

# Regulatory & Compliance Alert

A PUBLICATION OF NASD REGULATION, INC.

15.2 SUMMER 2001

## *Regulation S-P: Mandatory Compliance Deadline Of July 1, 2001*

Member firms are reminded that as of **July 1, 2001**, mandatory compliance with Securities and Exchange Commission (SEC) Regulation S-P, "Privacy of Consumer Financial Information," was required. (See *NASD Notice to Members 00-66*, which, in its attachment, sets forth the text of Regulation S-P.)<sup>1</sup> As further discussed below, all member firms have to comply with some aspect of Regulation S-P.

Title V of the Gramm-Leach-Bliley Act of 1999 (GLBA) required that the SEC and certain other federal agencies adopt rules relating to the privacy of nonpublic personal information of consumers and customers. In response, the SEC adopted Regulation S-P.

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NASD REGULATION, INC.

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GLBA and Regulation S-P require financial institutions, including broker/dealers,<sup>2</sup> to develop privacy policies with respect to consumer non-public information. Like other financial institutions, broker/dealers may not share nonpublic personal information of consumers with nonaffiliated third parties, except under limited exceptions, unless: (1) the broker/dealer provides notice of its privacy policies and practices; (2) the broker/dealer provides consumers with the ability to opt out of the sharing; and (3) the consumers do not opt out. Broker/dealers also must provide consumers who are customers with an initial privacy notice, and thereafter, annual privacy notices. Regulation S-P also requires broker/dealers to establish safeguards to protect the security and confidentiality of customer records and information.

Generally, Regulation S-P defines a “consumer” as an individual who obtains or has obtained a financial product or service from a financial institution that is to be used primarily for personal, family, or household purposes. Typically, a consumer has no further contact with the financial institution other than the one-time delivery of products or services. In contrast, Regulation S-P defines a “customer” as a consumer with which a financial institution expects to have or has established a continuing relationship.<sup>3</sup>

Below are Questions and Answers (“Q&As”) that address some issues that may arise in determining the application of Regulation S-P. The answers expressed below are staff opinions only and have not been reviewed or endorsed by the Board of Directors of NASD Regulation, nor have they been approved by the SEC.

## **Regulation S-P: Questions & Answers**

*Q: Who must comply with Regulation S-P?*

A: Title V of GLBA applies to all “financial institutions,” which means “any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956.” Under Section 124 of the Commodity Futures Modernization Act of 2000, it also means institutions subject to the jurisdiction of the Commodity Futures Trading Commission. For purposes of Regulation S-P, the SEC has determined that the law applies to all broker/dealers, investment companies, and investment advisers registered with the SEC. Accordingly, NASD Regulation believes that **all member firms** have to comply with some aspect of Regulation S-P.

*Q: What must be done by broker/dealers?*

A: (1) As of July 1, 2001, broker/dealers must have provided an initial notice (including the information on opt out rights required in Section 248.6 of Regulation S-P) to their existing customers. (See Section 248.4 of Regulation S-P, which provides that initial notices must be provided to those consumers who are the firms’ existing customers.)

(2) In addition, broker/dealers must be prepared to present privacy policies to consumers (including new customers) and must be able to receive and maintain, if applicable, opt out notices from them. (See Section 248.18(b) of Regulation S-P.) Consumers must be given a reasonable means and a reasonable amount of time to opt out of sharing with nonaffiliated third

parties other than those sharing arrangements permitted by an exception.

(3) Every broker/dealer also must have adopted policies and procedures that address administrative, technical, and physical safeguards for the protection of the records and information of consumers who are customers of the broker/dealers. (See Section 248.30 of Regulation S-P.) Member firms are encouraged to read SEC Release No. 34-42974 to determine whether there are any other aspects of Regulation S-P that may apply to their activities.

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*Q: Does Regulation S-P apply to a broker/dealer that does not have affiliates and does not intend to disclose nonpublic personal information to nonaffiliated third parties outside of the limited exceptions provided for under Regulation S-P (e.g., service providers or joint marketing arrangements)?*

A: Yes. Under the circumstances described, a broker/dealer's responsibilities include the following: (1) provide an initial notice to each new customer as of July 1, 2001;<sup>4</sup> (2) provide an annual notice to each customer during the continuation of the customer relationship; and (3) create appropriate internal control systems, including the maintenance of copies of the notices provided to consumers and documentation in customer files showing compliance, and ensure appropriate supervision over compliance with Regulation S-P. If the firm does not share information of non-customer consumers with nonaffiliated third parties outside of the exceptions provided

in Sections 248.14<sup>5</sup> or 248.15<sup>6</sup> of Regulation S-P, then the firm is not required to provide initial and opt out notices before disclosing nonpublic personal information about its non-customer consumers to nonaffiliated third parties. An initial notice, but not an opt out notice, would be required for disclosures made under Section 248.13<sup>7</sup> of Regulation S-P. If in the future, however, the firm decides to share the nonpublic personal information of non-customer consumers with nonaffiliated third parties outside of the limited exceptions, then the firm must provide the consumers with initial and opt out notices as appropriate before sharing the information.

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*Q: If a firm does not have affiliates and does not intend to share nonpublic personal information with nonaffiliated third parties outside of the exceptions provided in Sections 248.14 and 248.15 of Regulation S-P, what types of information should be included in the firm's initial and annual notices?*

A: Generally, these notices must include: (1) a statement that the firm does not disclose, and does not wish to reserve the right to disclose, nonpublic personal information to affiliates or nonaffiliated third parties, except to non-affiliated parties as authorized by law; (2) the categories of nonpublic personal information that a broker/dealer collects; and (3) the broker/dealer's policies and practices with respect to protecting the confidentiality and security of nonpublic financial information.

*Q: Are there sample clauses that a broker/dealer can use to draft its privacy notices?*

A: Yes. Appendix A to Regulation S-P contains sample clauses that may be used by broker/dealers and their affiliated companies in the drafting of privacy notices. However, use of the sample clauses that have been provided by the SEC in its Release will not be considered a safe harbor for firms. Whether compliance with an example or sample clause constitutes compliance with Regulation S-P depends on the facts and circumstances of each individual situation.

*Q: May a clearing broker provide a joint privacy notice with an introducing broker for which it clears on a fully disclosed basis?*

A: Yes. For purposes of Regulation S-P, an introducing firm and a clearing firm are considered to have a separate and

independent customer relationship with regard to any particular customer, and as such, both firms are required to provide notices to the customer. Section 248.9(f) of Regulation S-P, however, permits the introducing firm and the clearing firm to send a joint notice provided that the privacy notice is accurate with respect to each entities' privacy policies and that the notice clearly indicates it is from both firms. The joint notice may be sent by either the introducing or the clearing firm. As noted above, member firms should review *NASD Notice to Members 00-66* and SEC Release No. 34-42974 for additional information and guidance.

*Questions regarding this article may be directed to Greg Dean, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8159.*

- 1 See also SEC Release No. 34-42974 (June 22, 2000), 65 FR 40334 (June 29, 2000) (SEC adoption of Regulation S-P).
- 2 Investment companies and investment advisers registered with the SEC also must comply with GLBA and Regulation S-P.
- 3 Generally, references in Regulation S-P to "consumers" also apply to "customers."
- 4 Broker/dealers were required to have provided initial notices to the broker/dealers' existing customers by July 1, 2001.
- 5 Section 248.14 provides for an exception to the notice and opt out requirements for processing and servicing transactions.
- 6 Section 248.15 provides for various exceptions to the notice and opt out requirements (e.g., information shared with a consumer reporting agency in accordance with the Fair Credit Reporting Act, with persons holding a legal or beneficial interest relating to the consumer, etc.)
- 7 Section 248.13 provides for an exception to the opt out requirements for service providers and joint marketing arrangements.

## Margin Disclosure Statement Rule Approved

National Association of Securities Dealers, Inc. (NASD®) Rule 2341 became effective on June 4, 2001. NASD Rule 2341 requires all NASD members to deliver to non-institutional customers a disclosure statement that discusses the operation of a margin account and the risks associated with trading on margin.<sup>1</sup> This new requirement was a result of growing margin account balances coupled with an increase in customer inquiries and complaints relating to margin accounts. With input from a number of NASD Regulation standing and District committees, NASD Regulation staff concluded that, because there were no specific disclosure requirements in this area, disclosures to customers relating to margin were not consistent from firm to firm and often times were not in a form that was understandable to customers.

Rule 2341 requires that the margin disclosure statement be provided to margin customers in a separate document prior to or at the opening of a margin account. The margin disclosure statement describes the operation of a margin account and emphasizes that customers should carefully review their margin agreement. It also clarifies some of the risks associated with margin trading, including:

- ❖ *the customer can lose more funds than initially deposited;*
- ❖ *the firm can sell the securities or other assets in the customer's account without notice to the customer;*
- ❖ *the firm can dictate which security or other assets are selected for liquidation;*

- ❖ *the firm can raise its house maintenance margin requirements at any time without advance notice; and*
- ❖ *the customer is not entitled to an extension of time on a margin call.*

The NASD has provided a margin disclosure statement that can be used by member firms. Members are permitted to develop an alternative margin disclosure statement, provided that the alternative disclosure statement is substantially similar to the NASD-drafted statement and incorporates all of the relevant concepts. The rule also requires that the margin disclosure statement or an abbreviated version of the disclosure statement be provided to margin customers on an annual basis, either in a separate document or as part of other account documentation.

Members must deliver the initial and annual disclosure statement, in writing or electronically, to customers on an **individual** basis. For example, posting of the disclosure on the firm's Web site for general access would not fulfill the individual delivery requirement. However, requiring that each customer, when completing margin account opening documents, specifically read and indicate electronically that he or she has read the disclosure statement, would meet the individual delivery requirement.

The rule requires that the initial disclosure statement be provided in a **separate** document; the disclosure statement can be provided with or as part of other documents, but it must be con-

tained by itself on a separate page. The annual disclosure statement may be provided within other documentation, such as the account statement, and does not have to be on a separate page.

Both the clearing firm and the introducing firm are responsible for ensuring that the customer receives the required disclosures under new Rule 2341. However, pursuant to NASD Rule 3230, the clearing firm and introducing firm may specify, as part of the clearing agreement, which party is responsible for delivery of the initial and annual disclosure statements to the customer.

For those non-institutional customers who were margin customers of the firm prior to the effective date of the rule (June 4, 2001), members are required to provide the disclosure statement or an abbreviated version of the disclosure statement at the time of the next annual account statement to the customer, but no later than January 31, 2002.

*Questions regarding this article may be directed to Stephanie M. Dumont, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8176, or Susan DeMando, Member Regulation, NASD Regulation, Inc., at (202) 728-8411.*

1 For more detailed information regarding this new rule, see *NASD Notices to Members 01-37 (June 2001)* and *01-31 (May 2001)*.

## *NASD Dispute Resolution Provides Arbitration Awards Online*

NASD Dispute Resolution, Inc. now provides online access to awards issued by arbitrators at the NASD and at other forums via the Internet.

As of June 1, parties to arbitrations can directly obtain past awards—from *The Securities Arbitration Commentator (SAC)* in conjunction with SAC's project partner CCH, Inc.—free of charge, seven days a week via the NASD Dispute Resolution Web Site at [www.nasdr.com](http://www.nasdr.com). Visitors can immediately connect to SAC's arbitration awards library, which enables parties to search the awards by arbitrator name, award date, or by using keywords. The awards—in pdf format—are exact replicas of the arbitrators' awards, without modifications of any kind. Parties who need more sophisticated tools—such as a summary and analysis of specific awards—may purchase

additional, enhanced services from SAC. Visit SAC's Web Site at [www.sacarbitration.com](http://www.sacarbitration.com) for more information.

Parties can still obtain copies of awards directly from NASD Dispute Resolution. Continuing the current practice, parties in pending cases are entitled to obtain free of charge the last five awards (or all awards issued during the prior 12 months) rendered by any arbitrator proposed for their case. Visit the NASD Dispute Resolution Web Site or call (212) 858-4400 to obtain instructions and a form to request prior arbitration awards.

*Questions regarding this article may be directed to Barbara Brady, NASD Dispute Resolution, Inc., at (212) 858-4352, or to Kenneth Andrichik, NASD Dispute Resolution, Inc., at (212) 858-3915.*

### ADVERTISING REGULATION

## *Spotlight On Advertising Regulation*

This column is a new, periodic feature on issues relating to the review of NASD members' communications by the Advertising Regulation Department (the Department) of NASD Regulation, Inc. The Department's mission is to protect investors by ensuring that NASD member firms' communications with the public are fair, balanced, and not misleading. The Department pursues this mission through several regulatory programs including the review of filings submitted

by members to the staff for written comments. For detailed information regarding filing communications with the Department or past interpretive positions, please view the *Advertising Regulation Information Guide* at [www.nasdr.com/5600.htm](http://www.nasdr.com/5600.htm).

The Department provides written comments to NASD member firms on advertisements and sales literature filed with the staff either voluntarily or pursuant to one of the filing requirements set



forth in the NASD Conduct Rules. The Department staff also field questions from member firms and the public regarding the rules applicable to member communications. The Department hosts two conferences each fall: one in Washington, DC and one in conjunction with the NASD Regulation Fall Securities Conference. In addition, the Department contributes regularly to NASD publications such as *Notices to Members*.

The Department also conducts reviews of problematic communications used by member firms and brought to the attention of the Department as a complaint or inquiry. While many of these matters are resolved without need of disciplinary action, the Department does participate in the disciplinary process. The staff may issue informal remedial actions directly or, in situations involving egregiously misleading communications, the staff will work with NASD Regulation's District Offices and Department of Enforcement to pursue formal action.

### **Compliance Focus: Disclosure In “Stretch IRA” Sales Material**

The NASD staff has recently observed several situations in which members used communications with the public about individual retirement accounts reflecting current changes to Internal Revenue Service rules. The term “stretch IRA” is used to describe an IRA that is set up to extend the period of tax deferred earnings beyond the lifetime of the individual who created the account. The accounts are typically designed to last over multiple generations.

Communications seen by the Department have described investments such as mutual funds and variable products to fund the account.

Sales presentations for stretch IRAs often include hypothetical illustrations in the form of value tables showing how much the account will be worth over time. The NASD staff has commented to members about illustrations that cover extended periods, such as 90 years. The illustrations also contain other assumptions that are not stated or described clearly to the reader.

To avoid misleading the public about these accounts, members must make sure that they are described accurately and the assumptions used in the illustrations are stated clearly. No material fact or qualification may be omitted if it would cause the communication to be misleading. Following are certain issues that the NASD staff believes members must address in stretch IRA sales presentations:

- ❖ *Members must explain clearly that stretch IRAs are designed for investors who will not need the money in the account for their own retirement needs.*
- ❖ *Members must show the rate and age at which each distribution throughout the illustration periods begin.*
- ❖ *Hypothetical illustrations must not state or imply that results shown are on behalf of any specific investment product.*
- ❖ *Illustrations must not use unreasonable rates of return or lengthy time periods that would cause them to be exaggerated, promissory, or misleading.*
- ❖ *In preparing these illustrations members should consider various factors affecting an investor's decision such as possible changes to tax laws, the impact of inflation, and other risks.*

# questions

## Ask The Analyst

*“Ask the Analyst” provides member firms a forum to pose questions to the NASD Advertising Regulation Department on a variety of topics. Although the Department does not answer all questions in this publication, it does respond to all questions received either here or by contacting parties directly.*

### Variable Insurance Products

*Q: What disclosures, if any, must be included in communications that discuss the return available on the dollar cost averaging fixed account of a variable annuity contract?*

A: Members must be careful not to overstate the returns available on these accounts. The NASD has seen a number of communications that promote a dollar cost averaging fixed account based on a very high annual effective yield. In contrast to the standard fixed account of a variable annuity that might offer a 4% or 5% yield commensurate with other fixed income investments, we have seen some accounts advertised with rates as high as 12% or 15%. However, investors do not actually earn this rate over a full year.

The account is only available for lump sum investments. The lump sum is then automatically transferred into the variable account options in equal monthly installments over a period of six months or one year. Because all of the money must be transferred out of the account, the high annual effective rate is paid on a declining balance and, in the case of a six-month program, the rate is earned for less

than a year. Thus, the actual return on dollars invested is much lower than the advertised annual effective yield.

To avoid misleading the public about these accounts, members must avoid over-emphasizing the annual effective yield figure. Instead, members' communications about these accounts should focus first on explaining how the accounts operate, including the requirement that all monies be transferred out of the account within a pre-set timeframe. In addition, if any type of return is mentioned in communications about the account, the focus should be on the actual return on investment the customer can expect to receive over the term of the account net of applicable fees and charges. The annual effective yield figure may be disclosed provided it is not over emphasized and that it appears in context that clearly explains that it is used to calculate the return on investment, but does not reflect funds the customer will receive.

### General

*Q: How does the NASD view seminars? Are they considered advertisements or sales literature?*

A: Seminar scripts, handouts, slides, or other visual presentations are deemed to be sales literature under NASD Conduct Rule 2210(a)(2).<sup>1</sup> As such, these items must comply with the approval, recordkeeping, and filing requirements of the rule in addition to the content standards. In contrast, extemporaneous seminar presentations, such as unscripted question and answer sessions,

are considered to be the participation in a public forum. As such, the individual making the presentation must adhere to the content standards of NASD Conduct Rule 2210 only. However, member firms are obligated to supervise all seminar activities of their registered persons in accordance with NASD Conduct Rule 3010. Such supervision may include a prior approval requirement and monitoring of the substance of the seminar.

*Q: Does the NASD prohibit projections from third parties about general economic conditions?*

A: Members may include reasonable forecasts of general economic conditions in their communications with the public, provided they are clearly labeled as such and provided that sufficient information is included enabling the reader to understand and evaluate the forecast. For example, the communication would have to disclose the material assumptions used in arriving at a forecast and disclose the inherent uncertainty of such projections. Members must bear in mind that the rules strictly prohibit projections of investment results (see NASD Conduct Rule 2210(d)(2)(N)).

## Mutual Funds

*Q: We would like to advertise a magazine's rankings of our mutual fund's total return performance versus other funds. While the fund has existed for over 10 years, the magazine's rankings cover only one-year and five-year periods. Would our use of the rankings for the one-year and five-year periods suffice?*

A: Since the fund has existed for more than 10 years, Conduct Rule, IM-2210-3, titled "Use of Rankings in Investment Companies Advertisements and Sales Literature," requires a 10-year ranking as well. If this ranking is unavailable, as in this case, a comparable long-term ranking created by the same ranking entity is acceptable. Absent the inclusion of the 10-year or comparable long-term ranking, the magazine's rankings must not be used.

## Electronic Communications And Filing Requirements

*Q: We recently filed our first advertisement with the NASD Advertising Regulation Department and are aware that we will need to file all of our advertisements at least 10 days prior to use for a period of one year from the date of our first filing as required by NASD Conduct Rule 2210(c)(4)(A). Must our new Web site also be filed with the Advertising Regulation Department at least 10 days prior to use?*

A: Yes. Web sites are deemed to be advertisements because they are generally available to the viewer. However, some members limit access to sections of their Web sites through the use of passwords and/or the registration of the viewer. In these limited circumstances the password-protected sections of the members' Web sites may be deemed to be sales literature. Although some types of sales literature may be required to be filed depending on its content, in general sales literature does not need to be filed pursuant to Conduct Rule 2210(c)(4)(A). For a complete summary of the filing requirements, you may wish to review the *Advertising Regulation Question &*

*Answer Guide at [www.nasdr.com/5640.htm](http://www.nasdr.com/5640.htm). Members should contact the Department staff to discuss specific circumstances regarding the use of password protection and the filing requirements.*

### **Important Information About Advertising Filing Fees**

Members now have several payment options with respect to the Advertising Regulation filing fees charged in accordance with Section 13, Schedule A of the NASD By-Laws. You can use any of these options to establish an Advertising Filing Fee Account:

#### **A. CRD Account Payment Transfer**

You may have us deduct filing fees from your existing CRD account by providing us with written authorization. Please mail your written authorization to the address noted below or fax it to Suprina Hicks at (240) 386-4568.

#### **B. Credit Card Payment**

We accept credit cards for payment of your filing fees (Visa, MasterCard, or American Express). To request a credit card form, please contact Suprina Hicks at (240) 386-4537.

#### **C. Check Payment**

Effective June 15, 2001, the NASD Advertising Regulation Department changed the address for check remittances. All checks must be sent to the new P.O. Box address provided in this article.

Please use the P.O. Box address except in cases when you must use courier or overnight delivery. Please note the alternative address provided for these situations, as the P.O. Box address **will not** accept courier or overnight deliveries. We encourage the use of the P.O. Box address as it facilitates more timely automated processing of your remittance.

#### **Please send filing fee checks to:**

*NASD Regulation, Inc., Advertising Regulation  
P.O. Box 7777-W9075  
Philadelphia, PA 19175-9075*

*(Note: P.O. Box does not accept overnight/courier deliveries.)*

#### **For courier/overnight checks only:**

*NASD Regulation, Inc.  
Advertising Regulation—W9075  
c/o Mellon Bank, Room 3490  
701 Market Street  
Philadelphia, PA 19106*

#### **Please continue to submit all correspondence, sales literature and advertisements for review to:**

*NASD Regulation, Inc., Advertising Regulation  
9505 Key West Avenue, 5th Floor  
Rockville, MD 20850-3389*

Regardless of the method of payment, we will continue to provide monthly Filing Fee Statements.

*Questions or comments regarding these Advertising Regulation articles may be directed to the Department at (240) 386-4500.*

<sup>1</sup> "Advertisements" are communications with the public that appear in media (e.g., newspaper, radio, television, Web sites), whereas "sales literature" is directed to a specific audience or group. For complete definitions see NASD Conduct Rule 2210(a).

## Web CRD E-Mail Notifications For Firms

NASD Regulation reminds members of a new feature, implemented in a recent release, in the functionality of Web CRD<sup>SM</sup>. Member firms can now request an automatic e-mail reminder be sent from Web CRD to a designated individual at the firm whenever **any or all** of five significant, registration-related conditions occur:

1. *The member firm's financial account becomes funds deficient.*
2. *A regulator withdraws a temporary registration for an associated individual.*
3. *A registered individual associated with the firm becomes CE Inactive.*
4. *A registered individual associated with the firm is within 90 days from the end of his/her required Regulatory Element 120-day window.*
5. *An associated individual with the firm has an Outstanding Disclosure Letter.*

Firms may choose any combination or all of the five notifications for which they would like to be notified by e-mail. (See related article on page 19 regarding continuing education e-mail reminders.)

The firm must set up via Web CRD the receipt of the e-mail notifications. It must do so in order to provide the name and e-mail address of its designated recipient. To initiate receipt of any or all of the above notifications to an e-mail address at the firm, the firm must log onto Web CRD:

1. *Click on NFI ORGANIZATION SEARCH under ORGANIZATION-NON-FILING INFORMATION on the Site Map.*
2. *Click on FIRM NOTIFICATION on the Navigation Panel or on the footer at the bottom of the screen. NOTE: If you do not see Firm Notification on the Navigation Panel, you may not have authorization for this function. Please contact your firm's Web CRD Account Administrator.*
3. *Enter the e-mail address of the individual who you want to receive the notifications at your firm.*
4. *Enter the individual's name.*
5. *Enter the phone number of the individual.*
6. *Place a check mark in the box before each notification that you wish to receive. (If you would like to receive e-mail notification of all five notifications, you must check all five boxes.)*
7. *Click on SAVE.*

To access the Firm Notification function in Web CRD, your firm's Account Administrator must first entitle you with the MAINTAIN FIRMS NOTIFICATION privilege. Please note that while Account Administrators can set up other individuals at their firm with the Maintain Firms Notification function, they cannot do so for themselves. Account Administrators who do not already have the Maintain Firms Notification privilege and would like to be entitled to it themselves must fax a newly completed Account Administrator Entitlement Form (AAEF), specifically requesting the privilege, to the NASDR Entitlement Group at (240) 386-4669.

The Entitlement Group will add the privilege to the Account Administrator's other Web CRD entitlements. To obtain an AAEF, call the Gateway Call Center at (301) 590-6500.

Once the firm has initiated the notifications, it will receive a separate e-mail notification each time a selected condition occurs. As an example, if three individuals at the firm are issued Outstanding Disclosure Letters on the same day, then the firm will receive three separate e-mail notifications, one for, and specific to, each individual.

Currently firms may only designate one person to receive the e-mail messages. Several firms have requested the ability to identify more than one individual to receive e-mail messages. NASD Regulation is assessing the costs and technical considerations for such an enhancement.

Feedback from firms indicates that this Web CRD functionality has been positive, especially if the firm does not access Web CRD on a daily basis. With the rollout of the e-mail Firm Notification functionality, firms can now be assured of receiving these five timely and important updates via Web CRD Firm Queues and e-mail. It is the intention of NASD Regulation, with input from the Web CRD user communities, to expand the types of e-mail notifications that firms may request to receive as Web CRD is enhanced in future releases.

*Questions regarding the new firm e-mail notifications may be directed to the Gateway Call Center at (301) 590-6500.*

### ***Firm E-Mail Notifications Tip***

If the individual at the firm who receives the e-mail notifications is going to be out of the office for an extended period of time, due to vacation or other circumstances, there are two suggested methods to ensure continued review/analysis of the messages for firms:

- (1) the firm can change, at any time, the recipient of the e-mail notifications, via the Web CRD system, and should identify another individual to receive the e-mails during the interim. It would do so, following the steps previously outlined; or,
- (2) the individual who receives the e-mail notifications can request that the firm's technical support staff temporarily forward his/her e-mail to another individual's mailbox.

## *IARD Update: Investment Adviser Firm Registration*

The Investment Adviser Registration Depository (IARD) system was launched December 4, 2000. IARD enables investment advisers to electronically file Forms ADV and ADV-W with the SEC and/or individual states. Sponsored by the SEC and the North American Securities Administrators Association (NASAA), IARD was developed by NASD Regulation in accordance with the requirements set by its sponsors and an Industry Advisory Council, which includes investment adviser firms and trade associations.

The SEC mandated that all federally regulated advisers transition to electronic filing during the first four months of 2001. A Transition Filing Schedule was adopted based on an adviser's 801 number and fiscal year-end date. Advisers were required to submit a revised Form ADV electronically through IARD based on the Transition Filing Schedule.

April 30, 2001, marked the conclusion of the implementation period for existing SEC-registered investment adviser firms to transition onto IARD. The majority of advisers complied with the SEC mandate and successfully filed their Form ADVs by their scheduled deadlines. The SEC sent a warning letter on March 27, 2001, to federally regulated investment advisers that failed to set up an IARD User Account, which would entitle them to file on IARD. Those advisers that have failed to submit an electronic filing are at risk of having their SEC registration canceled.

All states that regulate investment advisers have agreed to accept filings through IARD. Currently most states have made firm participation in IARD voluntary; however, many states are in the process of legislation and/or rulemaking to mandate use of the IARD system. To check which states have already mandated or plan on mandating electronic filing on IARD, visit the NASAA Web Site at [www.nasaa.org](http://www.nasaa.org).

There are important upcoming IARD items to keep in mind for the second half of 2001, as well as for 2002. Scheduled for release in the third quarter of 2001 is the Investment Adviser Public Disclosure Program for investment adviser firms registered through the IARD system. The most recent electronic full Form ADV filing made will be disclosed via the Internet; however, home addresses and Social Security numbers will not be available for viewing.

Another important item is the firm's participation in the IARD Renewals Program for the fourth quarter of 2001. Additional detailed information regarding renewals will be communicated directly to investment adviser firms later in 2001 and will be available on the IARD Web Site at [www.iard.com](http://www.iard.com). As for 2002, advisers should plan on budgeting fees for the expected release of Investment Adviser Representatives, which will implement the registration of investment adviser representatives on IARD. The anticipated fees per representative are as follows: \$45 for an Initial Set-up Fee, \$45 for the Annual Renewal Fee, and \$45 for a Transfer Fee when a representative changes firms.

The IARD system will continue to grow as future releases enable further streamlining of electronic filing for investment advisers, centralized registration information for regulatory review, and valuable information to the investing public. For additional information regarding IARD, please visit these Web Sites.

**SEC at:** [www.sec.gov/iard](http://www.sec.gov/iard)

**NASD at:** [www.iard.com](http://www.iard.com)

**NASAA at:** [www.nasaa.org](http://www.nasaa.org)

*Question about this article may be directed to Janis Paulikas, CRD/Public Disclosure Department, NASD Regulation, Inc., at (240) 386-4772.*

#### REGULATORY SHORT TAKES

## *DPP And REIT Valuations On Customer Account Statements*

Since the SEC approved amendments to the NASD Customer Account Statement Rule (Rule 2340) in November 2000, NASD Regulation has addressed a number of questions from member firms concerning the interpretation and application of the rule. NASD Regulation has compiled in this *Regulatory & Compliance Alert* frequently asked questions to help members understand and apply the new amendments.

### **Background**

In *NASD Notice to Members 01-08* (January 2001), NASD Regulation included the text of the new amendments to the Customer Account Statement Rule and described the customer account statement disclosure requirements for illiquid direct participation program (DPP) and real estate investment trust (REIT) securities. The Customer Account Statement Rule requires members that conduct a general securities

business to send account statements to customers on at least a quarterly basis. The account statements must include a description of any securities position, money balances, or account activity since the prior account statement was sent.

The new amendments provide that estimated values must be included on an account statement if illiquid DPP or REIT securities are in the possession or control of the member and the annual report for the DPP or REIT includes a per share estimated value. When members are not required to provide an estimated value, they may do so voluntarily as long as they satisfy the rule's new requirements that: (i) valuations cannot be more than 18 months old; and (ii) account statements must describe the source of the valuation and the method by which it was developed.



## Questions And Answers

*Q. How soon after an estimated value is published in an annual report is a member required to include the value on an account statement?*

A. A member must include the estimated value on the account statement issued at the end of the third month following the date that the program or trust files the annual report with the SEC.

*Q. When a member is required to include an estimated value on the account statement, is the member required to include it only on the account statement issued at the end of the third month, or on all subsequent account statements, until a new estimated value is published in the annual report?*

A. The rule only requires members to include the estimated value on the account statement issued at the end of the third month following the date that the program or trust files the annual report with the SEC. Members, however, may decide to include estimated values on all customer account statements as an accommodation or service to their customers.

*Q. What is the extent of a member's obligation to ensure that the estimated value included on the account statement is accurate?*

A. The member is not obligated to ensure that an estimated value provided from outside the member firm is accurate. *NASD Notice to Members 01-08* states "The rule does not

obligate a general securities member to confirm the accuracy of an estimated value provided in a DPP or REIT's annual report or provided by any other source external to a member." A member has an affirmative obligation, however, to remove or amend an estimated value if the member can demonstrate that the value was inaccurate as of the date of valuation or is no longer accurate as a result of a material change in the operations or assets of the program or trust.

*Q. If a DPP or REIT program or trust provides a new estimated value in a quarterly report, is the new value necessarily a material change that renders a previously disclosed estimated value "no longer accurate," thereby preventing a member from continuing to use an estimated value that was based on annual financial statements or included in the last annual report?*

A. A quarterly estimated value that varies from a previously disclosed annual estimated value does not necessarily constitute a material change in the operations or assets of the program or trust requiring the annual value to be updated or deleted. Members will have to determine whether they may continue to report the previous value based on the facts and circumstances. NASD Regulation recognizes that such programs operating in the ordinary course of business will experience changes in financial operations and some fluctuations in the estimated value of their securities throughout the year that do not constitute a "material change."

- Q. *What kind of disclosure satisfies the rule's requirement for members to provide a description of the estimated value?*
- A. Members may fulfill this requirement by disclosing whether the estimated value represents an estimate of the investor's interest in the assets owned by the DPP or REIT or whether it represents an estimate of the value of the investor's securities.

- Q. *What kind of disclosure satisfies the rule's requirement for members to provide a description of the source of the estimated value?*
- A. Members may fulfill this requirement by disclosing whether the estimated value was obtained from the program managers, an independent valuation firm, or calculated by the member itself.

- Q. *What kind of disclosure satisfies the rule's requirement for members to provide a description of the method by which the estimated value was determined?*
- A. Members may fulfill this requirement by disclosing whether the estimated value was derived from:
- ❖ *an independent valuation firm's appraisal of program's assets;*
  - ❖ *the program managers' estimate of the value of the program assets;*
  - ❖ *the book value of the program's assets or capital accounts;*

- ❖ *repurchase prices paid for program interests; or*
- ❖ *sales prices of the program interests in informal secondary markets.*

- Q. *Do the rule's requirements apply regardless of whether DPP or REIT securities are included "above or below the line" on an account statement?*

- A. "Above the line" is a term that indicates securities are in the possession of the member. The term "below the line" means that securities or other assets listed on the account statement are reported, but are not in the possession of the member. Typically, securities are listed below the line in response to customer requests. The rule applies to securities listed or itemized on the account statement regardless of where they appear on the account statement.

*Questions regarding this article may be directed to Eugene Buchanan, Jr., or Susan E. Donovan, Corporate Financing Department, NASD Regulation, Inc., at (240) 386-4623.*

## Continuing Education Reminder

NASD Regulation reminds firms of their responsibility to monitor for compliance with the Regulatory Element of the Continuing Education requirements of NASD Rule 1120(a). NASD Regulation staff is detecting instances of inactive individual registrations due to the failure to complete Regulatory Element training. Some individuals in 'inactive' status have improperly continued to conduct business activities that require registration. In some instances, principals and senior officers of firms have continued to supervise staff and manage the firm's business even though their registration status is inactive.

The continuing education rules of all of the securities self-regulatory organizations prohibit persons deemed inactive from performing, or being compensated for, any activities requiring registration, including supervision. Infractions of the Regulatory Element continuing education provision can result in a range of actions from informal dispositions (such as a Letter of Caution) to a formal action (such as a complaint), depending on the circumstances of the particular matter.

As a reminder, Rule 1120 requires registered representatives and principals to complete the Regulatory Element computer-based training within 120 days from certain milestone dates. Each firm is required to prepare, maintain, and follow procedures that are reasonably designed to assure compliance with the Regulatory

Element. These procedures should identify who will be responsible for compliance with the rule, how that person will monitor Web CRD to determine when registered persons are required to complete their Regulatory Element training, and how the firm will ensure that persons deemed inactive cease conducting activities requiring registration, including supervision of the firm's business.

Notification to member firms of those registered persons approaching a milestone date, those currently in a 120-day window, and/or those who have been deemed inactive, is provided through Web CRD. In addition, firms may register to receive e-mail notification from Web CRD (*see related article on page 13 regarding how to make use of CRD e-mail notifications*) when a person registered with the firm is in an open window or has been deemed inactive. For more information, please see *NASD Notices to Members 00-35* (June 2000), *01-07* (January 2001), and *01-17* (March 2001).

*Questions concerning the continuing education requirements of NASD Rule 1120 may directed to Daniel M. Sibears or John Linnehan, Member Regulation, NASD Regulation, Inc., at (202) 728-6911 or (240) 386-4684, respectively. Members may also contact their local NASD Regulation District Office.*

## Testing Update

### **Excellence In Service Award For Testing Centers**

NASD Regulation established an Excellence In Service Award Program for those centers that consistently achieve excellence in the areas of customer service and performance.

The awards are made in April, June, October, and January for the previous calendar quarter.

The Excellence In Service Award winners for the first quarter of 2001 are:

Cincinnati, OH	Tucson, AZ	LaMesa, CA
Riverside, CA	Anaheim Hills, CA	Rancho Cucamonga, CA
Redlands, CA	Atascadero, CA	Tallahassee, FL
Temple Terrace, FL	St. Joseph, MO	Woodbury, MN
Oklahoma City, OK	Memphis, TN	Cuyahoga Falls, OH
Columbus, OH	Niles, OH	Strongsville, OH
Lima, OH	Pittsburgh (N. Hills), PA	Allentown, PA
Ft. Wayne, IN	Evansville, IN	Mishawaka, IN
Albuquerque, NM	Boise, ID	Las Vegas, NV
Portage, MI	Troy, MI	Lansing, MI
Utica, MI	Hamden, CT	Decatur, AL
Dothan, AL	Homewood, IL	Northbrook, IL
Urbandale, IA	Omaha, NE	Garden City, NY
Bismarck, ND	Sioux Falls, SD	Fox Point, WI
Charleston, SC	Williston, VT	Little Rock, AR
Charlotte, NC	Lexington, MA	Denver, CO
Melville, NY	Orlando, FL	Waltham, MA
Glendale, CA		

### **Update: Testing And Continuing Education—International Delivery**

NASD Regulation is now offering delivery of computerized testing and continuing education sessions in Europe and the Pacific Rim.

NOTE: Continuing Education Session 2-101 is now available for scheduling and delivery at all international locations. Continuing Education Sessions 2-201 and 2-106 are not yet available for scheduling or delivery. NASD Regulation anticipates that these will be available in the future. We are approving extensions to eligibility windows for candidates who want to schedule the 2-201 or 2-106 sessions internationally, since we are not able to accommodate them at this time.

If a continuing education window for Sessions 2-201 or 2-106 needs to be extended, please call NASDR Field Support Services in the US at 800-999-6647, Option 1. Indicate that the continuing education window needs to be extended because the individual is attempting to complete the session internationally.

Computerized delivery is offered in the following cities:

- ❖ *Sydney, Australia*
- ❖ *Hong Kong, China*
- ❖ *Paris, France*
- ❖ *Frankfurt, Germany*
- ❖ *Tokyo, Japan*
- ❖ *Seoul, South Korea*
- ❖ *London, United Kingdom*

For detailed contact/location information, appointment scheduling phone numbers, and policies/procedures for scheduling candidate appointments, visit our Web Site at [www.nasdr.com/2634.htm](http://www.nasdr.com/2634.htm).

The following are “best practices” that firms and candidates should use when scheduling a session internationally.

- ❖ *Ensure that the firm has filed an application on Web CRD for the candidate to take the appropriate session, and that an eligibility window has been opened.*
- ❖ *When scheduling the appointment, the firm and/or candidate should be prepared to provide a US-issued Social Security number (SS#) if an SS# has been entered into Web CRD for the candidate.*

*If a candidate is being scheduled into a foreign location, and has been issued an SS# that has been entered into Web CRD, then the SS# must be used as the candidate’s primary ID number when scheduling the appointment.*

*If a candidate does not have a US-issued SS#, then the firm and/or the candidate must be prepared to provide the candidate’s CRD Number for validation purposes.*

- ❖ *Request additional time for candidates who speak English as a second language (ESL) at the time that the appointment is scheduled. Candidates who speak English as a second language **will not** automatically receive additional time for their session.*

Upon arrival to the test center, the candidate must provide a letter from the firm verifying the ESL condition just as is required in domestic centers.

***Update: Implementation Of New Procedure For Group Appointment Scheduling***

Effective March 1, 2001, NASD Regulation implemented a new procedure for scheduling group appointments. There is one major difference from the procedure that was in place before March 1.

Firms will be contacted 30 days before the scheduled group appointment date for confirmation as to the number of appointments needed. Firms can opt to keep the number of appointments or reduce the number of appointments. Once the confirmation has occurred, the firm will be charged for the “agreed upon” number of appointments regardless of whether they are used.

Firms will need to provide specific candidate information (names, Social Security numbers) 14 days before the appointment date if the group was scheduled as a “block” and actual candidate information was not previously provided. If the candidate information is not provided to the Field Support Services Group appointment staff by the 14-day cutoff date, the appointments will be canceled, and the firm charged for those appointments.

NOTE: Firms must use caution when changing a previously confirmed group appointment to another date.

The original group appointment date has to be canceled in order to reserve a different date. The firm runs the risk of not being able to reserve the newly requested date (due to capacity restraints), and forfeiting the previously held date. A date change to an existing group appointment will be treated as a brand new request, and will be placed in the work queue as such.

*Questions about this article may be directed to Linda Christensen, Member Regulation, NASD Regulation, Inc., at (610) 627-0377.*

## Certification Testing & Continuing Education Delivery Location List

Current as of June 2001

### Alabama

Birmingham	205-871-7444
Decatur	205-350-8324
Dothan	334-677-6334
Mobile	334-344-6284
Montgomery	334-262-0043

### Alaska

Anchorage	907-563-6601
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### Arizona

Goodyear	623-932-7800
Tucson	520-531-0431

### Arkansas

Fort Smith	501-484-0702
Little Rock	501-663-8280

### California

Anaheim	714-637-7894
Atascadero	805-462-8308
Brea	714-255-1141
Culver City (5601 W. Slausen)	310-337-6696
Culver City (5731 W. Slausen)	310-337-6696
Diamond Bar	909-861-1146
Fremont	510-687-1391
Gardena	310-329-1844
Glendale	818-545-7383
Irvine	949-552-0563
La Mesa	619-668-2121
Palm Desert	760-836-1510
Piedmont	510-428-4123
Rancho Cucamonga	909-944-9763
Redlands	909-792-2145
Riverside	909-353-8600
Sacramento (Fair Oaks)	916-961-7323
San Diego	619-481-3648
San Francisco (Market St.)	415-882-1212
San Francisco (W. Portal St.)	415-681-3769
San Jose	408-257-7699
Santa Rosa	707-528-6000
Westlake Village	805-495-6367

### Canada

Calgary	403-777-1365
Etobicoke, ON	416-236-2629, Ext. 221
Halifax	902-422-7323
Montreal	514-876-8818
Richmond BC	604-231-1966
Saskatoon, SK	306-978-7323
Whitby	905-404-1818
Windsor	519-974-8747
Winnipeg	204-988-5050

### Colorado

Boulder	303-449-1700
Colorado Springs	719-593-1272
Englewood	720-493-5254
Littleton	303-972-7276
Pueblo	719-545-0838

### Connecticut

Glastonbury	860-659-0400
Hamden	203-287-9677
Norwalk	203-847-0031

### Delaware

Dover	302-741-0412
Wilmington	302-998-3817

### District of Columbia

Washington	202-955-5887
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### Florida

Coral Springs	954-340-2750
Davie	954-423-0782
Ft. Myers	941-275-1130
Gainesville	352-371-6891
Hollywood	954-967-0443
Jacksonville	904-739-3000
Maitland/Orlando	407-875-8118
Miami	305-825-2708
Sarasota	941-923-9399
Tallahassee	850-386-8707
Tampa	813-289-1246
Temple Terrace (Tampa)	813-989-9988
Winter Park	407-671-2332

**Georgia**

Atlanta	404-255-9957
Augusta	706-868-1888
Jonesboro	770-478-5356
Macon	912-474-5909
Marietta	770-980-1117
Savannah	912-354-2660
Valdosta	912-245-1069

**Hawaii**

Honolulu County	808-263-6656
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**Idaho**

Boise	208-322-3555
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**Illinois**

Carbondale	618-529-4664
Carpentersville	847-836-2031
Chicago (S. Wabash)	312-663-5632
Homewood	708-798-0238
Northbrook	847-559-2461
Peoria	309-682-0825
Springfield	217-546-0381
Sycamore	815-748-0074
Westchester	708-947-2800

**Indiana**

Evansville	812-479-6855
Ft. Wayne	219-436-2710
Indianapolis (E. 86th St.)	317-257-7546
Indianapolis (Girl's School Rd)	317-247-7664
Lafayette	765-447-0626
Merrillville	219-736-1113
Mishawaka	219-254-1055

**Iowa**

Bettendorf	319-359-1001
Urbandale	515-867-8500

**Kansas**

Topeka	785-272-7500
Wichita	316-651-5350

**Kentucky**

Lexington	606-268-3338
Louisville	502-423-0340

**Louisiana**

Baton Rouge	225-293-8489
Bossier City	318-742-7349
New Orleans	504-245-2600

**Maine**

Orono	207-581-1708
Portland	207-775-5812

**Maryland**

Baltimore	410-843-6401
Bethesda	301-718-9893
Columbia	410-740-8137
Lanham	301-552-3400
Pikesville	410-486-9045
Salisbury	410-341-4100

**Massachusetts**

Boston	617-345-8980
Brookline	617-264-4152
E. Longmeadow	413-525-4901
Lexington	781-861-0723
Waltham	781-890-0466
Worcester	508-853-7250

**Michigan**

Ann Arbor	734-973-9328
Grand Rapids	616-957-0368
Lansing	517-372-7413
Livonia	734-462-2750
Portage	616-321-8351
Troy	248-643-7323
Utica	810-739-0270

**Minnesota**

Bloomington	612-831-7461
Duluth	218-723-1494
Rochester	507-292-9270
Woodbury	651-702-6791

**Mississippi**

Jackson	601-366-6400
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**Missouri**

Ballwin	314-394-7742
Jefferson City	573-761-7317
Lee's Summit	816-525-5445
Springfield	417-882-0740
St. Joseph	816-671-9900
St. Louis	314-993-9092

**Montana**

Billings	406-656-4646
Helena	406-443-9205

**Nebraska**

Columbus	402-564-2862
Omaha	402-334-9449



**Nevada**

Las Vegas 702-795-7323  
Reno 775-829-2700

**New Hampshire**

Portsmouth 603-433-6800

**New Jersey**

Deptford 609-384-4744  
East Brunswick 732-390-4040  
Fairlawn 201-475-1670  
Hamilton Township 609-631-9794  
Toms River 732-349-4609  
Union 908-964-2862

**New Mexico**

Albuquerque 505-296-0609

**New York**

Albany 518-438-6762  
Amherst/Buffalo 716-565-0570  
Brooklyn Heights 718-222-1277  
East Syracuse 315-433-9038  
Garden City 516-746-7367  
Ithaca 607-277-4821  
Manhasset 516-869-1238  
Melville 516-845-9063  
NYC Manhattan Area 212-760-1137  
NYC Midtown Area 212-986-5661  
NYC Penn Plaza (15th Fl) 212-760-1137  
NYC Penn Plaza (17th Fl) 212-631-0020  
NYC Wall Street Area 212-797-3860  
Rego Park 718-997-6356  
Rochester 716-385-4810  
Staten Island 718-980-3079  
Vestal 607-798-1715  
Wappingers Falls 845-298-8378  
Watertown 315-788-2588  
White Plains 914-289-0437

**North Carolina**

Asheville 828-253-4224  
Charlotte 704-364-7758  
Gastonia 704-853-2038  
Greensboro 336-288-1311  
Greenville 252-756-0342  
Raleigh 919-846-1975

**North Dakota**

Bismarck 701-224-1171  
Fargo 701-293-1234

**Ohio**

Cincinnati 513-671-7030  
Columbus 614-451-4131  
Cuyahoga Falls (Akron) 330-922-5587  
Dayton 937-435-8417  
Hilliard 614-529-4232  
Lima 419-331-7323  
Mentor 440-255-0055  
Niles 330-652-1886  
Reynoldsburg 614-864-4090  
Strongsville 440-238-0530

**Oklahoma**

Oklahoma City 405-843-8378  
Tulsa 918-249-0820

**Oregon**

Eugene 541-485-4589  
Milwaukie 503-659-9575  
Portland 503-254-2009

**Pennsylvania**

Allentown 610-791-5320  
Clark Summit 717-586-4362  
Erie 814-864-6100  
Harrisburg 717-652-0143  
Lancaster 717-391-6519  
North Wales 215-412-7822  
Philadelphia 215-238-8380  
Pittsburgh (North Hills) 412-367-4620  
Pittsburgh (Braddock Ave.) 412-247-4463  
Plymouth Meeting 610-941-6284  
York 717-755-7471

**Puerto Rico**

Guaynabo 787-706-7640  
Hato Rey 787-753-6394

**Rhode Island**

Cranston 401-942-8552

**South Carolina**

Charleston 843-766-5599  
Columbia 803-354-9221  
Greenville 864-676-1506  
Irmo 803-749-0356  
Myrtle Beach 843-293-2960

**South Dakota**

Sioux Falls 605-362-4875

**Tennessee**

<i>Chattanooga</i>	423-894-6249
<i>Clarksville</i>	931-647-2003
<i>Franklin</i>	615-790-5018
<i>Knoxville</i>	423-690-0671
<i>Madison (Nashville)</i>	615-860-0376
<i>Memphis</i>	901-266-4606

**Texas**

<i>Abilene</i>	915-698-7858
<i>Amarillo</i>	806-359-1037
<i>Arlington</i>	817-572-6690
<i>Austin</i>	512-441-1978
<i>Beaumont</i>	409-899-9798
<i>Corpus Christi</i>	512-993-3793
<i>Dallas</i>	972-385-1181
<i>El Paso</i>	915-587-7323
<i>Houston (Saturn Ln)</i>	281-488-6144
<i>Houston (Kingwood)</i>	281-361-9243
<i>Lubbock</i>	806-785-4400
<i>Mesquite</i>	972-686-3310
<i>Midland</i>	915-520-9418
<i>San Antonio</i>	210-494-7263
<i>Sugar Land</i>	281-491-9200
<i>Waco</i>	254-772-2467

**Utah**

<i>Ogden</i>	801-394-5990
<i>Orem</i>	801-226-5544
<i>Salt Lake City</i>	800-578-6273

**Vermont**

<i>Williston</i>	802-872-0845
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**Virgin Islands**

<i>St. Croix</i>	340-773-5751
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**Virginia**

<i>Arlington/DC Area</i>	703-807-5813
<i>Lynchburg</i>	804-832-0778
<i>Mechanicsville</i>	804-730-5844
<i>Newport News</i>	757-873-0208
<i>Roanoke</i>	540-344-3688

**Washington**

<i>Lynnwood</i>	425-774-3922
<i>Puyallup</i>	253-848-0771
<i>Spokane</i>	509-467-8715

**West Virginia**

<i>Morgantown</i>	304-293-0699
<i>South Charleston</i>	304-744-4144

**Wisconsin**

<i>Fox Point</i>	414-540-2223
<i>Madison</i>	608-231-6270
<i>New Berlin</i>	414-796-0836
<i>Racine</i>	414-554-9009

**Wyoming**

<i>Casper</i>	307-235-0070
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# NASD REGULATION, INC.

## 2001 ADVERTISING REGULATION SEMINARS

Join us this fall to learn valuable compliance tips for financial services advertising. These practical, hands-on seminars will be led by advertising regulation experts—the people who work in advertising compliance every day.

Watch your mail for registration brochures. Please note, attendance will be limited for both seminars.

### *Topics covered will include:*

- ☛ Current Issues
- ☛ Electronic Communications
- ☛ Mutual Funds
- ☛ Case Studies
- ☛ Basics of Advertising Regulation
- ☛ Sales Practices and Supervision
- ☛ Variable Insurance Products

For more information, please visit the NASD Regulation Web Site at [www.nasdr.com](http://www.nasdr.com) or call (202) 728-8383.

### Washington, DC

**October 4-5, 2001**

JW Marriott Hotel  
1331 Pennsylvania Avenue  
Washington, DC 20004

**(202) 393-2000**

### Registration Fees

The registration fees for the **Washington, DC** seminar are:

<b><u>BEFORE</u></b>	September 4, 2001:	<b>\$475</b>
<b><u>AFTER</u></b>	September 4, 2001:	<b>\$500</b>

**NASD**<sup>®</sup>  
**REGULATION**  
An NASD Company

### Scottsdale, AZ

**October 22, 2001**

Fairmont Scottsdale Princess Hotel  
7575 East Princess Drive  
Scottsdale, AZ 85255

**(480) 585-4848**

### Registration Fees

The registration fees for the **Scottsdale, AZ** seminar are:

<b><u>BEFORE</u></b>	September 24, 2001:	<b>\$375</b>
<b><u>AFTER</u></b>	September 24, 2001:	<b>\$400</b>

*Comprehensive one-day program in conjunction with the Fall Securities Conference, October 23-24, 2001*

# NASD Regulation 2001 Fall Securities Conference



Fall Securities Conference  
October 23-24, 2001

Pre-Conference:  
Advertising Regulation  
Seminar  
October 22, 2001

Join us in Scottsdale, Arizona for the 2001 Fall Securities Conference:

- ✦ Learn about and discuss the latest developments in the securities industry.
- ✦ Hear from and interact with industry experts and NASD Regulation leadership, explore regulatory issues, and much more.

We encourage you to make hotel reservations early.

Contact: Fairmont Scottsdale Princess Hotel Reservations: (480) 585-4848 or (800) 344-4758

Watch your mail and [www.nasdr.com](http://www.nasdr.com) for complete conference information and registration materials.

Questions? Visit the NASD Regulation Web Site or call the NASD at (202) 728-8383.

## NASD DISCIPLINARY ACTIONS

## NASD Disciplinary Actions

*In April, May, and June 2001, the NASD announced the following disciplinary actions against these firms and individuals. Publication of these sanctions alerts members and their associated persons to actionable behavior and the penalties that may result. This information is current as of June 2001.*

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

### April Actions

**Joseph Gaetano Gerace (CRD #1060223, Registered Principal, San Rafael, California)** submitted an Offer of Settlement in which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Gerace consented to the described sanctions and to the entry of findings that, a member firm, acting through Gerace, effected transactions in securities while failing to maintain minimum required net capital.

Gerace's suspension began April 2, 2001, and concluded at the close of business May 14, 2001. (NASD Case #C01000020)

**W.R. Hambrecht & Co., LLC (CRD #45040, San Francisco, California)** and **William R. Hambrecht (CRD #234793, Registered Principal, San Francisco, California)** were censured and fined \$15,000, jointly and severally. The sanctions were based on findings that the firm, acting through Hambrecht, engaged in securities sales activities in contravention of a written agreement with the NASD that required the firm to refrain from engaging in such activities until it received approval from the NASD. (NASD Case #C01000011)

**Kevin Arthur Hoag (CRD #1908521, Registered Representative, San Francisco, California)** was fined \$12,200 and barred from association with any NASD member in any capacity. The fine must be paid before any application for reentry into the securities industry will be considered. The sanctions were based on findings that Hoag executed unauthorized transactions in the accounts of public customers. (NASD Case #C01000013)

### May Actions

**Leigh Farrington Fiske (CRD #2330320, Registered Representative, Monterey, California)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Fiske failed to respond to NASD requests for information. (NASD Case #C01000024)

**Gregory Paul Maggipinto (CRD #1042789, Registered Representative, San Jose, California)** was fined \$107,734 and barred from association with any NASD member in any capacity. The fine must be paid before any application for reentry into the securities industry will be considered. The sanctions were based on findings that Maggipinto executed unauthorized transactions in a deceased customer's account and fraudulently obtained discretionary trading authority from the customer's survivors by representing that he had been given power of attorney over the account. Maggipinto also failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #C01000026)

**Arnold Lopez Magpantay (CRD #2812805, Registered Representative, Sacramento, California)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Magpantay willfully provided false responses on his Form U-4. (NASD Case #C01000015)

### June Actions

**Cery Bradley Perle (CRD #2306492, Registered Principal, Corona Del Mar, California)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Perle received checks from public customers totaling \$30,000 for the purchase of stock in an IPO prior to the registration statement for the offering becoming effective. Furthermore, Perle began aftermarket trading in the stock before completing the distribution of the IPO in violation of the NASD's Free-Riding and Withholding Interpretation. (NASD Case #C01000020)

District 2 - Southern California (that part of the state south or east of the counties of Monterey, San Benito, Fresno, and Inyo), southern Nevada (that part of the state south or east of the counties of Esmeralda and Nye), and the former U.S. Trust Territories

### April Actions

**Nicholas John Kirk (CRD #2004783, Registered Representative, Rocklin, California)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity and required to pay \$78,500, plus interest, in restitution to a public customer. Proof of restitution, with interest, shall be a prerequisite before

reassociating with a member firm or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kirk consented to the described sanctions and to the entry of findings that he borrowed \$78,500 from a public customer purportedly for start-up costs for a business and failed to provide the customer with any instrument documenting the duration of the terms of the loans, including the principal borrowed from her or the interest, if any, she would be earning on that principal. The NASD found that, instead, Kirk used the funds for his personal use and benefit and never repaid the customer any portion of the loans. The findings also stated that Kirk gave the NASD false and misleading responses to written requests concerning his handling of loan proceeds and provided false and misleading representations on his Form U-4. (NASD Case #C02000055)

**Robert David Mayfield (CRD #2386752, Registered Principal, Murrieta, California) and Daniel Joseph Frydrych (CRD #1343609, Registered Principal, Temecula, California)** were named as respondents in an NASD complaint alleging that they recommended to public customers the purchase and sale of securities without having reasonable grounds for believing that such recommendations were suitable for the customers in light of the nature of the transactions and the facts disclosed by the customers as to their other securities holdings, financial situation, investment objectives, circumstances, and needs. The complaint further alleges that Frydrych and Mayfield engaged in unethical conduct in that they provided the customers and their member firm with a materially false and misleading mutual fund switch form negatively impacting their ability to accurately assess the suitability of the transactions. (NASD Case #C02010003)

**Thomas Vincent Meaglia (CRD #862483, Registered Representative, Glendora, California) and Richard Steven Meza (CRD #2570853, Registered Representative, Corina, California)** were named as respondents in an NASD complaint alleging that they exercised discretion in the accounts of public customers, without having obtained prior written authorization from the customers and prior written acceptance of the accounts as discretionary by their member firm. The complaint also alleges that Meaglia and Meza recommended and engaged in transactions in the account of public customers, and did not have reasonable grounds for believing that these recommendations and resultant transactions were suitable for the customers on the basis of their financial situation, investment objectives, and needs. (NASD Case #C02010002)

**Mynor Monterroso (CRD #2355105, Associated Person, Norco, California)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity, with the right to reapply for association with any NASD member in any capacity after a period of five years. Without admitting or denying the allegations, Monterroso consented to the described sanctions and to the entry of findings that he provided false responses on his Form U-4 and failed to amend his Form U-4. The findings also stated that Monterroso failed to respond to NASD requests for information. (NASD Case #C02000063)

**Robert Tretiak (CRD #1416058, Registered Principal, Las Vegas, Nevada)** was barred from association with any NASD member in any principal capacity, suspended from association with any NASD member in any capacity for two years and six months, fined \$35,000, and suspended until an outstanding arbitration award is paid in full plus an additional 30 days. If, after 30 months from the date of the National Adjudicatory Council (NAC) decision, an outstanding arbitration award is not fully paid or otherwise satisfied, the suspension imposed will convert to a bar in all capacities. The National Adjudicatory Council (NAC) imposed the sanctions following appeal of two Office of Hearing Officers (OHO) decisions. The sanctions were based on findings that Tretiak fraudulently sold securities in an initial public offering (IPO) while using a materially misleading prospectus and in violation of the contingency requirements contained in the prospectus and that he failed properly to establish an escrow account for the IPO. The NAC also found that Tretiak failed to satisfy a \$52,360 arbitration award that had been reduced to civil judgment. Tretiak has appealed this action to the SEC and the sanctions, other than the principal bar, and the suspension until he pays off the arbitration award, are not in effect pending consideration of the appeal. The principal bar and suspension, until the arbitration award is paid, began March 9, 2001. (NASD Cases #C02990042 and #C02980085)

## May Actions

**NevWest Securities Corporation (CRD #46464, Henderson, Nevada) and Anthony Marks Mello, III (CRD #2781726, Registered Principal, Las Vegas, Nevada)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$15,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Mello, offered and sold shares of common stock through a private "minimum-maximum" offering to public customers and presented to the customers a private placement memorandum that contained false and misleading statements. The findings also stated that the firm, acting through Mello, failed to deposit and retain customer funds in a properly established bank escrow account pending the occurrence of the contingency, failed to compute the amounts required to be deposited into the Special Reserve Bank Account for the Exclusive Benefit of Customers, and failed to timely deposit the amounts required to be deposited into the account. (NASD Case #C02010005)

**Harold Bailey Gallison, Jr. (CRD #1040211, Registered Principal, Las Vegas, Nevada)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gallison consented to the described sanction and to the entry of findings that he failed to abide by an NASD Order that prohibited him from associating with any NASD member in a principal or supervisory capacity. (NASD Case #C02000027)

**Jay Lynn Murphy (CRD #343227, Registered Representative, Van Nuys, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Murphy consented to the described sanction and to the entry of findings that he participated in private securities transactions and failed to give prior written notice to, and to receive written approval from, his member firm prior to engaging in such activities. (NASD Case #C02010006)

**Paul John Hoepfer (CRD #2318477, Registered Representative, Corona Del Mar, California)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Hoepfer failed to respond to NASD requests for information.

Hoepfer has appealed this action to the NAC, and the sanction is not in effect pending consideration of the appeal. (NASD Case #C02000037)

## June Actions

**James Ralph Betts, Jr. (CRD #20678, Registered Principal, San Rafael, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Betts consented to the described sanction and to the entry of findings that he participated in private securities transactions without providing prior written or oral notification to his member firm. (NASD Case #C02010017)

**Anura Mohan DeSilva (CRD #1438319, Registered Representative, Simi Valley, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, DeSilva consented to the described sanction and to the entry of findings that, in connection with the purchase and sale of variable annuity products through his member firm, DeSilva induced customers to render payment of unearned fees in the amount of at least \$32,600, directly to him. According to the findings, DeSilva misled the customers to believe that the unearned fees were his sole source of compensation for the transaction when, in fact, the unearned fees were in addition to commissions paid to him by the issuers, which reduced the market value of the customers' investments. In addition, the NASD found that DeSilva failed to inform his member firm that he was charging and receiving fees directly from customers in addition to commissions paid on the annuity transactions. (NASD Case #C02010007)

**Emanuel Richard Giglio (CRD #2457836, Registered Representative, Coronado, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 90 days. Without admitting or denying the allegations, Giglio consented to the described sanction and to the entry of findings that he engaged in private securities

transactions without prior written notice to, and approval from, his member firm.

Giglio's suspension began June 4, 2001, and will conclude September 1, 2001. (NASD Case #C02010016)

**Mark Chengpin Lee (CRD #2543839, Registered Principal, Rowland Heights, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000, suspended from association with any NASD member in any principal capacity for one and a half years, and as a condition to re-entering the securities business in any principal capacity, must requalify by exam as a general securities principal. Without admitting or denying the allegations, Lee consented to the described sanctions and to the entry of finding that a former member firm, acting through Lee, failed to supervise a registered representative adequately and properly to assure compliance with applicable rules and regulations, and failed to adopt, implement, and maintain adequate written supervisory procedures reasonably designed to detect and prevent unauthorized trading.

Lee's suspension began May 21, 2001, and will conclude at the close of business November 20, 2002. (NASD Case #C02010008)

**Luis Valente Orozco (CRD #3052545, Registered Representative, Chula Vista, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. The sanction was based on findings that Orozco engaged in an intentional and premeditated course of improper conduct in that he submitted false annuity applications and misused customer funds to settle the bogus transactions in order to inflate artificially his sales production statistics and to receive unearned commissions. According to the findings, to conceal his wrongdoing, Orozco misused and co-mingled funds in customers' accounts, forged a branch manager's signature on official checks, improperly obtained his employer's signature guarantee stamp, and used it to provide false signature guarantees. The findings also stated that, to further conceal his wrongdoing, Orozco opened an annuity account under a fictitious name, signed the false name to account documents, and funded the account by withdrawing funds, without authorization, from a certificate of deposit owned by a bona fide customer, and attempted to convert official checks and a check from an insurance company, all referencing the fictitious customer, into two separate official checks with a remitter to a bona fide customer. Moreover, the NASD determined that Orozco persisted in his scheme and attempted to thwart its detection by using multiple branch offices after facing questions from a branch manager. (NASD Case #C02010014)

**Hong Yi Sun (CRD #2286083, Registered Principal, Monterey Park, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any principal capacity for one and a half years and, as a condition to re-entering the securities business in any principal capacity, Sun must requalify by exam as a general securities

principal. In light of the financial status of Sun, no monetary sanction has been imposed. Without admitting or denying the allegations, Sun consented to the described sanctions and to the entry of findings that a former member firm, acting through Sun, conducted a securities business while failing to maintain its minimum required net capital. The findings also stated that Sun failed to supervise a registered representative adequately and properly to assure compliance with applicable rules and regulations, and failed to adopt, implement, and maintain adequate written supervisory procedures reasonably designed to detect and prevent unauthorized trading.

Sun's suspension began June 4, 2001, and will conclude at the close of business December 3, 2002. (NASD Case # C02010009)

**Ronald Duane Brouillette (CRD #1689348, Registered Representative, La Jolla, California)** was named as a respondent in an NASD complaint alleging that he engaged in unauthorized trading in the accounts of public customers.

The complaint also alleges that Brouillette failed to respond to NASD requests for information. (NASD Case #C02010015)

**Glenmore F. Diaz (CRD #11015945, Associated Person, Northridge, California)** was named as a respondent in an NASD complaint alleging that he received a \$10,283.15 check from a public customer to purchase bonds on the customer's behalf. The NASD also alleges that Diaz cashed the check and converted the funds for his personal benefit. (NASD Case #C02010026)

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

District 3A - Denver

#### April Actions

**William Joseph Shaughnessy (CRD #870259, Registered Representative, Tucson, Arizona)** submitted an Offer of Settlement in which he was censured and fined \$10,000. Without admitting or denying the allegations, Shaughnessy consented to the described sanctions and to the entry of findings that he made unsuitable recommendations for the joint securities account of public customers that resulted in an over-concentration of precious metals-related investments in the account. The findings also stated that Shaughnessy completed a new account form for the customers' securities account that contained material inaccuracies. (NASD Case #C3A000036)

**Thomas Otto Tabat (CRD #1011671, Registered Representative, Glendale, Arizona)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Tabat consented to the described sanction and to the entry of findings that he participated in private securities transactions outside the

scope of his employment with a member firm. The findings also stated that Tabat failed to provide prior written notice to, or receive written approval from, his member firm to participate in the transactions. (NASD Case #C3A010007)

**United Planners' Financial Services of America (CRD #20804, Scottsdale, Arizona) and Vaughn Sheldon Olthouse (CRD #501382, Registered Principal, Mesa, Arizona)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$50,000 and Olthouse was censured and fined \$20,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Olthouse, failed to inspect each office of supervisory jurisdiction annually and to establish in the firm's written supervisory procedures a schedule for the periodic inspection of the firm's branch offices. The NASD also found that the firm, acting through Olthouse, failed to conduct annual compliance interviews with each registered representative; failed to prepare a needs analysis and written training plan annually; and failed to implement a firm element continuing education program for its covered persons. The findings also stated that the firm, acting through Olthouse, failed to report customer complaints and the settlement of arbitrations to the NASD. (NASD Case #C3A010006)

#### May Actions

**James Joseph Corcoran (CRD #2328082, Registered Principal, Patchogue, New York)** submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one month. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Corcoran consented to the described sanctions and to the entry of findings that he offered and sold securities to public customers by means of misrepresentations of material information and omissions to disclose material information. The findings also stated that Corcoran made predictions of the future price of a speculative security in connection with the offer and sale of that security to a public customer.

Corcoran's suspension will begin the earlier of 30 days after he enters a plea of guilty or nolo contendere or is convicted in a criminal case or December 31, 2001. (NASD Case #C3A000028)

**Andrew Dwayne Miller (CRD #2002981, Registered Representative, Canon City, Colorado)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Miller consented to the described sanction and to the entry of findings that he obtained funds aggregating \$174,820.93 intended for investment and converted the funds to his own use and benefit. (NASD Case #C3A010011)



**Martin Lee Rising (CRD #1011762, Registered Representative, Paradise Valley, Arizona)** submitted an Offer of Settlement in which he was fined \$15,000 and suspended from association with any NASD member in any capacity for one month. Rising is also required to demonstrate to the NASD, not more than 90 days after the issuance of the Order of Acceptance of the Offer of Settlement, that an offer of rescission has been made to investors in an offering of securities. Without admitting or denying the allegations, Rising consented to the described sanctions and to the entry of findings that in connection with a private placement, he failed to return investor funds when the minimum sales contingency was not satisfied, and continued to solicit and accept purchases of the securities in a private placement after the minimum sales contingency was not satisfied and the funds received from investors were in the possession and control of the firm prior to the satisfaction of the minimum sales contingency. The findings also stated that Rising distributed offering materials to prospective investors that contained material misrepresentations.

Rising's suspension will begin June 1, 2001, and will conclude June 30, 2001. (NASD Case #C3A000012)

**Gerard Vincent Sherlock, Sr. (CRD #2629144, Registered Representative, Cherry Hill, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Sherlock consented to the described sanctions and to the entry of findings that he participated in private securities transactions, for compensation, without prior written notice to, or approval from, his member firms.

Sherlock's suspension began May 7, 2001, and will conclude at the close of business August 6, 2001. (NASD Case #C3A010004)

#### June Actions

**Don Jackson Akin (CRD #3108018, Registered Representative, Scottsdale, Arizona)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity.

Without admitting or denying the allegations, Akin consented to the described sanction and to the entry of findings that he posted false messages and baseless price predictions in an Internet chat room concerning a security that he owned. (NASD Case #C3A010014)

**Scott Robert Brown (CRD #2822289, Registered Representative, Provo, Utah)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Brown consented to the described sanction and to the entry of

findings that he falsified information and forged the signatures of public customers on retirement contribution forms and submitted them on behalf of the customers to his member firm without the authorization of the customers. The findings also stated that Brown submitted to his member firm a false variable annuity application for a voluntary 403(b) contribution on behalf of a new employee who was a fictitious person. (NASD Case #C3A010013)

**Stephen Walter Cline (CRD #2623218, Registered Representative, Windsor, Colorado)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cline consented to the described sanction and to the entry of findings that he applied for loans in the names of public customers who were clients of other agents, using identification he created from information in the files of his member firm. (NASD Case #C3A010012)

**Larry Scott Savage (CRD #1322718, Registered Representative, Sandy, Utah)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. In light of the financial status of Savage, no monetary sanction has been imposed. Without admitting or denying the allegations, Savage consented to the described sanction and to the entry of findings that he participated in private securities transactions, for compensation, without providing his member firm with prior written notice and without seeking, or receiving, permission from his member firm. The findings also stated that Savage participated in outside business activities without providing prompt written notice to his member firm. (NASD Case #C3A010008)

#### District 3B - Seattle

#### April Actions

**Floyd Clark Gambrel, Jr. (CRD #2492516, Registered Representative, Eden, Idaho)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gambrel consented to the described sanction and to the entry of findings that he engaged in private securities transactions, and failed to provide prior written notice to his member firm describing in detail the proposed transactions, his proposed role therein, and stating whether he had received, or might receive, selling compensation in connection with the transactions. (NASD Case #C3B010002)

#### May Actions

**Broadmark Capital Corporation (CRD #39056, Seattle, Washington)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,500. Without admitting or denying the allegations, the firm

consented to the described sanctions and to the entry of findings that it failed to report to the ACT the correct symbol indicating whether the firm executed transactions in eligible securities in a principal or agency capacity; incorrectly reported to ACT transactions as agency crosses when corresponding order tickets reflected the firm acting as principal; failed to report to ACT the correct symbol indicating whether the firm executed transactions in eligible securities in a principal or agency capacity; and failed to accept in ACT transactions in eligible securities within 20 minutes of the execution time. The findings also stated that the firm failed to consistently record or maintain all relevant terms and conditions on the memoranda for orders in that there was no indication of "not held" to denote working order status. The NASD also found that the firm incorrectly disclosed agency capacity on its customer confirmations for transactions when corresponding order tickets reflected the firm acting as principal. Furthermore, the NASD found that the firm used a non-compliant, non-synchronized, mechanical time stamp machine that failed to provide the "seconds" field to document times of receipt and execution. Moreover, the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning trading and market place rules. (NASD Case #C3B010004)

**Jesup & Lamont Securities Corp. (CRD #17833, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$13,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report short sale transactions to the ACT with a short sale modifier and failed to record or maintain all relevant terms and conditions on the memoranda for block order transactions in that there were no indications of "not held" to denote working order status. The findings also stated that the firm failed to show the correct time of execution on the memoranda of transactions reported to ACT. The NASD also found that customer confirmations failed to properly disclose the reported price to ACT and the difference between the reported price and the price to the customer, and incorrectly disclosed agency capacity on its customer confirmations for transactions when corresponding order tickets and account statements reflected the firm acting as principal. Furthermore, the NASD found that the firm failed to maintain a written record of its compliance with affirmative determination requirements in connection with customer-related short sales. Moreover, the NASD found that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning trading and marketplace rules. (NASD Case #C3B010005)

**Gary Dale Fresk (CRD #1075245, Registered Representative, Bellevue, Washington)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$12,500 and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Fresk consented to the described sanctions and to the entry of findings that he recommended

the sale of \$342,525 worth of mutual funds to a public customer without having reasonable grounds for believing that the recommendation was suitable for the customer. The findings also stated that Fresk exercised discretionary power in the customer's account, without the customer's prior written authorization or without the written acceptance of the account as discretionary by his member firm.

Fresk's suspension began April 16, 2001, and concluded at the close of business April 25, 2001. (NASD Case #C3B010003)

## June Actions

**William Lawson Campbell (CRD #2821539, Registered Principal, Auburn, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Campbell consented to the described sanction and to the entry of findings that he solicited and received \$10,000 from a public customer to be invested in mutual funds and other securities through an investment club and promised a return of 18% per annum on the investments. The findings also stated that no investment club existed and, instead, Campbell deposited the funds into his personal bank account, converting some or all of it to his own use and benefit. (NASD Case #C3B010008)

**Kenneth Craig Krull (CRD #730915, Registered Representative, Bellingham, Washington)** was censured, fined \$20,000, barred from association with any NASD member in any principal or supervisory capacity, and suspended from association with any NASD member in any capacity for one year. In addition, Krull was required to requalify as a general securities representative prior to reassociating with any NASD member and ordered to pay \$81,705 in restitution to public customers. The Ninth U.S. Court of Appeals affirmed the sanctions following appeal of a December 1998 SEC decision. The sanctions were based on findings that Krull recommended unsuitable mutual fund switches in the accounts of public customers without having reasonable grounds for believing that such transactions were suitable for the customers in view of the frequency of the transactions, the type of transaction being recommended, and the customers' financial situations, circumstances, and needs.

Krull's bar in any principal or supervisory capacity became effective July 25, 1997. Krull's suspension in any capacity began June 4, 2001, and will conclude at the close of business June 3, 2002. (NASD Case #C3B940028)

**Maureen Ann McGowan (CRD #2274365, Registered Representative, Seattle, Washington)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity and ordered to pay \$40,866.46, plus interest, in restitution to a public customer. Satisfactory proof of restitution, with interest, must be provided before reassociating with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations,

McGowan consented to the described sanctions and to the entry of findings that she obtained \$335,000 from a public customer and converted the funds to her own use and falsely represented to the customer that she had purchased municipal bonds for the customer's account. The findings also stated that, in order to conceal her conversion, McGowan caused checks totaling \$27,556 to be issued to the customer, falsely representing to the customer that the checks represented interest on the bonds she had purchased when, in fact, the checks were drawn on the customer's margin account. In addition, the NASD found that McGowan, in order to conceal her conversion and to impede an NASD investigation, falsely stated to NASD Regulation staff members that she had used funds from sources, other than the public customer, to repay certain debts. The NASD also found that McGowan created and delivered to the NASD false documents purporting to be bank statements and checks. (NASD Case #3B010009)

**Kenneth William Wagner (CRD #1583652, Registered Principal, Alpine, Utah)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wagner consented to the described sanction and to the entry of findings that a member firm, acting through Wagner, failed to maintain and preserve accurate books and records. The findings also stated that Wagner prepared and filed false quarterly reports with the NASD knowing that the reports were based on inadequate information and that the information contained in them was probably false. In addition, a member firm, acting through Wagner, failed to give telegraphic notice to the SEC or the NASD that the firm's net capital was less than what was required and that the firm failed to make and keep current its books and records. The NASD also found that Wagner engaged in a course of conduct with the intent to delay discovery by the NASD of his firm's failure to maintain accurate books and records, its filing of inaccurate reports pursuant to SEC Rule 17a-5, and its operation with insufficient net capital. (NASD Case #C3B010007)

**Peter Murphy Wright (CRD #814040, Registered Principal, Vancouver, Washington)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$20,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Wright consented to the described sanctions and to the entry of findings that he recommended that public customers purchase shares of stock, on margin, without having reasonable grounds for believing that such recommendations were suitable for the customers upon the basis of the facts disclosed by the customers as to their other security holdings, financial situation, and needs.

Wright's suspension began May 21, 2001, and will conclude at the close of business May 20, 2002. (NASD Case #C3B010006)

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

## April Actions

**Rodney Lynn Belzer (CRD #1616847, Registered Representative, Kansas City, Missouri)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Belzer consented to the described sanction and to the entry of findings that he accepted \$775,600 from public customers intended for investment purposes and, without the knowledge or consent of the customers, deposited the funds into his personal bank account and used \$530,600 of the funds for his own use and benefit. (NASD Case #C04010003)

**Verdell N. Tassler (CRD #1984549, Registered Representative, Abilene, Kansas)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Tassler failed to respond to NASD requests for information. (NASD Case #C04000032)

## May Actions

**Daniel Clinton Carlson (CRD #1497477, Registered Representative, Dassel, Minnesota)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Carlson consented to the described sanctions and to the entry of findings that he failed to give prior written notice to his member firm and receive written approval from the firm prior to participating in private securities transactions.

Carlson's suspension began May 7, 2001, and will conclude at the close of business November 6, 2001. (NASD Case #C04010014)

**Dennis Lester Freeman (CRD #213683, Registered Representative, Storm Lake, Iowa)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Freeman consented to the described sanctions and to the entry of findings that he negotiated and entered into a settlement agreement with public customers to pay them \$25,000 to resolve their verbal complaints about the decline in value of their accounts, without the knowledge or consent of his member firm.

Freeman's suspension began April 16, 2001, and concluded at the close of business April 27, 2001. (NASD Case #C04010004)

**Todd Joseph Kamler (CRD #2720579, Registered Representative, Kearney, Nebraska)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 60 days. In light of the financial status of Kamler, no monetary sanction has been imposed. Without admitting or denying the allegations, Kamler consented to the described sanction and to the entry of findings that he participated in private securities transactions and failed to give prior written notice to, and receive written approval from, his member firm prior to engaging in such activities.

Kamler's suspension began May 7, 2001, and will conclude at the close of business July 5, 2001. (NASD Case #C04010007)

**Dennis Lee Knuth (CRD #1769376, Registered Representative, Mosinee, Wisconsin)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Knuth consented to the described sanction and to the entry of findings that he received checks totaling \$33,096 from a public customer intended for the purchase of a life insurance product and converted the funds to his own use and benefit without the knowledge or consent of the customer. The findings also stated that Knuth affixed the signatures of public customers to an insurance policy withdrawal request, and without their knowledge or consent, affixed their signatures to an \$1,800 insurance proceeds check and converted the funds to his own use and benefit. (NASD Case #C04010006)

**Daniel Lewis Minor (CRD #1075162, Registered Representative, St. Joseph, Missouri)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Minor 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.

Minor's suspension began April 16, 2001, and will conclude at the close of business May 15, 2001. (NASD Case#C04010010)

**Brad Lee Running (CRD #1490783, Registered Representative, Watonna, Minnesota)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Running consented to the described sanctions and to the entry of findings that he negotiated and entered into a settlement agreement with public customers to pay them \$6,317.27 to resolve their verbal complaint about the decline in value of their account, without the knowledge or consent of his member firms.

Running's suspension began April 16, 2001, and concluded at the close of business April 27, 2001. (NASD Case #C04010009)

## June Actions

**Ghassan William Abdallah (CRD #2962504, Registered Representative, Atlantic, Iowa)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$19,600, which includes disgorgement of commissions earned of \$17,100, and suspended from association with any NASD member in any capacity for 60 days. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Abdallah consented to the described sanctions and to the entry of findings that he participated in outside business activities without providing prior written notice to, and receiving approval from, his member firm. Abdallah's suspension began June 4, 2001, and will conclude at the close of business August 2, 2001. (NASD Case #C04010017)

**Bradford Lee Buckler (CRD #2250998, Registered Representative, Kansas City, Missouri)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500, which includes disgorgement of the balance of unlawful profits of \$2,315.83, and suspended from association with any NASD member in any capacity for 60 days. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Buckler 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.

Buckler's suspension began June 4, 2001, and will conclude at the close of business August 8, 2001. (NASD Case #C04010018)

**Cyril Joseph Denn (CRD #1045129, Registered Representative, Mankato, Minnesota)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$4,000 and suspended from association with any NASD member in any capacity for 20 business days. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Denn consented to the described sanctions and to the entry of findings that he received a \$200,000 check from a public customer intended for the purchase of an annuity and, without the customer's knowledge or consent, misused \$4,000 of the funds.

Denn's suspension began June 4, 2001, and will conclude at the close of business June 29, 2001. (NASD Case #C04010019)

**Herbert Ernest Ellis (CRD #2783564, Registered Representative, Des Moines, Iowa)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$3,500, which includes disgorgement of \$1,000 in commissions earned, and suspended from association with any NASD member in any capacity for 30 days. The fine and disgorgement must be paid before reassociating with any NASD

member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Ellis consented to the described sanctions and to the entry of findings that he engaged in outside business activities without providing prior written notice to, and receiving approval from, his member firm.

Ellis' suspension began May 21, 2001, and will conclude at the close of business June 19, 2001. (NASD Case #C04010015)

**Jason Earl Pleggenkuhle (CRD #2706402, Registered Representative, Urbandale, Iowa)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pleggenkuhle consented to the described sanction and to the entry of findings that he received a \$125 check representing a refund for an overpayment by a public customer for her Individual Retirement Account (IRA), and executed redemption orders totaling \$5,000 in the account of a public customer. The NASD found that, without the knowledge or consent of the customer, Pleggenkuhle affixed her signature to the checks, cashed the checks, and converted the funds to his own use and benefit. The findings also stated that Pleggenkuhle initiated a \$1,000 withdrawal from a public customer's bank account, and without the customer's knowledge or consent, affixed the customer's signature to the check, and by cashing the check, misused the funds. (NASD Case #C04010016)

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

## April Actions

**Wendell Duane Beldon (CRD #1324913, Registered Principal, Tulsa, Oklahoma)** was named as a respondent in an NASD complaint alleging that he recommended and effected sales of Class B mutual fund shares to a public customer without having reasonable grounds for believing that the recommendations and resultant transactions were suitable for the customer on the basis of his financial situation and needs. (NASD Case #C05010012)

**Thomas Charles Bradley (CRD #28346, Registered Representative, Pinehurst, North Carolina)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500, suspended from association with any NASD member in any capacity for one year, and ordered to disgorge \$17,500 in unjust profits to public customers. The fine payment and satisfactory proof of payment of the disgorgement must be provided before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Bradley consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide his member firm with prior written notice, describing in detail the

proposed transactions, his role therein, and stating whether he had received, or would receive, selling compensation in connection with the transactions.

Bradley's suspension began April 2, 2001, and will conclude at the close of business April 1, 2002. (NASD Case #C05010015)

**Sterne, Agee & Leach, Inc. (CRD #791, Birmingham, Alabama)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to accurately report the unit price for transactions in Nasdaq NMS securities, in that the firm failed to exclude the markup/markdown for the reported transactions. The findings also stated that the firm held unexecuted customer limit orders in Nasdaq securities and continued to trade the securities for the firm's market making account at prices that would have satisfied the customers' limit orders but failed to execute the limit orders within 60 seconds of the times of the trades in the firm's market making account. The NASD also found that the firm failed to publish within 30 seconds of receipt bids or offers that reflected the prices and full size of customer limit orders, which orders were at prices that would have improved the firm's bid or offer in each security related to those orders; and failed to designate transactions as short sales or short sale exempt through ACT by including the appropriate .S or .X modifier. In addition, the NASD found that the firm failed to file Municipal Securities Rulemaking Board (MSRB) Form G-36 for municipal underwritings within 10 business days after the final agreement to purchase, offer, or sell the securities in accordance with MSRB filing procedures and failed to maintain a record of sending the required forms and documents to the MSRB. (NASD Case #C05010014)

**Derick Lawrence Sharpe (CRD #2790179, Registered Representative, Lawrenceville, Georgia)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Sharpe failed to respond to NASD requests for information. (NASD Case #C05000037)

**Robert Walter White (CRD #2118340, Registered Representative, Winston-Salem, North Carolina)** was barred from association with any NASD member in any capacity. The sanction was based on findings that White received \$10,000 from a public customer to be deposited in the customer's investment account and, instead, converted the funds to his own use and benefit without the customer's knowledge or consent. The findings also stated that White failed to respond to NASD requests for information. (NASD Case #C05000052)

## May Actions

**Commerzbank Capital Markets Corporation (CRD #21787, New York, New York)** and **Udo Braun (CRD #2897104, Registered Principal, Rye, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which they were

censured and fined \$15,000, jointly and severally. Braun was also suspended from association with any NASD member in any principal capacity for five business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Braun became actively engaged in the management of the firm's securities business prior to becoming registered with the NASD in any capacity.

Braun's suspension began April 16, 2001, and concluded at the close of business April 20, 2001. (NASD Case #C05990038)

**Julian Gaspar Russo (CRD #407793, Registered Representative, East Islip, New York)** submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Russo consented to the described sanction and to the entry of findings that he received \$13,000 from public customers for investment purposes but failed to invest the funds, thereby, misusing the customers' funds.

Russo's suspension began April 16, 2001, and will conclude at the close of business April 15, 2003. (NASD Case #C05000036)

**James J. Black, Jr. (CRD #1487059, Registered Representative, Germantown, Tennessee)** was named as a respondent in an NASD complaint alleging that he received \$57,839.70 in funds from a public customer, deposited the funds into an account he controlled, and converted the funds to his own use and benefit without the customer's knowledge or consent. The complaint also alleges that Black failed to respond to an NASD request to provide on-the-record testimony. (NASD Case #C05010024)

**Lee Edward Bridges (CRD #1509183, Registered Representative, McComb, Mississippi)** was named as a respondent in an NASD complaint alleging that he engaged in business activities outside the scope of his relationship with a member firm and failed to give prior written notice to his firm. The complaint also alleges that Bridges received \$1,000 from a public customer to open Individual Retirement Accounts (IRAs) on behalf of the customer's minor sisters, neglected to open the IRAs, and, instead, converted the funds to his own use and benefit, without the knowledge or consent of the customer. (NASD Case #C05010021)

#### June Actions

**Gretchen States (CRD #2832705, Registered Representative, Baton Rouge, Louisiana)** submitted a Letter of Acceptance, Waiver, and Consent in which she was suspended from association with any NASD member in any capacity for six weeks. In light of the financial status of States, no monetary sanction has been imposed. Without admitting or denying the allegations, States consented to the described sanction and to the entry of findings that she signed the names of public customers on an account application form, without the knowledge or consent of the customers.

States' suspension began May 7, 2001, and concluded at the close of business June 15, 2001. (NASD Case #C05010023)

#### District 6 - Texas

#### April Actions

None

#### May Actions

**John Stephen Grosenheider (CRD #2072154, Registered Representative, Austin, Texas)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Grosenheider failed to update his Form U-4. Grosenheider also failed to respond to NASD requests for information. (NASD Case #C06000022)

**Samuel Michael Rodio, II (CRD #2919945, Registered Representative, Katy, Texas)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Rodio consented to the described sanction and to the entry of findings that funds in the amount of \$5,312.98 were withdrawn from the account of public customers without their knowledge, authorization, or consent, and a check in the same amount and in the name of the customers was issued to and received by Rodio. The NASD determined that Rodio failed to deliver the check, and, instead, endorsed it and deposited the funds into his personal bank account, without the customers' knowledge, authorization, or consent. Rodio also failed to respond completely to NASD requests for information and documentation. (NASD Case #C06000039)

**Vincent Bernard Tolbert (CRD #2343655, Registered Representative, Killeen, Texas)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Tolbert received \$260 in cash from a public customer representing premium payments for a homeowner's insurance policy and converted the funds to his own use and benefit, without the authorization, knowledge, or consent of the customer. Tolbert also failed to respond to NASD requests for information. (NASD Case #C06000034)

#### June Actions

**Petra Moreno (CRD #1738689, Registered Representative, El Paso, Texas)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Moreno received checks totaling \$427.46 representing payments for a life insurance policy the customer purchased, cashed the checks, and used the funds for her own use and benefit without the authorization, knowledge, or consent of the customer. Moreno also failed to respond to NASD requests for information. (NASD Case #C06000032)

**Wayne Norman Schwartz (CRD #2580456, Registered Representative, Austin, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the allegations, Schwartz consented to the described sanctions and to the entry of findings that he caused the signatures of public customers in a single group plan to be applied on policy delivery receipts for life insurance policies without the customers' knowledge or consent. The NASD found that Schwartz submitted these receipts to his member firm in connection with the processing of these insurance policies.

Schwartz's suspension began May 21, 2001, and will conclude at the close of business July 2, 2001. (NASD Case #C06010009)

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

#### April Actions

**Mark Christopher Chang (CRD #2648704, Registered Representative, Miami, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Chang altered nine checks issued to public customers, endorsed the checks, and cashed eight of the checks, all without the authorization of the firm or the customers. Chang also failed to respond to an NASD request for information. (NASD Case #C07000046)

**Christopher M. Delcioppo (CRD #2730016, Registered Representative, New York, New York)** submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 45 days. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Delcioppo consented to the described sanctions and to the entry of findings that he failed to timely respond to NASD requests for information.

Delcioppo's suspension began April 2, 2001, and concluded at the close of business May 16, 2001. (NASD Case #C07000027)

**Ralph Umberto D'Ovidio (CRD #1736914, Registered Representative, Surfside, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that D'Ovidio failed to respond to NASD requests for information. (NASD Case #C07000069)

**Juan Carlos Fernandez (CRD #2080130, Registered Principal, Lakeworth, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Fernandez failed to respond to NASD requests to appear for on-the-record interviews. (NASD Case #C07000059)

**Timothy Patrick Flood (CRD #2074476, Registered Representative, Lawrenceville, Georgia)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$50,000, barred from association with any NASD member in any capacity with the right to reapply for association with any NASD member in any capacity after three years. The fine must be paid before reassociating with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Flood consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in the account of a public customer and entered into a settlement agreement and release with his customer wherein he paid the customer \$122,491.30 without disclosing the settlement or the unauthorized trades to his member firm. Furthermore, the NASD found that Flood signed a \$45,837.19 promissory note payable to the customer to settle the complaint without informing his member firm. Also, the NASD found that, when attempting to become registered with a member firm, Flood failed to disclose the existence of a customer complaint against him for the unauthorized trading and his settlement of the complaint. (NASD Case #C07010009)

**LH Ross & Company, Inc. (CRD #37920, Boca Raton, Florida) and Franklyn Ross Michelin (CRD #2459180, Registered Principal, Boca Raton, Florida)** were censured and fined \$24,000, jointly and severally. Respondents were also jointly and severally assessed \$2,909.70 as costs, including \$2,159.70 for transcripts and an administrative fee of \$750. The sanctions were based on findings that the respondents failed to implement the supervisory tape recording procedures required by the NASD taping rule.

This action was called for review by the NAC and the sanctions are not in effect pending consideration of the review. (NASD Case #C07000033)

**Mark S. Pacelli (CRD #2344494, Registered Representative, Plantation, Florida)** was barred from association with any NASD member in any capacity and ordered to pay \$40,000, plus interest, in restitution to a public customer. The sanctions were based on findings that Pacelli received \$40,000 from a public customer for investment purposes and used the funds for his own benefit. Pacelli also failed to respond to an NASD request for information. (NASD Case #C07000063)

**Kevin Arthur Sawicki (CRD #3100380, Registered Representative, West Palm Beach, Florida)** was named as a respondent in an NASD complaint alleging that he failed to respond to NASD requests for information. The complaint also alleges that Sawicki made misrepresentations and material omissions of fact to public customers in order to induce the customers to purchase stock; failed to disclose that he was paid commission on the sales; and failed to discuss any negative or cautionary information regarding the stock to the customers. (NASD Case #C07010006)

**Ronald Lawrence Solomon (CRD #1093887, Registered Principal, Miami, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Solomon failed to respond to NASD requests

to provide information and failed to respond to NASD requests to appear for on-the-record interviews. (NASD Case #C07000052)

**Robert James Strain, II (CRD #2787826, Registered Representative, Charlotte, North Carolina)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Strain caused the wire transfer of funds totaling \$500 from an investment club account to his aunt's bank account although he was not entitled to any of the funds in this account. Strain also failed to respond to NASD requests for information. (NASD Case #C07000076)

**Sean Patrick Tenney (CRD #3055872, Registered Representative, Orlando, Florida)** was named as a respondent in an NASD complaint alleging that he forged the signature of a public customer on a Mutual Fund and Certificate Redemption, Exchange, and/or Transfer of Investment form and a Financial Advisory Service Agreement form without the customer's authorization. The complaint also alleges that Tenney failed to respond to NASD requests for information. (NASD Case #C07010012)

### May Actions

**Baxter, Banks & Smith, Ltd. (CRD #40771, St. Petersburg, Florida) and Francis Martin McDermott (CRD #1013320, Registered Principal, St. Petersburg, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was expelled from NASD membership. McDermott was barred from association with any NASD member in any supervisory, principal, or proprietary capacity, and barred from association with any NASD member in any capacity with the right to reapply for association with any NASD member firm after three years in a non-supervisory, principal, or proprietary capacity. In light of the financial status of McDermott, no monetary sanction has been imposed. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through its representatives, engaged in a scheme involving the use of high pressure, manipulative, and deceptive sales practices and misrepresentations and omissions of material facts in connection with the sale of common stock referred to as "deal stocks."

According to the findings, the firm employed a three-step process for soliciting customers, first using unregistered cold callers to prospect for potential customers. Then the firm's representatives would cold call the prospects and attempt to solicit their purchase of a known Nasdaq or New York Stock Exchange (NYSE) listed stock, and subsequently employ a "bait and switch" tactic by calling back the customers and soliciting their purchase of one of the deal stocks. The NASD found that the misrepresentations, price predictions, and omissions by the representatives involved information that was material to the investors' investment decision, and that certain representatives engaged in unauthorized trades when customers did not agree to purchase a deal stock and

refused to execute customer orders to sell the stock. The NASD also found that the firm, acting through McDermott, failed to comply with Securities Exchange Act Rule 15c-9 concerning approval of accounts to trade in penny stocks and receipt of customer agreements to specific transactions, and the requirement to obtain suitability statements signed by the customers and approved by the firm. In addition, the NASD determined that the firm, acting through McDermott, failed to establish, maintain, and enforce a system to supervise the activities of its registered representatives that was reasonably designed to achieve compliance with applicable securities laws, rules, and regulations. (NASD Case #C07010014)

**Jefferson Pilot Securities Corp. f.k.a. Chubb Securities (CRD #3870, Atlanta, Georgia)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that during the course of its branch office audits and subsequent reviews of a registered representative's activities, the firm discovered a mutual fund switching by the representative. The NASD determined that, although the firm addressed the mutual fund switching with the representative, it failed to adequately address this issue in a timely manner and, therefore, failed to supervise, establish, and maintain a supervisory system that would ensure compliance with its suitability obligations. (NASD Case #C07010011)

**Ricardo Fallesgon Brown (CRD #845315, Registered Representative, Newport News, Virginia)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Brown received insurance disbursement checks totaling \$8,510.82 sent by his member firm for delivery to insurance customers, forged the endorsements on the checks, and deposited them into his personal bank account. In addition, Brown completed and submitted to his member firm an unauthorized application for a \$12,000 withdrawal on behalf of a public customer, received a \$12,000 disbursement check from his member firm, forged the customer's endorsement on the check, and deposited it into his personal bank account. Brown also submitted loan applications on behalf of public customers without their authorization, received checks totaling \$10,500, forged the endorsements of the customers on the disbursement checks, and deposited them into his personal bank account. Furthermore, Brown failed to respond to NASD requests for information. (NASD Case #C07000064)

**Robert Scott Cash (CRD #2063885, Registered Representative, St. Petersburg Beach, Florida)** was fined \$20,000 and suspended from association with any NASD member in any capacity for 30 business days for engaging in outside business activities, and suspended from association with any NASD member in any capacity for 60 days for making unsuitable recommendations. The sanctions were based on findings that Cash recommended that a public customer purchase a single premium deferred annuity outside of the scope of his employment with his member firm and failed to provide prior written notice to, or receive written



approval from, his member firm before such recommendation. Cash also recommended to a public customer the purchase of mutual funds and then changed the customer's account from a cash account to a margin account, without the customer's knowledge or consent, and without ever having discussed the use of margin with the customer, and engaged in a series of transactions in the customer's account that were unsuitable for the customer based upon the customer's investment objective, financial situation, and needs.

Cash's suspension began April 16, 2001, and will conclude at the close of business July 24, 2001. (NASD Case #C07000075)

**Shawn Cunningham (CRD #4031341, Registered Representative, Raleigh, North Carolina)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Cunningham provided false responses on his Form U-4. Cunningham also failed to respond to NASD requests for information. (NASD Case #C07000080)

**Mark Robert Harris (CRD #2273482, Registered Representative, Ft. Lauderdale, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 90 days. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Harris consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to give prior written notice to, and to receive written approval from, his member firm prior to engaging in such activities.

Harris' suspension began May 7, 2001, and will conclude August 4, 2001. (NASD Case #C07010020)

**Michael Emmanuel Leventis (CRD #2269194, Registered Principal, Delray Beach, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$40,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Leventis consented to the described sanctions and to the entry of findings that he made material misrepresentations of fact to the NASD staff during its investigation of a customer complaint.

Leventis' suspension began May 7, 2001, and will conclude at the close of business May 18, 2001. (NASD Case #C07010015)

**Christopher Patrick Lordi (CRD #2518281, Registered Representative, Deerfield Beach, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Lordi failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #C07000023)

**Frank Edward Mandrell (CRD #3100112, Registered Representative, West Palm Beach, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Mandrell failed to respond to NASD requests for information. (NASD Case #C07000078)

**Christopher Lynn Thomas (CRD #3152007, Registered Representative, Pembroke Pines, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that he failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #C07000077)

**Stephen Morris Wilkinson (CRD #718506, Registered Representative, Pace, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Wilkinson instructed a public customer to complete checks totaling \$23,345.31 to be used to purchase shares in mutual funds. Instead of arranging an electronic transfer of the customer's funds to the mutual funds, Wilkinson filled in his own name as payee on the checks, endorsed them, and deposited them into his own bank account. Wilkinson also failed to respond to an NASD request for information. (NASD Case #C07000074)

**Craig Henry Woodward (CRD #1955883, Registered Representative, West Palm Beach, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for six months. In light of Woodward's financial status, no monetary sanction was imposed. Without admitting or denying the allegations, Woodward consented to the described sanction and to the entry of findings that he issued press releases on the Internet in the name of a corporation in, which he was the sole owner, that contained misrepresentations regarding the corporation. The findings also stated that Woodward issued a press release on the Internet regarding another company and failed to disclose that he owned shares of the company.

Woodward's suspension began April 16, 2001, and will conclude at the close of business October 15, 2001. (NASD Case #C07990068)

**Mark Joseph Chavez (CRD #2411119, Registered Principal, Boca Raton, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Chavez failed to respond to NASD requests for information.

Chavez has appealed this action to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C07000084)

**Jack Harry Stein (CRD #1233359, Registered Representative, West Palm Beach, Florida)** was fined \$25,000 and suspended from association with any NASD member in any capacity for one year. The sanctions were based on findings that Stein made unsuitable recommendations to a public customer.

Stein has appealed this action to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C07000003)

## June Actions

**Steven Ballinger (CRD #2443694, Registered Representative, Orlando, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 30 days. In light of the financial status of Ballinger, no monetary sanction has been imposed. Without admitting or denying the allegations, Ballinger consented to the described sanction and to the entry of findings that he participated in a private securities transaction and failed to provide prior notification to his member firm of his participation, and did not cause the transaction to be carried on the books and records of the firm.

Ballinger's suspension began May 21, 2001, and will conclude at the close of business June 19, 2001. (NASD Case #C07010018)

**John Francis Brown (CRD #2692039, Registered Representative, Lake Mary, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Brown failed to respond to NASD requests for information. (NASD Case #C07000013)

**Andrew Benson Melville (CRD #1427201, Registered Principal, Altamonte Springs, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Melville failed to respond to NASD requests for information. (NASD Case #C07000088)

**Russell Eric Montgomery, Jr. (CRD #1012980, Registered Representative, Tampa, Florida)** was fined \$24,147.65 (including \$4,147.65 in ill-gotten commissions) and suspended from association with any NASD member in any capacity for one year. The sanctions were based on findings that Montgomery engaged in private securities transactions, for compensation, without giving his member firm prior written notice and without receiving prior written approval from the firm.

Montgomery's suspension began May 21, 2001, and will conclude at the close of business May 21, 2002. (NASD Case #C07000058)

**James Ernest Ross (CRD #2350497, Registered Representative, Longwood, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,250, which includes disgorgement of \$2,250 in commissions, and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Ross consented to the described sanctions and to the entry of findings that he participated in a private securities

transaction and failed to provide prior notification to his member firm of his participation, and did not cause the transaction to be approved and carried on the books and records of the firm.

Ross' suspension began May 21, 2001, and will conclude at the close of business June 19, 2001. (NASD Case #C07010019)

**Bayard William Spector (CRD #2931747, Registered Principal, Miami, Florida)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Spector consented to the described sanction and to the entry of findings that he arranged to have an impostor take the Series 7 exam on his behalf. Spector also failed to appear before the NASD and give testimony in connection with an ongoing investigation. (NASD Case #C07000095)

**Todd Richard Stone (CRD #1923863, Registered Principal, Boca Raton, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Stone failed to respond to NASD requests for information. (NASD Case #C07000085)

**Martel Pauline Zeeff (CRD #4140700, Associated Person, Sarasota, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Zeeff consented to the described sanction and to the entry of findings that she provided a member firm with a falsified test score report, incorrectly showing that she had successfully qualified as a general securities representative. (NASD Case #C07010021)

**Elliott George Charles Downs (CRD #2795169, Registered Representative, Derry, Pennsylvania)** was named as a respondent in an NASD complaint alleging that he recommended to public customers the purchase of stock without having a reasonable basis for the recommendations, and in connection with their decisions to purchase stock, Downs made predictions, misrepresentations, and omissions regarding the stock. The complaint also alleges that Downs purchased stock for public customers without their knowledge or authorization, and recommended and implemented a course of trading that was unsuitable for a customer based upon the customer's net worth, financial needs, lack of investment experience, and the customer's use of borrowed funds. Furthermore, the NASD alleges that Downs failed to respond to NASD requests to provide documents and to provide on-the-record testimony. (NASD Case #C07010031)

**Robert Arthur McDuffie (CRD 3128686, Registered Representative, Port Charlotte, Florida)** was named as a respondent in an NASD complaint alleging that he received a \$2,000 check from a public customer for investment purposes, and instead of making an investment for the customer, he endorsed the check and cashed it, thereby converting the funds to his own use and benefit. The complaint also alleges that McDuffie failed to respond to NASD requests for information. (NASD Case #C07010022)

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

District 8A - Chicago

## April Actions

**Salam Aburas (CRD #2969004, Registered Representative, Berwyn, Illinois)** was named as a respondent in an NASD complaint alleging that he purchased, or caused to be purchased, shares of common stock for the account of a public customer, without the knowledge or consent of the customer, and in the absence of written or oral authorization from the customer allowing him to exercise discretion in said account. (NASD Case #C8A010014)

**Joseph Edward Kurczodyna (CRD #864454, Registered Principal, Lake Bluff, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which he was censured and fined \$12,500. Without admitting or denying the allegations, Kurczodyna consented to the described sanctions and to the entry of findings that he failed to establish, maintain, and enforce written supervisory procedures, or to take reasonable steps to supervise individuals to prevent free-riding and withholding violations in an IPO. (NASD Case #C8A010011)

**Magellan Securities, Inc. (CRD #15986, Harper Woods, Michigan) and Terry Michael Laymon (CRD #304342, Registered Principal, Grosse Pointe Woods, Michigan)** submitted an Offer of Settlement in which they were fined \$40,500, jointly and severally. In addition, the firm was censured and Laymon was suspended from association with any NASD member in any capacity for 30 days, with the proviso that within the 30-day suspension period, he may spend a portion of one day on the premises of his member firm solely to complete the payroll for the employees of the firm, and for no other purpose. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Laymon, prepared inaccurate blotters, ledgers, trial balances, and net capital computations, filed inaccurate Focus Part IIA reports with the NASD, and failed to comply with the terms of a restrictive agreement when the firm accepted and held customer funds for the purchase of limited partnerships and deposited the funds into its general operating account or a "Client Trust Account." The findings also stated that the firm, acting through Laymon, failed to open a Special Reserve Bank Account for the Exclusive Benefit of Customers and failed to compute its special reserve requirement. Furthermore, the NASD found that the firm and Laymon received a total of \$266,595.39 from public customers for the purchase of interests in limited partnerships and commingled the funds with the firm's operating funds, improperly used the funds prior to purchasing such interests,

and failed to use \$10,417 as directed or return the funds to the customer until directed to do so by the NASD.

Laymon's suspension will begin April 16, 2001, and concluded at the close of business May 15, 2001. (NASD Case #C8A000060)

**Market Square Securities Trading, Inc. (CRD #43401, Boca Raton, Florida) and Kenneth Glen Strom (CRD #709395, Registered Principal, Lake Forest, Illinois)** submitted an Offer of Settlement in which they were censured and fined \$10,000, jointly and severally, and the firm was fined an additional \$1,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Strom, caused agency transactions for a non-public customer to be effected through the Small Order Execution System<sup>SM</sup> (SOESSM) and failed to qualify Strom as a limited representative equity trader prior to allowing him to execute transactions in equity, preferred or convertible debt securities other than on a securities exchange in connection with proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such transactions. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with NASD Marketplace Rule 4730. (NASD Case #C8A000064)

**Scott Douglass Winningham (CRD #2398475, Registered Representative, Canton, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Winningham consented to the described sanctions and to the entry of findings that he prepared and delivered to members of the public, sales literature in the form of a flyer offering his services as a financial consultant, and failed to have a registered principal of the firm approve the flyer prior to its use. The findings also stated that Winningham failed to provide the customers with a sound basis for evaluating the facts presented in the flyer with regard to the representations that no account fee and no commissions would be charged, and for evaluating the financial consulting expertise being offered. Moreover, the NASD found that the flyer contained a testimonial concerning the quality of his advice but failed to clearly state that "the testimonial may not be representative of the experience of other clients," and "the testimonial is not indicative of future performance or success." Furthermore, the NASD determined that the testimonial in the flyer contained statements and claims that were exaggerated, unwarranted, and/or misleading.

Winningham's suspension began April 2, 2001, and concluded at the close of business April 6, 2001. (NASD Case #C8A010008)

## May Actions

**BCR Capital Corporation (CRD #25330, Indianapolis, Indiana) and Rex M. Craig (CRD #1988160, Registered Principal, Tipton, Indiana)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Craig, participated in an all-or-none offering of limited partnership interests and rendered false and misleading representations in the offering memorandum that investors would receive a refund of their subscription price together with interest earned therein if the terms of the contingency were not met. The findings also stated that the firm, acting through Craig, failed to properly escrow funds for sales from investors' funds. (NASD Case #C8A010009)

**Baird, Patrick & Co., Inc. (CRD #1149, New York, New York)** submitted an Offer of Settlement in which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to accept Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>) eligible transactions within 20 minutes after execution and reported Consolidated Quotation Service transactions without the "T" modifier. The findings also stated that the firm reported the incorrect volume for a Nasdaq National Market (NNM) transaction and failed to establish, maintain, and enforce adequate written supervisory procedures to address all areas of the firm's trading and market making business in that the firm's procedures failed to address ACT rule compliance, limit order protection, Small Order Execution System<sup>SM</sup> (SOES<sup>SM</sup>) activity, locked and crossed markets, short sale rule compliance, the Order Audit Trail System (OATS<sup>SM</sup>) clock synchronization, and registration of equity traders and supervisors. (NASD Case #C8A000050)

**David Stephen Adams (CRD #1450961, Registered Representative, Bloomington, Illinois)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Adams endorsed a public customer's check for \$7,318.06, and used the funds either for his own use and benefit or for some purpose other than the benefit of the customer, without the knowledge or consent of the customer. Adams also failed to respond to NASD requests for information. (NASD Case #C8A000057)

**Paul Edward Carney (CRD #1943974, Registered Representative, Vernon Hills, Illinois)** was barred from association with any NASD member in any capacity and ordered to pay \$1,700,000, plus interest, in restitution to a public customer. The sanctions were based on findings that Carney effected unprofitable trades in the accounts of a public customer and prepared and delivered false profit and loss statements to the customer in an attempt to conceal losses incurred in the accounts. Moreover, Carney continued to effect trades in the customer's accounts after being instructed by the customer to stop. Carney also failed to answer all questions asked of him during an NASD on-the-record interview. (NASD Case #C8A000024)

**Alto Lee Tompkins, Jr. (CRD #2882915, Registered Representative, Chicago, Illinois)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Tompkins provided false responses on his Form U-4. (NASD Case #C8A000065)

**Bruce William Rhodes (CRD #2690462, Registered Representative, Rochester, Illinois)** was named as a respondent in an NASD complaint alleging that he received \$795,500 from a public customer with instructions that the funds be used to purchase short-term investments. The complaint alleges that Rhodes failed to follow the customer's instructions by depositing 692,176.17 of the customer's funds in an account at his firm and purchasing long-term investments for the customer, and used \$103,323.83 for some purpose other than for the benefit of the customer. The complaint also alleges that Rhodes failed to respond to NASD requests for information. (NASD Case #C8A010025)

## June Actions

**David Lloyd Foran (CRD #861746, Registered Principal, Royal Oak, Michigan)** was fined \$35,000, suspended from association with any NASD member in any capacity for two years, and required to requalify before acting in any capacity requiring qualification. The fine must be paid before any application for reentry into the securities industry will be considered. The National Adjudicatory Council (NAC) imposed the sanctions following an appeal of a December 1999 Office of Hearing Officers decision. The sanctions are based on findings that Foran misappropriated more than \$5,000 in commissions from his firm's commission account and misapplied the funds, thereby converting the funds to his own use and benefit.

Foran's suspension began June 4, 2001, and will conclude at the close of business June 3, 2003. (NASD Case #C8A990017)

**Kenneth Edward Hetlinger (CRD #1260242, Registered Representative, Mundelein, Illinois)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Hetlinger caused over \$74,000 to be wire-transferred from the account of a public customer to his attorney's account and used the funds for either his own benefit or for some purpose other than the benefit of the customer, without the customer's knowledge or consent. Hetlinger also failed to respond to NASD requests for documents and information. (NASD Case #C8A000072)

## District 8B - Cleveland

## April Actions

None

## May Actions

**Tower Equities, Inc. (CRD #16195, Dayton, Ohio) and Kenneth Robert Wiseman (CRD #1345001, Registered Principal, Vandalia, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Wiseman, effected transactions in securities when it failed to maintain the minimum required net capital. The findings also stated that the firm, acting through Wiseman, failed to maintain an accurate general ledger. (NASD Case #C8B010008)

**Jerry Lee Getter (CRD #1080528, Registered Representative, Brookville, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Getter consented to the described sanction and to the entry of findings that he engaged in private securities transactions away from his member firm and failed to provide his firm with detailed written notice of the transactions, his role therein, and to receive written permission from his firm to engage in the transactions. (NASD Case #C8B010007)

## June Actions

**Perry Andrew Groves (CRD #1274576, Registered Principal, Troy, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and ordered to disgorge \$8,764.41, plus interest, in commissions to public customers. Satisfactory proof of payment of the disgorgement, with interest, must be provided before reassociating with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Groves consented to the described sanctions and to the entry of findings that he sold promissory notes to public customers away from his member firm and failed to provide his firm with detailed written notice of the transactions, his role therein, and to receive permission from the firm to engage in the transactions. (NASD Case #C8B010009)

District 9 - Delaware, Pennsylvania, West Virginia, District of Columbia, Maryland, and New Jersey

District 9A - Philadelphia

## April Actions

**David Wayne Burk (CRD #1094676, Registered Representative, Sparks, Maryland)** was barred from association with any NASD member in any capacity. The

sanction was based on findings that Burk failed to respond to NASD requests for information. (NASD Case #C9A000022)

**Louis David Verrone (CRD #1037862, Registered Representative, Johnstown, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and ordered to disgorge \$10,000 received in commissions. Satisfactory proof of payment of the disgorgement must be made before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Verrone consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, or approval from, his member firm. (NASD Case #C9A010004)

## May Actions

**Pennsylvania Merchant Group, Ltd. (CRD #18533, West Conshohocken, Pennsylvania)** submitted an Offer of Settlement in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to establish, maintain, and enforce supervisory procedures for its retail sales activity reasonably designed to achieve compliance with applicable securities laws and regulations. (NASD Case #C9A000007)

**Kenneth Thomas Lambricht (CRD #1124567, Registered Representative, Baltimore, Maryland)** submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for 20 business days. In light of the financial status of Lambricht, no monetary sanctions were imposed. Without admitting or denying the allegations, Lambricht consented to the described sanction and to the entry of findings that he guaranteed a public customer against loss. The findings also stated that Lambricht failed to respond to NASD requests for information.

Lambricht's suspension began April 16, 2001, and concluded at the close of business May 11, 2001. (NASD Case #C9A000033)

**Keith Allen Long (CRD #1049701, Registered Representative, Selinsgrove, Pennsylvania)** submitted an Offer of Settlement in which he was fined \$5,000, suspended from association with any NASD member in any capacity for one month, and required to disgorge \$1,498, plus interest, in commissions earned to public customers. The fine payment and satisfactory proof of payment of disgorgements, plus interest, must be provided before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Long consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and failed to provide his member firm with prior written notice.

Long's suspension began May 7, 2001, and will conclude at the close of business June 6, 2001. (NASD Case #C9A000037)

**Rachel Ellen Neufeld (CRD #2699457, Registered Representative, Collingswood, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$40,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before reassociating with a member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Neufeld consented to the described sanctions and to the entry of findings that she participated in private securities transactions and failed to provide her member firm with written notice of the proposed transactions, her proposed role therein, and whether she had received, or might receive, selling compensation in connection with the transactions. The findings also stated that Neufeld engaged in business activity for compensation outside the scope of employment with her member firm and failed to provide her member firm with prompt written notice.

Neufeld's suspension began May 7, 2001, and will conclude at the close of business May 6, 2003. (NASD Case #C9A010008)

**Juanita Rios (CRD #4175638, Associated Person, Wilmington, Delaware)** was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 business days for providing a false response on her Form U-4 and barred from association with any NASD member in any capacity for failing to respond to NASD requests for information. The fine must be paid before reassociating with a member firm. The sanctions were based on findings that Rios failed to respond to NASD requests for information and provided a false response on her Form U-4 application for registration.

Rios' bar became effective March 29, 2001. (NASD Case #C9A000041)

**Geiger Merrill Smith, Jr. (CRD #427616, Registered Representative, Newtown Square, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that he sold a variable universal life insurance policy to a public customer, and induced another registered representative to be the agent on record for the sale and agreed to share the commissions because Smith's earnings were subject to a garnishment order. The findings also stated that the policy never took effect and Smith induced a registered representative at another firm to place the policy through that agent's firm and to remit the bulk of the commission to Smith.

Smith's suspension began May 7, 2001, and concluded at the close of business May 11, 2001. (NASD Case #C9A010005)

**Luther Allen Hanson (CRD #1956960, Registered Representative, Charleston, West Virginia)** was suspended from association with any NASD member in any capacity for 90 days, required to requalify as a general securities representative within six months, and directed to disgorge \$79,105.62 in commissions to public customers. If it is proven that any customers have recouped their investments, the commissions relating to such customers shall be converted to a fine to be paid to the NASD. The sanctions were based on findings that Hanson participated in the offer and sale of securities without prior written notice to, or approval from, his member firm.

This case has been called for review by the NAC, and the sanctions are not in effect pending consideration of the review. (NASD Case #C9A000027)

## June Actions

**Michael John Brown (CRD #1228489, Registered Representative, Burlington, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Brown consented to the described sanction and to the entry of findings that he participated in private securities transactions and failed to provide his member firm with prior written notice describing the transactions, his proposed role therein, and stating whether he had received, or might receive, selling compensation in connection with the transactions. (NASD Case #C9A010009)

**Maximo Justo Guevara (CRD #1205879, Registered Representative, Philadelphia, Pennsylvania)** was censured, fined \$100,000, barred from association with any NASD member in any capacity, and ordered to pay \$13,992, plus interest, in restitution to a public customer. The SEC affirmed the sanctions following appeal of a January 1999 NAC decision. The sanctions were based on findings that Guevara made unsuitable recommendations in connection with sales of partnership interests to retail customers. Guevara also engaged in private securities transactions outside the regular course or scope of his employment without providing written notice to his member firm.

Guevara has appealed this action to the Third U.S. Court of Appeals and the sanctions, other than the bar, are not in effect pending consideration of the appeal. (NASD Case #C9A970018)

**John Anthony Thomas (CRD #2064972, Registered Representative, Charleston, West Virginia)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Thomas consented to the described sanction and to the entry of findings that he submitted to his member firm requests for loans against insurance policies owned by public customers, without the customers' knowledge or authorization. The findings also stated that Thomas obtained possession of loan

checks issued to the customers totaling \$15,200, deposited the checks into a personal bank account, and used the funds for his own benefit. (NASD Case #C9A010010)

**Thomas Andrew Winnicki, Sr. (CRD #1513199, Registered Representative, Dickson City, Pennsylvania)** was named as a respondent in an NASD complaint alleging that he engaged in private securities transactions without prior written notice to, and approval from, his member firm. The complaint also alleges that Winnicki offered and sold promissory notes to public customers without a reasonable basis for believing that such transactions were suitable for the customers based upon their financial situation, investment objectives, and needs. (NASD Case #C9A010011)

#### District 9B - New Jersey

#### April Actions

**Mark P. Azzolino (CRD #4209615, Registered Representative, Fairlawn, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Azzolino consented to the described sanctions and to the entry of findings that he provided false responses on his Form U-4.

Azzolino's suspension began March 19, 2001, and will conclude at the close of business June 18, 2001. (NASD Case #C9B010007)

**Frank Anthony Cardia, Jr. (CRD #2808582, Registered Representative, Bogota, New Jersey)** was barred from association with any NASD member in any capacity and fined \$50,000 for falsifying records concerning a customer's account and for providing false information to the NASD. Cardia was also suspended from association with any NASD member in any capacity for six months, fined \$30,000 for pre-selling the aftermarket in a stock, and ordered to pay \$8,637.95, plus interest, in restitution to a customer for failing to execute a limit order. The sanctions were based on findings that Cardia intentionally falsified a public customer's account records by falsely representing that another individual was the account executive on the customer's account and providing false testimony to the NASD during an on-the-record interview. Cardia also violated the antifraud provisions of the securities laws by utilizing a tie-in arrangement in which the customer had to agree to purchase aftermarket shares of stock in order to purchase shares in an IPO, and failed to follow a customer's instruction to sell a security. In addition, the NASD found that Cardia falsely stated in a written response to an NASD request for information that no customer had complained that he failed to place a sell limit order.

Cardia has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C9B000007)

**Christopher Ronald DiGregorio (CRD #2754779, Registered Representative, Staten Island, New York)** submitted an Offer of Settlement in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, DiGregorio consented to the described sanctions and to the entry of findings that he effected unauthorized transactions in a public customer's account.

DiGregorio's suspension began April 2, 2001, and concluded at the close of business April 16, 2001. (NASD Case #C9B000042)

**International Correspondent Trading, Inc. (CRD #37401, Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to indicate on limit order tickets whether the orders were day or good-till-canceled orders. Furthermore, the NASD determined that the firm failed to indicate on order tickets whether they were market or limit orders, failed to indicate the time of entry or execution, failed to indicate the time of cancellation, failed to indicate whether the securities were "long" or "short" in the account, and failed to indicate affirmative determination. The NASD also found that order tickets could not be located. (NASD Case #C9B010011)

**Robert Daniel Louis (CRD #2707569, Registered Principal, Hackensack, New Jersey)** was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Louis falsified a public customer's account record by falsely representing that he was the account executive on the customer's account, signing the new account form, and permitting another individual to use his account executive number when executing transactions in the account. The NASD also found that Louis testified falsely in an NASD on-the-record interview. (NASD Case #C9B000007)

**Michael Verbitsky a.k.a. Michael Levine (CRD #3070975, Registered Representative, Livingston, New Jersey)** was named as a respondent in an NASD complaint alleging that he sold and purchased securities for the accounts of public customers without the knowledge or consent of the customers and in the absence of written or oral authorization from the customers to exercise discretion in said accounts. The complaint further alleges that Verbitsky failed to respond to NASD requests for information. (NASD Case #C9B010018)

**Richard Peter Williams, Jr. (CRD #2556997, Registered Representative, Pompton Lakes, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before reassociating with any NASD member following the

suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Williams consented to the described sanctions and to the entry of findings that he failed to timely amend his Form U-4 to disclose that he had been named as a respondent in an investment-related, consumer-initiated arbitration which alleged that he was involved in sales practice violations.

Williams' suspension began April 2, 2001, and will conclude at the close of business May 1, 2001. (NASD Case #C9B010010)

### May Actions

**Merrion Group, LLC (CRD #30145, Westfield, New Jersey)** submitted an Offer of Settlement in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it conducted a securities business while failing to maintain its minimum required net capital. (NASD Case #C9B000013)

**Seaboard Securities, Inc. (CRD #755, Florham Park, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$27,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to establish, maintain, and enforce adequate written supervisory procedures regarding options transactions and the review of branch office activities. The findings also stated that the firm failed to designate a supervisory principal for trading/market making, options, continuing education, and government securities. In addition, the NASD determined that, in connection with an IPO underwriting, the firm accepted customer checks dated prior to the effective date of the offering, and failed to update its quote within 30 seconds in instances when the customer's limit order was priced better than the firm's prevailing quotation. Furthermore, the NASD found that the firm reported short sale transactions to ACT without using the short sale modifier; failed to execute short sale transactions on a down bid at a price that was not 1/16 above the current inside bid; and failed to maintain evidence of having made an affirmative determination ensuring that the shares could be obtained for a short sale. Moreover, the NASD found that the firm failed to identify on order tickets whether the transactions were long or short, and failed to file, or to file in a timely manner, customer complaints it received. (NASD Case #C9B010026)

**David Wainwright Buys, Sr. (CRD #1965954, Registered Representative, Montville, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and ordered to pay \$66,993.23 in restitution to a trust account and/or its beneficiaries. Proof of restitution, with interest, shall be a prerequisite before reassociating with a member firm or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Buys consented to the described sanctions and to the entry of findings that he

converted \$66,993.32 from a trust account in which he served as a trustee and used the funds for his own use and benefit, without the beneficiaries' knowledge or consent. (NASD Case #C9B010023)

**Richard D'Ambola (CRD #2816480, Registered Representative, Landing, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500, suspended from association with any NASD member in any capacity for six months, and required to disgorge \$13,460, plus interest, to customers. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Proof of payment of disgorgement, with interest, shall be a prerequisite before reassociating with a member firm or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, D'Ambola consented to the described sanctions and to the entry of findings that he effected offers and sales of securities to public customers outside of the normal course or scope of his association with his member firm and failed to provide his member firm prior written notification of such offers and sales of securities.

D'Ambola's suspension began May 7, 2001, and will conclude at the close of business November 6, 2001. (NASD Case #C9B010020)

**Steven Douglas Goodman (CRD #1510905, Registered Principal, Allison Park, Pennsylvania)** was fined \$75,000 and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of a November 1999 National Adjudicatory Council (NAC) decision. The sanctions were based on findings that Goodman used high-pressure tactics to induce sales, and increased customer losses by dissuading them from selling, and failed to execute sell orders. (NASD Case #C9B960013)

**James Alan Gorab (CRD #2910909, Registered Representative, Hoboken, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$20,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Gorab consented to the described sanctions and to the entry of findings that he submitted a false transcript to a member firm regarding his educational background and willfully failed to disclose information on his Form U-4.

Gorab's suspension began April 16, 2001, and will conclude at the close of business April 15, 2003. (NASD Case #C9B010013)

**Rocco Nick Graziosi (CRD #2590696, Registered Representative, Glen Cove, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Graziosi consented to the described sanctions and to the entry of findings that he



arranged to have another registered representative sign new account forms falsely representing that the representative was the customers' account executive, failed to sign the forms as the customers' account executive and, thereby caused his firm to maintain inaccurate books and records. Furthermore, the NASD determined that Graziosi knowingly and improperly used the registered representative's executive number for entering transactions in the customers' account, thereby causing his member firm to maintain inaccurate books and records.

Graziosi's suspension began April 16, 2001, and will conclude July 15, 2001. (NASD Case #C9B010015)

**Barbara Jennings (CRD #3168111, Registered Representative, Plainsboro, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Jennings consented to the described sanctions and to the entry of findings that she failed to update her Form U-4.

Jennings' suspension began April 16, 2001, and will conclude at the close of business May 15, 2001. (NASD Case #C9B010016)

**Paul Lovrovich (CRD #2575457, Registered Principal, Avenel, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lovrovich consented to the described sanction and to the entry of findings that he attempted to conceal from his member firm that he had canceled two trades made for his personal account by canceling and re-billing the trades to the account of a relative and then canceling and re-billing the trades to his member firm's error account. According to the findings, at the time Lovrovich canceled the trades, the stock prices of both securities had declined, thereby allowing him to avoid having to pay for the unfavorable trades. The NASD found that the firm paid for the costs of these transactions, incurring a loss of approximately \$1,100. Lovrovich also provided false and misleading information to the NASD during an on-the-record interview. (NASD Case #C9B010021)

**Gregory Vincent Morgan (CRD #2334270, Registered Representative, Baldwin, New York)** was fined \$50,000, suspended from association with any NASD member in any capacity for two years, and ordered to pay \$69,230, plus interest, in restitution to a public customer for effecting unauthorized securities transactions. In addition, Morgan was barred from association with any NASD member in any capacity for making unsuitable recommendations and engaging in excessive trading, and failing to respond to NASD requests for information. The sanctions were based on findings that Morgan effected unauthorized securities transactions in the account of a public customer. Morgan also made unsuitable recommendations, including recommenda-

tions to trade excessively, to a public customer. In addition, Morgan failed to respond to NASD requests for information.

Morgan's bar became effective March 20, 2001. (NASD Case #C9B000024)

**Richard Bruce O'Callaghan (CRD #1707271, Registered Representative, Freehold, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$27,500 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, O'Callaghan consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on a Form U-4, and provided false and misleading testimony to the NASD during an on-the-record interview. O'Callaghan's suspension began May 7, 2001, and will conclude at the close of business May 6, 2002. (NASD Case #C9B010024)

**Andrew Calvin Rothstein (CRD #1187031, Registered Representative, Jackson, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Rothstein consented to the described sanction and to the entry of findings that he arranged for a \$3,000 check to be issued from a public customer's annuity account, endorsed the check, and converted the funds for his own use and benefit, without the customer's knowledge or consent. Rothstein also failed to respond to NASD requests for information. (NASD Case #C9B010014)

**Paul Carl Sildatke (CRD #2910292, Registered Principal, Morris Plains, New Jersey)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Sildatke failed to respond to NASD requests for information. (NASD Case #C9B000028)

**Nathan James Smith (CRD #1946055, Registered Representative, Chatham, New Jersey)** was named as a respondent in an NASD complaint alleging that he failed to respond to NASD requests for information. The complaint also alleges that Smith improperly converted \$200,000 in funds received from public customer intended for investment purposes to his own use and benefit. (NASD Case #C9B010019)

**Matthew Laurence Zimmerman (CRD #1800015, Registered Representative, Morris Plains, New Jersey)** was named as a respondent in an NASD complaint alleging that he engaged in unauthorized trading in the accounts of public customers, made untrue statements of material facts, and omitted to state material facts to customers causing them to lose almost \$55,000 in their accounts, while collecting over \$9,000 in commissions. The complaint also alleges that Zimmerman failed to respond to NASD requests to appear for on-the-record interviews. (NASD Case #C9B010027)

## June Actions

**Frank Anthony Cardia, Jr. (CRD #2808582, Registered Representative, Bogota, New Jersey)** was barred from association with any NASD member in any capacity, and fined \$50,000 for falsifying records concerning a customer's account and for providing false information to the NASD. Cardia was also suspended from association with any NASD member in any capacity for six months, fined \$30,000 for pre-selling the aftermarket in a stock, and ordered to pay \$8,637.95, plus interest, in restitution to a customer for failing to execute a limit order. The sanctions were based on findings that Cardia intentionally falsified a public customer's account records by falsely representing that another individual was the account executive on the customer's account and providing false testimony to the NASD during an on-the-record interview. Cardia also violated the antifraud provisions of the securities laws by utilizing a tie-in arrangement in which the customer had to agree to purchase aftermarket shares of stock in order to purchase shares in an initial public offering (IPO), and failed to follow a customer's instruction to sell a security. In addition, the NASD found that Cardia falsely stated in a written response to an NASD request for information that no customer had complained that he failed to place a sell limit order.

The bar became effective April 23, 2001. (NASD Case #C9B000007)

**Marco Louis Carucci (CRD #1951639, Registered Representative, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Carucci consented to the described sanction and to the entry of findings that he failed to respond to NASD requests to appear for an on-the-record interview. The findings also stated that Carucci engaged in outside business activities and private securities transactions without prior written notice to, or approval from, his member firm. (NASD Case #C9B010028)

**Peter Aristides Ladas (CRD #2145234, Registered Representative, Branchburg, New Jersey)** submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for six months. In light of the financial status of Ladas, no monetary sanction has been imposed. Without admitting or denying the allegations, Ladas consented to the described sanction and to the entry of findings that he completed, signed, and submitted to his member firm a life insurance policy reinstatement form that contained false information.

Ladas' suspension began May 21, 2001, and will conclude at the close of business November 20, 2001. (NASD Case #C9B010012)

**Eric Riedman (CRD #833344, Registered Representative, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and required to pay \$55,000 in restitution to a public customer.

Proof of restitution shall be a prerequisite before reassociating with a member firm or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Riedman consented to the described sanctions and to the entry of findings that he received \$55,000 in funds from a public customer with instructions to place the funds in limited partnerships. The NASD found that Riedman instead placed the funds in his bank account, provided the customer with interest on the funds over the course of the following two years, and then placed the funds into limited partnerships. Riedman also failed to respond to NASD requests for information. (NASD Case #C9B010033)

**Edward James Stock, Jr. (CRD #2379991, Registered Representative, Nesconset, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Stock consented to the described sanction and to the entry of findings that he signed his name on customers' new account forms falsely representing that he was the customers' account executive when, in fact, another registered representative had introduced the customers' accounts to the member firm, thereby causing his firm to maintain inaccurate books and records. The findings also stated that Stock knowingly and improperly permitted the registered representative to use his account executive number for entering transactions in the customers' accounts, thereby causing his member firm to maintain inaccurate books and records. Stock also failed to respond to NASD requests for information. (NASD Case #C9B010029)

**Richard William Stopa (CRD #2368388, Registered Principal, New York, New York)** was named as a respondent in an NASD complaint alleging that he executed unauthorized transactions in the accounts of public customers. The complaint also alleges that Stopa improperly charged a five percent markup by selling stock from a public customer's regular account and subsequently purchasing shares of the same stock for the customer's IRA. (NASD Case #C9B010040)

District 10 - The five boroughs of New York City, and Long Island

## April Actions

**John Baragwanath (CRD #2472854, Registered Representative, Santiago, Chile)** submitted an Offer of Settlement in which he was fined \$6,000 and suspended from association with any NASD member in any capacity for 20 business days. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Baragwanath consented to the described sanctions and to the entry of findings that he paid a public customer approximately \$7,000 to partially reimburse the customer for a loss, without the knowledge and consent of his member firm.

Baragwanath's suspension began April 2, 2001, and concluded at the close of business April 30, 2001. (NASD Case #C10000191)

**Marco Louis Carucci (CRD #1951639, Registered Representative, Brooklyn, New York) and Christopher Michael Tomasulo (CRD #1220199, Registered Representative, Staten Island, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which each respondent was fined \$2,500, suspended from association with any NASD member in any capacity for 30 days, and ordered to pay \$2,482 in restitution to a public customer. In light of the financial status of Carucci and Tomasulo, fines of \$2,500 were imposed. Payment of the fine and satisfactory proof of restitution, with interest, must be provided by each respondent before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they failed to follow a public customer's instructions to sell securities.

Carucci's and Tomasulo's suspensions began March 19, 2001, and concluded at the close of business April 17, 2001. (NASD Case #C10010030)

**Shun Tak ("Dixon") Chow (CRD #2721545, Registered Representative, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 18 months. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Chow consented to the described sanctions and to the entry of findings that he effected orders for the purchase of shares of an investment product that was not approved by his member firm for public customers away from his firm. The NASD also found that, prior to effecting the transactions, Chow failed to provide written notification to, or obtain written approval from, his member firm.

Chow's suspension began March 19, 2001, and will conclude at the close of business September 18, 2002. (NASD Case #C10010034)

**John Patrick Clancy (CRD #2085167, Registered Representative, New York, New York)** submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for 60 days. In light of the financial status of Clancy, no monetary sanction has been imposed. Without admitting or denying the allegations, Clancy consented to the described sanction and to the entry of findings that he failed to respond to an NASD request to appear for an on-the-record interview.

Clancy's suspension began April 2, 2001, and will conclude at the close of business May 31, 2001. (NASD Case #C10990222)

**Clayton John Darrohn, Jr. (CRD #2708608, Registered Representative, West Sayville, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Darrohn consented to the described sanction and to the entry of findings that, prior to becoming registered at a member firm, he used the registered representative numbers of other individuals to effect securities transactions on behalf of public customers. The findings also stated that Darrohn failed to respond to NASD requests to appear for on-the-record interviews. (NASD Case #C10010028)

**Salvatore Louis Esposito (CRD #2534742, Registered Representative, Howard Beach, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Esposito had an impostor take the Series 7 qualification exam on his behalf. The findings also stated that Esposito failed to respond truthfully during an NASD on-the-record interview. (NASD Case #C10000186)

**Larry Bruce James (CRD #2616619, Registered Representative, Brookhaven, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that James failed to respond to NASD requests to appear for on-the-record interviews. (NASD Case #C10000144)

**Michael Joel Keizman (CRD #2824901, Registered Representative, Brooklyn, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Keizman failed to respond to NASD requests for information. (NASD Case #C10000164)

**Kirlin Securities, Inc. (CRD #21210, Syosset, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$17,250. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to Nasdaq late; reported late trades without the ".SLD" modifier. In addition, the findings stated that the firm reported short sales that were late; failed to report bunched trades with the ".B" modifier; failed to use the late bunch trade modifier (".SB"); and failed to compare trades within 20 minutes. The findings also stated that the firm failed to provide customers with best execution and failed to comply with FIPS rules and trade reporting requirements. In addition, the NASD found that the firm's order tickets failed to contain notations documenting the firm's efforts to obtain quotes from three dealers. Moreover, the NASD found that the firm's written supervisory procedures did not set forth procedures adequately designed to ensure compliance with the prohibition against the coordination of quotes, trades, and trade reports; the proper displaying of quotes and prices; the prohibition against delaying trade reporting and sharing information with other market makers; firm quote obligations and procedures; timely and accurate trade reporting obligations; ACT Rule amendments; and proper conduct by trading personnel. Furthermore, the NASD found that the

firm failed to report to the NASD the internal suspension of its marketing manager and the suspension of registered representatives. The findings stated that the firm failed to report to the NASD that a claim by the estate of a customer was resolved for an amount in excess of \$25,000. (NASD Case #C10010035)

**Matthew Steven McKeon (CRD #2564640, Registered Representative, Flushing, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, McKeon consented to the described sanctions and to the entry of findings that he failed to execute a public customer's sell order. The findings also stated that McKeon failed to timely respond to an NASD request for information.

McKeon's suspension began April 2, 2001, and concluded at the close of business May 1, 2001. (NASD Case #C10010036)

**Michael Louis Meskers (CRD #3225041, Registered Representative, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$20,000, suspended from association with any NASD member in any capacity for one year, and ordered to requalify by exam as a general securities representative within 90 days from the date the suspension is over. If Meskers fails to requalify within that period, he shall be suspended from acting in that capacity until the exam is successfully completed. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Meskers consented to the described sanctions and to the entry of findings that he falsified firm documents by signing his name as the approving registered representative on customer new account forms by backdating his approval date on the forms. The findings also stated that Meskers accepted a \$39,476.36 check from his member firm that represented commissions relating to transactions, transferred the funds to an individual not registered with the NASD, and, thereby, facilitated the payment of commissions to an unregistered individual.

Meskers' suspension began March 19, 2001, and will conclude at the close of business March 18, 2002. (NASD Case #C10010018)

**Anthony Armando Morrelli (CRD #2561728, Registered Representative, Mineola, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Morrelli effected transactions in the account of public customers without their prior knowledge, authorization, or consent. (NASD Case #C10000199)

**Peter Gerard Olton (CRD #1967551, Registered Principal, Parlin, New Jersey)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Olton converted \$13,000 of a public customer's funds by effecting a wire transfer from the customer's

brokerage account to his personal bank account without the knowledge, authorization, or consent of the customer. The findings also stated that Olton failed to respond to NASD requests for information. (NASD Case #C10000168)

**Vito Gerard Padulo (CRD #2370645, Registered Representative, Englishtown, New Jersey)** was fined \$20,000 and suspended from association with any NASD member in any capacity for 30 days for unauthorized transactions. In addition, Padulo was barred from association with any NASD member in any capacity for failing to respond to NASD requests for information. The fine must be paid before reassociating with any NASD member or before requesting relief from any statutory disqualification. The sanctions were based on findings that Padulo effected unauthorized transactions in the account of a public customer and failed to respond to NASD requests for information.

Padulo's bar became effective February 21, 2001. (NASD Case #C10000166)

**Parker Financial Corporation (CRD #42140, Huntington Station, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported short sale transactions in NNM securities through ACT and failed to append the ".S" modifier identifying the transactions as short sales. The NASD also found that the firm reported agency transactions to ACT incorrectly as principal transactions. The findings also stated that the firm failed to execute short sale transactions in accordance with the NASD short sale "bid test" requirements and failed to make an affirmative determination as to the stock's availability in short sale transactions reported to ACT. In addition, the NASD found that the firm reported transactions late to ACT without the ".SLD" modifier, and reported aggregated transactions to ACT without the ".B" modifier. (NASD Case #C10010032)

**Cosmo Scali (CRD #2396302, Registered Representative, Brooklyn, New York) and Jeffrey Scott Geoghegan (CRD #2582567, Registered Representative, Putnam Valley, New York)** were each barred from association with any NASD member in any capacity. The sanctions were based on findings that Scali and Geoghegan engaged in transactions in the accounts of public customers without their prior knowledge, authorization, or consent. The findings also stated that Scali requested that a public customer provide him with an address outside of Texas to circumvent Texas blue sky restrictions. In addition, the NASD found that Geoghegan solicited public customers to purchase units in an initial public offering (IPO) prior to its effective date and failed to advise his customers of material facts regarding the extensive risks associated with the proposed investment, and falsified an entry on an order ticket in order to evade Virginia blue sky restrictions. (NASD Case #C10970143)

**Morgan Simonson (CRD #3136194, Associated Person, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and

ordered to pay \$9,619.21 in restitution to a public customer. Satisfactory proof of restitution, with interest, must be made prior to reassociation with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Simonson consented to the described sanctions and to the entry of findings that he transferred \$18,719.21 in customer funds to his personal bank account without the customer's prior knowledge, authorization, or consent and misused and commingled the funds. The findings also stated that Simonson returned \$9,100 to the customer and converted the remaining balance for his own use and benefit. In addition, the NASD found that Simonson prepared monthly account statements for the customer that contained false information. Moreover, the NASD found that Simonson failed to inform his member firm that he maintained a securities account with another member firm and failed to inform the other member firm that he was associated with a member firm. Furthermore, the NASD findings stated that Simonson failed to respond to NASD requests for information and documentation. (NASD Case #C10010040)

**Jason Varzarevsky (CRD #2891755, Registered Representative, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000, suspended from association with any NASD member in any capacity for six months, ordered to pay \$30,000 in restitution to a public customer, and ordered to requalify by exam as a general securities representative within 90 days of the approval and issuance of the AWC. If Varzarevsky fails to requalify within the time period, he shall not associate with any NASD member in any capacity until he requalifies. Payment of the fine and satisfactory proof of restitution, with interest, must be provided before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Varzarevsky consented to the described sanctions and to the entry of findings that he made material misrepresentations to induce a public customer to purchase shares of stock.

Varzarevsky's suspension began March 19, 2001, and will conclude at the close of business September 18, 2001. (NASD Case #C10010031)

**David Michael Weeks (CRD #2280967, Registered Principal, West Hills, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. In light of the financial status of Weeks, no monetary sanction has been imposed. Without admitting or denying the allegations, Weeks consented to the described sanction and to the entry of findings that he effected transactions in the accounts of public customers without the prior knowledge or consent of the customers and commingled the funds of public customers with cash and/or securities held in his personal securities account. The findings also stated that Weeks failed to respond to NASD requests for information and documentation. (NASD Case #C10010013)

**Daniel Alberto Zappala (CRD #2762038, Registered Representative, Merrick, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500, suspended from association with any NASD member in any capacity for six months, and ordered to pay \$3,500 in restitution to a public customer. Payment of the fine and satisfactory proof of payment of the restitution, with interest, must be provided before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Zappala consented to the described sanctions and to the entry of findings that he effected transactions in the account of a public customer without the customer's prior knowledge, authorization, or consent.

Zappala's suspension began April 2, 2001, and will conclude at the close of business October 1, 2001. (NASD Case #C10010038)

#### May Actions

**Wolff Investment Group, Incorporated (CRD #21930, New York, New York) and Patricia Ann Schaen (CRD #412379, Registered Principal, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$15,000, payable to a public customer. Failure to pay the fine within 60 days from the date the AWC is issued will result in the suspension of Schaen from association with any NASD member in any capacity and the suspension of the firm's membership until payment is complete. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Schaen, failed to establish procedures for the review and endorsement by a principal of all transactions that would prevent unauthorized trading. (NASD Case #10010041)

**Jonathan Elia Sasoon Bekhor (CRD #1910534, Registered Principal, Beverly Hills, California)** submitted an Offer of Settlement in which he was fined \$10,000, suspended from association with any NASD member in any capacity for 60 business days, and ordered to requalify by exam as a general securities principal within 60 days from the day the order accepting the Offer was issued by the NASD. If Bekhor fails to requalify, he will be suspended from acting in such capacity until the exam is successfully completed. The fine must be paid before reassociating with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Bekhor consented to the described sanctions and to the entry of findings that a member firm, acting through Bekhor, failed to have a qualified municipal securities principal engaged in the management, direction, or supervision of an underwriting, and allowed an unregistered person to act in that capacity; failed to designate a municipal securities principal responsible for its supervision; and failed to have the trade tickets for the underwriting approved by a municipal securities principal. The findings also stated that a member firm, acting through Bekhor, violated the terms of an NASD

Restriction Agreement and acted as sole underwriter in a municipal securities offering. The NASD also found that Bekhor failed to send to the Municipal Securities Rulemaking Board (MSRB) copies of a completed MSRB Form G-36, failed to pay an underwriting fee to the MSRB, and failed to comply with MSRB bookkeeping requirements.

Bekhor's suspension began April 16, 2001, and will conclude at the close of business July 10, 2001. (NASD Case #C10990037)

**William E. Cherry, Jr. (CRD #3237150, Associated Person, West Hempstead, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cherry consented to the described sanction and to the entry of findings that he received the proctor's report from the NASD's Certification Testing Center that stated that Cherry had failed the NASD Series 63, Uniform Securities Agent State Law exam, and altered the proctor's report to reflect that he had passed the exam. Cherry presented the altered report to his member firm, misrepresenting that he had passed the exam. (NASD Case #C10010047)

**Pasquale Forti (CRD #2685740, Registered Principal, Hazlet, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for 30 days, ordered to pay \$5,000 in restitution to a public customer, and ordered to attend a continuing education course with respect to the duties of a general securities representative. The fine payment and satisfactory proof of payment of restitution, with interest, must be provided before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Forti consented to the described sanctions and to the entry of findings that he failed to execute a public customer's request to sell shares of stock and warrants. The findings also stated that Forti made material misrepresentations to another public customer that resulted in the customer purchasing shares of stock and then delayed his request to sell the stock.

Forti's suspension began April 16, 2001, and will conclude at the close of business May 15, 2001. (NASD Case #C10010039)

**Eric Peter Lesak (CRD #2390075, Registered Representative, Wantagh, New York)** was censured, fined \$15,000, and barred from association with any NASD member in any capacity. The fine must be paid before reassociating with any NASD member. The sanctions were based on findings that Lesak effected unauthorized transactions in the account of a corporate customer without the knowledge, authorization, or consent of the company's president. The findings also stated that Lesak failed to respond to NASD requests to appear for on-the-record interviews. (NASD Case #C10000087)

**Jang Soo Lim (CRD #2881926, Registered Representative, Forest Hills, New York)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lim consented to the described sanction and to the entry of findings that he arranged for \$15,000 in loans to be issued against the life insurance policy of a public customer without the customer's knowledge, authorization, or consent and converted and/or misused the loan proceeds. The findings also stated that Lim forged the customer's signature on checks issued by the insurance company to the customer in connection with the loan. In addition, the NASD found that Lim failed to respond to NASD requests for information. (NASD Case #C10010019)

**Becky Maria Nunez (CRD #2313048, Registered Representative, Brooklyn, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Nunez executed unauthorized transactions in the account of a public customer and failed to respond to NASD requests for information. (NASD Case #C10000174)

**Peter David Ragofsky (CRD #2066034, Registered Representative, Brooklyn, New York)** was barred from association with any NASD member in any capacity and ordered to pay \$15,956, plus interest, in restitution to public customers. The sanctions were based on findings that Ragofsky effected unauthorized transactions in the accounts of public customers. (NASD Case C10000086)

**Daniel Carmine Santoro (CRD #2211387, Registered Representative, Douglaston, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and ordered to pay \$2,422.05 in restitution to his former member firm. Without admitting or denying the allegations, Santoro consented to the described sanctions and to the entry of findings that he converted \$25,000 from a public customer by obtaining a check payable to the customer and depositing it in his personal checking account without the customer's knowledge or authorization. The findings stated that Santoro forged the required signature on the check so that he could deposit it into his personal bank account. The NASD also found that Santoro caused credit cards to be opened under the names and social security numbers of public customers, directed the bills be sent to his home address, and named himself as the secondary card holder without their knowledge or authorization. (NASD Case #C10010043)

**Mitchell Louis Goldberg (CRD #1386682, Registered Principal, Syosset, New York)** was named as a respondent in an NASD complaint alleging that, in connection with the purchase or sale of a security, he intentionally, knowingly, or recklessly employed a device, scheme, contrivance, and artifice to defraud; omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and engaged in acts, practices, or courses of business that operated as a fraud or deceit upon a public customer. The complaint also alleges that Goldberg effected transactions in the accounts of

public customers without their prior knowledge, authorization, or consent. In addition, the complaint alleges that, in an effort to induce the customer to ratify unauthorized transactions, Goldberg intentionally and/or recklessly made material, misleading, and false representations that were without a reasonable basis and failed to disclose to the customer material information. The complaint further alleges that Goldberg failed to execute the sell orders of public customers. Moreover, the complaint alleges that Goldberg failed to accurately record on the books and records of his member firm the residential address of a public customer, and circumvented Indiana Blue Sky laws by preparing a new account form for a customer using the home address of the customer's father in another state. (NASD Case #C10010042)

**Mohamed Imran Hussain (CRD #2287607, Registered Representative, Staten Island, New York)** was named as a respondent in an NASD complaint alleging that he guaranteed a customer against loss. (NASD Case #C10010046)

## June Actions

**Hornblower & Weeks, Inc. (CRD #4683, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$47,500, which includes disgorgement in the amount of \$7,500 in revenue improperly received by the firm as a result of the activities of the brokers whose registrations were inactive. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report to the NASD customer complaints that it had received, and that it had taken disciplinary action that led to the termination of registered representatives. The findings also stated that the firm failed to report a settlement with a public customer in the amount of \$30,000 and to timely report to the NASD a written customer complaint that it received. In addition, the NASD found that the firm failed to disclose, and to clearly disclose, the markup or markdown on confirmations of principal transactions. The NASD also found that the firm permitted individuals to act as registered persons when their registration status with the NASD was inactive due to their failure to comply with the Regulatory Element of NASD's Continuing Education Requirement. Furthermore, the NASD found that the firm's employees failed to attend its annual compliance meeting, and that the firm failed to either obtain a copy of the Form U-5 filed by the most recent previous employer or to demonstrate that it had made reasonable efforts to do so. (NASD Case #C10010051)

**Joseph Matthew Chelales (CRD #2720791, Associated Person, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity, including clerical or ministerial functions. Without admitting or denying the allegations, Chelales consented to the described sanction and to the entry of findings that he failed to respond to an NASD request to appear for an on-the-record interview. (NASD Case #C10010048)

**John Doukas (CRD #862177, Registered Representative, North Salem, New York)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Doukas consented to the described sanction and to the entry of findings that he permitted a person subject to statutory disqualification to engage in the activities of his member firm. The findings also stated that Doukas engaged in manipulative, deceptive, and fraudulent practices in connection with the purchase and sale of securities by implementing and enforcing a "no net selling" policy and failed to communicate this policy to the firm's customers. The NASD also found that Doukas failed to carry out his supervisory duties, and failed to establish, maintain, and enforce a supervisory system reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules. Doukas ignored "red flag" warnings of problematic conduct committed by registered representatives and failed to take appropriate action designed to prevent future violations or to properly discipline the registered representatives. Moreover, the NASD found that Doukas failed to establish, maintain, and enforce written supervisory procedures that assigned registered representatives to a designated principal for supervision and designated certain persons as supervisors or principals who did not function in those capacities. In addition, the NASD found that Doukas failed to file any customer complaint information with the NASD despite the fact that numerous customer complaints were received by his firm. (NASD Case #C10000026)

**Claude Anthony Eatman, Jr. (CRD #1899070, Registered Principal, Jersey City, New Jersey)** submitted an Offer of Settlement in which he was fined \$10,000, suspended from association with any NASD member in any registered capacity for two years, and suspended from association with any NASD member in any capacity for 20 business days. Without admitting or denying the allegations, Eatman consented to the described sanctions and to the entry of findings that he executed unauthorized trades in the account of a public customer. The findings also stated that Eatman submitted change of address forms in regard to the accounts of public customers to his member firm, without the customers' knowledge or consent, so that the firm's records reflected fictitious addresses. The NASD also found that Eatman opened the account of one public customer and used an address at which the customer did not live.

Eatman's suspensions began May 21, 2001, and the suspension in any registered capacity will conclude at the close of business May 20, 2003. The suspension in any capacity will conclude at the close of business June 18, 2001. (NASD Case #C10000185)

**Scott Darren Fessler (CRD #2689471, Registered Representative, Valley Stream, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500, suspended from association with any NASD member in any capacity for 15 days, and ordered to pay \$5,117.91, plus interest, in restitution to a public customer. Without admitting or denying the allegations, Fessler

consented to the described sanctions and to the entry of findings that he sold shares of stock from a public customer's account without the customer's knowledge and consent and used the proceeds to purchase other shares of stock for the customer's account, without the customer's knowledge or consent.

Fessler's suspension began June 4, 2001, and will conclude at the close of business June 18, 2001. (NASD Case #C10010055)

**Everton Clyde Lewis (CRD #2548000, Registered Representative, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for five days. Without admitting or denying the allegations, Lewis consented to the described sanctions and to the entry of findings that he failed to execute a limit sell order from a public customer in a timely manner pursuant to the customer's instructions, resulting in the customer receiving a less favorable price for his order.

Lewis' suspension began June 4, 2001, and concluded at the close of business June 8, 2001. (NASD Case #C10010057)

**Robert J. Lewis, Jr. (CRD #2530590, Registered Representative, Rego Park, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Lewis willfully failed to disclose material information on a Form U-4. (NASD Case #C10000197)

**James Edgar Lingo (CRD #2889448, Registered Principal, Staten Island, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and ordered to cooperate fully with the NASD in regard to matters relating to the offer and sale of shares of a private placement. Without admitting or denying the allegations, Lingo consented to the described sanctions and to the entry of findings that he made baseless price predictions, other material misrepresentations, and material omissions of adverse business facts to public customers in the offer and sale of a private placement. The findings also stated that Lingo effected securities transactions for public customers away from his member firm and failed to provide prior written notification to, or to receive written approval from, his member firm before effecting the transactions. (NASD Case #C10010050)

**Erik Joseph Matz (CRD #2715303, Registered Representative, Hicksville, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Matz consented to the described sanctions and to the entry of findings that he exercised discretionary authority in the account of a public customer without the customer's prior written authorization and his member firm's written acceptance of the account as discretionary.

Matz's suspension began May 21, 2001, and will conclude at the close of business June 19, 2001. (NASD Case #C10010052)

**Kenneth Rivera (CRD #4047245, Associated Person, Cos Cob, Connecticut)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Rivera willfully failed to disclose a material fact on his Form U-4 and failed to respond to NASD requests for information. (NASD Case #C10000209)

**Gerard Mauro Roth (CRD #2498720, Registered Representative, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and ordered to cooperate fully with the NASD in regard to matters relating to the offer and sale of shares in a private placement. Without admitting or denying the allegations, Roth consented to the described sanctions and to the entry of findings that he made material misrepresentations including baseless price predictions and material omissions of adverse business facts to public customers in the offer and sale of a private placement. The findings also stated that Roth effected securities transactions for public customers away from his member firm and failed to provide written notification to, or to obtain written approval from, his member firm prior to effecting the transactions. The NASD also found that Roth failed to respond to NASD requests for information and documentation and to appear for an on-the-record interview. (NASD Case #C10010049)

**Francesco Anthony Scarso (CRD #2679981, Registered Representative, Brooklyn, New York)** submitted an Offer of Settlement in which he was fined \$8,000, suspended from association with any NASD member in any capacity for 30 business days, and ordered to requalify by exam as a general securities representative. If Scarso fails to requalify within 90 days from the date of the Order Accepting the Offer of Settlement, he may not thereafter be associated with any NASD member as a general securities representative until he passes the exam. Scarso was also required to pay \$27,000 in restitution to public customers. Without admitting or denying the allegations, Scarso consented to the described sanctions and to the entry of findings that he effected transactions in the accounts of public customers without their authorization.

Scarso's suspension will begin June 18, 2001, and will conclude at the close of business July 30, 2001. (NASD Case #C10000135)

**Todd Richard Stone (CRD #1923863, Registered Principal, Boca Raton, Florida)** was fined \$10,000 and suspended from association with any NASD member in all supervisory capacities for 30 business days for failing to amend a Form BD and for failing to designate an office of supervisory jurisdiction (OSJ); fined \$5,000 for failing to maintain adequate written supervisory procedures; and barred from association with any NASD member in any capacity for failing to respond to NASD requests for information. The sanctions were based on findings that Stone, as his member firm's compliance officer, failed to amend the firm's Form BD and failed to designate an OSJ



when his firm opened new branch offices or other business locations. The findings also stated that Stone failed to ensure that his firm amended its written supervisory procedures to designate as an OSJ each location that met the NASD definition, to designate appropriately registered principals in each OSJ, and to designate appropriately registered representatives or principals in each non-OSJ branch office with authority to carry out the supervisory responsibilities assigned to that office. The NASD also found that Stone failed to respond to NASD requests for information.

Stone's bar was effective April 27, 2001. (NASD Case #C10000211)

**Stephen Daniel Carcaterra (CRD #2674226, Registered Representative, Seabright, New Jersey)** was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 business days for engaging in private securities transactions, and barred from association with any NASD member in any capacity for failing to appear for an NASD on-the-record interview. The fine must be paid if Carcaterra seeks to reenter the securities industry. The sanctions were based on findings that Carcaterra engaged in private securities transactions, for compensation, and failed to provide his member firm with prior written notification describing in detail the proposed transaction, his role therein, and stating whether he received, or might receive, compensation. The findings also stated that Carcaterra failed to receive written approval from his member firm prior to the transactions. In addition, the NASD found that Carcaterra failed to respond to NASD requests to appear for an on-the-record interview.

Carcaterra has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C10000165)

**Joseph Doria (CRD #2356685, Registered Representative, Franklin Square, New York)** was named as a respondent in an NASD complaint alleging that he received \$60,000 from a public customer to invest in the stock market and, instead, converted the funds to his own use and benefit, without the customer's prior knowledge, authorization, or consent. (NASD Case #C10010060)

**William Scott & Co., LLC (CRD #14979), Anthony Joe Radicone (CRD #2461173, Registered Representative, Staten Island, New York), Yakov (Jack) Shulm Koppel (CRD #2448735, Registered Representative, Monroe, New York) and Vinson Foresta (CRD #2567149, Registered Representative, Edison, New Jersey)** were named as respondents in an NASD complaint alleging that the firm, acting through Radicone, Koppel, Foresta, and other individuals, employed or induced the firm's associated persons to engage in acts and practices in connection with accounts of public customers, including the use of high-pressure telephone sales pitches in an effort to sell low-priced, speculative securities; the use of baseless price and performance predictions; the use of material, false, misleading, and inaccurate representations; the failure to disclose material information including the financial condition

of securities; the effecting of unauthorized transactions in the accounts of public customers; and the failure or refusal to sell securities from the accounts of public customers despite their instructions to do so. The complaint also alleges that Radicone advised public customers that in order to purchase securities in an IPO, they had to agree to purchase securities in the secondary market. In addition, the complaint alleges that Radicone performed duties as a registered person while his registration status was inactive due to his failure to timely complete the Regulatory Element of the NASD's Continuing Education Rule. Moreover, the complaint alleges that Koppel accepted payment for IPO securities prior to the effective date of the issuer's registration statement. (NASD Case #C10010004)

District 11 - Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and New York (except for the counties of Livingston, Monroe, and Steuben; the five boroughs of New York City; and Long Island)

#### April Actions

**Barclay Investments, Inc. (CRD #6159, New York, New York) and Basil Constantine Williams (CRD #717300, Registered Principal, Englewood, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$25,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Williams, failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules pertaining to the registration of principals and establishing a record of each person who had supervisory responsibilities and to identify qualifications it deemed important in determining whether a supervisor can fulfill his/her assigned responsibilities. The findings also stated that the firm, acting through Williams, allowed an individual to function as a principal when he was not so registered with the NASD. (NASD Case #C11010005)

**John Weldon Hare (CRD #1965893, Registered Principal, Darien, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 14 days. Without admitting or denying the allegations, Hare consented to the described sanctions and to the entry of findings that he failed to provide prompt written notice to his member firm of his activities outside the scope of his relationship with his firm.

Hare's suspension began April 2, 2001, and concluded April 15, 2001. (NASD Case #C11010006)

**Steven John Manocchia (CRD #1010935, Registered Representative, Smithfield, Rhode Island)** was named as a respondent in an NASD complaint alleging that he misappro-

appropriated and converted at least \$8,198.44 in funds from a loan taken on a variable life insurance policy held in the name of a public customer. The complaint also alleges that Manocchia, without the consent of the customer, caused the loan check to be issued and sent to his address, forged the customer's signature on the check, added his own signature, and deposited the check into his own bank account. (NASD Case #C11010007)

**Steven Barry Nothmann (CRD #1265457, Registered Representative, Boston, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$25,000 and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Nothmann consented to the described sanctions and to the entry of findings that, in response to an NASD request for information, he provided tax returns to the NASD that he had previously completed using his son's social security number and made the documents appear to look as if they contained his social security number.

Nothmann's suspension began March 19, 2001, and will conclude at the close of business June 18, 2001. (NASD Case #C11010002)

**Gary Clinton Scofield (CRD #1026835, Registered Representative, Clifton Park, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for 18 months, ordered to disgorge commissions, and required to pay \$4,486.68, plus interest, in partial restitution to a public customer. If the customer has received full restitution from another source, the \$4,486.68 will be paid as an additional fine. The fine payment and satisfactory proof of disgorgement and restitution, with interest, must be made before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Scofield consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, or approval from, his member firm. The findings also stated that Scofield received a \$564.07 override in connection with the sale of a promissory note by another registered representative.

Scofield's suspension began April 2, 2001, and will conclude at the close of business October 1, 2002. (NASD Case #C11010004)

### May Actions

**Nicholas Michael Calapa (CRD #1245429, Registered Representative, Stamford, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for six months. In light of the financial status of Calapa, no monetary sanctions were imposed. Without admitting or denying the allegations, Calapa consented to

the described sanction and to the entry of findings that he recommended unsuitable trading in the account of a public customer. Calapa inappropriately recommended that the customer continue use margin loans in order to engage in a short-term trading strategy involving highly concentrated positions in particular securities, causing the account to suffer losses in excess of \$88,000. The findings also stated that Calapa acted in reckless disregard of his client's interest when he disregarded the impact of the short-term trading, the inappropriate use of margin in the account, the risks that the account incurred from this activity, and the high concentration levels of certain securities in the account.

Calapa's suspension began April 16, 2001, and will conclude at the close of business October 15, 2001. (NASD Case #C11010010)

**Donald Albert Gorneau (CRD #1477882, Registered Representative, Winslow, Maine)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gorneau consented to the described sanction and to the entry of findings that he received over \$60,000 from public customers to invest in variable annuities and traditional life insurance products, and, instead, converted the funds to his own use and benefit. (NASD Case #C11010012)

**Suzanne Marie Greany (CRD #2488261, Registered Representative, Wales, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Greany consented to the described sanction and to the entry of findings that she failed to respond to NASD requests for information. (NASD Case #C11010011)

**Stacey Lein Lew (CRD #3215074, Registered Representative, Framingham, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Lew consented to the described sanctions and to the entry of findings that she forged a customer's signature on a Change of Financial Advisor Form without the customer's knowledge or consent. The findings also stated that Lew submitted the form to an investment company, thereby becoming the registered representative of record with respect to the customer's mutual fund holdings.

Lew's suspension began April 16, 2001, and will conclude at the close of business April 15, 2002. (NASD Case #C11010008)

**Robert Joseph Sampson (CRD #1051109, Registered Representative, Rochdale, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any

capacity. Without admitting or denying the allegations, Sampson consented to the described sanction and to the entry of findings that he misappropriated at least \$87,000 in cash proceeds from the accounts of public customers and improperly converted the proceeds for his own use and benefit. (NASD Case #C11010009)

**Daniel Christopher Stearns (CRD #1888242, Registered Representative, Colonie, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$17,000, of which \$12,000 represents disgorgement of commissions, and suspended from association with any NASD member in any capacity for two months. Without admitting or denying the allegations, Stearns consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, or approval from, his member firm.

Stearns' suspension will begin June 1, 2001, and will conclude at the close of business July 31, 2001. (NASD Case #C11010013)

## June Actions

**Scott Joseph Brennan (CRD #1415232, Registered Representative, Manilus, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Brennan consented to the described sanction and to the entry of findings that he withdrew \$30,789.32 from a public customer's variable annuity and converted the funds for his own use and benefit. (NASD Case #C11010018)

**Kevin Koehler Handley (CRD #1920007, Registered Representative, Bristol, Rhode Island)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$35,000, which includes the disgorgement of \$30,000 in commissions earned, and suspended from association with any NASD member in any capacity for 90 days. Without admitting or denying the allegations, Handley consented to the described sanctions and to the entry of findings that, while registered with a member firm, he entered into an arrangement with another registered representative at another member firm involving the transfer of customer accounts to the other firm. The representative paid Handley in excess of \$30,000 in commissions for mutual fund transactions executed by the customers that were recommended by Handley. The findings also stated that in connection with the aforementioned activity, Handley engaged in private securities transactions without prior written notice to, or approval from, his member firm.

Handley's suspension began May 21, 2001, and will conclude at the close of business August 21, 2001. (NASD Case #C11010016)

**Steven John Manocchia (CRD #1010935, Registered Representative, Smithfield, Rhode Island)** submitted an Offer of Settlement in which he was barred from association

with any NASD member in any capacity. Without admitting or denying the allegations, Manocchia consented to the described sanction and to the entry of findings that he misappropriated funds totaling \$8,198.44 in proceeds from a loan taken on a variable life insurance policy held in the name of a public customer and caused the loan check to be issued and sent to his address. The findings also stated that Manocchia forged the customer's signature on the check, added his own signature, and deposited the check into his own bank account, converting and misappropriating \$8,198.44 for his own use and benefit. (NASD Case #C11010007)

**James Walter Rulison (CRD #1313251, Registered Representative, Canandaigua, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Rulison consented to the described sanction and to the entry of findings that he misappropriated approximately \$2,101,000 belonging to public customers. (NASD Case #C11010019)

**Robert Edmund Serio (CRD #1224555, Registered Representative, Boston, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and ordered to pay \$170,000, plus interest, in restitution to a family trust and individual members of the family. Satisfactory proof of payment of the restitution, with interest, must be provided before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Serio consented to the described sanctions and to the entry of findings that he made unauthorized transfers from the accounts of a family trust and individual members of the family totaling at least \$170,000 and misappropriated the proceeds for his own personal use and benefit. (NASD Case #C11010015)

## Enforcement Department

### April Actions

**Frederick Michael Benson (CRD #2876856, Registered Principal, Woodinville, Washington)** submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Benson consented to the described sanctions and to the entry of findings that he held himself out as a broker and affirmatively misrepresented his registration status. The findings also stated that Benson recommended securities transactions to public customers, made announcements about particular stocks to everyone in the trading room on a regular basis, and talked to individual customers about stocks during the trading day without being registered with the NASD. In addition, the NASD found that Benson accepted customer orders and entered them on the branch's admin machine prior to being registered with the NASD.

Benson's suspension began April 2, 2001, and concluded at the close of business May 1, 2001. (NASD Case #CAF000028)

**Gary Ducarmel Guirand (CRD #2372860, Registered Principal, Baldwin, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for 30 days, and ordered to pay \$5,416.75 in restitution to a public customer. Without admitting or denying the allegations, Guirand consented to the described sanctions and to the entry of findings that he placed unauthorized trades in the accounts of public customers. The findings also stated that Guirand failed to comply with a customer's instructions that his account be closed and the remaining securities be delivered to him.

Guirand's suspension began April 2, 2001, and concluded at the close of business May 1, 2001. (NASD Case #CAF010005)

**Warren Richard Schreiber (CRD #722981, Registered Representative, East Hills, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Schreiber consented to the described sanction and to the entry of findings that he entered a plea of guilty in the U.S. District Court, Southern District of New York, to felony securities law violations, (NASD Case #CAF010004)

## May Actions

**Millennium Securities Corp. (CRD #31695, New York, New York), Richard Allen Sitomer (CRD #1995999, Registered Principal, New York, New York) and Todd Michael Rome (CRD #2082803, Registered Principal, New York, New York)** submitted an Offer of Settlement in which the firm was ordered to file a Broker/Dealer Withdrawal Form to withdraw its membership from NASD no later than December 31, 2001, and that, if it fails to do so, not to oppose any action brought by the NASD Department of Enforcement seeking its expulsion. The firm was also required to disgorge \$1.1 million and ordered not to act as a participant in any underwriting or initial public offering (IPO) in any capacity until such time as it has withdrawn from membership in the NASD. Sitomer and Rome were each fined \$100,000, suspended from association with any NASD member in any capacity for six months, and suspended from association with any NASD member in any principal capacity for two years. Sitomer was also ordered to guarantee \$225,000 of the firm's \$1.1 million disgorgement.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm participated as co-underwriter in an IPO of common stock and warrants. Sitomer and Rome sold a majority of the firm's allocation to public customers whose accounts they controlled, and repurchased all of the securities bought by the customers at the same prices after the opening of aftermarket trading and before becoming

available to the investing public, thereby continuing the distribution. Following the repurchases, the firm upticked its quotations and significantly increased the prices of the securities despite relatively little trading activity, and used special selling methods to resell the securities to retail customers at prices substantially above those paid by the firm to reacquire them. The NASD also found that the firm, Sitomer, and Rome made markets in common stock and warrants, and bid for, purchased, or induced others to purchase those securities. The findings also stated that the respondents failed to disclose that they were conducting a distribution, the amount of securities distributed, the source of the securities, and that the firm's customers would be paying significantly more than what the firm had just paid for the same securities.

Sitomer's and Rome's suspensions in any capacity began April 12, 2001, and will conclude

at the close of business October 11, 2001. Sitomer's and Rome's suspensions in any principal capacity began April 12, 2001, and will conclude at the close of business April 11, 2003. (NASD Case #CAF000005)

**George Honorato Malagon, Jr. (CRD #2088064, Registered Principal, Fresh Meadows, New York)** submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Malagon consented to the described sanctions and to the entry of findings that he failed to disclose material facts to a public customer that a reasonably prudent customer would have wanted disclosed in making investment decisions and that Malagon had a duty to disclose. The findings also stated that Malagon executed unauthorized trades in the account of a public customer without discretionary trading authority.

Malagon's suspension began April 16, 2001, and concluded at the close of business May 4, 2001. (NASD Case #CAF000046)

**Robert Frank Toth (CRD #2320179, Registered Principal, Rosedale, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Toth failed to respond to NASD requests for testimony and documents. (NASD Case #CAF000014)

**Juan Carlos Vega (CRD #2150200, Registered Representative, Miami, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$15,000, suspended from association with any NASD member in any capacity for 60 days, and ordered to cooperate with the NASD in any related investigation and hearing. Without admitting or denying the allegations, Vega consented to the described sanctions and to the entry of findings that he rendered substantial assistance to his member firm and its CEO by executing orders and carrying out all basic trading functions relating to the trading activities of the common stock of a company that were designed to deceive or defraud public customers in spite of a general awareness that his role was improper.

Vega's suspension began April 16, 2001, and will conclude at the close of business June 14, 2001. (NASD Case #CAF010006)

**Patrick James Boyce (CRD #2388578, Registered Principal, East Setauket, New York)** was named as a respondent in an NASD complaint alleging that he directly and/or indirectly, singly and in concert, by use of the means or instrumentalities of interstate commerce, or of the mails, and in connection with the purchase and sale of securities, knowingly or recklessly engaged in, and/or induced others to engage in a device, scheme, or artifice to defraud, the use of an untrue statement of material fact and/or the omission of material facts necessary to make statements made, in light of the circumstances, not misleading, and acts, practices, or courses of business that operated as a fraud or deceit upon persons. The complaint also alleges that Boyce executed unauthorized trades in the accounts of public customers without the discretionary trading authority for the accounts. The complaint further alleges that Boyce made material omissions and misrepresentations and engaged in high-pressure sales tactics in attempting to solicit public customers to purchase stocks. In addition, the complaint alleges that Boyce effected transactions in and/or induced the purchase or sale of securities by means of manipulative, deceptive, and other fraudulent devices and contrivances. (NASD Case #CAF010007)

**Dane Stephen Faber (CRD #1020637, Registered Principal, Sausalito, California), Grace Patricia Stoneham (CRD #1068378, Registered Representative, San Francisco, California) and Monty Reasor Myler (CRD #1922281, Registered Principal, Palm Beach Gardens, Florida)** were named as respondents in an NASD complaint alleging that they, by the use of instrumentalities of interstate commerce, or of the mails, made material misrepresentations and omitted to state material facts about a company; effected transactions in, or induced the purchase or sale of, a security by means of a manipulative, deceptive, or fraudulent device; and failed to observe high standards of commercial honor and just and equitable principles of trade. The complaint alleges that each of the respondents solicited indications of interest for a common stock by falsely representing that the company would be selling the stock through an IPO, failed to conduct an adequate inquiry into the company before recommending purchase of the security to public customers, and recklessly disregarded publicly available information that indicated the shares were not being offered through an IPO. The complaint also alleges that the respondents made baseless and improper price predictions and assurances of success about the stock. The complaint further alleges that Faber made unsuitable recommendations to a public customer and made unsuitable transactions in her account in light of her investment objectives, financial situation, and needs. In addition, the complaint alleges that Myler failed to pay an NASD arbitration award. (NASD Case #CAF010009)

## June Actions

**Falcon Trading Group, Inc. (CRD #30361, Boca Raton, Florida), Sovereign Equity Management Corp. (CRD #20016, Deerfield Beach, Florida), and Glen Thomas Vittor (CRD #1565323, Registered Principal, Deerfield Beach, Florida)** were fined \$1 million, jointly and severally. In addition, the firms were expelled from NASD membership and Vittor was barred from association with any NASD member in any capacity. The sanctions were based on findings that the respondents effected short sales for the firms' own accounts and failed to make an affirmative determination that the firms could borrow the securities or otherwise provide for delivery of the securities by the settlement date. The findings also stated that the respondents, in cooperation with others, attempted to obtain stock at below-market prices through the use of threats and coercion, and that, through naked short sales and extortion, the respondents participated in a manipulation of the market for those securities. (NASD Case #CAF980002)

**Michael DiFrancesca (CRD #2315616, Registered Representative, East Northport, New York)** was fined \$25,000, barred from association with any NASD member in any capacity, and ordered to pay \$386,114.78, plus interest, in restitution to public customers. The sanctions were based on findings that DiFrancesca effected transactions in the accounts of public customers without their authorization. The findings also stated that DiFrancesca actively solicited public customers to purchase securities without disclosing that the issuers had received going concern opinions from their auditors. The NASD also found that DiFrancesca made specific price predictions without having a reasonable basis for making such representations. (NASD Case #CAF000038)

**Troy Victor Wren (CRD #2542185, Registered Representative, Seaford, New York)** submitted an Offer of Settlement in which he was fined \$10,000, suspended from association with any NASD member in any capacity for 30 days, and ordered to pay \$42,604.38, plus interest, in restitution to public customers. The fine payment and satisfactory proof of payment of the restitution, plus interest, must be provided before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Wren consented to the described sanctions and to the entry of findings that he engaged in fraudulent sales practices in disregard of his obligation of fair dealing and commercial honor with respect to customers. The NASD found that Wren made a specific price prediction about a speculative security being sold without an adequate, accurate, or reasonable basis in fact. The findings also stated that Wren refused to execute a customer's sell orders.

Wren's suspension began May 21, 2001, and will conclude at the close of business June 19, 2001. (NASD Case #CAF000043)

**VTR Capital, Inc. n.k.a Fairchild Financial Group, Inc. (CRD #21404, New York, New York)** and Edward Joseph McCune (CRD #1316826, Registered Principal, Haines City, Florida) were named as respondents in an NASD complaint alleging that the respondents failed to disclose, or caused the firm's registered representatives to fail to disclose, to public customers material information in connection with the offer, sale, or recommendation of common stock including that they had purchased a very large quantity of shelf-registered shares from the selling security holders at a low price and that they were recommending and reselling the shares to the firm's customers at much higher prices. The complaint also alleges that as a result of the respondents' actions, the available public float was increased substantially, the resales presented an immediate and substantial risk of dilution, and the resales constituted a separate or secondary offering requiring an amended or supplemental prospectus. The complaint alleges that by virtue of this conduct, the firm and McCune knowingly or recklessly employed devices, schemes, or artifices to defraud; made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices, or courses of business that operated, or would have operated, as a fraud or receipt upon any persons in connection with the purchase or sale of securities. In addition, the complaint alleges that the firm, acting through McCune, failed to file information and documents regarding the proposed terms of the secondary offering of the shares with the NASD. Furthermore, the complaint alleges that the firm, acting through McCune, participated in the secondary offering of the shares in which the underwriting compensation exceeded the maximum permissible under NASD guidelines. (NASD Case #CAF010010)

## Market Regulation Department

### April Actions

**ABN AMRO Incorporated (CRD #15776, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$36,500, and required to pay \$268.75, plus interest, in restitution to investors. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that when it acted as principal for its own account, the firm failed to provide written notification disclosing to its customers the correct reported trade price, and failed to provide written notification disclosing to its customers that the transaction was executed at an average price. The findings also stated that the firm failed to display immediately customer limit orders in Nasdaq securities in its public quotation, when each such order was at a price that would have improved the firm's bid or offer for each such security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each such security, and the size of the order represented more than a de minimis change in relation to the size associated with the firm's bid or offer in each such

security. Furthermore, the NASD found that the firm failed to accept or decline in Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>) transactions in eligible securities within 20 minutes after execution; failed to use reasonable diligence to ascertain the best inter-dealer market; and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. The NASD also determined that the firm failed, within 90 seconds after execution, to transmit through ACT last sale reports of transactions in Nasdaq National Market (NNM) securities, Nasdaq SmallCap<sup>SM</sup> securities, and OTC Equity securities; failed to designate through ACT such last sale reports as late; and incorrectly reported to the Fixed Income Pricing System<sup>SM</sup> (FIPS<sup>®</sup>) transactions in high-yield securities. (NASD Case #CMS010026)

**Hill, Thompson Magid & Co., Inc. (CRD #2202, Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it published, or submitted for publication, quotations in the National Quotation Bureau "Pink Sheets" for securities and failed to have in its records the documentation required by SEC Rule 15c2-11(a), and failed to have a reasonable basis under the circumstances for believing that the required information was accurate in all material respects or that the sources of the required information were reliable. The findings also stated that the firm failed to file a Form 211 for the securities at least three business days before the firm's quotations were published or displayed in a quotation medium, and the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations concerning NASD Marketplace Rule 6740 and SEC Rule 15c2-11. (NASD Case #CMS010015)

### May Actions

**Dean Witter Reynolds, Inc. (CRD #7556, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$15,000, and required to revise its written supervisory procedures relating to the U.S. Securities and Exchange Commission (SEC) and NASD firm quote rules. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that an order was presented to the firm at the firm's published bid or published offer in an amount up to its published quotation size. The NASD found that the firm failed to execute the orders upon presentation and thereby failed to honor its published quotation. Furthermore, the NASD determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations concerning the SEC and NASD firm quote rules. (NASD Case #CMS010034)

**J.B. Oxford & Company (CRD #14343, Beverly Hills, California)** submitted a Letter of Acceptance, Waiver, and

Consent in which it was censured, fined \$76,500, required to pay \$12,002.96, plus interest, in restitution to customers, and required to revise its written supervisory procedures relating to the SEC and NASD firm quote rules, the Order Handling Rules, trade reporting, ACT reporting, registration, locked and crossed markets, anti-competitive practices, books and records, short sale affirmative determination requirements and OATS. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that an order was presented to the firm at the firm's published bid or published offer in an amount up to its published quotation size. The firm failed to execute the orders upon presentation and thereby failed to honor its published quotation. The findings also stated that the firm, a market maker in securities, without making reasonable efforts to avoid a locked or crossed market by executing transactions with all market makers whose quotations would be locked or crossed, entered bid or ask quotations in the Nasdaq stock market that caused a locked or crossed market condition to occur in each instance, and failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. Furthermore, the NASD found that the firm failed to execute an order fully and promptly, and failed to display immediately customer limit orders in Nasdaq securities in its public quotation, when each such order was at a price that would have improved the firm's bid or offer for each such security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each such security, and the size of the order represented more than a de minimis change in relation to the size associated with the firm's bid or offer in each such security. The NASD also determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations concerning the Order Handling Rules, trade reporting, ACT reporting, registration, locked and crossed markets, anti-competitive practices, SEC and NASD firm quote rules, short sale affirmative determination, and OATS. (NASD Case #CMS010038)

**Morgan Stanley & Co., Incorporated (CRD #8209, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to display immediately customer limit orders in Nasdaq securities in its published quotation, when each such order was at a price that would have improved the firm's bid or offer for each such security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each such security, and the size of the order represented more than a de minimis change in relation to the size associated with the firm's bid or offer in each such security. (NASD Case #CMS010035)

**Raymond James & Associates, Inc. (CRD #705, St. Petersburg, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$25,000, and required to pay \$1,137.50, plus interest, in

restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to use reasonable diligence to ascertain the best inter-dealer market; failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions; and to ascertain the best inter-dealer market by failing to execute customer market orders fully and promptly. The findings also stated that the firm failed to immediately display customer limit orders in Nasdaq securities in its published quotation, when each such order was at a price that would improve the firm's bid or offer in each security, or at a price equal to its public quote when such quote was priced equal to the firm's bid or offer and the national best bid or offer for each such security and the size of the order represented more than a de minimis change in relation to the size associated with its bid or offer in each such security. (NASD Case #CMS010028)

**Robb Peck McCooey Clearing Corporation (CRD #7432, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through ACT, last sale reports of transactions in an NNM security. (NASD Case #CMS010037)

**Jeffrey Scott Miller (CRD #2375756, Registered Representative, Bellmore, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Miller consented to the described sanctions and to the entry of findings that he posted communications on an electronic bulletin board concerning customer securities without notifying the customers and without identifying himself as a registered representative. The findings also stated that Miller failed to inform the customers of a potential conflict of interest, and failed to observe high standards of commercial honor, and just and equitable principles of trade. Furthermore, the NASD found that Miller posted a communication on an electronic bulletin board that contained untrue, unwarranted, and misleading statements, made false price predictions without a reasonable basis, and failed to provide the investor with a sound basis for making an investment decision.

Miller's suspension began May 7, 2001, and concluded at the close of business May 11, 2001. (NASD Case #CMS010031)

## June Actions

**James Raymond Sickler (CRD #2656670, Registered Representative, Miami, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Sickler failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #CMS000213)

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