

Regulatory & Compliance Alert

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14.2 SUMMER 2000

NASD Institute Launches Its First Programs

In May the NASD Institute for Professional Development successfully launched its first program as part of the NASD Institute-Wharton Certificate Program. This June the NASD Institute also held the first of several symposia to come—Fixed Income Products and Ethics—in conjunction with Fordham University.

The NASD Institute for Professional Development—designed to provide quality educational programs for financial industry professionals and regulators—is hosting and developing a number of educational programs, the cornerstone of which is the NASD Institute-Wharton Certificate Program.

To summarize, the NASD Institute-Wharton Certificate requires 120 hours of education, broken into three phases. Phases I and III together provide 60 hours and take place at Wharton on the campus of the University of Pennsylvania. Phase I, held this past May, and an upcoming Phase I session to be held November 5-10, 2000, include courses focusing on:

- ❖ Securities Law and Regulatory Structure
- ❖ Enhancing Professional Conduct in the Financial Services Industry

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- ❖ Finance for the Regulatory and Compliance Officer
- ❖ User's View of Financial Accounting: Policies and Issues
- ❖ Supervision and Supervisory Structure
- ❖ Success in the Securities Industry—Regulatory Interactions

The recently completed May 2000 Phase I session brought together Wharton professors, industry and regulatory presenters, and attendees from academia, regulatory organizations, securities and financial services firms, and others, allowing for an environment where all participants were able to learn from each others' unique industry and regulatory experiences.

An additional 60 hours (Phase II) is achieved through elective programs either offered by the NASD Institute, or programs offered by other

course providers and jointly approved by the NASD Institute and the Wharton School. Courses are designed to enable managers, compliance professionals, lawyers, and regulators to assume greater leadership roles and responsibilities. Topics include, but are not limited to, fixed income products, advertising regulation, investment companies, variable annuities, derivatives, and online trading issues. Further, one of the Phase II courses—an Ethics symposium tailored to the financial services industry and developed with Fordham University—is a requirement for certificate candidates. Any of these courses may be taken on a non-certificate basis.

Phase III, the second one-week Wharton session, will offer the certificate candidates advanced-level courses that build on Phases I and II.

A candidate who successfully completes the NASD Institute-Wharton Certificate curriculum within three years' time is designated as a Certified Regulatory and Compliance Professional (CRCP).

Summary Of NASD Institute-Wharton Certificate Requirements

- ❖ 120 credit hours completed in three years.
- ❖ 60 of 120 hours are acquired through two separate one-week programs at the Wharton School on the University of Pennsylvania campus.
- ❖ Additional 60 hours are acquired through completion of courses sponsored or approved by the NASD Institute and the Wharton School.
- ❖ Fordham University Ethics Symposium.

Program instructors for NASD Institute programs include faculty from the Wharton School, Fordham University, and other academic institutions, as well as recognized experts in the fields of securities regulation and financial services.

The NASD Institute is currently in the process of scheduling additional Phase I and III programs for 2001, as well as additional Phase II sessions for this year and subsequent years. The Institute will publish updated program and enrollment information on its Web Pages at http://www.nasd.com/nipd_index.htm as soon as these dates are available.

You may also subscribe to obtain free e-mail notifications from the NASD Institute about new programs and other Institute news. Just go to the NASD Institute Web Pages at the Internet address listed in the previous paragraph, click on the button titled "subscribe to our e-mail notifications," and complete the online form.

Questions about this article may be directed to Gary L. Tidwell, Executive Director, NASD Institute for Professional Development, at (212) 858-4020, or via e-mail at nipd@nasd.com.

SEC Approves New Voluntary Single Arbitrator Pilot Program For A Two-Year Period

On February 15, 2000, the Securities and Exchange Commission (SEC) approved the proposal of NASD RegulationSM to add a new rule to the NASD Code of Arbitration Procedure (Code). The new rule—Rule 10336—is entitled "Single Arbitrator Pilot Program" and will be effective for a two-year period. The Pilot Program is voluntary and allows parties with claims of \$50,000.01 to \$200,000 to select a single arbitrator to hear their cases, rather than the panel of three arbitrators they would otherwise select. The Pilot Program also allows the parties to communicate directly with the single arbitrator under certain conditions. NASD Rule 10336, which became effective on May 15, 2000, will result in lower arbitration fees to the parties and will enhance the dispute resolution process by affording quicker resolution of arbitration claims by participants.

In developing a proposal to provide parties in a public customer case with the alternative of a single arbitrator at a reduced cost, NASD Regulation sought feedback from the Public Investors Arbitration Bar Association, the Securities Industry Association, and the Small Firm Advisory Board of the NASD to determine if investors and the industry would support such a program. After evaluating the feedback provided, NASD Regulation decided to offer, on a trial basis, an optional modification of current Neutral List Selection System (NLSS) procedures. NLSS is a computerized program developed in November 1998 to generate lists of proposed arbitrators (neutrals) for selection by the parties under Rule 10308 of the Code.

The Pilot Program will exclude any case seeking punitive damages unless all of the parties in such a case request a single arbitrator. All types of claims by all parties, including counterclaims, third-party claims, and cross-claims, will be counted in the \$200,000 claim limitation. Forum fees provided for in Rule 10332(c) of the Code will not be counted in the \$200,000 limitation.

The Pilot Program provides that the parties participate in the selection of the single arbitrator. After the parties receive notice that a panel of three arbitrators has been selected, the parties have 15 days to determine whether they want to choose one of the three selected arbitrators to serve as the single arbitrator under the Pilot Program. The 15-day period corresponds with the 15-day period that parties have to select a chairperson of the panel under Rule 10308(c)(5) of the Code. Thus, if the parties decide not to proceed in the Pilot Program, they can proceed under regular Code arbitration procedures without delay.

questions

Frequently Asked Questions Relating to the Single Arbitrator Pilot Program

To help explain the details of the Single Arbitrator Pilot Program to investors, members, and associated persons, NASD Regulation staff designed the following comprehensive list of questions and answers:

Q. What is the Single Arbitrator Pilot Program (Pilot Program) designed to do?

A. The Pilot Program is designed to allow parties with claims of \$50,000.01 to \$200,000, inclusive of interest, attorneys' fees, and other costs, to agree to select a single arbitrator to hear their cases, rather than a panel of three arbitrators as would normally be the case under the Code. This will result in lower arbitration fees and quicker resolution of arbitration claims. The Pilot Program also allows the parties to communicate directly with the arbitrators under certain conditions, as described below.

Q. Is the Pilot Program mandatory or voluntary?

A. The Pilot Program is voluntary. All parties must agree to the use of the Pilot Program.

Q. What types of claims are eligible for the Pilot Program?

A. Claims arising between a customer and an associated person or a member are eligible for the Pilot Program. The Pilot Program is limited to cases involving aggregate claims between \$50,000.01 and \$200,000. Cases involving claims of \$50,000 or less normally have only one arbitrator under the Code.

Q. Are there any types of claims not eligible for the Pilot Program?

A. The Pilot Program is not available for the resolution of employment disputes or other intra-industry disputes.

Q. Are claims that include a request for punitive damages eligible for the Pilot Program?

A. No. The Pilot Program will exclude any case seeking punitive damages unless all of the parties in such a case request a single arbitrator. If the parties agree to include requests for punitive damages, the \$200,000 limitation will still apply unless the parties agree to a higher amount.

Q. Will interest, attorneys' fees, and other costs be included within the Pilot Program's \$200,000 claim limitation?

A. Yes.

Q. Will filing fees, hearing session fees, member surcharges, and member process fees be included within the Pilot Program's \$200,000 claim limitation?

A. No.

Q. Will all types of claims by all parties, including any counterclaims, third-party claims, and cross-claims be counted towards the \$200,000 limitation?

A. Yes.

Q. When do the parties decide on whether to use the Pilot Program?

A. The parties will participate in the usual arbitrator selection method provided under the Code, known as the Neutral List Selection System. After the parties receive notice that a panel of three arbitrators has been selected, Rule 10308(c)(5) of the Code provides that they have 15 days in which to select a chairperson. If it appears that the case fits the criteria for the Pilot Program, the parties can

determine pursuant to Rule 10336(b)(1) whether they want to choose one of their three selected arbitrators to serve as the single arbitrator in the Pilot Program.

Q. May the parties choose any of the three arbitrators as the single arbitrator?

A. Yes. The parties may choose any of the three arbitrators, including the non-public arbitrator, to serve as the single arbitrator.

Q. How many days do the parties have to agree on a single arbitrator?

A. Rule 10336(b)(2) provides that the parties will have 15 days from the date the Director sends notice of the names of the arbitrators to agree on a single arbitrator. This 15-day period will run concurrently with the time period to select a chairperson under Rule 10308(c)(5).

Q. What if the parties do not agree on a single arbitrator?

A. If the parties do not agree on a single arbitrator, Rule 10336(b)(3) provides that the case will proceed under the usual procedures of Rule 10308. This means the case will be heard by a panel of three arbitrators, with the parties being given a chance to select the chair from among these arbitrators.

Q. May parties communicate orally with the arbitrator outside the presence of other parties?

A. No. The parties may not communicate orally with the arbitrator unless all parties participate.

Q. May the parties communicate directly in writing with the single arbitrator?

A. Yes. The Pilot Program will allow parties to agree to communicate directly with the arbitrator without Office of Dispute Resolution (ODR) staff involvement. Rule 10336(c)(1) provides that parties will be permitted to send written materials, including information (discovery) requests and motions, directly to the selected arbitrator. This is different from the procedures normally used under the Code, and is a special feature of the Pilot Program. Copies of such materials must be sent simultaneously and in the same manner to all parties and to the ODR staff member assigned to the case.

Q. Are the parties required to send proof of service of written materials?

A. Yes. Parties must send to the ODR staff member assigned to the case, the arbitrator, and all parties proof of service of written materials, indicating the time, date, and manner of service upon the arbitrator and all parties.

Q. Do you require a particular format for proof of service?

A. No. Parties may use the same type of Certificate of Service used in state or federal courts or another format that includes the necessary information, including the address to which the materials were sent. As is true under Rule 5(b) of the Federal Rules of Civil Procedure, service by mail is complete upon mailing.

Q. May parties serve the materials on the arbitrator by facsimile (fax) or other electronic means?

A. Yes. If the arbitrator and all parties agree, written materials may be served by fax or other electronic means. Such agreement might be given at the point of entry into the Pilot Program or at any time thereafter by providing an electronic mail (e-mail) address or a fax number. Once such agreement is reached, it will be presumed to continue unless the arbitrator and parties are notified otherwise. If the arbitrator or any party does not have access to an electronic means of communication, then such means may not be used.

Q. May parties initiate conference calls with the arbitrator?

A. Yes. Rule 10336(c)(2) provides that, if the arbitrator agrees, parties may initiate conference calls with the arbitrator, provided that all parties are on the line before the arbitrator joins the call.

Q. May the arbitrator initiate conference calls with the parties?

A. Yes. Rule 10336(c)(3) provides that the arbitrator may initiate conference calls with the parties, provided all parties are on the line before the conference begins.

Q. Will filing fees, member surcharges, and member process fees change under the Pilot Program?

A. No.

Q. Are any fees reduced in the Pilot Program?

A. Yes. Hearing session fees have been reduced in the Pilot Program to reflect lower arbitrator honoraria (payments) and other cost savings:

- ❖ For claims of \$50,000.01 to \$100,000, hearing session fees under the Pilot Program will be \$550 per session or \$1,100 for a two-session day.
- ❖ For claims of \$100,000.01 to \$200,000, hearing session fees under the Pilot Program will be \$750 per session or \$1,500 for a two-session day.

Q. What are the savings?

A. For claims of \$50,000.01 to \$100,000, the Pilot Program fee structure represents a reduction of \$200 per session for the parties as compared with normal case procedures (or a \$400 reduction for a two-session day). For claims of \$100,000.01 to \$200,000, the new fee structure represents a reduction of \$375 per session for the parties as compared with normal case procedures (or a \$750 reduction for a two-session day).

Q. What if, after agreeing to the Single Arbitrator Pilot Program, a party learns of information that leads the party to believe there are additional claims or higher claims than originally made, which would raise the total amount in controversy over the \$200,000 maximum for the Pilot Program?

A. Because the Pilot Program is designed to add flexibility to the Code, parties and arbitrators faced with these facts could, for example, agree to continue with a single arbitrator who would be empowered to award more than

\$200,000, or determine whether two other arbitrators already ranked in the initial list selection process might still be available, allowing the case to continue without serious interruption as a three-arbitrator case (fees would be adjusted to the normal three-arbitrator schedule). The single arbitrator has discretion to determine whether to allow a party to file a new or amended pleading, except when a party is responding to a new or amended pleading. See Rule 10328(b). Accordingly, if a party seeks to amend a pleading to raise the total amount in controversy over the \$200,000 maximum, the party must first receive the arbitrator's consent.

Q. What if the parties do not agree to amend the claim and continue with either a single arbitrator or a three-arbitrator panel?

A. A party may move to dismiss the claim without prejudice and, if the arbitrator grants the motion, the claim can then be re-filed as a regular, three-person case. Parties considering the option to re-file the revised claim as a regular, three-arbitrator case should understand that filing a new case would involve the payment of the initial filing fees and hearing session deposit for the new case. They should also consider any applicable eligibility or statute of limitations defenses the new filing date might raise.

Q. What is the procedure for seeking a dismissal without prejudice?

A. Rule 10305(a) provides that arbitrators may dismiss a proceeding at the request of a party or on the arbitrator's own initiative. Another party to the case may object to the dismissal.

The single arbitrator has the discretion to determine whether or not to grant a request for dismissal. Rule 10305(c) provides that arbitrators shall dismiss a proceeding at the joint request of all the parties.

Q. What happens if the request to dismiss without prejudice is denied?

A. If the request to dismiss is denied, then the case will proceed with the single arbitrator, who cannot award more than the \$200,000 jurisdictional limit (unless the parties have agreed otherwise).

Q. What happens if the request to dismiss without prejudice is granted?

A. When a case is dismissed, hearing session deposits will be returned for any hearings that were not held. Filing fees, member surcharges, and process fees are non-refundable. If any hearing sessions were held, the arbitrator will determine the allocation of forum fees.

Q. Where can I get more information on the Pilot Program?

A. Speak with the staff in any Dispute Resolution office, or visit our Web Site.

Questions regarding this article may be directed to Jean I. Feeney, Special Advisor, Office of Dispute Resolution, NASD Regulation, at (202) 728-6959.

ADVERTISING REGULATION

Inaccurate Performance Graphs Result In Formal Action

NASD Regulation recently announced a settlement in which it censured and fined an NASD member firm \$100,000 for running inaccurate mutual fund advertisements and for violating other NASD advertising-related rules. In particular, NASD Regulation found that the member firm:

- ❖ published advertisements containing inaccurate graphs of mutual fund performance;
- ❖ published an advertisement that did not convey the risks of fluctuating prices inherent in investing;

- ❖ used advertisements and sales literature without first obtaining registered principal approval; and
- ❖ failed to properly file items with NASD Regulation's Advertising/Investment Companies Regulation Department.

In addition to the censure and fine, the firm has undertaken to file prior to use, for a period of six months, all advertisements depicting performance information through the use of graphs, bar charts, or pie charts.

The firm's use of inaccurate graphs in its advertisements violated NASD Conduct Rule 2210, which requires, in part, that members' communications provide a sound basis for evaluating the facts with respect to any product or service discussed. The firm's use of the graphs also violated NASD Conduct Rule 2110 which requires members in the conduct of their business to observe high standards of commercial honor and just and equitable principles of trade. The graphs depicted the performance of a hypothetical \$10,000 investment in a specific mutual fund using a "mountain chart" format. NASD Regulation found several problems associated with the use of these graphs:

- ❖ Due to unequal distances between plot points on the graph lines, many of the advertisements failed to accurately portray increases and decreases in the investment.
- ❖ Several of the graphs showed dollar values along the vertical axis that did not correspond to actual performance over time. For example, based on a \$10,000 hypothetical investment at the fund's inception, the investment appeared to grow to be approximately \$29,000 in the graph, when in fact it had grown to \$22,000.
- ❖ When the firm updated several of the advertisements, it continued to use the old graph lines, labeled with the numbers reflecting the fund's current performance, rather than re-drawing and re-plotting the graph lines to reflect the fund's actual performance over the period indicated.

- ❖ In several of the graphs, dollar markings indicating "20K," "30K," and "40K" were placed along the vertical axis after the graph line was plotted, yet these markings did not correspond to the values portrayed by the graph line.

This case demonstrates member firms' responsibilities to ensure that their graphic presentations of performance are accurate and provide the reader with a sound basis to evaluate any service or product discussed as set forth in NASD Conduct Rule 2210.¹

In its review of member filings of advertisements and sales literature, NASD Regulation has noted areas of concern in the use of graphic presentations of performance.

Labeling

Members must ensure that the axes and base-lines of graphs are labeled clearly so that the reader can understand how the performance data relates to the graph. The increments on the axes must also aid the reader in understanding the significance of the data. NASD Regulation has cautioned members about using graphs with little or no indication of the increments on the axes.

Disclosure

The text accompanying a graph must clearly state its purpose and significance. Advertisements and sales literature that contain graphs illustrating the historic performance of a

¹ Members should also be aware that the SEC has articulated certain principles with respect to graphics in the publication titled *A Plain English Handbook*, which is available on the SEC Web Site at www.sec.gov. The *Handbook* indicates that graphic presentations must be truthful and states that, "any graphic should be proportionately correct or drawn to scale."

hypothetical investment in a product must disclose the relevant assumptions, such as: the initial investment amount; whether dividends and capital gains were reinvested; whether taxes have been reflected; and whether sales loads or other fees were deducted.

Starting Points Or Baselines Of Graphs

Members must ensure that the starting point of a graph fairly reflects the performance of the product without exaggeration. In certain bar graphs that compare performance data, members have used a baseline that is higher than zero. This higher value baseline may exaggerate the differences between the performance data illustrated. Similarly, in a mountain chart format, using a non-zero starting point may make poor performance appear more favorable. If a non-zero starting point is chosen, the member firm must have a reasonable basis for choosing such a point.

Scale

The NASD Conduct Rules do not require that members use a specific scale or format when depicting performance using graphs. Nevertheless, the prohibition of exaggerated or misleading statements or claims requires that

members exercise care in choosing the appropriate scale for presentations of performance information.

Comparisons

Members may use graphs that compare an investment in a product with a hypothetical investment in a benchmark index over the same time period. In accordance with the NASD Conduct Rules, members must ensure that the comparative index is appropriate and provides the reader with a sound basis for evaluating the facts with respect to the product. For example, SEC rules require mutual fund annual reports or prospectuses to include hypothetical illustrations that compare the fund's performance to that of a benchmark index over a 10-year timeframe. If a member firm chooses to include a different comparative benchmark index in such a comparison in advertisements or sales literature for the fund, the member must ensure that the index chosen is appropriate.

Any questions regarding the use of charts and graphs in members' communications with the public may be directed to the Advertising/Investment Companies Regulation Department at (202) 728-8330.

Advertising Of Bonus Credit Variable Annuities

In recent months, the Advertising/Investment Companies Regulation Department (the Department) has observed an increase in communications with the public promoting "bonus credit" variable annuities. These products offer credits equal to a percentage of the amount invested in the variable annuity contract. Bonus credits generally range from 3 percent to 5 percent of the money invested. In order to fund these bonus credits, the contracts typically impose high mortality and expense charges and lengthy surrender charge periods.

Members must file their advertisements and sales literature concerning variable annuities with the Department under NASD Conduct Rule 2210(c)(1). The Department has commented on communications regarding bonus credit variable annuities and has recommended revisions necessary to make the material consistent with applicable standards of Rule 2210. In order to meet these standards, bonus credit variable annuities communications that prominently promote the bonus credit should also prominently explain that fees and expenses may be higher, and the surrender periods may be longer, than contracts that do not provide the bonus feature.

Several member firms have attempted to use hypothetical illustrations with the contract prospectus that depicts how the bonus credit will affect the contract's value. Such illustrations must reflect the costs associated with the

annuities, including ongoing mortality and expense risk charges, administrative costs, and surrender charges. Members also should avoid the use of hypothetical illustrations that unduly raise investor expectations as to the variable annuity's future value. NASD Conduct Rule 2210(d)(2)(N) prohibits member communications from predicting or projecting investment results.

Hypothetical illustrations must meet several conditions in order to avoid being viewed as projections and to ensure that they provide the reader with a sound basis for evaluating the facts with respect to the annuity. The illustrations may present assumed rates of return of up to 12 percent provided that a 0 percent rate is also presented. In addition to the disclosure discussed above for the presentation of bonus credits, the presentation must explain prominently that the illustration is hypothetical, that it is intended to show how the annuity operates, and that it may not be used to project or predict investment results.

The Department will continue to scrutinize bonus product sales material and require revisions to any material that does not present information about the product in a fair and balanced manner, or that contains illustrations that appear to predict or project the future value of the contract.

Any questions regarding bonus product sales material may be directed to the Department staff at (202) 728-8330.

Non-Cash Compensation—Training Or Education Meetings

NASD Conduct Rules 2820 and 2830 generally prohibit the payment of any form of compensation from third-party offerors to associated persons of members. The training or education exception to these rules, specifically Rules 2820(g)(4)(C) and 2830(l)(5)(C), permit payments or reimbursement in connection with meetings held to train or educate associated persons. However, these two provisions are subject to the following conditions: (1) members must comply with the recordkeeping requirement provided in subparagraph 2820(g)(3) and 2830(l)(3) of the non-cash compensation rules; (2) the associated person must obtain prior approval to attend the meeting by the employing member, and attendance may not be preconditioned on the achievement of a sales target or any other non-cash compensation arrangement incentives; (3) the location of the meeting must be appropriate to the purpose of the meeting, which generally means an office of the member or offeror, or a facility located in the vicinity of such office; (4) the payment or reimbursement by an offeror may not be applied to the expenses of a guest; and (5) the offeror's payment or reimbursement may not be preconditioned on the achievement of a sales target or other non-cash compensation arrangement.

This exception to the non-cash compensation rules recognizes the importance of ongoing education, which may include seminars concerning portfolio or structural changes to a product and explanations of new products. NASD Regulation has received inquiries about payments or reim-

bursements by offerors for training or education meetings that extend beyond the time necessary for the actual training or educational meeting. For example, some offerors apparently reimburse associated persons for additional days at the training location or pay for other activities such as tours, golf outings, and other forms of entertainment.

NASD Regulation interprets the training or education exception as an event that is first and foremost intended to provide training or education to an associated person. Any training meeting should occupy substantially all of the work day. Payment or reimbursement for any associated meals, lodging, and transportation would be permissible but reimbursement or payment for golf outings, tours, or other forms of entertainment while at a location for the purpose of training or education would not be permissible.

NASD Regulation recommends that offerors use their own internal employee expense reimbursement policies as a guide when planning for training or education meetings. That is, offerors may consider allowing an additional night's stay for associated persons of a member when the additional night actually reduces the meeting's net lodging and transportation expenses.

Questions about this article and any other non-cash compensation issue may be directed to the Advertising/Investment Companies Regulation Department at (202) 728-8330.

Suitability Issues For Multi-Class Mutual Funds

NASD Regulation reminds members and their registered representatives to consider the suitability of recommending certain higher-expense classes of mutual fund shares, particularly when an investor is seeking a long-term investment. Although the purchase of certain fund classes may allow an investor to avoid paying a front-end sales load, the cost imposed by a class's higher expenses may outweigh this benefit, particularly with respect to large dollar purchases. Additionally, members and their representatives should consider the impact on an investor's long-term results that breakpoints, rights of accumulation, and letters of intent may have when they reduce the sales charges paid on purchases of share classes that impose front-end sales charges.

Background

When considering mutual funds, investors often have the option of choosing from different classes of shares. In a multi-class structure, each class of shares invests in the same portfolio of securities, but may be sold through different distribution arrangements and may entail different expense levels. Likewise, different classes of shares may result in different sales compensation being paid to broker/dealers and their registered representatives.

Broker-sold mutual funds often offer three classes of shares. One class (generally designated "Class A" shares) may impose a front-end sales load, but may impose no (or a low) ongoing fee to pay for sales and marketing expenses (referred to as a Rule 12b-1 fee). Often,

breakpoints in the sales load structure will cause the front-end load percentage to decrease as the investment amount increases. Additionally, investors may take advantage of other methods to decrease the sales load paid on subsequent purchases, such as through rights of accumulation and letters of intent.

A second class (often designated "Class B" shares) may not impose a front-end sales charge, but instead may impose a contingent deferred sales charge (CDSC) on share redemptions and a relatively high 12b-1 fee. The amount of the CDSC normally declines the longer the shares are held. Class B shares often automatically convert to Class A shares (and thus pay lower 12b-1 fees) after a period of time, which is usually after the CDSC declines to zero.

A third class (often designated "Class C" shares) may impose neither a front-end nor a back-end sales load, but may impose a relatively high 12b-1 fee. Additionally, some mutual funds offer classes that impose no front-end or back-end sales charges and a relatively low 12b-1 fee, but only offer such classes to retirement plans or institutional investors. Fund sponsors also may choose class designations and expense structures other than those described above.

Regulatory Concerns

NASD Notices to Members 94-16 (March 1994) and *95-80* (September 1995) provide further guidance with respect to mutual fund sales practices. These *Notices* remind members that, in

determining whether a fund is suitable for an investor, a member should consider the fund's expense ratio and sales charges as well as its investment objectives. Additionally, Interpretive Material 2830-1 generally prohibits members from selling mutual fund shares in dollar amounts just below the sales charge breakpoint in order to increase a member's compensation. These principles apply equally to recommending a particular fund share class to an investor.

To determine which class may be the most suitable for investors, members should know the advantages and disadvantages of different mutual fund classes. Registered representatives should ask the investor what are his or her investment goals and objectives, including the investor's time horizon. In particular, investors seeking to avoid front-end loads should be informed of the potential long-term effect of the higher ongoing sales charges associated with Class B shares (and Class C shares, if applicable). With a more complete description of share-class characteristics, investors will be better able to choose the class

that is most suited to their investment needs. It is suggested that members maintain written records of these discussions in their files. Similarly, members generally should not recommend Class B or C shares to investors who seek to purchase in large amounts and who would incur significantly lower sales charges for Class A share purchases due to the availability of breakpoints, rights of accumulation, or letters of intent.

The SEC recently issued an administrative decision finding that two broker/dealer sales representatives sold Class B shares in violation of federal securities laws for failing to make certain disclosures to customers regarding Class B shares. *See In the Matter of Michael Flanagan, et al.*, SEC Initial Release No. 160 (Jan. 31, 2000) (available on www.sec.gov). Members are encouraged to review this decision.

Questions regarding this article may be directed to the appropriate NASD Regulation District Office or to the Member Regulation Department at (202) 728-8221.

A Collection Worth Noticing . . .

Notices to Members Bound Volumes

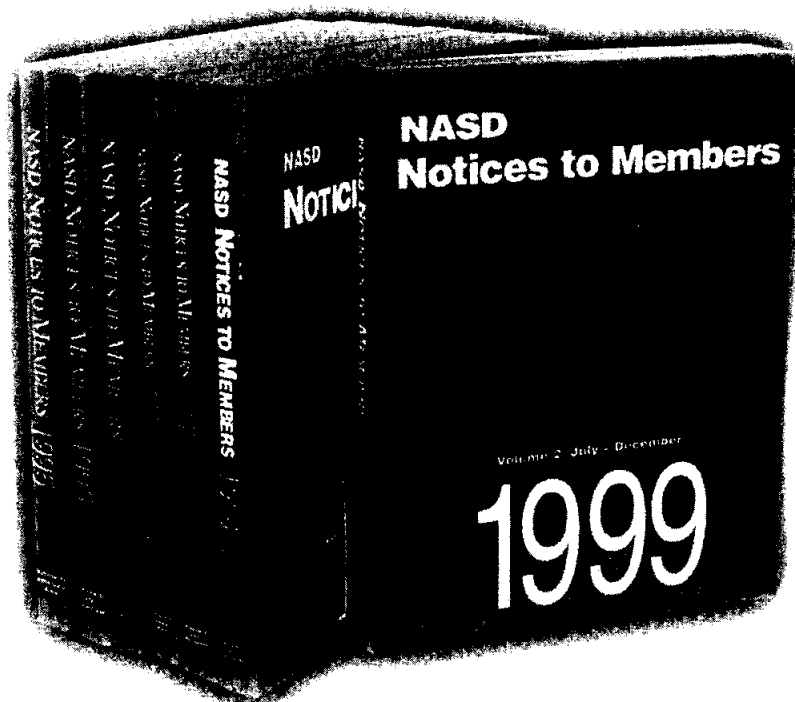
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Investment Instruments Offered By CD Brokers

NASD Regulation has found that some member firms and registered persons are becoming increasingly involved in marketing Certificates of Deposit (CDs) offered by Deposit Brokers (CD Brokers). CD Brokers facilitate the placement of deposits with Federal Deposit Insurance Corporation (FDIC)-insured institutions and solicit funds from investors for this purpose. Generally, CDs are issued by banks and are not registered with the SEC. In the past, courts have reviewed CDs marketed by member firms and determined that certain CDs should be registered with the SEC. In addition, examinations by NASD Regulation staff and customer complaints indicate the possibility of questionable sales practices in the marketing of instruments offered by CD Brokers. Some potentially abusive practices appear to involve sales of "zero coupon CDs" with maturities of up to 30 years to elderly customers. Among the potential problems identified by the staff are misstatements regarding FDIC insurance, interest rates, fees and markups, as well as the suitability of the instruments.

CD Brokers—The term Deposit Broker originated in the Federal Deposit Insurance Act (FDIA). Under the FDIA, Deposit Brokers are required to register with the FDIC before they may solicit or place deposits with an insured depository institution. The purpose of the registration is to give the

FDIC notice that a firm is acting as a CD Broker and does not imply that the FDIC reviewed or approved either the firm or the CDs.

CDs May Be Securities—An instrument that is nominally referred to as a CD may be a security depending upon the facts and circumstances of the offering. In *Gary Plastic Packaging v. Merrill Lynch, Pierce, Fenner & Smith*, 756 F. 2d 230 (2d Cir. 1985), the Court concluded that a program to sell CDs issued by banks created an "investment contract" that met the statutory definition of a security. In reaching its decision, the Court noted that customers relied upon the efforts, knowledge, and financial expertise of the member firm for the success of the CD program. Among other factors, the Court based its decision on findings that the firm investigated issuers, marketed the CDs, and offered customers the opportunity to sell them in a secondary market. Investment in the CD program was motivated by the expectation of a return of principal, the potential for price appreciation due to interest rate fluctuations, and the liquidity of highly negotiable instruments. Further, customers were not protected by the FDIC for the return of principal and were required to rely on the future success of the firm's CD program. Customers also had a substantial risk of loss of principal due to interest rate fluctuations.

When Are Particular CDs Securities?—The determination by member firms and registered persons of whether a CD is a security requires a detailed analysis and must be made on an individual basis for each CD. In this regard, a number of factors must be analyzed, including whether:

- ❖ the CDs are held by a custodian rather than the issuing bank or a clearing firm and are not issued in the name of the Depository Trust Corporation (non-DTC eligible CDs);
- ❖ customers are required to sign a contract with a CD Broker or a custodian that sets forth the terms and conditions of the instrument;
- ❖ the issuing bank deals directly with the CD Broker rather than the ultimate purchaser of the CD (*i.e.*, the bank does not “know” the customer);
- ❖ the terms of the investment purchased by the customer differ from the terms of the CD issued by the bank;
- ❖ customers are offered the opportunity to participate in a secondary market organized by the CD Broker to liquidate their CDs without paying early withdrawal fees or penalties;
- ❖ the CD Broker or custodian purchases CDs in blocks from banks and divides them among customers (fractionalized CDs);
- ❖ the sales literature or advertisements associated with a CD claim to offer higher yields because the CD Broker or custodian negotiates directly with banking institutions and agrees to large blocks of CDs;
- ❖ the CD Broker or custodian represents to customers that it has special knowledge and expertise in locating high-rate CDs;
- ❖ the total fees, commissions, and markups charged to customers purchasing the CDs exceeds 0.25 percent of the amount invested; and/or
- ❖ the rate of interest payable by the CD is not stated in terms of an annual percentage yield (APY) as is required for CDs sold by banks.

Many of the instruments offered by CD Brokers are highly complex and require thorough due diligence by member firms and registered persons. Member firms and registered persons should resolve the regulatory issues regarding the securities laws, SEC regulations, and NASD rules, in addition to the federal banking laws before offering these instruments to customers. Misrepresenting or failing to fully disclose information to customers regarding FDIC insurance, interest rates, maturity dates, fees, and markups, may subject registered persons and member firms to regulatory action.

Questions regarding this article may be directed to James McNamara, NASD Regulation Office of Regulation Policy, at (202) 728-6962.

Online Brokerage Services And The Suitability Rule

As with all facets of American life in recent years, the securities industry has been profoundly affected by the growth of technology. One of the most significant changes is the advent of online brokerage accounts. The number of U.S. online accounts in 1996 was 1.5 million.¹ By 1998, this number had risen to 7.1 million.² By the end of the first quarter of 2000, the number had risen to over 15 million.³ In addition, approximately 16 to 18 percent of investors now use the Internet to buy or sell stocks.⁴ According to one report, moreover, a staggering \$1 trillion is now held in online brokerage accounts.⁵

The increase in online brokerage accounts has provided certain broker/dealers and their customers with new benefits. Broker/dealers offering online brokerage can provide low-cost services, and customers can access vast amounts of investment information in a relatively quick, low-cost manner.

Brokerage firms have developed myriad different business models geared toward this new online environment. These models include order-execution services only, a mixture of order-execution and advice services, and numerous variations in between.⁶ NASD Regulation neither takes a position on nor seeks to influence any firm's or customer's choice of a particular business model in this new environment. Regardless of the types of services firms provide to their customers, however, this online environment presents new regulatory challenges, such as determining how the suitability rule should apply to online trading.

The NASD's suitability rule states that in recommending to a customer the purchase, sale, or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer. A member's suitability obligation, however, applies only to securities that have been "recommended" by the member.

For present purposes, two major questions arise from the intersection of online trading and suitability: first, whether the current suitability rule should apply at all to online activities; and second, if so, what types of online communications constitute "recommendations" for purposes of the rule.

Some brokerage firms have urged NASD Regulation to take a hands-off approach to the online suitability issue.⁷ These broker/dealers argue that online customers (1) do not want brokers to interfere with their trading; (2) want to avoid the traditional broker-customer relationship; (3) think that trading online without a broker is less expensive; and (4) do not have a reasonable expectation that they will be protected from bad investment decisions. A number of firms have also cautioned that applying the suitability rule or imposing new regulations would effectively vitiate many of the benefits of online trading. Online broker/dealers would be forced to withhold any information that could be regarded as a "recommendation," thereby limiting the flow of information to online investors. A requirement that online broker/dealers review every customer-directed trade for suitability, some argue, would increase transaction costs and delay trade

execution. Some firms have further argued that other rules, such as the antifraud provisions and rules governing advertisements and other public communications, provide ample protection to online investors.

Conversely, some regulators and academics have advocated heightened suitability requirements for online broker/dealers. For instance, one law professor, testifying before the United States Senate, argued that online broker/dealers are gatekeepers to the securities markets, and as such, they should have a duty to "screen out" customers who pursue "investment strategies that are clearly too risky for their financial situations and investment goals." This professor opined that an online broker/dealer's duty arises from the fact that it allows customers to use its facilities. A state regulator also challenged the view that online broker/dealers can never make a "recommendation" to a customer, and he testified in support of applying the current suitability rules to online trading. In addition, the Massachusetts Securities Division recently proposed a policy release that defines certain online activities that will and will not be deemed "recommendations" under Massachusetts suitability rules. Virginia's Division of Securities, moreover, sent requests to many large online broker/dealers for information on suitability-type requirements.⁸ These recent developments have caused some concern that broker/dealers could be subject to disparate standards if other states begin to take action in this area without guidance from a national regulatory organization.

Although the online investor has access to enormous amounts of information and generally enjoys greater autonomy than investors did in the past, the potential for a conflict of interest still exists between the online customer and the online broker/dealer. After all, most online firms, like most traditional broker/dealers, still charge transaction-based fees. At least for the short term, therefore, online firms would seem to benefit from frequent trading by customers, which in many instances may not be in the customers' best interests. Moreover, some new electronic communications from online broker/dealers to their customers clearly can constitute "recommendations." Thus, even though the traditional application of the suitability rule may not fit squarely within the new online trading environment, it nonetheless remains both applicable to online trading and necessary to protect customers under certain circumstances.

Identifying all of the types of electronic communications that could constitute "recommendations" and trigger the application of the suitability rule is not a simple task. However, there are some guidelines. In general, the more individualized and specific the communication about a security or group of securities, the closer the communication gets to crossing the line and becoming a recommendation.⁹ Another consideration may be whether the firm unilaterally decides to provide the information to the customer or whether the firm provides the information at the customer's request. In the end, however, "[w]hether a particular transaction is in fact recommended depends on an analysis of all the relevant facts and circumstances."¹⁰

As NASD Regulation considers how best to adapt the suitability rule to this new online firm-customer relationship, it is focused on its core investor protection mission. At the same time, NASD Regulation recognizes that an overzealous approach could slow the growth of innovative online services. We believe, therefore, that a cautious approach by both brokerage firms and regulators in this new online environment is prudent. To this end, an Electronic Brokerage Committee was formed this year to participate in the development of balanced regulatory approaches that will fully protect investors

without unnecessary restrictive regulation. In addition to this Committee, NASD Regulation will continue to work with other members of the industry and regulators, as well as consider public comment on suitability and other important issues arising in the online brokerage environment.

Questions about this article may be directed to Nancy C. Libin, Assistant General Counsel, (202) 728-8835, or James S. Wrona, Assistant General Counsel, (202) 728-8270, NASD Regulation Office of General Counsel.

¹ Gomez Advisors of Massachusetts.

² *Id.*

³ Sam Zuckerman, *Fidelity, Schwab Score with Traders*, *San Francisco Chronicle*, April 29, 2000, at A1.

⁴ *Merrill Lynch and Others Create Muni Online Service*, *The Wall Street Journal*, May 31, 2000, at C25; Speech by Commissioner Laura Unger of the Securities and Exchange Commission, Jan. 27, 2000.

⁵ See Geoffrey A. Simon, *Online Trading: 15 Million Investors Now in the Game*, *Tampa Bay Business Journal*, June 23, 2000, at 48TB.

⁶ See generally *Stockbrokers Still Fill a Need: More People Going Solo, Thanks To Internet, But Skillful Consultation Can Pay Big Dividends*, *Rochester Democrat and Chronicle*, June 25, 2000, at 3E; Stacy Forster, *The Cop: an SEC Commissioner Talks About the Challenges of Battling Online Fraud*, *The Wall Street Journal*, June 12, 2000, at R18; Mike McNamee, *There's No Such Thing as a Free Trade*, *Business Week*, June 12, 2000, at 196; Kathleen Pender, *Net Brokers Really Need to Get Physical to Prosper: Best Performers Have Stores that Help Bring Customers Into the Fold*, *San Francisco Chronicle*, June 6, 2000, at C1 & C5; Paul Beckett & Carrie Lee, *E*Trade Stops Revolt to Join the Crowd*, *The Wall Street Journal*, May 31, 2000; Patrick McGeehan, *Ameritrade Offering Free Electronic Trading*, *New York Times*, April 23, 2000.

⁷ See generally SEC Commissioner Laura Unger, *Online Brokerage: Keeping Apace of Cyberspace* (Nov. 1999) ("Unger Report"). The Unger Report can be accessed through the SEC Web Site at www.sec.gov/news/spstindx.htm.

⁸ See Michael Schroeder, *Virginia Joins Those Scrutinizing Online Brokers*, *The Wall Street Journal*, June 12, 2000, at C24.

⁹ See U.S. General Accounting Office, *On-Line Trading: Better Investor Protection Information Needed on Brokers' Web Sites*, at 17 (May 2000) ("As on-line broker-dealers provide investors information tailored to their individual needs, they get closer to becoming responsible for determining if these investments are suitable for their customers.").

¹⁰ *Clarification Of NASD Notice To Members 96-60* (FYI, March 1997).

Margin And Electronic Investing Information Posted On NASD Regulation Web Site

In recent months, NASD Regulation has published a number of communications for members, investors, and others about the area of margin. For your convenience, a "Margin Information" Web Page, located at <http://www.nasdr.com/5700.htm>, has been developed that brings together this information in one area of the NASD Regulation Web Site.

Information on this Web area includes a margin statement stuffer, interpretive guidance, monthly margin statistics, related rule filings, and *NASD Notices to Members*. NASD Regulation encourages NASD member firms and other interested parties to use the margin statement stuffer to send to customers and others.

Also, NASD Regulation has recently published a new resource made available to inform and educate members' customers, and others, about electronic investing. The new Web Page may be accessed at: http://www.nasdr.com/2500_online.htm.

Designed in a Q&A format, the Web Page enables visitors to learn about some of the basics of electronic investing and contains general information about this quickly expanding area of the securities industry.

Questions about these Web Pages, or about publishing the margin statement stuffer for your firms, may be directed to Rosa Maymi, Corporate Communications, at (202) 728-8981.

Update To 1997 Regulatory & Compliance Alert Article

In the June 1997 issue of the *Regulatory & Compliance Alert*, an article titled "NASD Regulation Reminds Members Of Margin Requirements" stated that "Open-end mutual funds can NEVER be purchased on margin." This language appears in the second bullet of the original 1997 article. In fact, there are circumstances under which open-end mutual funds could be purchased on margin.

The following text correctly updates that information as follows:

Section 11(d)(1) of the Securities Exchange Act of 1934 generally prohibits the extension of credit by a broker/dealer with respect to the purchase

of securities issued by a registered open-end investment company. To determine whether or not a member firm may offer immediate credit (*i.e.*, extend margin) in any given transaction, member firms should refer to Section 11(d)(1), and Rules 11d-1 and 11d1-2 promulgated thereunder, which exempt certain securities from the provisions of Section 11(d)(1). In addition, the Securities and Exchange Commission has issued several no-action letters on this subject, which firms also may want to review.

Questions about the issue of margin may be directed to Susan DeMando, Member Regulation, at (202) 728-8411.

Financial Operations Focus

Financial Operations Focus is a regular feature that NASD Regulation will present in the *Regulatory & Compliance Alert* highlighting questions and answers about members' financial operations.

Proprietary Accounts Of Introducing Brokers

A broker or dealer that has proprietary assets in the possession of another broker or dealer must have a Proprietary Account of Introducing Brokers Agreement (PAIB) in place in order to treat those assets as allowable assets for net capital purposes.

Some brokers and dealers do not have a traditional relationship with a clearing firm. For example, specialty firms only deal in direct participation programs or mutual funds, and don't "introduce" customer accounts on a fully disclosed basis to a clearing firm. Nevertheless, these brokers or dealers may have a trading or investment account that is carried by another broker or dealer.

The SEC informed NASD Regulation that the PAIB letter, issued November 3, 1998, applies to *all* proprietary assets of a broker or dealer held by another broker or dealer regardless of the relationship. As such, NASD Regulation published *Notice to Members 99-44* to clarify the SEC's view. In part, the *Notice* states the following: The PAIB letter applies to all broker/dealers with cash and/or securities on deposit in a

proprietary account at another broker/dealer. Firms should make sure their assets held at another broker/dealer, are the subject of a PAIB agreement; if not, the assets will have no value for net capital purposes in accordance with the PAIB letter.

Temporary Capital Contributions

The SEC has repeatedly emphasized that capital contributions to a broker/dealer must not be temporary. The SEC has stated that an infusion of capital into a broker/dealer and subsequent withdrawal within one year of the infusion would be viewed as a loan and considered a liability of the broker/dealer from the time the infusion was received. In addition, if a capital contribution is made with an understanding that the contribution can be withdrawn at the option of the investor, the contribution may not be included in the firm's net capital computation and must be characterized as a liability from the date of infusion. Any withdrawal of capital by an investor within one year, other than a withdrawal described in paragraph (e) (4) (iii) of Rule 15c3-1, is presumed to have been a loan, and not a capital contribution, and must be treated as such on the books of the broker/dealer.

Annual Audits

There have been some instances where members have submitted their annual audits and the auditor that signed the report was not properly registered. According to SEC Rule 17a-5 and Regulation S-X, the Commission does not

recognize any person as a certified public accountant/public accountant who is not duly registered and in good standing under the laws of his/her place of residence or principal office. It is the member's responsibility to make sure that its auditor meets these requirements. Audits signed by an auditor not properly registered will be considered as a failure to file, potentially requiring a new audit by a qualified auditor. In this regard, broker/dealers should confirm that an auditor is properly registered prior to contracting

for services. In addition, a broker/dealer should reaffirm such status each year as certain auditors may have had their registrations lapse due to, among other things, the failure to pay fees, meet continuing education requirements, or as a result of a disciplinary action.

Questions regarding this article may be directed to Susan DeMando, Member Regulation, at (202) 728-8411.

Staff Relocations

Over the next several months, some NASD Regulation and NASD staff will be moving to a new location in Rockville, Maryland. The move will be conducted in a staggered fashion beginning early July, with completion expected in the fall of this year. This relocation plan affects over 1,300 employees and contractors in the Washington and Rockville areas.

Please note that most phone and fax numbers for these departments/staff will change; however, we plan to retain a voice mail message at the old number providing callers with the new phone number for a period of 60 days.

Departments that will be moving include Advertising Regulation, Corporate Financing, Continuing Education, Testing and Qualifications, CRD/Public Disclosure, Market Regulation, Business Program Services, and some Member Regulation staff.

Please refer to the NASD Regulation Web Site (www.nasdr.com) for more details as they become available. NASD Regulation will also be sending information via e-mail broadcasts to NASD Executive Representatives during the course of the moves, as needed and appropriate. And, if you are unable to locate someone given the options above, please call the Gateway Call Center at (301) 590-6500.

QUALIFICATIONS/TESTING/CONTINUING EDUCATION

New Regulatory Element Computer-Based Training For Series 6 Investment Representatives Coming In The Fourth Quarter

The Securities Industry/Regulatory Council on Continuing Education is developing a Regulatory Element computer-based training program specifically for Series 6 registered individuals—the S106 Investment Representative Program. The investment products and services described in the training scenarios of the S106 will relate only to mutual funds and variable products. The format of the S106 will also feature audio segments as well as text on screen. After the S106 Investment Representative Program becomes available for delivery at Sylvan/Prometric Centers sometime in the fourth quarter of 2000, there will be three distinct Regulatory Element computer-based training programs: the Supervisor Program for registered principals and supervisors (S201), the Series 6 Investment Representative Program for Series 6 representatives (S106), and the Registered Representative Program for all other registrations (S101).

Rollout of the new S106 Investment Representative Program has already led to certain changes in the information found in the CE Queues on Web CRDSM. For example, the CE Queues now specify the S106 Series 6 Investment Representative Session for Series 6

Investment Representatives, requiring firms or the representatives themselves to schedule appointments for the S106. Firms and representatives should be aware, however, that until the new S106 training is actually available at the Sylvan/Prometric Centers, the representative will receive the Registered Representative Session (S101), and will satisfy his or her Regulatory Element requirement by taking it because Web CRD will interpret the S101 result as S106.

The rollout of the S106 Investment Representative Program has been done in this way to accommodate various organizational schedules and to allow sufficient time for the industry to become familiar with the new program. Firms should monitor the Continuing Education Web Pages of the NASD Regulation Web Site (<http://www.nasdr.com/2640.htm>) beginning in August or September to view a content outline for the new Investment Representative Program (S106).

Questions regarding this article may be directed to John Linnehan, Continuing Education, at (301) 208-2932.

Using CRD To Access Continuing Education Information

To make Continuing Education information more readily available to firms through the Web CRD system, members can now access and view Continuing Education information in their **Firm Queues** on CRD.¹ The CRD system no longer sends hard-copy Continuing Education Advisory Messages, or "yellow sheets," to advise firms of their registered representatives' Regulatory Element requirements. CRD also makes available supplemental Continuing Education Reports to assist firms in identifying and tracking their registered representatives.

Types Of CE Firm Queues

The following is a list of Continuing Education (CE) Firm Queues that firms should view, and the hard-copy notices the queues replaced.

Supplemental CE Reports Available From Web CRD

Web CRD also provides firms with various reports to complement the CE Queues. Reports marked with an asterisk (*) may be imported into a spreadsheet or database where the data may then be sorted by the user. To request any of these reports, please send an e-mail request to crdreports@nasd.com or call the Gateway Call Center at (301) 869-6699.

CE Download*—This report defines the CE base date for actively registered individuals with the firm who are subject to the Regulatory Element.

Approaching CE Queue Download*—This report allows firms to download the list of individuals in the firm's Approaching CE Requirement Queue.

Approaching CE Queue Report—This report provides the firm with a "printable" list of individuals in the firm's Approaching CE Requirement Firm Queue.

Current Inactive CE Individuals Within A Firm—This report lists all individuals currently employed with the requesting firm who have a status of CE Inactive at the time the report is requested.

Previously Inactive CE Individuals Within A Firm—This report lists all individuals who were employed by the requesting firm and who had a status of CE Inactive during the timeframe specified.

Approaching CE Two Year Termed Report—This report lists individuals who *will be* administratively terminated within the next 10 days (if they remain CE Inactive) for failure to satisfy the Regulatory Element requirement. These individuals have had a status of CE Inactive for two years from their most recent requirement window end date.

CE 2-Year Termed Report—This report lists individuals who were employed by the requesting firm and were administratively terminated during the timeframe specified. Individuals on this report will need to re-qualify for registration through a qualification examination and must submit an Initial Form U-4 to re-activate their registrations.

<p>Web CRD CE Firm Queue</p>	<p>Hard-Copy CE Reports Replaced By Firm Queues</p>
<p>Approaching CE Requirement Queue <i>Lists individuals with CE Windows starting within 28 days.</i></p>	<p><i>Initial Notices and Notices for Significant Disciplinary Actions</i></p>
<p>Currently CE Required Queue <i>Lists all individuals currently in their 120-day CE Window.</i></p>	<p><i>Monthly Requirement Summary Report</i></p>
<p>Recently CE Satisfied Queue <i>Lists individuals who have completed the Regulatory Element within a time period specified by the user.</i></p>	<p><i>Individual and Summary Completion Reports</i></p>
<p>CE Inactive Queue <i>Lists approved individuals at the firm who are currently CE Inactive.</i></p>	<p><i>Individual and Summary Inactive Reports</i></p>
<p>Current Individual Deficiencies Queue²— CE Inactive <i>Lists new hires of the firm who are CE Inactive and whose registrations are not approved. (Note: Web CRD does not approve the registrations of persons who are inactive unless and until those persons satisfy the Regulatory Element. Persons in this situation have CRD registrations with a status of DEFICIENT-CE.)</i></p>	<p><i>Individual and Summary Inactive Reports</i></p>
<p>Currently 2-Year CE Termed Queue <i>Lists all individuals who have had their registrations administratively terminated because they had been CE Inactive for 2 years.</i></p>	<p><i>CE Two Year Termination Notice and CE Two Year Termination Warning Notice</i></p>

¹ Firm Queues are listed in the Individual Processing column of the Web CRD Site Map, the first page after the log-in screen.

² CE Inactive Deficiencies are found in the Registrations Queue. To access, first click on the **Registrations Queue**, then **Current Individual Deficiencies**, and then select **CE Inactive** from the deficiencies list.

Written Supervisory Procedures

Firms are reminded to review their written supervisory procedures as they relate to the manner in which registered persons are identified, notified, and tracked to satisfy the Regulatory Element requirements. In this regard, procedures in this area should refer to CRD Firm Queues and sup-

plemental CRD reports, and not to written CE Advisory Messages, which are no longer sent.

Contact the Gateway Call Center at (301) 869-6699 or Heather Bevans, Continuing Education, NASD Regulation, at (301) 590-6011, for more information.

Securities Industry/Regulatory Council On Continuing Education Publishes Firm Element Questions And Answers For Small Firms

The Securities Industry/Regulatory Council on Continuing Education (CE Council) has prepared a Question and Answer booklet to help small firms with the unique challenges they face to comply with the Firm Element requirements. Copies of the booklet were mailed to firms with 25 or fewer registered representatives in May and may be viewed by all firms on the NASD Regulation Web Site at: <http://www.nasdr.com/2640a.htm#questions>.

Hard-copy versions of the booklet are available while supplies last; contact Matthew Swindle at (301) 590-6039 regarding hard-copy versions of this publication.

The booklet contains answers to questions such as:

- ❖ What are the expectations of small firms regarding the annual preparation of a written Firm Element plan?

- ❖ How should a small firm develop a Needs Analysis?
- ❖ What type of Firm Element training is suitable for a new hire with substantial experience?

This booklet is part of a multi-faceted CE Council initiative to address small firm concerns about the Firm Element. The booklet aims to provide small firms with a better understanding of their continuing education obligations.

Questions about the booklet should be directed to John Linnehan, Continuing Education, at (301) 208-2932, or Daniel M. Sibears, Member Regulation, at (202) 728-8221.

June 2000 NASAA Implements Waiting Periods Between Failed Exams

Effective June 1, 2000 the North American Securities Administrators Association (NASAA) implemented the following waiting periods for individuals needing to retake the Series 63 (Uniform Securities Agent State Law Examination), Series 65 (Uniform Investment Adviser Law Examination), or Series 66 (Uniform Combined State Law Examination) following a failed attempt: (1) a minimum of 30 days after failing the first exam before the second taking of the exam can be scheduled; (2) a minimum of 30 days after failing the exam for the second time

before the third taking of the exam can be scheduled; and (3) a minimum of 180 days after failing the exam for a third time before the fourth taking of the exam (and each subsequent taking) can be scheduled.

The change applies to all scheduling requests received on or after June 1, 2000 to retake exams regardless of when the exam was failed. For more information regarding these changes, refer to the NASAA Web Site at www.nasaa.org.

Testing Update

Excellence In Service Award For Sylvan Centers

NASD Regulation has established a Sylvan Technology Center (STC) Excellence in Service

Award Program for those STCs that consistently achieve excellence in the areas of customer service and performance. The awards are made in April, July, October, and January for the previous calendar quarter.

The Excellence In Service Award winners for first quarter 2000 are:

* Consecutive Quarter Winners

* Memphis, TN	Cincinnati, OH	Goodyear, AZ
* St. Louis, MO	Temple Terrace, FL	Niles, OH
* Fox Point, WI	Pittsburgh, PA	Indianapolis, IN
Troy, MI	Hamden, CT	Billings, MT
Sioux Falls, SD	Deptford, NJ	Puyallup, WA
San Diego, CA	Gainesville, FL	Akron (Stow), OH
Strongsville, OH	Pittsburgh (N. Hills), PA	Ft. Wayne, IN
Utica, MI	Omaha, NE	Orlando, FL

Reminders: Policy And Procedures

English As A Second Language (ESL)

Candidates that need additional session time because English is not the candidate's first language can schedule an appointment at the local Sylvan Center or the Sylvan Call Center (800) 578-6273.

The request for additional time must be made when scheduling the appointment so that the additional time can be added to the appointment session. In order to be granted the additional time, the candidate must present onsite at the session, a recently dated authorization letter from the candidate's firm stating that the additional time is needed due to ESL.

- ❖ The authorization letter must be printed on company letterhead and contain the original signature of the candidate's supervisor or principal of the firm.
- ❖ The letter must contain the candidate's name, test title, and/or exam series number, and the appointment date.
- ❖ Photocopies of a previously written letter will not be accepted.

Storage Of Personal Belongings At Sylvan Testing Centers

Before entering the testing room, candidates will be asked to place all personal belongings, including programmable digital watches, and purses/wallets in a locker. Non-programmable, non-financial calculators are permitted in the

testing room. The candidate will maintain the key to the locker until the session has been completed.

Candidates should keep in mind that the size of the lockers in most centers is not large. Briefcases and/or portable computer equipment may not fit in the lockers provided. Larger items, and those items of value that the candidate may not feel comfortable placing in a locker, should not be brought to the testing center.

**Testing And Continuing Education—
International Delivery**

NASD Regulation is working with Virtual University Enterprises (VUE), a Minneapolis-based division of NCS, Inc., to begin operations of computer-based testing centers in six international locations. These locations, under contract to VUE/NCS, will be operational during the fourth quarter of 2000. They will deliver all securities industry testing and continuing education sessions in computer-based format. Centers are being established in London, Paris, Frankfurt, Hong Kong, Tokyo, and Seoul. NASD Regulation will consider other cities if a demand for additional services exists.

Full details on specific addresses and the process for scheduling into these centers will be available in the next edition of the *Regulatory & Compliance Alert*.

Questions regarding international delivery should be directed to A. Lee Hays, Testing and Qualifications, at (301) 590-6003 or lee.hays@nasd.com.

Certification Testing & Continuing Education Delivery Locations List

Current as of June 2000

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
Phoenix (N. 35th Ave.)	602-548-8220
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	510-745-8192
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
Walnut Creek	925-934-3099
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
Denver	303-692-8745
Glendale	303-807-5813
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

Casselberry	407-671-2332
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	Louisiana	
Sarasota	941-923-9399	Baton Rouge	225-293-8489
Tallahassee	850-386-8707	Bossier City	318-742-7349
Tampa	813-289-1246	New Orleans	504-245-2600
Temple Terrace (Tampa)	813-989-9988		
Georgia		Maine	
Atlanta	404-255-9957	Orono	207-581-1708
Augusta	706-868-1888	Portland	207-775-5812
Jonesboro	770-478-5356		
Macon	912-474-5909	Maryland	
Marietta	770-980-1117		
Savannah	912-354-2660		
Valdosta	912-245-1069		
Hawaii			
Honolulu County	808-263-6656		
Idaho			
Boise	208-322-3555		
Illinois			
Carbondale	618-529-4664		
Chicago (LaSalle St.)	312-609-2525		
Chicago (S. Wabash)	312-663-5632		
Homewood	708-798-0238		
Lombard	630-434-8056		
Northbrook	847-559-2461		
Peoria	309-682-0825		
Springfield	217-546-0381		
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	765-447-5996		
Merrillville	219-736-1113		
Mishawaka	219-254-1055		
Iowa			
Bettendorf	319-359-1001		
Des Moines	515-223-6650		
Kansas			
Topeka	785-272-7500		
Wichita	316-651-5350		
Kentucky			
Lexington	606-268-3338		
Louisville	502-423-0340		

Montana			
Billings	406-656-4646	Greensboro	336-288-1311
Helena	406-443-9205	Greenville	252-756-0342
		Raleigh	919-846-1975
Nebraska		North Dakota	
Columbus	402-564-2862	Bismarck	701-224-1171
Omaha	402-334-9449	Fargo	701-293-1234
Nevada		Ohio	
Las Vegas	702-889-4132	Akron	330-922-5587
Reno	702-829-2700	Cincinnati	513-671-7030
New Hampshire		Columbus	614-451-4131
Portsmouth	603-433-6800	Dayton	937-435-8417
New Jersey		Hilliard	614-529-4232
Deptford	609-384-4744	Lima	419-331-7323
East Brunswick	732-390-4040	Mentor	440-255-0055
Fairlawn	201-475-1670	Niles	330-652-1886
Hamilton Township	609-631-9794	Reynoldsburg	614-864-4090
Toms River	732-349-4609	Strongsville	440-238-0530
Union	908-964-2862	Oklahoma	
New Mexico		Oklahoma City	405-843-8378
Albuquerque	505-296-0609	Tulsa	918-249-0820
New York		Oregon	
Albany	518-869-6119	Eugene	541-485-4589
Amherst/Buffalo	716-565-0570	Milwaukie	503-659-9575
Brooklyn Heights	718-222-1277	Portland	503-254-2009
East Syracuse	315-433-9038	Pennsylvania	
Garden City	516-746-7367	Allentown	610-791-5320
Ithaca	607-277-4821	Clark Summit	717-586-4362
Manhasset	516-869-1236	Erie	814-864-6100
Melville	516-845-9063	Harrisburg	717-652-0646
NYC Manhattan Area	212-760-1137	Lancaster	717-391-6519
NYC Midtown Area	212-809-5509	North Wales	215-412-7822
NYC Wall Street Area	212-809-5509	Philadelphia	215-238-8380
Rego Park	718-997-6356	Pittsburgh (North Hills)	412-367-4620
Rochester	716-385-4810	Pittsburgh (Braddock Ave.)	412-247-4463
Staten Island	718-980-3079	York	717-755-7471
Vestal	607-798-1715	Puerto Rico	
Wappingers Falls	914-298-8378	Hato Rey	787-753-6394
Watertown	315-788-2588	Rhode Island	
White Plains	914-289-0437	Cranston	401-942-8552
North Carolina		South Carolina	
Asheville	828-253-4224	Charleston	843-766-5599
Charlotte	704-364-7758	Greenville	864-676-1506
Gastonia	704-853-2038	Irmo	803-749-0356

South Dakota

Sioux Falls 605-362-4875

Tennessee

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

Texas

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

Utah

Orem 801-226-5544
 Salt Lake City 800-578-6273

United Kingdom

London (011-44) 171-374-2666

Vermont

Wilmington 802-872-0845

Virgin Islands

St. Croix 340-773-5751

Virginia

Fairfax 703-807-5813
 Lynchburg 804-832-0778
 Mechanicsville 804-730-5844
 Newport News 757-873-0208
 Roanoke 540-344-3688

Washington

Mountainlake 425-774-3922
 Puyallup 253-848-0771
 Spokane 509-467-8715

West Virginia

Morgantown 304-293-0699
 South Charleston 304-744-4144

Wisconsin

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

Wyoming

Casper 307-235-0070

NASD DISCIPLINARY ACTIONS

NASD Disciplinary Actions

In April, May, and June 2000, 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 Monday, June 12, 2000.

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

George Earl Harper (CRD #1632256, Registered Representative, Dayton, Nevada) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine is due and payable prior to reassociation with a member firm. Without admitting or denying the allegations, Harper consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior notice to, or authorization from, his member firm. (NASD Case #C01000005)

Troy Wayne Long (CRD #2708824, Registered Representative, Antelope, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Long failed to respond to NASD requests for information relating to his termination from a member firm. (NASD Case #C01990017)

Herman Paul Manalili (CRD #856842, Registered Representative, Hilo, Hawaii) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was suspended from association with any NASD member in any capacity for 120 days. Without admitting or denying the allegations, Manalili consented to the described sanction and to the entry of findings that, prior to his association with member firms, he opened a brokerage account with another member firm, and continued to engage in securities trades in that account during the course of his association with the firms. Furthermore, the findings stated that Manalili failed to disclose the existence of the account to his member firms and failed to inform the executing firm that he had become an associated person. Manalili also failed to disclose his involvement in private securities transactions to his member firms. (NASD Case # C01000004)

May Actions

Renato Carbonel Fernandez (CRD #2647861, Registered Representative, San Jose, California), Marie Soriano Delacruz (CRD #2547419, Registered Representative, San Jose, California), and Alma Guiang Pontillas (CRD #283333, Registered Representative, San Jose, California) submitted Offers of Settlement pursuant to which they were each fined \$10,000 and suspended from association with any NASD member in any capacity for three months. Payment of the fines shall be a prerequisite for consideration of any application for reentry by the respondents. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that, in connection with an individual's attempt to reach a higher level of sales of variable life insurance at the member firm, Fernandez, Delacruz, and Pontillas signed as writing agent and/or witness attesting to information concerning applications for variable life insurance policies. The NASD determined that in fact, Fernandez, Delacruz, and Pontillas were neither the agent nor a witness, and had no idea as to whether the information on the application was correct, but were merely provided the applications for their signatures. (NASD Case #C01990022)

Renato Gonzales Quiazon (CRD #2139458, Registered Representative, Union City, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Quiazon failed to respond to NASD requests for information. (NASD Case #C01990018)

Bernard San Juan Rondez (CRD #2791324, Registered Representative, Marina, California) was barred from association with any NASD member in any capacity. The National Adjudicatory Council (NAC) imposed the sanctions following appeal of an Office of Hearing Officers (OHO) decision. The sanction was based on findings that Rondez failed to respond to NASD requests for information. (NASD Case #C01990002)

June Actions

Stephen Earl Prout (CRD #857060, Registered Principal, Clovis, California) was fined \$10,000 and suspended from association with any NASD member in any capacity for nine months. The sanctions were based on findings that Prout falsified customers' dates of birth on variable annuity applications.

This action was called for review by the NAC and the sanctions are not in effect pending consideration of the review. (NASD Case #C01990014)

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

Michael William O'Donnell (CRD #1254156, Registered Principal, Northridge, California) submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, O'Donnell consented to the described sanction and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firms describing the proposed transactions and his proposed role therein. The findings also stated that O'Donnell made material misrepresentations and/or omissions to investors regarding the risk and registration status of an investment company. O'Donnell also misrepresented to public customers his qualifications, his indebtedness, his placement of funds in an escrow account, and his purchase of life insurance policies naming investors as beneficiaries to protect their investments in case of his death. In addition, O'Donnell made unrealistic projections regarding expected profitability. (NASD Case #C02990047)

Dennis Frank Riggi (CRD #1052272, Registered Principal, Los Angeles, California) was fined \$1,200, suspended from association with any NASD member in any capacity for 30 days, and barred from association with any NASD member in any principal capacity. The sanctions were based on findings that Riggi, while president and sole owner of a member firm, distributed a private placement memorandum that misrepresented the amount of commissions his firm would receive from the sale of securities. (NASD Case #C02990017)

David Ray Steele (CRD #1126752, Registered Representative, El Cajon, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to 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, Steele consented to the described sanctions and to the entry of findings that he executed transactions in the securities account of a public customer and exercised discretionary power in the account without prior written authorization from the customer or written acceptance by his member firm of the account as discretionary. (NASD Case #C02000002)

Gail S. Yamauchi (CRD #2838913, Registered Representative, Los Angeles, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Yamauchi failed to respond to NASD requests for information regarding possible misappropriation of customer funds. (NASD Case #C02990058)

May Actions

James Edward Bassano (CRD #2736206, Registered Representative, North Bellmore, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Bassano deliberately opened accounts and executed purchases of stock for public customers without their knowledge or consent. (NASD Case #C02990053)

I. C. Rideau, Lyons & Co., Inc. (CRD #17974, Los Angeles, California), Lamar Andrew Lyons, Sr. (CRD #1788438, Registered Principal, Marina Del Rey, California), and Joyce Ann Green (CRD #1880829, Registered Principal, Pasadena, California) were fined \$20,000, jointly and severally, and Green was suspended from association with any NASD member in any capacity for 30 days. The sanctions were based on findings that the respondents failed to respond in a complete and timely manner to NASD requests for information. (NASD Case #C02990034)

Robert Joseph Kernweis (CRD #1392867, Registered Representative, Burbank, California) and William Pohn Willis (CRD #836417, Registered Principal, Rancho Palos Verdes, California) Kernweis was fined \$294,063, which shall be due and payable at such time as he seeks to reenter the securities industry, and barred from association with any NASD member in any capacity. Willis was fined \$10,000, suspended from association with any NASD member in any supervisory capacity for 30 days and required to requalify by exam as a principal by taking and passing the Series 24 exam. The sanctions were based on findings that Kernweis engaged in trading in the account of a public customer that was not suitable based on the size, nature, and frequency of the recommended transactions, and engaged in excessive trading in the customer's account. Willis, as manager, had the authority and the obligation to prevent the unsuitable and excessive trading in the customer's account, and failed to take appropriate action to supervise the firm. (NASD Case #C02980024)

Donna Lorine Post (CRD #1271324, Registered Representative, Mentone, California) was barred from association with any NASD member in any capacity and ordered to reimburse her former member firm \$165,182.73, plus interest, for restitution paid by the firm to her customers. The sanctions were based on findings that Post received approximately \$203,000 from public customers for the purpose of purchasing various investments, failed and neglected to execute the purchase of the requested investments on the customers' behalf, and instead misappropriated these funds to her own use and benefit, without the customers' knowledge or consent. (NASD Case #C02990026)

Merlin Blaine Riley, III (CRD #1318026, Registered Principal, Dana Point, California) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Riley consented to the described sanction and to the entry of findings that he executed transactions in various securities in the accounts of

public customers without their authorization and executed purchase and sale transactions for the account of a public customer pursuant to oral discretionary authority but without the requisite written authority from the customer nor the permission of his member firm. (NASD Case # C02990050)

Robert Tretiak (CRD #1416058, Registered Principal, Las Vegas, Nevada) was fined \$10,000, and suspended from association with any NASD member in any capacity until the arbitration award is satisfied (by payment or fully paid settlement), plus 30 additional business days. The NASD further ordered that the fine be increased by \$100 per day if the arbitration award is not satisfied within 30 days of the date this decision became final, until such time as the award is satisfied. The sanctions were based on findings that Tretiak failed to pay a \$52,360 arbitration award.

Tretiak has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C02980085)

Robert Tretiak (CRD #1416058, Registered Principal, Las Vegas, Nevada) was fined \$10,000, suspended from association with any NASD member in any capacity for two years, and barred from association with any NASD member in any principal capacity for disseminating a false and misleading prospectus. In addition, Tretiak was fined \$15,000 and suspended from association with any NASD member in any capacity for six months for failing to require return of investor funds, and for causing his member firm to enter into an improper escrow agreement. The sanctions were based on findings that Tretiak participated in an initial public offering (IPO) of securities on a contingency basis to raise funds to acquire a parcel of land and provided a prospectus to public investors that was materially false and misleading in that it contained out of date and erroneous information and failed to disclose significant changes in the IPO's financial circumstances. The findings also stated that Tretiak failed to return investor funds when terms of the contingency were not met and failed to transmit investor funds promptly to a properly established escrow account.

Tretiak has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C02990042)

June Actions

J. Patrick Flynn (CRD #1049094, Registered Principal, Encinitas, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$6,000, and suspended from association with any NASD member in any capacity for 90 days. Payment of the fine shall be a prerequisite for consideration of any application for reentry into the securities industry. Without admitting or denying the allegations, Flynn consented to the described sanctions and to the entry of findings that he recommended and engaged in purchase and sale transactions in the account of a public customer and did not have reasonable grounds for believing that these recommendations and resul-

tant transactions were suitable for the customer on the basis of the customer's financial situation, investment objectives, health consideration, and needs.

Flynn's suspension began on June 5, 2000, and will conclude on September 2, 2000. (NASD Case #C02000011)

Emerson Sung Lee (CRD #2001764, Registered Representative, Arcadia, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Lee failed to respond to NASD requests for information. (NASD Case #C02990059)

Richard McConnell (CRD #866561, Registered Representative, Henderson, Nevada) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, McConnell consented to the described sanctions and to the entry of findings that, without authorization from his member firms, McConnell used his firms' letterhead and purported auspices as a knowing and willing participant in a scheme to provide misleading and fraudulent "proof of funds" letters to potential third-party investors. The NASD found that through the "proof of funds" letters, McConnell fraudulently claimed that individuals, some of whom were customers of the firms, maintained various substantial deposits with the firms, when, in fact, the individuals held either little or no funds on deposit with the firms. The purpose of the letters was to aid undisclosed third parties in an overall scheme to defraud potential investors. (NASD Case #C02000012)

Frederick Earl Meyer (CRD #1088572, Registered Representative, Los Angeles, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. The fine shall be due and payable prior to reassociation with a member firm following the suspension or prior to any application or request for relief from statutory disqualification. Without admitting or denying the allegations, Meyer consented to the described sanctions and to the entry of findings that he participated in private securities transactions but failed to provide prior written notification to his member firm.

Meyer's suspension began June 5, 2000, and will conclude at the close of business on June 4, 2001. (NASD Case #C02000014)

William Fred Ponce (CRD #1424682, Registered Representative, Laguna Niguel, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for one year. Payment of the fine shall be a prerequisite for consideration of any application for reentry into the securities industry. Ponce also, as a condition to reentering the securities business following the suspension, must requalify as a general securities representative. Without admitting or denying the allegations, Ponce consented to the described sanctions and to the entry of findings that he engaged in private securities

transactions without providing prior written notice to, or receiving approval from, his member firms. The findings also stated that Ponce engaged in outside business activities and failed to provide his member firms with prompt written notification of his outside business activities.

Ponce's suspension began on June 5, 2000, and will conclude at the close of business on June 4, 2001. (NASD Case #C02000015)

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

District 3A - Denver

April Actions

Mark Joel Appleton (CRD #702513, Registered Principal, Arvada, Colorado) submitted an Offer of Settlement pursuant to which he was fined \$12,500 and suspended from association with any NASD member in any supervisory capacity for 10 business days. The fine is due and payable prior to reassociation with a member firm following the suspension. Without admitting or denying the allegations, Appleton consented to the described sanctions and to the entry of findings that he failed to supervise a registered representative in a manner reasonably designed to achieve compliance with applicable laws, rules, and regulations. The findings also stated that Appleton failed to establish written supervisory procedures to address adequately minimum sales contingencies, private securities transactions, membership and registration rules, and supervision. (NASD Case #C3A990067)

Larry Lynn Graham (CRD #1965936, Registered Principal, Littleton, Colorado) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$7,500 and suspended from association with any NASD member in any capacity for three weeks. Without admitting or denying the allegations, Graham consented to the described sanctions and to the entry of findings that he participated in a course of conduct that constituted the mishandling of a customer's funds. (NASD Case #C3A990073)

Janssen-Meyers Associates, L.P. (CRD #34171, New York, New York) and Bruce Meyers (CRD #1045447, Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$10,000, jointly and severally. The firm was also fined an additional \$16,000 and ordered to pay \$5,819 in restitution to public customers. Without admitting or denying the allegations, the firm and Meyers consented to the described sanctions and to the entry of findings that the firm, acting through Meyers, failed to enforce the firm's written supervisory procedures regarding trading restrictions. The findings also stated that the firm traded ahead of the execution of customer limit orders. (NASD Case #C3A000005)

Andrew Frank Soldo, Jr. (CRD #2448880, Registered Representative, East Islip, New York) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Soldo consented to the described sanction and to the entry of findings that he made material misrepresentations, omitted to disclose material facts, and predicted the future prices of speculative securities in connection with the offer and sale of securities. The findings also stated that Soldo effected transactions in customer accounts without the customer's prior authorization. Soldo then represented to the customer that the failure to pay for the unauthorized purchase would cause the sale of a profitable position in his account and the entry of a judgment that would affect his credit rating. (NASD Case #C3A990016)

Christopher Duncan Strachan (CRD #2660920, Registered Principal, Fruit Heights, Utah) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Strachan consented to the described sanction and to the entry of findings that he engaged in business activities outside the scope of his employment with a member firm without providing the firm prompt written notice of his activities. The findings also stated that Strachan issued a promissory note to reimburse public customers in order to settle their complaint away from his member firm. In addition, Strachan failed to respond completely to NASD requests for information. (NASD Case #C3A000009)

May Actions

D.E. Frey & Company, Inc. (CRD #23595, Denver, Colorado) submitted a Letter of Acceptance, Waiver, and Consent pursuant to 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 report settlements of customer complaints and arbitration awards to the NASD as required. (NASD Case #C3A000011)

Paul Anthony Romero (CRD #2817671, Registered Representative, Littleton, Colorado) was barred from association with any NASD member in any capacity and ordered to reimburse his member firm \$4,694.48, plus interest, for restitution the firm paid to a public customer. The sanctions were based on findings that Romero recommended that the customer purchase a life insurance policy. The customer completed the application and paid the initial premium of \$4,600 to purchase the policy. The findings further stated that the customer decided not to complete the purchase of the policy whereupon the firm canceled the application and issued the customer a \$4,600 refund check. Romero intercepted the check, forged the customer's signature, endorsed the check over to himself, and converted the \$4,600 to his own use. (NASD Case #C3A990058)

June Actions

None

District 3B - Seattle

April Actions

None

May Actions

None

June Actions

None

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

April Actions

Michael Kyle Faulkner (CRD #1182049, Registered Principal, Springfield, Missouri) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Faulkner consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information relating to his conduct while at a member firm. (NASD Case #C04000012)

Ansula Pet Hwa Liu (CRD #1373612, Registered Representative, Minneapolis, Minnesota) was fined \$50,000 and barred from association with any NASD member in any capacity. The fine was reduced from \$100,000 if Liu pays \$50,000, plus interest, in restitution to public customers within six months of this decision. The NAC imposed the sanctions following appeal of an OHO decision. The sanctions were based on findings that Liu engaged in private securities transactions without providing prior written notification to her member firm and failed to respond to NASD requests for information. (NASD Case #C04970050)

May Actions

Steven Gerald Ives (CRD #2197745, Registered Representative, St. Paul, Minnesota) was barred from association with any NASD member in any capacity. The sanction was based on findings that Ives failed to respond to NASD requests for information. (NASD Case #C04990046)

June Actions

Roy Allen Arp (CRD #1123392, Registered Representative, Charles City, Iowa) was barred from association with any NASD member in any capacity. The sanction was based on findings that Arp failed to respond to NASD requests for information. (NASD Case #C04990048)

Donald Dwight Bostic, Sr. (CRD #2262782, Registered Representative, St. Louis, Missouri) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bostic consented to the described sanction and to the entry of findings that he received checks totaling \$43,273.43 from public customers and, without the knowledge or consent of the customers, deposited or cashed the checks and converted the funds to his own use and benefit. (NASD Case #C04000021)

James Edward Lynch, Jr. (CRD #2872529, Registered Representative, St. Peters, Missouri) was barred from association with any NASD member in any capacity. The sanction was based on findings that Lynch falsified portfolio statements to reflect a \$10,000 variable annuity purchase for a public customer's benefit which, in fact, did not exist. Lynch also failed to respond to NASD requests for information. (NASD Case #C04990049)

Arthur Julius Olson, Jr. (CRD #352426, Registered Principal, Hilton Head Island, South Carolina) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was suspended from association with any NASD member in any capacity for 90 days and required to provide proof of payment of \$15,000 in restitution. Payment of the restitution shall be a prerequisite for consideration of any application for reentry into the securities industry. In light of his financial status, the sanctions do not include a monetary fine but instead only includes the restitution referred to above. Furthermore, for one year after the date Olson reassociates with a member firm following the suspension, he must agree to refrain from accepting or maintaining employment in a sales capacity with any NASD member firm unless that firm has formulated special supervisory procedures to oversee and monitor his sales practices with customers.

Without admitting or denying the allegations, Olson consented to the described sanctions and to the entry of findings that he engaged in the purchase and sale of securities in a public customer's Revocable Living Trust account, without having reasonable grounds for believing that these transactions were suitable for the customer in light of her financial situation, investment objectives and needs, and the size and frequency of the transactions.

Olson's suspension began on June 5, 2000, and will conclude on September 2, 2000. (NASD Case #C04000019)

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

April Actions

Cindy Rae Kolb (CRD #1433552, Registered Principal, San Marcos, Texas) was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 business days for exercising discretion without her firm's approval. Kolb was also barred from association with any

NASD member in any capacity and ordered to pay \$71,068.67, plus pre-judgment interest, in restitution to public customers for fraudulent conduct, conversion of customer funds, and excessive trading. The fine is due and payable prior to application for reentry into the securities industry. The sanctions are based on findings that Kolb effected unauthorized transfers and disbursements by forging, or causing the forgery of, signatures on letters of authorization and submitting requisitions to her member firm. Kolb, thereby, converted \$486,772.50 received from public customers to her personal benefit and the benefit of a third party. The findings also stated that Kolb engaged in excessive trading in the accounts of public customers and exercised discretion in customers' accounts without the prior authorization of the customers and the acceptance of the accounts as discretionary by her member firm. (NASD Case #C05970037)

Charles Edward Warner (CRD #459110, Registered Representative, Nashville, Tennessee) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Warner consented to the described sanction and to the entry of findings that he received approximately \$25,500 from public customers for investing in variable annuity contracts, failed to make the investments on the customers' behalf, and, instead, converted the funds to his own use and benefit. The findings also stated that Warner failed to respond to NASD requests for information. (NASD Case #C05000004)

May Actions

Jennifer Lynn Gonzalez (CRD #2461482, Registered Principal, Houston, Texas) submitted an Offer of Settlement pursuant to which she was suspended from association with any NASD member as a general securities principal for two years and barred from association with any NASD member as a financial and operations principal. Without admitting or denying the allegations, Gonzalez consented to the described sanctions and to the entry of findings that she failed to ensure the preparation and maintenance of accurate books and records for her member firm. The findings also stated that she allowed her firm to engage in a securities business when she knew, or should have known, that her firm's net capital was below the required minimum and failed to provide appropriate notification. Gonzalez also failed to ensure the accurate preparation of FOCUS Part II filings for her firm. In addition, Gonzalez failed to ensure that unaudited financial statements in a private placement memorandum and financial information in a stock purchase agreement were not false and misleading. (NASD Case #C05990026)

James Han (CRD #2710091, Registered Principal, Bayside, New York) submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Han consented to the described sanction and to the entry of findings that he effected the unauthorized transfer of funds totaling \$6,600 from the day-trading account

of a public customer to his own personal account maintained at his member firm, without the knowledge or consent of the customer. The findings also stated that Han transferred securities transactions from the day-trading account of another customer to his own personal account without the knowledge or consent of the customer. In addition, Han failed to respond to NASD requests for information. (NASD Case #C05000005)

Lakeside Trading (CRD #39418, Metairie, Louisiana) and Thomas Griswold Russell (CRD #2669033, Registered Principal, Metairie, Louisiana) were fined \$75,000, jointly and severally. The firm was suspended from association with any NASD member for 30 days for failing to file its audited financial statements and expelled from NASD membership for misuse of funds. Russell was fined an additional \$137,961.95, suspended from association with any NASD member in any capacity for a total of 14 months and 40 business days, barred from association with any NASD member, and ordered to pay restitution totaling \$316,005.48 to a member firm and a public customer. The fines and restitution are due and payable upon Russell's or the firm's re-entry into the securities industry. The sanctions are based on findings that Russell misused customer funds by improperly sharing in the profits in the customer's account. Russell also exercised discretion in the customer's account without a written agreement. The findings also stated that Russell guaranteed a customer against loss in margin calls, made misrepresentations to his clearing firm, and engaged in unauthorized trading in a customer's account. In addition, the firm, through Russell, failed to file an annual audited statement and failed to file a FOCUS report in a timely manner. Furthermore, the firm and Russell failed to file its Web Site with the NASD before its first use and failed to pre-file its revised Web Sites in a timely manner. Russell failed to ensure the firm's compliance with NASD's advertising rules and distributed misleading advertisements on its Web Sites. Moreover, Russell failed to respond to NASD requests for information. (NASD Case #C05990018)

Don Anthony Rouzan (CRD #2933209, Registered Principal, New Orleans, Louisiana) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Rouzan consented to the described sanction and to the entry of findings that he induced the sale of and effected transactions in securities by means of manipulative, deceptive, or other fraudulent devices or contrivances. Rouzan delivered an investment contract to a purchaser that contained fraudulent information regarding the uses to be made of invested funds and the risks of the investments. The findings also stated that Rouzan engaged in private securities transactions without prior written notice to, and approval from, his member firm. (NASD Case #C05000006)

Edward Thomas Rush (CRD #812872, Registered Representative, Hampton Bays, New York) was fined \$48,096.89, suspended from association with any NASD member in any capacity for 50 days, and barred from associ-

ation with any NASD member in any capacity. The fine shall be due and payable prior to re-entry in the securities industry. The sanctions were based on findings that Rush made unsuitable recommendations to public customers in regard to short term trading in mutual funds and did so to reap commissions. The findings also stated that Rush exercised discretion in the accounts of public customers without written authorization from the customers and prior written acceptance of the accounts as discretionary from his member firm. In addition, Rush failed to respond to NASD requests for information. (NASD Case #C05990043)

June Actions

First Southwest Company (CRD #316, Dallas, Texas) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$59,697. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, acting as principal, it sold a portfolio of U.S. Treasury securities to a municipal issuer for a defeasance escrow without disclosing to the issuer that it would retain positive carry. The findings also stated that the firm's profit on this defeasance escrow transaction totaled 0.38 percent of the prevailing interdealer market prices of the U.S. Treasury securities. (NASD Case #C05000020)

Himanshu Thakorlae Parekh (CRD #1886324, Registered Representative, Chattanooga, Tennessee) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$7,500, which includes disgorgement of approximately \$1,000 earned on violative transactions, and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, Parekh consented to the described sanctions and to the entry of findings that he engaged in the sale of mutual funds to public customers residing in states in which he was not registered in any capacity. The findings also stated that, in connection with the sale of these mutual funds, Parekh falsified address information on the mutual fund applications for the customers.

Parekh's suspension began June 5, 2000, and will conclude on July 4, 2000. (NASD Case #C05000012)

District 6 - Texas

April Actions

Merle Seth Brower, Jr. (CRD #1564817, Registered Representative, Austin, Texas) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Brower consented to the described sanction and to the entry of findings that he submitted life insurance applications to his member firm that were false and misleading in that they related to a fictitious person. (NASD Case #C06000008)

Laronda Joyce Fuller n.k.a. Laronda Franklin (CRD #2794996, Registered Representative, Dallas, Texas) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fuller consented to the described sanction and to the entry of findings that she changed the addresses for accounts belonging to public customers and processed unauthorized withdrawal requests from these accounts that involved the unauthorized liquidation of securities. Fuller directed that checks totaling \$64,774.39 drawn against the accounts be sent to the addresses she had previously designated for these accounts where they were received, endorsed by a third party, and deposited into a bank account in which she had a beneficial interest. The findings also stated that Fuller failed to respond to an NASD request to provide testimony. (NASD Case #C06000003)

May Actions

Cartha Lawrence Stroud, Jr. (CRD #1939827, Registered Representative, Arlington, Texas) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Stroud consented to the described sanction and to the entry of findings that he converted two laptop computers from his member firm. (NASD Case #C06000009)

June Actions

Self Trading Securities, Inc. (CRD #38439, Austin, Texas) and John Beckinridge Pearson (CRD #2427579, Registered Principal, Austin, Texas) submitted an Offer of Settlement pursuant to which the firm and Pearson were censured and fined \$27,500, jointly and severally, and the firm was fined an additional \$2,500. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Pearson, permitted individuals to engage in the investment banking or securities business of the firm, even though such individuals had not been registered with the firm in any capacity. The findings also stated that the firm, acting through Pearson, advertised on an Internet Web Site and the advertising failed to provide a sound basis for evaluating the services provided by the firm and included exaggerated and unwarranted statements that were potentially misleading. The firm also failed to complete a training needs analysis and develop a written training plan concerning the Firm Element of the Continuing Education Program. Furthermore, the firm failed to establish, maintain, and enforce written procedures that were reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules, in that the firm's procedures failed to adequately address NASD rules governing registration of order input personnel and continuing education. (NASD Case #C06000005)

David Randall Wright (CRD #2378371, Registered Representative, Irving, Texas) was barred from association with any NASD member in any capacity and ordered to pay \$34,333.29, plus interest, in restitution to his former member firm. The sanctions were based on findings that Wright placed orders to purchase securities with the intent of paying for the securities out of the proceeds from subsequent sales of the same securities. (NASD Case #C06990008)

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

April Actions

Philip Ralph Friedenn, Jr. (CRD #2403375, Registered Representative, Ft. Lauderdale, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Friedenn consented to the described sanction and to the entry of findings that he participated in private securities transactions and failed to obtain prior written approval from his member firms. (NASD Case #C07000010)

Mark Edward Nichols (CRD #1778988, Registered Principal, Naples, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Nichols consented to the described sanction and to the entry of findings that he sold \$1,491,888 in promissory notes to investors without providing prior written notification to, or receiving prior written approval from, his member firm. (NASD Case #C07000009)

Michael Humphrey Salandy (CRD #1686500, Registered Representative, Stone Mountain, Georgia) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Salandy consented to the described sanction and to the entry of findings that he entered fictitious trades into a public customer's account and journaled trades between the firm's proprietary account and the customer's account via the firm's computer system, thereby creating \$216,002.24 in false and improper profits in the account of which Salandy personally received at least \$9,100 from the customer. (NASD Case #C07000011)

May Actions

Alberto Enrique Argomaniz (CRD #2518033, Registered Representative, Miami, Florida) was fined \$62,500 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Argomaniz forged a public customer's endorsement to an insurance premium refund check and converted the \$7,500 proceeds to his own use and benefit. (NASD Case #C07990013)

Joseph Giulio Chiulli (CRD #1149276, Registered Principal, Lynbrook, New York) was censured, suspended from association with any NASD member in any capacity for one year, and required to requalify by exam before acting in any capacity requiring registration. The Securities and Exchange Commission (SEC) affirmed the sanctions following appeal of a December 1998 NAC decision. The sanctions were based on findings that Chiulli failed to preserve his member firm's books and records and failed to respond to NASD requests for information. (NASD Case #C07970006)

Garry Scott Ivey (CRD #801743, Registered Representative, Atlanta, Georgia) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$7,500, and suspended from association with any NASD member in any capacity for 30 business days. The fine shall be due and payable either prior to reassociation with a member firm following the suspension or prior to any application requesting relief from a statutory disqualification. Without admitting or denying the allegations, Ivey consented to the described sanctions and to the entry of findings that he exercised discretionary power in accounts held by a public customer without obtaining prior written authorization from the customer and without having the accounts accepted as discretionary accounts by his member firm. (NASD Case #C07000018)

Kashner Davidson Securities Corp. (CRD #5319, Sarasota, Florida) and Victor Lawrence Kashner (CRD #264714, Registered Principal, Sarasota, Florida) The firm was fined \$25,000, suspended from participating in municipal securities transactions for six months, and required to continue to retain an independent consulting firm for 18 months to review and monitor the firm's compliance and written supervisory procedures. Kashner was fined \$50,000, suspended from association with any NASD member in a principal or supervisory capacity for two years, and required to requalify as a general securities principal by taking and passing the Series 24 exam after serving his suspension. In addition, Kashner was required to attend a compliance conference with the NASD within 60 days from the date this decision becomes final. The sanctions were based on findings that the firm effected municipal securities trades without having those trades approved by a qualified municipal securities principal, and allowed Kashner to approve those trades when he was not qualified as a municipal securities principal. In addition, the firm sold shares of "hot issues" to potentially restricted accounts without inquiring into the beneficial ownership of the purchasers, and the firm and Kashner submitted inaccurate Free-Riding and Withholding questionnaires to the NASD for each of the "hot issues." Furthermore, the firm placed orders to sell securities on behalf of its customers and accepted "long" sell orders and failed to make the required notations on the order tickets. The firm also effected sell transactions on behalf of its customers without noting on the order ticket whether the sale was long or short and effected principal transactions with its customers where the order tickets reflected the time the order was executed but failed to reflect the time the orders were received. (NASD Case #C07960095)

Patrick Joseph Larkin (CRD #2597308, Registered Representative, Sarasota, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$35,000, suspended from association with any NASD member in any capacity for one year, and ordered to disgorge \$22,812.66 in commissions. Without admitting or denying the allegations, Larkin consented to the described sanctions and to the entry of findings that he sold promissory notes to public customers without providing prior written notice of his participation in such sales to his member firm. (NASD Case #C07000022)

Albert Douglas Lassak (CRD #1633765, Registered Representative, West Palm Beach, Florida) was fined \$50,000 and suspended from association with any NASD member in all capacities for two years for making unsuitable recommendations. Lassak was also fined \$10,000 and suspended from association with any NASD member in all capacities for 30 business days for improperly exercising discretion in a customer's account. In addition, Lassak was barred from association with any NASD member in all capacities for failure to respond. The sanctions were based on findings that Lassak made unsuitable recommendations in a public customer's account and improperly used discretion in the customer's account. Lassak also failed to respond to NASD requests for information. (NASD Case #C07990062)

Gary Vincent Leone (CRD #1092745, Registered Principal, Sarasota, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$25,000, suspended from association with any NASD member in any capacity for 90 days, and ordered to disgorge \$4,141 in commissions. Without admitting or denying the allegations, Leone consented to the described sanctions and to the entry of findings that he sold promissory notes to public customers without providing prior written notice of his participation in such sales to his member firm. (NASD Case #C07000021)

Nelson E. Ramosdiaz, Sr. (CRD #2359612, Registered Representative, Aguas Buenas, Puerto Rico) was barred from association with any NASD member in any capacity. The sanction was based on findings that Ramosdiaz failed to respond to NASD requests for information. (NASD Case #C07990054)

Blaine Stanley Tarnecki (CRD #1042264, Registered Representative, Port Charlotte, Florida) was fined \$2,500 and suspended from association with any NASD member in any capacity for 10 days for participation in an outside business activity, and fined \$10,000 and suspended from association with any NASD member in any capacity for six months for failure to respond. The fines shall be payable prior to Tarnecki's reentry into the securities industry. The sanctions were based on findings that Tarnecki participated in an outside business activity without providing prior notice to his firm, and failed to respond in a timely manner to NASD requests for information. (NASD Case #C07990050)

June Actions

Arthur Andrew Alonzo, III (CRD #2090475, Registered Representative, Boca Raton, Florida) was barred from association with any NASD member in any capacity and suspended from association with any NASD member in any capacity for one year. The sanctions were based on findings that Alonzo falsified client documents, engaged in unauthorized trade transactions, and made unsuitable recommendations to public customers. Alonzo also acted in a registered capacity without being registered and failed to respond to NASD requests for information.

Alonzo's suspension will begin on June 19, 2000, and will conclude on June 18, 2001. (NASD Case #C07990070)

Robert Smith Baldwin (CRD #813373, Registered Representative, Sarasota, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$7,000, which includes the disgorgement of financial benefits received of \$4,500, and suspended from association with any NASD member in any capacity for 30 days. Payment of the fine and restitution shall be a prerequisite for consideration of any application for reentry into the securities industry. Without admitting or denying the allegations, Baldwin consented to the described sanctions and to the entry of findings that he served as a representative of another member firm, participated in outside business activities, and received compensation from the firm, without giving prompt written notice to his member firm of his association with another firm.

Baldwin's suspension began June 5, 2000, and will conclude on July 4, 2000. (NASD Case #C07000028)

Juan Ramon Diaz (CRD #2751770, Registered Representative, Orlando, Florida) was barred from association with any NASD member in any capacity and ordered to pay \$84,439 in restitution plus pre-judgement interest to a public customer. The sanctions were based on findings that Diaz converted \$84,439 for his own use and benefit that he received from a public customer for investment purposes and made misrepresentations to the customer regarding his member firm's involvement in a private placement for a company owned by the customer. (NASD Case #C07990055)

Arturo Ehrlich (CRD #2026759, Registered Representative, Key Biscayne, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to 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, Ehrlich consented to the described sanctions and to the entry of findings that he engaged in an outside business activity without providing written notice to his member firm.

Ehrlich's suspension began on June 5, 2000, and will conclude on July 4, 2000. (NASD Case #C07000030)

Vito Gili, Jr. (CRD #2670123, Registered Principal, Boca Raton, Florida) submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gili consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. (NASD Case #C07000016)

Ali Safavi (CRD #1958071, Registered Representative, McLean, Virginia) was barred from association with any NASD member in any capacity. The sanction was based on findings that Safavi forged documents and converted customer funds totaling \$215,133 for his own use. The findings also stated that Safavi changed the addresses of public customers without their permission or knowledge. On at least one occasion, he changed their addresses to his own residential address. In addition, Safavi failed to respond to NASD requests for information. (NASD Case #C07990060)

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

Kent Anderson (CRD #2717386, Registered Representative, Waterford, Michigan) was barred from association with any NASD member in any capacity. The sanction was based on findings that Anderson deposited a customer refund check into his personal account without the customer's knowledge or consent, failed to pay the premium for the customer's insurance policy, and, instead, used the funds for some purpose other than for the customer's benefit, thereby improperly using customer funds. The findings also stated that Anderson failed to respond to NASD requests for information. (NASD Case #C8A990053)

Sylvester Cannon, Jr. (CRD #2766126, Registered Representative, Detroit, Michigan) was fined \$25,000 and barred from association with any NASD member in any capacity. The NAC imposed the sanctions following appeal of an OHO decision. The decision became final following Cannon's dismissed appeal to the SEC. The sanctions were based on findings that Cannon failed to respond to NASD requests for information. (NASD Case #C8A980054)

May Actions

William Thomas Breese (CRD #2542710, Registered Representative, Midlothian, Illinois) was barred from association with any NASD member in any capacity. The sanction was based on findings that Breese converted funds totaling nearly \$300,000 from public customers for his own use and benefit. Breese also failed to respond to NASD requests for information. (NASD Case #C8A990039)

Michael John David Halladay (CRD #2275159, Registered Representative, Belvidere, Illinois) was barred from association with any NASD member in any capacity. The sanction was based on findings that Halladay participated in private securities transactions without providing prior written notification to his member firm. Halladay also failed to respond to NASD requests for information. (NASD Case #C8A990006)

Boggie Hanczaruk-Harlow (CRD #2381253, Registered Principal, Woodbridge, Illinois) was barred from association with any NASD member in any capacity and ordered to pay \$43,000 in restitution to a public customer. The sanctions were based on findings that he participated in private securities transactions that resulted in a customer loss of \$43,000, without prior written notice to, and approval of, his member firm. Hanczaruk-Harlow also failed to respond to NASD requests for information. (NASD Case #C8A990041)

Miller Tabak Hirsch & Co. (CRD #10384, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$12,500, and fined an additional \$5,000 jointly and severally with an individual. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it entered orders into the Small Order Execution SystemSM (SOESSM) on the same side of the market in securities, and in each instance, the order, based on a single investment decision, was larger than the maximum order size for SOES, and was broken up into small parts and entered into SOES exceeding the SOES maximum order size for that security if aggregated. The findings also stated that the firm entered orders for trades from its proprietary account as SOES orders for execution against a SOES Market Maker, and executed securities transactions for the accounts of its customers but failed to make and keep current a memorandum of each order received. In addition, the firm failed to establish or maintain adequate written supervisory procedures regarding its trading and market-making activities. (NASD Case #C8A000021)

William James O'Brien (CRD #350577, Registered Representative, Hawthorn Woods, Illinois) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity and ordered to pay \$60,000, plus interest, in restitution to public customers. The restitution is due and payable prior to any application or request for relief from any statutory disqualification. Without admitting or denying the allegations, O'Brien consented to the described sanctions and to the entry of findings that he sold \$60,000 in promissory notes to public customers, and failed to provide written notice to, or receive written authorization from, his member firm of his participation in the private securities transactions. The findings also stated that O'Brien misrepresented to the customers that their funds would be used to purchase property which would then be sold and the proceeds of the sale would be used to repay the customers when, in fact, the funds were used for his own benefit. The NASD determined that as a result of this misrepresentation, O'Brien received checks totaling \$60,000 payable to him, negotiated and

cash the checks, and used the funds for purposes other than the customers' benefit. O'Brien also filed a Form U-4 with the NASD that failed to disclose a bankruptcy petition filed in Illinois. (NASD Case #C8A000016)

Peters Securities Co., L.P. (CRD #15970, Chicago, Illinois), Reuben Donnelley Peters (CRD #1329222, Registered Principal, Evanston, Illinois), and John Walter Sobolewski (CRD #1327410, Registered Principal, Woodbridge, Illinois) submitted a Letter of Acceptance, Waiver, and Consent (AWC) pursuant to which the firm was censured and fined \$55,000, jointly and severally with Peters. Peters was suspended from acting in the capacities of a general securities principal and/or a financial and operations principal for 30 days and required to requalify by exam as a general securities principal and a financial and operations principal within 90 days of the end of the suspension or cease acting in such capacities until he has requalified. Sobolewski was censured, fined \$15,000, and required to requalify by exam as a financial and operations principal within 90 days of the date that the AWC was accepted by the NAC or cease acting in such capacity until he has requalified.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Peters and Sobolewski, effected securities transactions when it failed to maintain the minimum required net capital. The findings also stated that the firm, acting through Peters, executed transactions at locations but failed to register any of the locations as Offices of Supervisory Jurisdiction (OSJ) and failed to designate an appropriately registered principal in each of the locations. In addition, the firm, acting through Sobolewski, allowed an individual to act in the capacity of a general securities principal when the individual was not appropriately qualified or registered in such capacity. Furthermore, the NASD determined that the firm, acting through Peters, failed to prepare, maintain, and/or enforce adequate written supervisory procedures regarding the Regulatory Element of the Continuing Education requirement and reviewing the activities and conducting an annual inspection of each OSJ office. (NASD Case #C8A000023)

Brian Michael Rowland (CRD #1558510, Registered Representative, Bartlett, Illinois) and Nelida Vazquez-Rowland (CRD #1410094, Registered Principal, Bartlett, Illinois) submitted an Offer of Settlement pursuant to which Rowland was fined \$10,000 and suspended from association with any NASD member in any capacity for two years. The fine shall be due and payable either prior to reassociation with a member firm following the two year suspension or prior to any application or request for relief from any statutory disqualification. Vazquez-Rowland was barred from association with any NASD member firm. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they engaged in private securities transactions and failed and neglected to give written notice to, or receive written approval from, their member firm prior to engaging in such activities. (NASD Case #C8A990065)

Thomas Edward Smith (CRD #2225515, Registered Representative, Bay City, Michigan) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Payment of the fine shall be a prerequisite for consideration of any application for association with a member firm. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide written notice to, or receive written authorization from, his member firm of his participation in such transactions. The findings also stated that Smith executed transactions involving equity securities for the accounts of public customers when he was not properly qualified and registered in an appropriate capacity. (NASD Case #C8A0000017)

Michael John Tindall (CRD #2630450, Registered Representative, Novi, Michigan) was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 business days. The fine shall not be due and payable until Tindall seeks to re-enter the securities industry. The sanctions were based on findings that Tindall forged public customers' signatures on various forms he submitted in connection with their applications for variable appreciable life insurance policies, without their knowledge or consent. (NASD Case #C8A990061)

June Actions

D. H. Brush & Associates, Inc. (CRD #3667, Chicago, Illinois) and Edwin McBride (CRD #1195514, Registered Principal, Chicago, Illinois) submitted an Offer of Settlement pursuant to which the firm and McBride were fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through McBride, failed to enforce supervisory procedures and failed to reasonably supervise an individual with a view to achieving compliance with the NASD's registration regulations. (NASD Case #C8A990074)

District 8B - Cleveland

April Actions

Daniel James Butchello, Jr. (CRD #2247132, Registered Representative, Olean, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Butchello failed to respond to NASD requests for information concerning termination from his member firm. (NASD Case #C8B990029)

Charter One Securities, Inc. (CRD #13373, Cleveland, Ohio) and Robert Joseph Thompson, Jr. (CRD #2667325, Registered Principal, Cleveland, Ohio) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$15,000, jointly and severally.

Without admitting or denying the allegations, the firm and Thompson consented to the described sanctions and to the entry of findings that the firm, acting through Thompson, effected transactions in securities when it failed to maintain the minimum required net capital. The findings also stated that the firm, acting through Thompson, filed materially false monthly FOCUS reports. (NASD Case #C8B000003)

May Actions

Anyta Leigh Boroski (CRD #2983888, Registered Representative, Westerville, Ohio) was barred from association with any NASD member in any capacity. The sanction was based on findings that Boroski failed to respond to NASD requests for information. (NASD Case #C8B990035)

June Actions

Samuel Lewis Werek (CRD #2174774, Registered Principal, Columbus, Ohio) was barred from association with any NASD member in any capacity. The sanction was based on findings that Werek failed to respond to NASD requests for information. (NASD Case #C8B990036)

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

District 9A - Philadelphia

April Actions

Capital Strategies Limited (CRD #10253, Philadelphia, Pennsylvania) and Bart Steven Kaplow (CRD #264208, Registered Principal, Philadelphia, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured; fined \$13,500, jointly and severally; and required to pay \$1,792.32 in restitution to public customers. Without admitting or denying the allegations, the firm and Kaplow consented to the described sanctions and to the entry of findings that the firm, acting through Kaplow, failed to evaluate and prioritize its training needs and failed to develop a written training plan. The findings also stated that the firm, acting through Kaplow, effected transactions in equity securities prior to receiving a modification to, or removal of, the restriction limiting its business transactions in specified securities which did not include equities. In addition, the firm, acting through Kaplow, failed to establish written procedures to supervise its equities business and the activities of its registered representatives in effecting equities transactions. Furthermore, the firm, acting through Kaplow, failed to fulfill its obligation to obtain the best execution of market orders pertaining to an equity security in that it failed to process orders internally and transmit them to the firm's clearing house in a timely manner. (NASD Case #C9A000009)

First Security Investments, Inc. (CRD #24035, Kingston, Pennsylvania) and Margaret Charles Slusser (CRD #1977559, Registered Principal, Wilkes-Barre, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$15,000, jointly and severally. Without admitting or denying the allegations, the firm and Slusser consented to the described sanctions and to the entry of findings that the firm, acting through Slusser, failed to evaluate the firm's training needs, to develop a written training plan, and to administer Firm Element training to its covered registered persons pursuant to a written plan. The findings also stated that the firm, acting through Slusser, failed to prevent representatives from performing duties as representatives even though they had failed to complete the Regulatory Element of Continuing Education by the required date. (NASD Case #C9A000006)

Bela Standard Rossmann (CRD #2296135, Registered Principal, Chalfont, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity and required to pay \$50,000, plus interest, in restitution to a public customer. The restitution is due and payable prior to any application requesting relief from statutory disqualification. Without admitting or denying the allegations, Rossmann consented to the described sanctions and to the entry of findings that he received \$100,000 from a public customer to conduct securities transactions, failed to conduct the transactions, and, instead, converted the funds to his own use and benefit without the customer's knowledge or consent. The findings also stated that Rossmann failed to respond to NASD requests for information and documentation regarding the customer's complaint of conversion and other violative conduct. (NASD Case #C9A000008)

Kenneth Allen Thompson (CRD #1759914, Registered Principal, Morton, Pennsylvania) was barred from association with any NASD member in any capacity. The sanction was based on findings that Thompson failed to respond to NASD requests for information. (NASD Case #C9A990042)

May Actions

Michael William Burke (CRD #1793662, Registered Representative, Mount Joy, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Burke consented to the described sanction and to the entry of findings that he provided fictitious account statements to a public customer to deceive him about the existence and value of investments. The findings also stated that Burke failed to respond to NASD requests to provide documents. (NASD Case #C9A000013)

Valerie Remon Patterson (CRD #2350853, Registered Principal, Lanham, Maryland) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Patterson consented to the described sanction and to the entry of findings that she received \$1,194 from individuals recruited to represent affiliates of her member firm and deposited the funds in her personal bank account instead of remitting them as required. (NASD Case #C9A000011)

June Actions

The Advisors Group, Inc. (CRD #14035, Bethesda, Maryland) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$11,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted an individual to perform duties as a registered person while his registration status with the NASD was inactive due to his failure to complete the Regulatory Element of the NASD's Continuing Education Program in a timely manner. (NASD Case #C9A000016)

District 9B - New Jersey

April Actions

Eliezer Gurfel (CRD #1409216, Registered Representative, Washington, D.C.) was censured and barred from association with any NASD member in any capacity. The SEC affirmed the findings of the NAC. The decision became final following a denial of Gurfel's appeal petition by the U.S. Court of Appeals for the District of Columbia. The sanctions were based on findings that Gurfel forged, or caused to be forged, the signature of the firm's president on commission checks totaling \$9,625.64, and converted the proceeds to his own use. (NASD Case #C9B950010)

May Actions

G. W. Piper & Co., Inc. (CRD #22563, Florham Park, New Jersey), George Warren Piper (CRD #363944, Registered Principal, Ridgewood, New Jersey), and Anthony Vincent Graziano (CRD #1853757, Registered Principal, Florham Park, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm and Piper were censured and fined \$157,500, jointly and severally; the firm and Graziano were fined \$7,500, jointly and severally; and Graziano was fined \$2,500, individually. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Piper, allowed an individual to act as a general securities representative and allowed Graziano to act as a general securities principal while both failed to register in the

respective capacities. The findings also stated that the firm, acting through Graziano, failed to evaluate and prioritize its training needs and to implement a written training plan for its Firm Element training requirement. (NASD Case #C9B000006)

Horner Steven Williams (CRD #1884779, Registered Representative, Red Bank, New Jersey) was fined \$25,000 and suspended from association with any NASD member in any capacity for two years. The fine is due and payable when Williams seeks to re-enter the securities industry. The sanctions were based on findings that Williams failed to respond timely and completely to NASD requests for information. (NASD Case #C9B990033)

June Actions

Jerome Domershick (CRD #733884, Registered Principal, Malverne, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$5,000, which includes disgorgement of unlawful profits of \$3,000, and suspended from association with any NASD member in any capacity for five days. Without admitting or denying the allegations, Domershick consented to the described sanctions and to the entry of findings that he engaged in a scheme to circumvent the NASD's Free-Riding and Withholding Interpretation when he, acting through his wife and one of his customers, knowingly purchased shares of common stock in a hot issue conversion offering.

Domershick's suspension began on June 5, 2000, and concluded at the close of business on June 9, 2000. (NASD Case #C9B000010)

James Scott Marxer (CRD #2816890, Registered Principal, Poughkeepsie, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 30 days. Payment of the fine shall be a prerequisite for consideration of any application for reentry into the securities industry. Without admitting or denying the allegations, Marxer consented to the described sanctions and to the entry of findings that he failed to disclose on his Form U-4 that he was the subject of a customer complaint and that he was named as a defendant in a California civil action.

Marxer's suspension began June 5, 2000, and will conclude on July 4, 2000. (NASD Case #C9B990030)

Seaboard Securities, Inc. (CRD #755, Florham Park, New Jersey), Anthony DiGiovanni (CRD #601698, Registered Principal, Florham Park, New Jersey), Joseph Zappala (CRD #475869, Registered Principal, Pilesgrove, New Jersey), David Goldblatt (CRD #1661615, Registered Principal, New York, New York) and John Joseph Plunkett (CRD #2321368, Registered Principal, Brooklyn, New York) submitted Offers of Settlements pursuant to which the firm was censured and fined \$150,000, jointly and severally, with Zappala and DiGiovanni. In addition, Zappala was fined \$10,000, suspended from association with any NASD

member in any capacity for 15 days, and suspended from association with any NASD member in any principal capacity for 30 days. Goldblatt was censured, fined \$10,000, and suspended from association with any NASD member in any principal capacity for 45 days. Plunkett was censured, fined \$7,500, and suspended from association with any NASD member in any principal capacity for 15 days.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Zappala, failed to adequately establish or maintain certain aspects of a supervisory system reasonably designed to ensure compliance with the securities laws; the respondents failed to hold annual compliance meetings, failed to conduct an annual inspection of all areas of business, failed to establish procedures for the review and endorsement by a registered principal of all transactions, failed to evidence background checks of newly hired registered representatives, and failed to register three of its Offices of Supervisory Jurisdiction in that capacity. The findings also stated that the firm, acting through Zappala, failed to establish, maintain, and enforce adequate written supervisory procedures in certain areas of its business operations, including trading and market making, retail sales, mutual funds, and options, and allowed Plunkett to act as a general securities principal of the firm without being registered as a principal. The NASD also found that the firm, acting through Zappala, failed to register an office as a branch office; failed to file customer complaints received in a timely manner; allowed a registered representative to conduct an institutional securities business at the firm while his securities registration was inactive due to a failure to complete the Regulatory Element of the NASD's Continuing Education Program in a timely manner; and failed to prioritize its training needs and implement a written training plan for its Firm Element training requirement. The NASD also determined that the firm, acting through DiGiovanni, failed to develop and implement written procedures providing for the supervision of certain options accounts and orders in such accounts; deposited common stock and warrants that traded at a premium in the secondary account in its proprietary trading account in violation of the NASD's Free-Riding and Withholding Interpretation; and failed to obtain certain required information about the offering to determine that the account did not fall within a prohibited category according to the Free-Riding and Withholding Interpretation. Furthermore, the NASD determined that the firm, acting through DiGiovanni, reported transactions to the Automated Confirmation Transaction ServiceSM (ACTSM) in violation of applicable securities laws and regulations regarding trade reporting and failed to indicate on order tickets whether orders were solicited or unsolicited and whether the order was a limit order or a market order. In addition, Goldblatt allowed an individual to continue to act as a general securities representative for the firm when his registration was inactive due to a failure to timely complete the Regulatory Element of the NASD's Continuing Education Program.

Zappala's suspension in all capacities began June 5, 2000, and concluded at the close of business June 19, 2000; his

suspension in a principal capacity began June 5, 2000, and will conclude July 4, 2000. Goldblatt's suspension will begin July 3, 2000, and will conclude at the close of business August 18, 2000. Plunkett's suspension began June 5, 2000, and concluded at the close of business June 19, 2000. (NASD Case #C9B000009)

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

April Actions

Jason Todd Ash (CRD #2608941, Registered Representative, Miller Place, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Ash failed to respond to NASD requests for information regarding his termination from a member firm. (NASD Case #C10990130)

Dudley Alexander Biggs (CRD #2994166, Registered Principal, Yonkers, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to 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, Biggs consented to the described sanctions and to the entry of findings that he failed to disclose criminal charges on a Form U-4. (NASD Case #C10000028)

Donald & Co. Securities, Inc. (CRD #7776, Tinton Falls, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$10,000, and required to retain an independent consultant to review, and make recommendations to improve, the firm's net capital procedures. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, acting through an individual, it failed to maintain the required minimum net capital. (NASD Case #C10970175)

John Vincent McEwan (CRD #2238252, Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$15,000, suspended from association with any NASD member in any capacity for 13 months, and required to pay \$5,784.02 in restitution to a public customer within 60 days of acceptance of this AWC by the NASD. McEwan was also required to requalify by exam in all capacities within 90 days from the date the AWC was issued by the NASD. If McEwan fails to requalify within that time, he will be suspended from acting in any capacity requiring registration until such exams are successfully completed. Payment of the fine and satisfactory proof of payment of restitution, plus interest, shall be prerequisites for consideration of any application for reentry into the securities industry. Without admitting or denying the allegations, McEwan consented to the described sanctions and to the entry of findings that he effected securities transactions in a public customer's account without the customer's prior knowledge or consent. The findings also stated that McEwan completed and signed a new account form for the

customer when he knew that the customer's residence address on the new account form was incorrect. (NASD Case #C1000024)

Phillip John Milligan (CRD #1874103, Registered Principal, Guttenberg, New Jersey) was barred from association with any NASD member in any capacity. The decision became final following Milligan's dismissed appeal to the NAC. The sanction was based on findings that Milligan failed to respond to NASD requests to appear for on-the-record testimony. (NASD Case #C10990058)

Marc Schuman Nemeth (CRD #2573956, Registered Representative, New York, New York) submitted an Offer of Settlement pursuant to which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 90 business days. The fine is payable in full 30 days after the conclusion of the suspension. Without admitting or denying the allegations, Nemeth consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information. (NASD Case #C10990077)

Remo P. Rei (CRD #2348000, Registered Representative, Cugnasco, Italy) was barred from association with any NASD member in any capacity. The sanction was based on findings that Rei failed to respond to NASD requests for information relating to complaints concerning the misappropriation of customer funds. (NASD Case #C10990155)

Daniel Reyes (CRD #2557051, Registered Representative, New York, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Reyes failed to respond to NASD requests for information regarding his termination from a member firm. (NASD Case #C10990157)

Jean Guiteaud Severe (CRD #2688594, Associated Person, Orange, New Jersey) submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Severe consented to the described sanctions and to the entry of findings that he failed to disclose a nolo contendere plea to non-securities related felony charges involving the wrongful taking of property on his Form U-4. (NASD Case #C10990147)

May Actions

Frank Paul Bavaro (CRD #1504493, Registered Principal, Staten Island, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$5,000, suspended from association with any NASD member in any capacity for 10 days, and required to requalify as a general securities principal. Without admitting or denying the allegations, Bavaro consented to the described sanctions and to the entry of findings that he changed a trading desk time clock to an earlier date, placed the new time stamp on an internal order ticket that reflected the cancellation of an order

to buy a New York Stock Exchange (NYSE)-listed security on the earlier date. Bavaro sent the ticket to NYSE Market Surveillance as evidence of the canceled trade. (NASD Case #C10000055)

Brookehill Equities, Inc. (CRD #7966, Westport, Connecticut) and Sarabeth Margolis Wizen (CRD #845499, Registered Representative, Randolph Township, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$15,182, jointly and severally, which included \$2,682 in commissions that the firm received. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Wizen, failed to detect that an individual solicited new account forms and signed her name to the forms as a registered representative, solicited and completed order tickets for transactions with public customers, and generated approximately \$5,364 in commissions before the effective date of her registration. The findings also stated that the firm, acting through Wizen, failed to establish, maintain, and enforce adequate written supervisory procedures reasonably designed to ensure the firm's compliance with the NASD membership and registration rule. (NASD Case #C10000032)

Kelly Marie Denti (CRD #2279001, Registered Representative, Flemington, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Denti consented to the described sanction and to the entry of findings that she failed to disclose withdrawal penalties and surrender charges to public customers in connection with the sale of mutual funds and variable annuities. (NASD Case #C10000051)

Gale Reich Donovan (CRD #70260, Registered Representative, New York, New York) was fined \$39,000; suspended from association with any NASD member in any capacity for two years and 30 business days; required to pay \$4,488, plus interest, in restitution to a public customer for unsuitable recommendations; and barred from association with any NASD member in any capacity. The fines shall be due and payable prior to Donovan's re-entry in the securities industry. The sanctions were based on findings that Donovan engaged in unsuitable and excessive trading in the accounts of a public customer and effected discretionary trades without the customer's prior written authorization. The findings also stated that Donovan acted as a general securities representative at a member firm without being registered with the NASD. In addition, Donovan failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #C10990142)

Richmond Talbot Fisher (CRD #2994893, Registered Principal, Riverside, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$7,500 and suspended from association with any NASD member in a principal capacity for 10 business days. Without admitting or denying the allegations, Fisher consented to the described sanctions and to the entry of findings that he

functioned as the president and chief operating officer of his firm and was active in the management of the firm's securities business, including the supervision of employees and the conduct of business, without being registered in the capacity of a general securities principal. (NASD Case #C10000038)

Bruce Thomas Gmahle, Jr. (CRD #2044839, Registered Representative, Point Pleasant Beach, New Jersey) submitted an Offer of Settlement pursuant to which he was fined \$10,858, which includes the disgorgement of \$858 of commissions earned, and barred from association with any NASD member in any capacity with the right to reapply after two years. The fine, including disgorgement, shall be due and payable prior to reassociation with a member firm following the bar or prior to any application requesting relief from a statutory disqualification. Without admitting or denying the allegations, Gmahle consented to the described sanctions and to the entry of findings that he executed transactions in the accounts of public customers without their prior knowledge, authorization, or consent. (NASD Case #C10990211)

Averell Golub (CRD #2083375, Registered Representative, Brooklyn, New York) was fined \$50,175 and suspended from association with any NASD member in any capacity for one year. The fine is due and payable upon Golub's re-entry into the securities industry. The sanctions were based on findings that Golub made material misrepresentations and omitted material facts to solicit public customers to purchase a security.

Golub has appealed this case to the NAC and it has been called for review by the NAC. The sanctions are not in effect pending consideration of the review. (NASD Case #C10990024)

Jonathan David Gottfried (CRD #2647864, Registered Representative, Malverne, New York) submitted an Offer of Settlement pursuant to which he was fined \$2,500 and suspended from association with any NASD member in any capacity, including clerical and administrative, for 15 business days. Without admitting or denying the allegations, Gottfried consented to the described sanctions and to the entry of findings that he failed to disclose a settled customer complaint on a Form U-4. (NASD Case #C10990214)

Joseph Jerry Lacertosa (CRD #2556113, Registered Representative, Pompano, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Lacertosa failed to respond to NASD requests for information. (NASD Case #C10990160)

Paul Patrick McGlynn (CRD #2496302, Registered Principal, Middle Village, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that McGlynn failed to respond to NASD requests for information and to appear for on-the-record interviews. (NASD Case #C10990151)

Leonard Alan Neuhaus (CRD #1871294, Registered Principal, Roslyn Heights, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$6,400 and suspended from association with any NASD

member in any supervisory capacity for 10 business days. Without admitting or denying the allegations, Neuhaus consented to the described sanctions and to the entry of findings that a member firm, acting through Neuhaus, caused the sale of units of a public offering to a general securities representative who, at the time of the sale, was a prohibited recipient of the hot issue. The findings also stated that the firm, acting through Neuhaus, failed to prepare, maintain, and enforce adequate written supervisory procedures in connection with the NASD's Free-Riding and Withholding Interpretation. (NASD Case #C10000034)

John Joseph Puglisi (CRD #1537482, Registered Representative, New York, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Puglisi failed to respond to NASD requests for information. (NASD Case #C10990069)

Philip Rubinovich (CRD #2615385, Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was suspended from association with any NASD member in any capacity for 90 business days and required to requalify in all capacities. Without admitting or denying the allegations, Rubinovich consented to the described sanctions and to the entry of findings that he sold a private placement to a public customer and failed to disclose this activity to his member firm. Rubinovich received \$5,000 in compensation for the sale of the private placement. (NASD Case #C10000041)

Louis Joseph Sorrentino (CRD #2192207, Registered Representative, Marlboro, New Jersey) submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sorrentino 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. (NASD Case #C10000010)

Eddy Ralph St. Louis (CRD #2358608, Registered Principal, Brooklyn, New York) was barred from association with any NASD member in any capacity and ordered to pay \$1,300, plus interest, in restitution to a public customer. The sanctions were based on findings that St. Louis received \$2,000 from a public customer for investment in a company he controlled and, instead, converted the money to his own use and benefit without authorization from the customer. (NASD Case #C10990196)

Standard & Poor's Securities, Inc. (CRD #5248, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to 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 ensure that individuals actively engaged in the firm's securities business, or in its management, were properly registered with the NASD. (NASD Case #C10000036)

Roberto Gonzalez Villasenor, Jr. (CRD #1031313, Registered Representative, New York, New York) submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 business days. The fine shall be due and payable prior to reassociation with a member firm following the suspension or prior to any application requesting relief from a statutory disqualification. Without admitting or denying the allegations, Villasenor consented to the described sanctions and to the entry of findings that he failed to provide his member firm with written or oral notice of his participation in outside business activities. (NASD Case #C10000005)

Andrew Neal Weber (CRD #2364164, Registered Representative, Rockville Centre, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Weber failed to respond to NASD requests for information. (NASD Case #C10990166)

Andrew Richard Zimmer (CRD #1493072, Registered Representative, Stamford, Connecticut) was barred from association with any NASD member in any capacity and ordered to pay \$10,000, plus interest, in restitution to a member firm. The sanctions were based on findings that Zimmer engaged in outside business activities without providing prompt written notification to his member firm. The findings also stated that Zimmer fraudulently induced a public customer to send him \$10,000 as an advance against fee, withheld repayment of the advance, and converted the funds to his own use and benefit. In addition, Zimmer failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #C10990191)

June Actions

America First Associates Corp. (CRD #38245, New York, New York) and Joseph Ricupero (CRD #1457028, Registered Representative, Bayside, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm and Ricupero were censured and fined \$12,500, jointly and severally. Without admitting or denying the allegations, the firm and Ricupero consented to the described sanctions and to the entry of findings that the firm, acting through Ricupero, failed to develop a Continuing Education training needs analysis and training plan and failed to evidence that training took place within a calendar year. The findings also stated that the firm, acting through Ricupero, conducted a securities business while failing to maintain its minimum net capital requirement. In addition, the firm, acting through Ricupero, failed to provide prompt written notice to the NASD of the departure of principals and failed to maintain the level of experience and qualifications of its principals as presented during the pre-membership application process. (NASD Case #C10000050)

Dmitry Aranovich (CRD #2373613, Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was

fined \$15,000 and suspended from association with any NASD member in any capacity for 15 months. The fine shall be due and payable prior to reassociation with a member firm following the suspension or prior to any application or request for relief from any statutory disqualification. Without admitting or denying the allegations, Aranovich consented to the described sanctions and to the entry of findings that he purchased shares of stock in the account of a public customer without the prior knowledge, consent, or authorization of the customer. The findings also stated that Aranovich entered into a settlement agreement with the customer without providing his member firm with notice of the settlement.

Aranovich's suspension began June 5, 2000, and will conclude at the close of business on September 4, 2001. (NASD Case #C10000068)

John Christos Daskalis (CRD #2006603, Registered Representative, Bayside, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to 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, Daskalis consented to the described sanctions and to the entry of findings that he placed and effected orders for the purchase of fixed annuity and insurance products for clients directly with an insurance company and not through his member firm, or his firm's authorized insurance companies, and effected these transactions without providing written notice of such activity to his member firm.

Daskalis' suspension began June 5, 2000, and concluded at the close of business on June 9, 2000. (NASD Case #C10000060)

David Manning Fresne (CRD #1091992, Registered Representative, Millerton, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$15,000, which includes disgorgement of \$5,000 earned as a result of outside business activities, and ordered to requalify as a general securities representative. If Fresne fails to requalify within 180 days of the issuance of this AWC, he shall not associate with any NASD member firm in any capacity until he requalifies as a general securities representative. Without admitting or denying the allegations, Fresne consented to the described sanctions and to the entry of findings that he failed to provide a timely response to an NASD request for information. The findings also stated that he failed to provide prompt written notice to his member firm regarding business activity outside the scope of his employment with the firm and the receipt of compensation for such employment. (NASD Case #C10000059)

Arthur Vincent Gunning, Jr. (CRD #2493535, Registered Representative, Brooklyn, New York) submitted an Offer of Settlement pursuant to which he was fined \$30,000, barred from association with any NASD member in any capacity with a right to reapply after two years, and ordered to pay \$20,798, plus interest, in restitution to public customers. The fine and restitution shall be due and payable prior to reassociation with a member firm following the bar or prior to any

application or request for relief from any statutory disqualification. Without admitting or denying the allegations, Gunning consented to the described sanctions and to the entry of findings that he executed trades in the accounts of public customers without their prior knowledge, authorization, or consent. The findings also stated that Gunning made baseless and improper price and performance predictions to public customers. In addition, Gunning guaranteed a customer against loss. (NASD Case #C10990141)

HFC Capital Corp (CRD #30539, New York, New York) and Ephram Pollack (CRD #1231145, Registered Principal, Flushing, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm and Pollack were censured and fined \$20,000, jointly and severally. Pollack was also suspended from association with any NASD member in any supervisory capacity for two years and ordered to requalify by exam as a general securities principal (Series 24) within 90 days of acceptance of the AWC. Without admitting or denying the allegations, the firm and Pollack consented to the described sanctions and to the entry of findings that the firm, acting through Pollack, failed to reasonably and properly supervise its representatives' activities so as to detect and prevent violations of NASD rules resulting from their offer and sale of stock.

Pollack's suspension began June 5, 2000, and will conclude at the close of business on June 4, 2002. (NASD Case #C10000070)

Major League Securities, LLC (CRD #32211, Jericho, New York) and Steven Bart Schonfeld (CRD #1051868, Registered Principal, East Hills, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm and Schonfeld were censured and fined \$13,500, jointly and severally. The firm was also fined an additional \$2,000. Without admitting or denying the allegations, the firm and Schonfeld consented to the described sanctions and to the entry of findings that the firm permitted separate agency orders in excess of the maximum order size to be split and entered into SOES so as not to exceed the maximum permissible order size. The findings also stated that the firm, acting through Schonfeld, failed to make and keep order memoranda concerning separate securities transactions and failed to record the correct time of execution for other securities transactions. The firm, acting through Schonfeld, maintained discretionary accounts without the customers' prior written authorization to specifically designated individuals and without the firm's acceptance, in writing, of the discretionary authorizations. In addition, the firm, acting through Schonfeld, failed to conduct an annual needs analysis, prepare a written training plan, or provide any training to its covered registered persons as required by the Firm Element of the Continuing Education Program. Further, the firm, acting through Schonfeld, failed to prepare, maintain, and enforce adequate written supervisory procedures covering each of the above areas. (NASD Case #C10000047)

James Albert Mayer, Jr. (CRD #2305774, Registered Representative, Bay Shore, New York) submitted an Offer of Settlement pursuant to which he was barred from

association with any NASD member in any capacity and ordered to pay \$23,996.23, plus interest, in restitution to public customers. Without admitting or denying the allegations, Mayer consented to the described sanctions and to the entry of findings that he effected transactions in the accounts of public customers without the customers' knowledge or consent. The findings also stated that Mayer failed to execute sales in the accounts of public customers. (NASD Case #C10990206)

Nathan & Lewis Securities, Inc. (CRD #8503, New York, New York) and Richard Berenger (CRD #1041622, Registered Principal, Bardonia, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm and Berenger were censured and fined \$10,000, jointly and severally. Without admitting or denying the allegations, the firm and Berenger consented to the described sanctions and to the entry of findings that the firm, acting through Berenger, failed to report statistical and summary information concerning customer complaints to the NASD. The findings also stated that the firm, acting through Berenger, failed to establish, maintain, and enforce adequate written supervisory procedures reasonably designed to achieve compliance with the NASD rule concerning customer complaint reporting procedures. (NASD Case #C10000069)

Thomas Damian O'Rourke (CRD #1325169, Registered Principal, Englewood, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and fined \$25,000. Without admitting or denying the allegations, O'Rourke consented to the described sanctions and to the entry of findings that he failed to report statistical and summary information regarding customer complaints to the NASD. The findings also stated that O'Rourke determined that his member firm would participate in a firm commitment underwriting when he knew that the firm failed to have sufficient net capital. O'Rourke also failed to establish, maintain, and enforce written supervisory procedures pertaining to the Regulatory and Firm Elements of the Continuing Education Program, trading, and market making. In addition, O'Rourke failed to ensure that each registered representative of the firm participated, no less than annually, in an interview or meeting conducted by the firm at which relevant compliance issues were discussed. (NASD Case #C10000062)

Roman Osmanov (CRD #2467401, Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$12,825, which includes the disgorgement of commissions earned of \$325, and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Osmanov consented to the described sanctions and to the entry of findings that he exercised discretionary authority and effected a purchase transaction in a public customer's account without obtaining prior written authorization from the customer or having the account accepted, in writing, as a discretionary account by his member firm. The findings also stated that in an attempt to mollify the customer, Osmanov proposed settlement terms to the customer without his firm's knowledge or consent.

Osmanov's suspension began June 5, 2000, and concluded at the close of business on June 23, 2000. (NASD Case #C10000053)

Doyle Lardell Randall, Sr. (CRD #2462237, Registered Representative, Dix Hills, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Randall made misrepresentations and omitted material facts to a public customer in connection with the purchase or sale of securities and engaged in activities requiring registration as a general securities representative without being registered in that capacity. The findings also stated that Randall failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #C10990162)

Bertram Howard Rosenblatt (CRD #1275489, Registered Representative, Syosset, New York) submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Rosenblatt consented to the described sanctions and to the entry of findings that he, without the knowledge, consent, or authorization of the customer, fabricated a letter of authorization purportedly signed by the customer that directed the transfer of shares of stock from the customer's account to the joint account of other customers. The findings also stated that Rosenblatt failed to respond to NASD requests for information and documentation. (NASD Case #C10000027)

Lance Jay Siedman (CRD #1719376, Registered Principal, Dix Hills, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$45,000 and suspended from association with any NASD member in any capacity for 45 days. Without admitting or denying the allegations, Siedman consented to the described sanctions and to the entry of findings that he effected the sale of stock while his member firm was restricted from doing so because of its participation in the syndicate that was underwriting a secondary stock offering and he effected transactions in the stock on behalf of another firm which resulted in the circumvention of the other firm's trading restrictions. The findings also stated that Siedman recorded stock trades as proprietary transactions when they were actually agency transactions on behalf of another firm. Siedman failed to establish a new account for the firm that placed the order and to record the transactions in that account and not in his firm's proprietary trading account.

Siedman's suspension began May 22, 2000, and will conclude at the close of business on July 5, 2000. (NASD Case #C10000049)

Jeffrey Richard Talboom, Jr. (CRD #1871309, Registered Representative, Smithtown, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$15,000 and suspended from association with any NASD member in any capacity for 18 months. Without admitting or denying the allegations, Talboom consented to the described sanctions and to the entry of findings that, while registered with a member firm, he opened a personal securi-

ties account at another firm without notifying his member firm, in writing, of the account and failed to notify the executing firm, in writing, of his association with a member firm. The findings also stated that Talboom received \$20,000 from a public customer for the purpose of investing in an account, failed to deposit the funds in a separate account, and, instead, deposited the funds into his personal account without the customer's prior knowledge, authorization, or consent. Talboom used the funds to purchase securities until he returned the funds and profits made trading with the funds at a later date.

Talboom's suspension began June 5, 2000, and will conclude at the close of business on December 4, 2001. (NASD Case #C10000064)

The Thornwater Company, L.P. (CRD #36195, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$40,000, and fined an additional \$2,500, jointly and severally with an individual. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report customer settlements and statistical and summary information regarding customer complaints to the NASD. The findings also stated that the firm, acting through an individual, failed to develop and administer written training plans in accordance with the Firm Element of the NASD's Continuing Education Program. In addition, the firm failed to enforce written supervisory procedures pertaining to the Regulatory and Firm Elements of the Continuing Education Program, trading, and market making. Furthermore, the firm failed to ensure that each registered representative of the firm participated, no less than annually, in an interview or meeting conducted by the firm at which relevant compliance issues were discussed. Moreover, the firm conducted a securities business and failed to maintain sufficient net capital and failed to report short-sale transactions correctly. (NASD Case #C10000061)

Mikhail Vainshtok (CRD #2483935, Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to 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, Vainshtok consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information in a timely manner.

Vainshtok's suspension began June 5, 2000 and concluded at the close of business on June 9, 2000. (NASD Case #C10000056)

Marlowe Robert Walker, III (CRD #1328130, Registered Representative, Hauppauge, New York) was barred from association with any NASD member in any capacity. The NAC imposed the sanction following an appeal of an OHO decision. The sanction was based on findings that Walker associated with a member firm while he was subject to statutory disqualification and knowingly submitted false, misleading, and inaccurate Forms U-4 and MC-400 to the NASD in

regard to his employment with a member firm. The findings also stated that Walker failed to testify truthfully during an NASD on-the-record interview. (NASD Case #C10970141)

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

None

May Actions

Nutmeg Securities, Ltd. (CRD #18975, Westport, Connecticut) and Matthew Kent Rochlin (CRD #1629493, Registered Principal, Westport, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm and Rochlin were censured; fined \$5,000, jointly and severally; and required to pay \$18,816.28, plus interest, in restitution to public customers, jointly and severally. The firm was also individually fined \$3,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm inaccurately reported Nasdaq SmallCapSM transactions to ACT as cross transactions when they should have been reported as sell or buy transactions. The findings also stated that the firm failed to identify aggregated transaction reports in a Nasdaq SmallCap security to ACT using the required ".B" modifier, failed to report transactions to ACT, failed to designate a transaction as late, and reported transactions late using the required ".SLD" modifier. The firm also failed to designate as late to ACT transactions in Nasdaq National Market* (NNM) securities and Consolidated Quotation System and reported transactions late using the required ".SLD" modifier. In addition, the firm, acting through Rochlin, charged excessive markups to retail customers based on its contemporaneous cost in principal transactions in a Nasdaq SmallCap security resulting in a gross dollar profit to the firm of \$18,816.28. Moreover, the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules relating to trade reporting and recordkeeping. (NASD Case #C11000006)

Ricky Cecil Reed (CRD #1092905, Registered Representative, Watertown, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 15 months. Without admitting or denying the allegations, Reed consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, or written approval from, his member firm. Reed received \$19,378.43 in commissions as a result of the transactions.

Reed's suspension began with the opening of business on April 24, 2000, and will conclude at the close of business on July 23, 2001. (NASD Case #C11000004)

June Actions

Trafalgar Financial Services, Inc. (CRD #36099, Boston, Massachusetts) and Carmen William Elio, Jr. (CRD #1861586, Registered Principal, Medford, Massachusetts) were censured and fined \$10,000, jointly and severally. The firm was fined an additional \$1,000, jointly and severally, with another individual. The sanctions were based on findings that the firm, acting through an individual, effected securities transactions while failing to maintain the minimum required net capital. The findings also stated that the firm, acting through Elio and another individual, permitted an inactive registered representative to engage in the securities business of the firm. In addition, the firm, acting through Elio, failed to establish, maintain, and enforce written supervisory procedures that ensured compliance with the Regulatory Element of the NASD's Continuing Education Program. (NASD Case #C11990042)

Waddell & Reed, Inc. (CRD #866, Shawnee Mission, Kansas) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$75,000. 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 written supervisory procedures reasonably designed to achieve compliance with applicable laws, regulations, and NASD rules relating to forgery, unauthorized transactions, and misappropriation. The findings also stated that, when confronted with evidence of problems in these areas, the firm failed to respond adequately and to take appropriate action that was reasonably designed to prevent violations by its registered representatives and achieve compliance with applicable securities laws, regulations, and NASD rules. (NASD Case #C11000007)

Enforcement Department

April Actions

Joel Marc Grant (CRD #1518004, Registered Principal, Roslyn, New York) submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Grant consented to the described sanction and to the entry of findings that he made baseless and improper price predictions as to speculative securities to public customers, failed to execute customer sell orders, and placed unauthorized trades. The findings also stated that Grant required that customers purchase aftermarket shares as a condition of purchasing IPO units. (NASD Case #CAF980031)

Horace Richard Hillberry (CRD #1136754, Registered Representative, Clearwater, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Payment of the fine shall be a prerequisite for consideration of any application for reentry into the securities industry. Without admitting or denying the alle-

gations, Hillberry consented to the described sanctions and to the entry of findings that he misrepresented to public customers that a new variable life insurance policy could be acquired for little or no additional cash payments by using cash values and/or future dividends from existing life insurance policies when, in fact, the customers were required to make payments to keep the insurance in force. The findings also stated that Hillberry sold variable life insurance to customers for whom the purchases were not suitable. In addition, Hillberry misrepresented that variable life insurance was a pension plan and failed to disclose the life insurance elements of the product. (NASD Case #CAF000004)

May Actions

Edwin Leslie Lawrence, Jr. (CRD #2282684, Registered Representative, Dix Hills, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Lawrence made baseless and improper price predictions, guarantees, and misrepresentations to public customers about speculative stocks. The findings also stated that Lawrence engaged in unauthorized trading in the accounts of customers and failed to execute sell orders for customers. (NASD Case #CAF980031)

June Actions

Keith Dennis Grossman (CRD #2127371, Registered Representative, Huntington Station, New York) was barred from association with any NASD member in any capacity and ordered to pay \$12,596, plus interest, in restitution to a public customer. The sanctions were based on findings that Grossman acted as part of a "boiler room" and executed unauthorized transactions in the accounts of public customers. The findings also stated that Grossman attempted to deceive one customer and to continue to execute transactions in the account of another customer after the customers had complained about the unauthorized transactions. (NASD Case #CAF990042)

Steven Gordon Jaross (CRD #1796840, Registered Representative, Forest Hills, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Jaross made baseless and improper price predictions, guarantees, and misrepresentations to public customers. The findings also stated that Jaross engaged in unauthorized trading in customer accounts and refused or failed to execute sell orders for customers. In addition, Jaross tied the sale of an IPO to a customer's commitment to purchase in the aftermarket. (NASD Case #CAF980031)

Joseph John Mandaro (CRD #2559154, Registered Representative, Coral Springs, Florida) was barred from association with any NASD member in any capacity and ordered to pay \$105,852, plus interest, in restitution to public customers. The sanctions were based on findings that

Mandaro made material misrepresentations and baseless price predictions to public customers and failed to disclose material facts including the risk of investing in highly speculative securities and negative information about the issuers. The findings also stated that Mandaro engaged in unauthorized trading in customer accounts for which he did not have discretionary authority and failed to execute customer sell orders. (NASD Case #CAF990011)

Stacy Meyers (CRD #2080315, Registered Representative, Scotch Plains, New Jersey) submitted an Offer of Settlement pursuant to which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Meyers consented to the described sanction and to the entry of findings that she failed to respond to NASD requests to appear for on-the-record testimony. (NASD Case #CAF990046)

Thomas Dennis Zoidis (CRD #477046, Registered Principal, Rydal, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$50,000, and suspended from association with any NASD member in a supervisory capacity for 30 days. Without admitting or denying the allegations, Zoidis consented to the described sanctions and to the entry of findings that he failed to adequately supervise the conduct of his member firm's municipal securities business and the activities of its associated persons. The findings also stated that Zoidis failed to adopt, maintain, and enforce written supervisory procedures to ensure compliance with Municipal Securities Rulemaking Board rules and applicable SEC rules. (NASD Case #CAF000011)

Market Regulation Committee

April Actions

Chase Securities, Inc. (CRD #10793, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$12,500, and required to submit revised written supervisory procedures concerning transaction reporting within 60 days of acceptance of this AWC by the NAC. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in NNM securities to ACT in a timely manner and failed to designate them as late to ACT. The firm also failed to report transactions executed outside normal market hours, to report their time of transaction, and to report listed securities transactions to ACT in a timely manner. The findings also stated that the firm failed to accept or decline transactions in eligible securities in a timely manner. Furthermore, the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning transaction reporting. (NASD Case #CMS000012)

Credit Suisse First Boston Corporation (CRD #816, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$40,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed short-sale transactions, failed to make an affirmative determination for each of the transactions, and failed to report short-sale transactions to ACT with a short-sale indicator. The findings also stated that the firm submitted an erroneous short interest position paper to the NASD and failed to establish, maintain, and enforce adequate written supervisory procedures reasonably designed to achieve compliance with the short-sale rules. (NASD Case #CMS990030)

Direct Access Brokerage Service (CRD #30057, Chicago, Illinois) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to respond in a timely manner to NASD requests for an automated submission of trading data for securities included in The Nasdaq Stock Market®, traded on a national securities exchange, or for non-Nasdaq® securities. The findings also stated that the firm submitted automated submissions of trading data after the date such information was required to be provided. (NASD Case #CMS000023)

First Albany Corporation (CRD #298, Albany, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to 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 execute customer limit orders contemporaneously after it traded each security for its own market-making account at a price that would have satisfied each customer limit order. The firm failed to display customer limit orders immediately when the orders were at a price that would have improved the firm's bid or offer in each security related to those orders. The findings also stated that the firm failed to display the full size of customer limit orders when the orders were priced equal to the firm's bid or offer and the national best bid or offer and the orders represented more than a de minimus change in relation to the size associated with the firm's bid or offer in each security. In addition, the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable rules regarding recordkeeping, best execution, limit order display, the Quote Rule, limit order protection, anti-competitive practices, and trade reporting for equity and fixed income transactions. (NASD Case #CMS000029)

GKN Securities Corp. (CRD #19415, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured; fined \$68,500; required to pay \$1,356.25, plus interest, in restitution to public customers; and required to revise its written supervisory procedures relating to ACT compliance, best execution, limit order protection, trade reporting, and other rules and regulations within 60 days of acceptance of this AWC by the NAC. Without admitting or denying the allegations, the firm

consented to the described sanctions and to the entry of findings that it aggregated customer trades in NNM securities, Nasdaq SmallCap securities, and an OTC Bulletin Board® security for trade reporting purposes without designating reports with a .B modifier and without noting the aggregations on corresponding order tickets. The firm also reported transactions late without an .SLD modifier. The findings also stated that the firm failed to contemporaneously, or partially, execute customer limit orders in Nasdaq securities after it traded each security for its own market-making account at a price that would have satisfied each customer's limit order and failed to use reasonable diligence to ascertain the best inter-dealer market so that the resultant price to the customer was as favorable as possible under prevailing market conditions. The firm failed to display customer limit orders when the orders were at a price that would have improved the firm's bid or offer in each security related to those orders or when the full size of the orders was priced equal to the firm's bid or offer and the national best bid or offer and the orders represented more than a de minimus change in relation to the size associated with the firm's bid or offer in each security. The firm failed to report the correct capacity to ACT, failed to cancel a trade through ACT, and reported the wrong execution time to ACT. Furthermore, the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with regard to the above matters. (NASD Case #CMS000024)

Goldman, Sachs & Company (CRD #361, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$17,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it untimely filed transactions in OTC equity securities on Form Ts with the NASD. The findings also stated that the firm failed to use reasonable diligence to ascertain the best inter-dealer market for the security and to buy and sell in such market so that the resultant price to each customer was as favorable as possible under prevailing market conditions. In addition, the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable NASD rules relating to transaction reporting via Form T. (NASD Case #CMS000016)

Pacific Growth Equities, Inc. (CRD #24835, San Francisco, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$10,000, and required to revise the firm's written supervisory procedures relating to firm quote compliance within 60 days of acceptance of this AWC by the NAC. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to execute orders presented at its published bid or offer in an amount up to its published quotation size, thereby failing to honor its published quotation. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning the SEC and the NASD firm quote rules. (NASD Case #CMS000021)

William V. Frankel & Co. (CRD #1895, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$10,000, and required to revise its written supervisory procedures relating to firm quote compliance in a manner acceptable to the NASD within 60 days of acceptance of this AWC by the NAC. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to execute orders presented at its published bid or offer in an amount up to its published quotation size, thereby failing to honor its published quotation. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws and regulations concerning the SEC and the NASD firm quote rules. (NASD Case #CMS000018)

May Actions

Alan Jay Eisenman (CRD #1532934, Registered Representative, Dallas, Texas) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$25,000 and suspended from association with any NASD member in any capacity for seven business days. Without admitting or denying the allegations, Eisenman consented to the described sanctions and to the entry of findings that, acting in his capacity as a registered representative, he caused to be entered two non-bona fide orders in an NYSE-listed security in his personal account at the close of the market to determine how orders would be treated and at what price they would be executed. The NASD found that at the time of placing the orders, Eisenman held a short position of contracts of call options in the security and such orders were executed and reported, causing the Pacific Stock Exchange-listed calls to move to the strike price. (NASD Case #CMS000033)

Investment Services Capital Corp. (CRD #31271, Suffern, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$12,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed short-sale transactions in certain securities, all of which were NNM securities, at or below the inside bid when the current inside bid was below the preceding inside bid in each of the securities, and executed short-sale transactions in certain securities and failed to maintain a written record of the affirmative determinations made for such orders. The findings also stated that the firm executed long-sale transactions and incorrectly reported each of these transactions to ACT with a short-sale indicator, and failed to maintain brokerage order memoranda for transactions. The firm also failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable NASD rules. (NASD Case #CMS000049)

LCP Capital Corporation (CRD #14469, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$17,500, and required to pay \$406.25, 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 by failing to buy or sell in such market so that the resultant price to the customer was as favorable as possible under prevailing market conditions and by failing to execute customer orders fully and promptly. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules regarding trading and market making. (NASD Case #CMS000056)

RBC Dominion Securities Corporation (CRD #6579, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$10,000, and required to revise its written supervisory procedures relating to trade reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions in NNM securities, Nasdaq SmallCap securities, and OTC equity securities to ACT late and without the appropriate .SLD modifier. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules regarding trade reporting. (NASD Case #CMS000052)

Starr Securities, Inc. (CRD #13336, New York, New York) submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured, fined \$11,000, and required to submit revised written supervisory procedures concerning transaction reporting to the NASD within 60 days of acceptance of this AWC by the NAC. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions in NNM securities late to ACT and failed to designate transactions as late and incorrectly designated NNM securities transactions as ".T" to ACT. The findings also stated that the firm incorrectly reported to ACT whether it executed trades as principal or agent in transactions. In addition, the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules regarding transaction reporting. (NASD Case #CMS000053)

June Actions

Ingalls and Snyder, LLC (CRD #2288, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to 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 reported transactions to the Fixed Income Pricing SystemSM (FIPS[®]) in violation of applicable securities laws and regulations regarding the reporting of high yield corporate debt securities. The findings also stated that the firm failed to establish, maintain, and enforce supervisory procedures reasonably designed to achieve compliance with the applicable rules and regulations, and with the applicable rules of the NASD regarding the transaction reporting of high yield corporate debt securities. (NASD Case #CMS000064)

On-Site Trading, Inc. (CRD #30271, Great Neck, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which it 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

executed short-sale transactions in certain securities, all of which were NNM securities, at or below the inside bid when the current inside bid was below the proceeding inside bid in each of the securities. The findings also stated that the firm executed short-sale transactions in certain securities and failed to annotate an affirmative determination for each of these transactions and executed long-sale transactions and incorrectly reported each of these transactions to ACT with a short-sale indicator. Furthermore, the NASD determined that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable NASD short-sale rules. (NASD Case #CMS000068)

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If you have further questions or comments, please contact either the individual listed at the conclusion of an item or Rosa A. Maymi, Editor, *Regulatory & Compliance Alert (RCA)*, 1735 K Street, NW, Washington, DC 20006-1500, (202) 728-8981.

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