediate aftermarket.

Mario Arthur Romano (Registered Representative, Staten Island, New York) submitted an Offer of Settlement pursuant to which he was fined \$7,500 and suspended from association with any member of the NASD in any capacity for five business days. Without admitting or denying the allegations, Romano consented to the described sanctions and to the entry of findings that he completed blank order tickets that were previously time-stamped, and submitted them for processing as purchases after the market had moved in his favor.

Terry Devanand Singh (Registered Representative, Richmond Hill, New York) 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, Singh consented to the described sanctions and to the entry of findings that during the course of an examination, he possessed notes with material relevant to the examination.

Peter Joseph Tornaben (Registered Representative, Palm Beach Gardens, Florida) 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 years. Without admitting or denying the allegations, Tornaben consented to the described sanctions and to the entry of findings that he falsely advised a public customer that an options position had been sold at a profit, when in fact the options had not been sold. According to the findings, Tornaben also altered a purchase confirmation to reflect the above activity and sent the confirmation to the customer.

The NASD also found that Tornaben failed to execute two public customers' orders and later advised one of the customers that her options position had been sold at a profit, when it had actually expired worthless. In addition, the findings stated that Tornaben effected unauthorized transactions in four public customers' accounts.

Windsor IBC, Inc. (New York, New York) and Mary Martha Martin (Registered Principal, New York, New York) the firm submitted an Offer of Settlement and was fined \$66,511, an amount that may be reduced by actual restitution to customers. The firm was also suspended from engaging in principal transactions in penny stocks for 90 days. Martin was fined \$25,000 and required to requalify by examination as a general securities principal. Without admitting or denying the allegations, Windsor consented to the described sanctions and to the entry of findings that the firm, acting through Martin, sold shares of common stocks to public customers at prices that were not fair, in contravention of the NASD Mark-Up Policy. The markups on these transactions ranged from 6.75 to 133 percent above the firm's contem-

poraneous costs. In addition, the findings stated that the firm failed to establish and implement supervisory procedures to detect and prevent the aforementioned activity.

October Actions

George Montgomery Albrecht, Jr. (Registered Representative, Laurence Harbor, New Jersey) was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Albrecht failed to respond to NASD requests for information concerning his termination from a member firm.

Garrison Bye (Registered Representative, Tampa, Florida) was fined \$10,000, barred from association with any member of the NASD in any capacity, and required to requalify by examination in any capacity. In addition, Bye is required to pay \$20,955 in restitution to a public customer. The sanctions were based on findings that Bye recommended and caused to be purchased for the account of a public customer shares of common stocks without reasonable grounds for believing that the transactions were suitable for the customer based on his financial objectives and needs.

Myra Audrey Uy Cheng (Registered Representative, Edgewater, New Jersey) was fined \$20,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Cheng failed to respond to NASD requests for information concerning a customer complaint.

Damon Andrews & Co., Ltd. (New York, New York) and Larry K. Nick (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. In addition, the firm has to employ a qualified, limited financial and operations principal within 60 days of the acceptance of the Letter of Acceptance, Waiver and Consent. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Nick, conducted a securities business while failing to maintain its required minimum net capital.

The findings also stated that the firm, acting through Nick, failed to keep a record of when customer funds were forwarded to a bank trust account. In addition, the NASD found that the firm, acting through Nick, failed to satisfy the contingency on a private placement prior to withdrawing customer funds from its trust account for the issuer. The firm, acting through Nick, also failed to establish written supervisory procedures covering its business activities.

Stephen Robert Goodwin (Registered Principal, New York, New York) was fined \$15,000 and suspended from association with any member of the NASD in any principal capacity for two years. The sanctions were based on findings that Goodwin, acting on behalf of a former member firm, failed to comply with the firm's restriction agreement by executing and clearing equity transactions for public customers without obtaining the NASD's approval.

Goodwin, acting on behalf of the firm, conducted a securities business while failing to maintain the required minimum net capital and without having a general securities principal or representative registered with the NASD. In addition, the firm, acting through Goodwin, failed to maintain a fidelity bond and failed to provide the NASD with requested information.

Edward Patrick Harris (Registered Representative, Holmdel, New Jersey) was fined \$30,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Harris made purchase transactions in the account of a public customer without his knowledge or consent. In addition, Harris failed to respond to NASD requests for information.

Stuart Lee Huber (Registered Representative, Brooklyn, New York) was fined \$20,000. The sanction was based on findings that Huber failed to respond in a timely manner to NASD requests for information concerning a customer complaint.

Norman E. Phillips (Registered Representative, New York, New York) was fined \$20,000 and suspended from association with any member of the NASD in any capacity for six months. The sanctions were based on findings that Phillips executed transactions in the accounts of five public customers without their knowledge or authorization.

Douglas P. Shebroe (Registered Representative, Smithtown, New York) was fined \$10,000, barred from association with any member of the NASD in any capacity, and required to requalify by examination. In addition, Shebroe has to pay \$26,500 plus interest in restitution to a public customer. The sanctions were based on findings that Shebroe recommended and effected unsuitable transactions in the account of a public customer that generated excessive commissions and markups. Moreover, Shebroe failed to disclose to the customer the commission and fee structure and did not reflect these commissions on his confirmations.

Bruce D. Warshaw (Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$10,000 and suspended from association with any member of the NASD in any capacity for one year. Without admitting or denying the allegations, Warshaw consented to the described sanctions and to the entry of findings that he fabricated fictitious customer complaints and forged correspondence regarding purported settlements with customers totaling \$99,000 for the purpose of recording losses for income tax reasons.

Warshaw's suspension was deemed served from September 1, 1990, to September 1, 1991.

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

August Actions

Ronald R. Lachapelle (Registered Principal, Auburn, Maine) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$600,000 and barred from association with any member of the NASD in any capacity. Without admitting or denying the allegations, Lachapelle consented to the described sanctions and

to the entry of findings that he misappropriated in excess of \$500,000 in customer funds from at least 43 public customers.

John A. Malach (Registered Representative, Rochester, New York) was fined \$20,000 and barred from association with any member of the NASD in any capacity. The NBCC imposed the sanctions following an appeal of a decision by the DBCC for District 11. The sanctions were based on findings that Malach failed to respond to NASD requests for information concerning a customer complaint.

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

September Actions

Douglas A. Bombardier (Registered Representative, Peabody, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent under 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, Bombardier consented to the described sanctions and to the entry of findings that he misappropriated to his own use insurance premiums totaling \$5,723.82.

Professional Planning & Technologies, Inc. (Warwick, Rhode Island), Harry Harootunian (Registered Principal, Cranston, Rhode Island), and Frank Kufrovich (Registered Principal, Woodland Hills, California) submitted an Offer of Settlement that resulted in the firm and Harootunian being fined \$45,000, jointly and severally. They must also submit all written advertisements and sales literature for review by a special counsel for a period of one year. Kufrovich was fined \$45,000 and required to requalify by examination as a general securities principal.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Harootunian and Kufrovich, failed to terminate a private offering on the expiration date and continued to offer the units to investors. In the private offerings, the NASD also found that the firm, acting through Harootunian and Kufrovich, prepared and disseminated to prospective investors sales literature that contained false and misleading statements. In addition, the NASD determined that the firm, acting through Harootunian and Kufrovich, solicited investors in the same three offerings through the use of sales literature and sold units to investors who neither had an existing or prior business relationship with their firm.

October Actions

Craig A. Corrinne (Registered Representative, Boynton Beach, Florida) was fined \$25,000 and barred from association with any member of the NASD in any capacity. The sanctions were based on findings that Corrinne submitted false and fictitious applications for life insurance to his member firm.

Morton B. Erenstein (Registered Representative, Florham Park, New Jersey) was fined \$70,000. The sanction was based on findings that Erenstein engaged in private securities transactions without giving prior written notification to his member firm.

Michael D. Stewart (Registered Representative, Cambridge, England) submitted an Offer of Settlement pursuant to which he was fined \$15,000 and required to requalify by examination as a general securities principal. Without admitting or denying the allegations, Stewart consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and outside business activities without providing prior written notice to his member firm.

Market Surveillance Committee

August Actions

None

September Actions

Bruce E. Mauer (Registered Representative, Evergreen, Colorado) was fined \$20,000 and suspended from association with any member of the NASD in any capacity for two years. The sanctions were based on findings that Mauer failed to respond to NASD requests for information.

October Actions

Barry J. Miele (Registered Representative, Staten Island, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$15,625 and suspended from association with any member of the NASD in any capacity for five business days. Without admitting or denying the allegations, Miele consented to the described sanctions and to the entry of findings that he placed a purchase order on behalf of a public customer and charged excessive commissions of 23.08 percent of the total cost of the transaction. □

Please direct your comments or suggestions about this publication to Michael Budzinski, Editor, *NASD Regulatory & Compliance Alert*, 1735 K Street, NW, Washington, DC 20006-1506, or call (202) 728-8945.

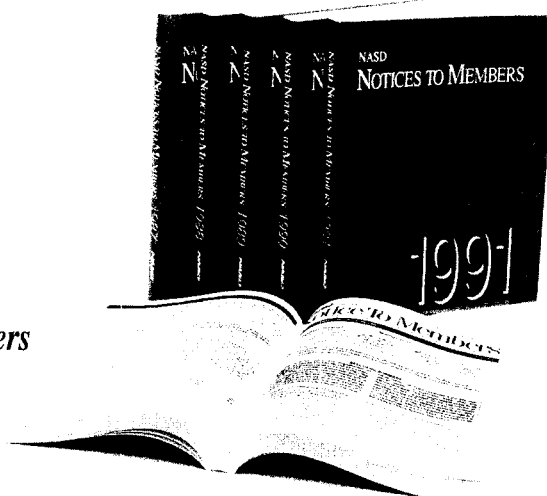
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