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N.A.S.D. NEWS

Published by the National Association of Securities Dealers, Inc.

"A quiet but increasingly effective job of policing of the securities business is being done by the business conduct committees of the National Association of Securities Dealers, Inc."—ROYAL F. MUNGER in the *Chicago Daily News*.

Volume II

Washington, D. C., October 1, 1941

Number 1

Board Decides NASD Should Gather Vital Statistics; Study Underway

Absence of Basic Information Detrimental to Over-the-Counter Trade, Governors Agree

Vital statistics on over-the-counter dealings in securities are to be gathered by the National Association of Securities Dealers, Inc., pursuant to a decision of the Board of Governors.

A full discussion of the subject of data on over-the-counter trading was had at the recent meeting of the Board. It was generally agreed that the absence of basic facts about this phase of the securities business did not contribute to an appreciation of it, competitively. Concluding that this situation should be corrected, the Board authorized the making of periodic checks of the membership of NASD for the purpose of gathering basic information which could be used in the best interests of the business.

Study To Be Made

Study is to be made of the subject and of the most feasible manner of proceeding. The purpose will be to avoid burdening members with additional inquiries and also to collect only such facts as will promote the welfare and objects of the business and the Association.

Salesmen

More Direct Control, Supervision Advised

Members of the Board of Governors and Chairmen of NASD District Committees at their recent meeting discussed problems that have developed out of members' neglect to exercise proper control over salesmen.

Executive Director Wallace H. Fulton in his report to the Board said that it would appear desirable to require that officers or partners of members be made to more directly supervise and

(See "Salesmen" Page 6)

"Job to Do"



NASD GOVERNORS DEMAND MEMBERS

"HOUSE-CLEAN"; EXAMINATIONS OK'd

Examinations of Members Specifically Approved By Board of Governors

Business Conduct Committees, Their Agents, Representatives Accredited by Resolution

A resolution was passed at the recent meeting of the Board of Governors approving and implementing the examination program which has been under way in many NASD districts over a period of the past several months.

Complying with suggestions made by several chairmen of District Committees, the Board voted unanimously for the resolution which specifically set forth the officials, agencies and representatives of the Association authorized to direct and conduct examinations of members.

It was the consensus of Board members and District Chairmen that those vested with such authority should be formally accredited by action of the Board, and to accomplish this objective the following resolution was passed:

Agencies Named

"RESOLVED, That it is essential for the promotion of the Corporation's welfare, object and purposes and more particularly for the administration and enforcement of its Rules of Fair Practice, that any District Business Conduct Committee, any duly authorized Local Business Conduct Committee, or any duly authorized member or members of any such committees, or any duly authorized agent or agents of any such committees, or any Association examiner duly authorized by the Executive Director shall have the right, in order to and solely for the purpose of determining whether any member is complying with the Rules of Fair Practice of the Association,

(See "Resolution" Page 8)

By Robert W. Baird

The NEWS prints below an article by the Chairman of NASD with respect to decisions reached at the last Board of Governors meeting which are covered in detail elsewhere in this edition.

We have a job to do.

It is a house-cleaning job.

If there was any doubt of the need to clean house, experience of the last several months has removed that doubt.

Since the Board of Governors meeting in April—when a program for intensive enforcement work was adopted—we've learned that abuses of one kind or another—many serious, most minor—are too prevalent to be any longer taken lightly by those in the business who have the best interests of the business at heart.

We are going to have to eliminate the abuses, and, if necessary, eliminate those who perpetrate them.

No Witch-Hunt

We are not on a witch-hunt.

We are not out to undermine but to rehabilitate.

This program is part educational and part disciplinary.

It may be a distasteful job.

Every member of the Board of Governors is aware of that.

(See "Baird" Page 2)

TODAY'S TIP

Note the "ears" at top of this page. Use one on left to pass the NEWS on to your associates and employes. The one on the right contains the opinion of one observer of the NASD program.

"Dealer Market" Is Subject of Committee Study

Plans to establish a so-called dealer market on the New York Curb Exchange under which offerings of special blocks of securities would be handled at a net price, have been the subject of study and investigation by a Special Committee of the NASD. Authority of the Securities and Exchange Commission for establishment of such a market on the Curb is sought by George P. Rea, Curb president. The Commission currently is considering a staff report on Mr. Rea's proposals which presumably sets forth requirements for protection of the public interest involved in the matter. The Commission has not as yet issued its decision on Mr. Rea's request.

Complaints in District #11

James Parker Nolan, Chairman of District #11 (District of Columbia, Maryland, North Carolina, Virginia and West Virginia) reports that the five formal complaint cases that are pending in the District all involve excessive and secret profits in securities and oil royalties, "profits in some cases running as high as 100 per cent."

Baird

(Continued from Page 1)

But at their meeting a few days ago they were as one in agreeing that the job has to be done.

The evidence of the need was as conclusive as any reasonable man could ask for.

Let us not forget that your Association was established through permissive legislation passed by Congress (the so-called Maloney Act).

Regulating Own Affairs

The privilege extended of regulating our own affairs was a unique departure by Congress.

The Association can make gestures at enforcing its rules and regulations.

That is the easy, procrastinating, ostrich-like way to act.

But if that course is followed, the consequences are plainly to be seen.

Instead of being allowed to do our own regulating, the federal government will take over and do it for us.

The Board of Governors has decided, once and for all to avoid that at all costs.

Members Notified on "Freezing Order" Licenses

The attention of all NASD members is called to United States Treasury Department Public Circular No. 6 issued September 13, 1941 under Executive Order #8389, as amended, which announced that thereafter any licenses issued under the "freezing orders" permitting the redemption or purchase for sinking fund purposes or other purchase for blocked accounts of bonds, debentures, or similar obligations issued by governments of blocked countries, including political subdivisions, or by corporations organized under the laws of any blocked country, would be limited to securities bearing clearance certificates on Treasury Form TFEL-2.

Applications for the attachment of Form TFEL-2 should be filed on Form TFE-2A with the Federal Reserve Bank for the district in which the applicant is located.

In view of the time required to obtain clearance certificates under these regulations, members are advised in dealing in securities which are affected by these orders, to specify "Seller 30" at the time of contract.

"TECHNICAL" LANGUAGE DECRIED BY COMMISSION IN LETTER

The Securities and Exchange Commission does not hold to the view of some in the securities business that use of "technical language is always sufficient to inform the customer of the capacity in which the person in the securities business is acting for the customer. On the contrary, the Commission feels that "a customer should be advised in unequivocal fashion of the relationship which he is entering into" according to a letter recently received by NASD from E. W. Pavenstedt, Chief, Securities Association Unit. Mr. Pavenstedt said in his letter that he was speaking as well for the commission as for his own view of the matter.

Customer "Education"

Prompted by a legal discussion of terminology used to confirm transactions and the implications of cus-

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Vice Chairmen

LAURENCE M. MARKS,
Treasurer

WALLACE H. FULTON,
Executive Director

*The NASD NEWS is published in
the interest of Association mem-
bers. Members' criticisms and
suggestions will be welcome.*

Reports Success in Efforts to Obtain Dividend Notices

Henry G. Riter, 3rd, Chairman of the New York, New Jersey and Connecticut District reported to the Board of Governors recently that his committee has continued "with marked success" its efforts to secure cooperation from companies on the matter of supplying ample notice of declaration of dividends or other payments to security holders. The problem is one of long-standing but Mr. Riter's committee has steadily improved the situation.

tomers "education" involved, Mr. Pavenstedt wrote as follows on the subject:

"The suggestion that a person in the securities business has done all that is required by talking to a customer in terms of 'sell to,' 'buy for,' 'buy from' or 'sell for' is one with which I am not in accord. Surely you will agree that a customer should be advised in unequivocal fashion of the relationship which he is entering into and that this, in the great majority of situations, cannot be accomplished by the use of words of art, i.e., rather technical phrases, which probably have significance only to those trained in the law or particularly expert in securities transactions.

"I have been authorized to add that the above also represents the point of view of the Commission."

NASD to Study Over-the-Counter Clearing Unit

**Committee Will Report
On Feasibility; Tentative
Survey Already Made**

The National Association of Securities Dealers, Inc. plans to conduct an exhaustive survey of the need and usefulness of a national clearing organization for securities dealt-in in over-the-counter markets. This decision was arrived at after a special committee to report on the matter recommended to the Board of Governors that a representative committee be authorized to review the matter and report its findings later to the Board.

Efforts have been made in the past to establish "local" clearing houses for over-the-counter dealers in a given area. For one or more reasons, each past attempt of this nature has encountered obstacles which eventually undermined the effort. However, those with experience in such efforts express confidence that obstacles could be surmounted by careful, well-considered preparation for attainment of the goal. Such preparation is the purpose of appointment of a committee to study the matter thoroughly.

The temporary committee which made a tentative survey of the subject and reported its recommendations to the Board consisted of Edgar S. Baruc, Chairman and the following: Charles J. Cullen, Albert E. Kelly and Milton Steinbach with Gustave Levy, alternate.

Lane Opinion on Prospectuses

Broker and dealer problems relating to the use of prospectuses in transactions in the American Telephone and Telegraph Company debentures, recently offered pro rata to stockholders, were made the subject of a special opinion by Chester T. Lane, General Counsel of the Securities and Exchange Commission. The opinion served to clear up many questions raised by dealers and while the opinion dealt with the Telephone matter, the principles expressed by Mr. Lane are equally applicable to transactions in any other issue of registered securities during the first year after the registration statement has become effective. Therefore, the opinion would be a useful one for all brokers and dealers to have on file for future reference.

COOPERATION WITH SECURITIES COMMISSIONERS MAKES PROGRESS

The National Association of Securities Dealers, through a committee headed by Lowry Sweney of Columbus, is cooperating with a committee of the National Association of Securities Commissioners in efforts to bring about uniformity in data required by the States in the underwriting and distribution of securities as well as registration of dealers. Mr. Sweney reports that several meetings have been held with Paul A. Selby, Chairman of the NASC committee on the subject and close cooperation is to be given Mr. Selby's committee in the future.

"It would appear" said Mr. Sweney in a report to the Board of Governors, "that the chance of accomplishing results that will substantially benefit the industry lies mostly in the field of standardization and uniformity of state regulatory requirements. The great burden, which the multiplicity of forms, regulations, reports, registration requirements, etc., set up by the various States in their different Blue Sky Acts has laid upon our business, is too well known. An encouraging and important factor is that this confusion is recognized by the Securities Commissioners themselves and, according to Mr. Selby, there is strong sentiment among his group toward uniformity. We have pledged him our utmost cooperation as this objective, if attained, would be of inestimable benefit to our business."

Uniform State Requirements

Another effort at simplification and uniformity of State requirements is being undertaken by a separate commit-

tee of the NASC which is also receiving support and assistance from the NASD. This committee is headed by Vern G. Zeller of Wisconsin and this group has already submitted to large underwriters a proposed standard application form for registration of securities.

It is expected that the approaching annual convention of the NASC, which will be attended by Chairman Baird, Mr. Sweney and Executive Director Fulton, will provide opportunity for further conferences on these matters.

Report Shows Member Firms' 1941 Results

In connection with its study of brokerage commission rates, the Securities and Exchange Commission has compiled statistics on operating results of New York Stock Exchange member firms in the first six months of 1941. The over-all interest return on capital was found to have been 3.2 per cent for the period although it was pointed out in financial circles that this result did not take into consideration the fact that many partners received no salary during the period under review and others were on a much reduced salary basis.

Reports were received by the SEC from 561 of the 569 firms in business on June 30, it was reported. Excluding the two large odd-lot houses, which were heavy losers, it was shown that 299 firms lost \$5,292,000, fourteen firms broke even and 246 firms showed a net gain of \$6,682,000 leaving a total net profit of \$1,390,000.

423 Lose \$2,665,000

Of the total of 561 firms, 423 received more than 50 per cent of their gross revenue from Exchange commissions and showed an aggregate loss of \$2,665,000. It was shown that 257 of these firms lost a total of \$4,441,000, eleven broke even, and 155 profited to the extent of \$1,776,000.

The compilation indicated that the member firms earned a total of \$14,319,000 with which to pay partner salaries, interest on invested capital, etc. Actual payments to partners were reported to have amounted to \$7,608,000. The average payments made to 2,661 active partners amounted to \$4,200 on a yearly basis, the statistics showed, suggesting that some partners were not remunerated during the period.

Fleek Nominated I. B. A. Head

John S. Fleek, partner of Hayden, Miller and Company, Cleveland, has been nominated for the presidency of the Investment Bankers Association of America, Emmett F. Connely of Detroit, retiring president, announces. Mr. Fleek will also become chairman of the association's public information committee and in this capacity will serve as a full-time executive of the association, taking a leave of absence from his business to assume direction of the public relations program being conducted by the IBA. Election of the new IBA president will take place at the annual convention in Hollywood, Fla., November 30 to December 5.

EXCERPTS FROM THE EXECUTIVE DIRECTOR'S REPORT

Typical Complaints Cited During Meeting of Board; Salesman Case Feature

Wallace H. Fulton, Executive Director of the National Association of Securities Dealers, Inc., reviewed for the Board of Governors several complaints against members that have been disposed of by District Business Conduct Committees. He referred to the interest the Securities and Exchange Commission has displayed in matters brought to the attention of the Committees during their hearings.

A few cases cited by Mr. Fulton follow:

"Two complaints were filed against a member. The basis of the complaints was excessive profits. Inspection disclosed profits ranging from 15 to 28 per cent. But the defense of the head of the firm and his representatives was interesting to say the least. In the testimony before the DBCC dealing with one transaction, the salesman, with the head of the firm supporting him, defended the large profit taken in this transaction on these grounds: that the client lived in a neighboring city; "she has comparatively a small amount of money"; "I had to deliver the securities to her home" (he had also called on her at home to make the sale and get the order) and "it took 3½ days to complete the transaction." Suffice it to say that an exhaustive hearing productive of comparable explanations for other instances of excessive profits resulted in the firm's being censured and fined \$500 on each count, or \$1,000 in all.

Customers' Written Orders

"Another firm made a practice of having its salesmen obtain written orders from customers authorizing the firm to purchase and sell specific securities. The language of such orders clearly implied that the firm would act as agent for its customers in these transactions.

"Transactions with customers over a period of several months, under such orders, were examined. Occasional profits ranging up to more than 90 per cent were found to have been realized and the firm made it a practice to confirm such transactions as a principal. In one case, the firm bought stock of a local company in a distant market and within a few days sold it to an employe of the company at a mark-up of nearly 40 per cent. It confessed ignorance of

EXAMINATIONS PROGRESSING; GROUP NOW WORKING IN DISTRICT No. 3

Examinations of member books and records has been accelerated since the April meeting of the Board of Governors. Examiners on the Washington staff or those employed in the field; questionnaires, and visits by Field Secretaries are the means being employed in this work.

In District #3 (Arizona, Colorado, New Mexico, Utah and Wyoming) all members are undergoing examination by a group of trained employees of the NASD at the request of the District Committee. The examiners are being directed by C. H. Staples, head of the Washington examining staff and include William H. R. Gould, Washington; John A. McCandless, Philadelphia (District #12) D. J. Conway, Portland (District #1) and Allan H. Tod, Chicago (District #8). With the exception of Mr. Tod, all of these representatives participated in the recent examination of all members in Minnesota (District #4). Mr. Tod became employed by the Chicago District office since that examination. (The Minnesota examination is covered elsewhere in this issue.)

Questionnaire Experiment

An experiment in questionnaire-examination of members was conducted by District #8 among Indianapolis members. In order to compare this experience with another method, this District will shortly sponsor an examination by NASD personnel of members in another city.

District #2 (California and Nevada) conducted two inquiries among members in the Northern and Southern sections of the District. In the former, a questionnaire was sent to all members requesting, among other things, a transcript of transactions for a 30-day period and a current balance sheet. The Southern section, meanwhile, requested members to submit a statement of the policy of their firms with respect to pricing and profits on over-the-counter principal transactions and requesting

rules and regulations with respect to proper notices to customers of the character of its relations with them. The firm was fined \$350."

(Examples of other violations and action taken by District Business Conduct Committees are covered elsewhere in this edition.)

that a copy of the memorandum be placed in the hands of each sales representative of the member firm.

A Certified public accountant has conducted examination of books of more than twenty members in #14 (Maine, Massachusetts, New Hampshire, Rhode Island and Vermont).

Other Districts are proceeding as follows:

District #1 Examinations

The District Secretary of #1 has completed examination of books, records and accounts of eighteen of the eighty-six members in Oregon, Washington and Idaho;

Visits are being made to members by the District Secretary of #5 (Kansas, west Missouri, and Oklahoma) and examination of books and records is being made in certain instances;

Every member of #7 (Arkansas, east Missouri and Kentucky) is to be examined by the District Secretary; eleven of the seventy-two have been examined to date;

In #10 (Ohio, and eastern Kentucky) the District Secretary is making periodic examinations of members, having completed eighteen to date, four of which resulted in formal complaints;

Examinations in #11 (D. of C., Maryland, No. Carolina, Virginia and West Virginia) are being made by examiners of the Washington staff;

Routine examinations being made of members of #12 (Pennsylvania and Delaware) by the District Secretary, fourteen having been completed to date;

In #13 (New York, New Jersey, Connecticut) examinations are being made by staff examiners; use of a questionnaire, to be sent to all members, is contemplated.

Nine Districts Employ Secretaries

Nine of the fourteen Districts of the National Association of Securities Dealers, Inc. now employ full-time, paid secretaries. The latest additions to the staff of secretaries follow: in District #1 (Ida., Ore., Wash. and Nev.) D. J. Conway; District #12 (Del. and Pa.) John A. McCandless. A part-time secretary is now employed in District #5 (Kans., W. Mo. and Okla.), Robert Zehring. District #11 (D. of C., Md., N. C., Va. and W. Va.) has been authorized to secure a full-time secretary.

TO THE BOARD OF GOVERNORS—SEPTEMBER, 1941

Precedent Set With Minnesota Members Examined as Group

Ten Formal Complaints Result; Minor, Technical Violations Explained

Members of the Association in District #4 (Minnesota, Montana, North Dakota and South Dakota) in June volunteered to examination of their books, accounts and records by examiners of the Washington staff and several District Secretaries. No such examination had ever before been undertaken. Number four thereby became the pace-maker for all Districts in the matter of self-examination with an eye upon the rules and regulations of the Association.

The District Committee found evidence indicating that 88 per cent of the membership in that area could be charged with violations of NASD rules—although in the vast majority of the cases violations were of a technical and easily correctable nature. Formal complaints were found to be necessary against 20 per cent of the membership, however. And, in addition, 28 letters were written to members by the Committee—these being varied in tenor according to the violations of the member. In all instances, the latter required answers stating the practices complained of would be discontinued.

Chairman Nelson's Report

Norman Nelson, Chairman of the District Committee in his report to the Board said:

"The most common form of violation of rules disclosed by the examination was in connection with confirmations, particularly with reference to the offer to disclose certain information in agency transactions. This seemed to be largely a matter of misunderstanding as most of the violators were using forms intended to meet the requirements but which were inadequate. There were a number of cases of improper disclosure of capacity in which acting; cases where commissions were shown in principal transactions, and cases of improper disclosure of commissions paid and charged on agency transactions. The cases considered to be most serious involved instances of the foregoing and one or more of the following: concealed profits, exorbitant profits, and an extreme case of failure

"Encouraging and Challenging"

Developments since the April meeting demonstrate that the policy then enunciated by the Board with respect to the imperative need of intensive enforcement work has been bearing fruit. District Committees have shown a commendable degree of cooperation. The prevailing sentiment, evidenced by this review, is in the direction of a thorough house-cleaning by the business itself in its own self-interest. The progress to date should be both encouraging and challenging for the future.

to maintain required books and records.

Some Books Lacking

"There were several cases where books of account were lacking in one or more necessary records, such as an In and Out Blotter, or a Securities Ledger. Instances were found where books were not posted for considerable time and where pencil entries had been used. The Commingling-Hypothecation rule was not properly understood in several instances. There were also violations of certain rules of the Minnesota Securities Commission which were brought to the attention of the members concerned.

"While the work of the Committee in connection with the examination is not finished, it is felt that the net results of the examination will prove to have been beneficial to the members as a whole. Practically all of them welcomed the examination as an opportunity to obtain help in improving their procedure and in arriving at a better understanding of the requirements. All of them are now more actively aware of the necessity for conforming to the rules."

NASD has 2,949 Members

As it entered its third year, the National Association of Securities Dealers, Inc. had 2,949 members, with 31 applications pending and with 811 branch offices registered. Two years ago when NASD succeeded the Investment Bankers Conference, the Association had 1,467 members.

18 NASD Memberships Cancelled, 4 Suspended; Fines up to \$2,000

46 "Formal" Complaints Handled, 37 Pending; Censure 9 Members

Eighteen memberships have been cancelled by District Business Conduct Committees and four memberships suspended under the program of enforcement of rules and regulations of NASD to which all members bind themselves upon admission. In addition eleven fines have been imposed, ranging up to an aggregate cost to the member involved of \$2,000, nine penalties of censure invoked, seven complaints withdrawn and five cases settled by parties involved.

These penalties resulted from forty-six formal complaint cases handled to date by DBCC's. (In general, "formal" cases are instituted where the complaint involves alleged serious abuses.) Thirty-seven such cases are pending in the fourteen districts.

Eighty-three Complaints

The eighty-three formal complaints against members filed since January, 1940 originated in the various districts as follows:

No. 1 (Idaho, Ore., Wash.).....	2
2 (California, Nevada)	13
3 (Ariz., Colo., N. Mex., U., Wyo.)	0
4 (Minn., Mont., N. Dak., S. Dak.)	10
5 (Kans., W. Mo., Okla.).....	0
6 (Texas)	1
7 (Ark., E. Mo., Ky.).....	0
8 (Ill., Ind., Ia., Mich., Nebr., Wis.)	10
9 (Ala., Fla., Ga., La., Miss., S. Carol., Tenn.)	0
10 (Kentucky, Ohio)	3
11 (D. of C., Md., N. Carol., Va., W. Va.)	6
12 (Delaware and Penna.)	1
13 (N. Y., N. J., Conn.).....	24
14 (Me., Mass., N. H., R. I., Vt.)...	13

In addition to the above formal complaints, the Association has disposed of 134 informal complaints out of a total of 150 that have come before Committees. Eighty-three letters of censure were imposed in the cases disposed of to date as well as two fines. Nine cases resulted in settlements between parties. The remainder of the cases were either withdrawn, dismissed, or the member was exonerated or action found unnecessary by NASD.

Fifty-Three Complaints Pending Against Members; Thirty-Nine Are Formal

Total Includes Fourteen Informal Cases; Decisions Near in Many Instances

A total of fifty-three complaints are pending in the fourteen districts of the National Association of Securities Dealers, Inc. Of this total, thirty-nine complaints are of a formal character while fourteen are informal. District Business Conduct Committees, in some of these cases, have held final hearings and are preparing decisions while in others, decisions have been reached and are in the process of being released in the form of a notice to the respondent firms and to national headquarters.

The number of complaints pending in the Districts as of September 15 follows:

District #1 (Idaho, Oregon, Washington)	
Formal	1
Informal	0
District #2 (California and Nevada)	
Formal	2
Informal	1
District #3 (Arizona, Colorado, New Mexico, Utah, Wyoming)	
Formal	0
Informal	0
District #4 (Minnesota, Montana, North Dakota, South Dakota)	
Formal	10
Informal	0
District #5 (Kansas, west Missouri, Oklahoma)	
Formal	0
Informal	0
District #6 (Texas)	
Formal	0
Informal	0
District #7 (Arkansas, east Missouri, Kentucky)	
Formal	0
Informal	0
District #8 (Illinois, Indiana, Iowa, Michigan, Nebraska, Wisconsin)	
Formal	5
Informal	4
District #9 (Alabama, Florida, Georgia, Louisiana, Mississippi, South Carolina, Tennessee)	
Formal	0
Informal	1

District #10 (Kentucky and Ohio)	
Formal	3
Informal	0

District #11 (Dist. of Columbia, Maryland, North Carolina, Virginia, West Virginia)	
Formal	5
Informal	0

District #12 (Pennsylvania and Delaware)	
Formal	0
Informal	0

District #13 (New York, New Jersey, Connecticut)	
Formal	11
Informal	7

District #14 (Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)	
Formal	2
Informal	1

Salesmen

(Continued from Page 1)

control the actions of salesmen. "The history of complaints," he said, "too often discloses that salesmen are allowed an extreme amount of latitude and freedom of decision where rules and regulations of the Association are susceptible of violation. When abuses of uncontrolled salesmen are exposed, it is commonly the defense of the member firm that the head of the business was not acquainted with the practices of the salesmen."

Chairman Baird pointed out to the Board that salesmen in some cases receive as much as 80 per cent of the gross profit on their transactions. The "pecuniary necessities" of the salesman was identified as an important factor in a complaint against one member which resulted in a substantial fine, it was pointed out. Further than this, the member in this case is subject to periodic examination on motion of the District Business Conduct Committee.

Code Rule Recalled

During the course of the discussion before the Board, it was recalled that under the Investment Bankers Code a rule prohibited employment of a salesman unless he had two years' experience and also required salesmen then employed to pass an examination. Experience of those who administered the Code was "disconcerting" on this score, it was said. Many salesmen, it was

Five Memberships Cancelled By District #13 Committee; Others Are Suspended

Actions Based on Unfair Prices, Refusal to Allow Examination

The District Business Conduct Committee of District #13 (New York, New Jersey and Connecticut) recently cancelled the memberships of five members of that District after hearings on formal complaints against them. Four of the cancellations were founded upon findings that the member, while capital was impaired, improperly had paid dividends to stockholders. One such cancellation also involved the following charges; use of company funds improperly to purchase shares of its own stock; improper recommendations to customers; use of manipulative, deceptive and fraudulent devices in inducing purchases of stock and charging of unfair prices. A fifth member's membership was cancelled when he refused to permit inspection of books and records by an authorized representative of the Committee.

The Committee also suspended one member for one year on failure of the member to keep and preserve books and records. Another member was suspended for thirty days for charging unfair prices and the suspension carried the proviso that the membership would be cancelled unless the member corrected practices which were the basis for the thirty day suspension. Charges of unfair prices also resulted in suspension for thirty days of an additional member.

found, were not qualified by experience or knowledge of finance to be employed in the investment business.

The Board was informed by District Committee Chairman Albert Theis, Jr. of District #7 (Arkansas, East Missouri and Kentucky) that a bulletin was sent to all members recommending that activities of all salesmen be carefully supervised and approved by a responsible partner or officer of the member firm.

Lester Watson, Chairman of #14 District Committee (Maine, New Hampshire, Rhode Island and Vermont) told the Board of Governors that the salesman "is the greatest source of trouble in public relations" of member firm. He reported that many houses "dominated" by their sales force, many of the members of which receive 50% of the profit on their transactions.

Confirmation Disclosures Made Subject of SEC Opinion; "Amount" Defined

Actual Dollars and Cents Charged as Commission Must Be Clearly Set Forth

A broker's confirmation must disclose, in actual dollars and cents, amount of the commission charged a customer. If it does not, the broker is violating SEC Rule X-15C1-4, according to an opinion just rendered to NASD by James A. Treanor, Jr. Director, Trading and Exchange Division.

This rule, says Mr. Treanor, "cannot be satisfied merely by expressing a formula by which the customer can compute commissions; it requires that the actual commission charged be set forth in dollars and cents." The rule requires the disclosure of "the source and amount of any commission or other remuneration received or to be received." "Amount," under Mr. Treanor's opinion, clearly means dollars and cents and must be properly identified as commission. The commission charge cannot be expressed as a percentage of the par value of bonds nor as an amount per share of stock and conform with SEC rules.

Example of Improper Practice

The specific instance reviewed by the SEC was one where a broker confirmed purchase for a customer of 100 shares of XYZ Common at 50¾ when the actual cost price to the broker was 50. A footnote to the confirmation said: "the above price includes our usual charge for services of this character amounting to viz ¾% of par value of bonds, \$.75 per share of stock."

The SEC opinion not only concluded that this was a violation of Rule X-15C1-4 but that the broker might be subjecting himself to liability under section 17(a) of the Securities Act due to the appearances of making an "untrue statement." On this latter score, however, Mr. Treanor's opinion reserved judgment.

FUTURE MEMBER MEETINGS

Chairman Baird and Executive Director Fulton are packing bags again as we go to press. . . . They recently covered the Pacific Coast. . . . Eight meetings in almost as many days from Denver to Seattle. . . . Then one in Boston. . . . Next stop—Atlanta. . . . They'll speak there on the 30th. . . . From Atlanta they'll go to Nashville to talk to members there on the 31st. . . . Thence to Birmingham for a meeting on October 1. . . . New Orleans will hear them on the 2nd. . . . They are fresh from the recent Board of Governors meeting . . . and will, therefore, have a vital message for District No. 9. . . . Later on—meetings in Districts No. 11 and No. 12 are on the schedule. . . .

Committee of Investment Companies

A new permanent organization of investment companies has been formed under the name of the National Committee of Investment Companies with Paul Bartholet, formerly vice president and treasurer of the Tri-Continental group, as president of the unit. Mr. Bartholet is resigning his posts at Tri-Continental to devote his full time to the NCIC which will represent substantially all management-type companies.

The organization is to carry on and extend the work done in the last year by the national committee which feels that the results of the experimental year warrant continuation of the joint efforts undertaken in behalf of the investment company group represented by the committee.

Texas Transfer Tax

Joseph T. Johnson, chairman, National Uniform Practice Committee, calls attention of all members to the Texas Stock Transfer Law (article XV of House Bill number 8 as passed by the Regular Session of the 47th Texas Legislature). "To avoid misunderstandings and disputes," Mr. Johnson says for the committee, "members located outside the State of Texas are advised to ascertain the taxability of any transactions made with Texas dealers or in securities of Texas corporations, and to reach an understanding regarding the incidence of any Texas Stock Transfer Taxes that may accrue, prior to entering into such transactions."

Birthday Observed

The National Association of Securities Dealers, Inc., recently observed its second anniversary. The Association is the successor corporation to the Investment Bankers Conference, Inc. established September 3, 1936, which in turn was successor to the Investment Bankers Code Committee.

Uniform Practice Rules Interpreted for Trades In "When-Issued" Rails

Transactions in Fixed Interest Obligations, Income Securities Covered

The National Uniform Practice Committee announces the following formal interpretation of the pertinent provisions of Section 43 of the National Uniform Practice Code regarding trading in "When, as and if issued" in proposed new securities of railroad companies, in accordance with current specific plans of reorganization, effective on and after September 17, 1941:

Fixed Interest Obligations: Unless the parties agree otherwise, "when as and if issued" transactions between members in fixed interest obligations of new or reorganized railroad companies shall be "and accrued interest" to date of settlement. Interest shall be computed on the basis of the expired portion of the coupon current at the time of settlement, and all due and past coupons shall be detached.

Contingent Interest Securities

Income or Contingent Interest Securities: Unless the parties agree otherwise, "when, as and if issued" transactions between members in income or contingent interest securities of such companies shall be "flat," and shall carry all payments that may be made or declared in connection with such new securities from the effective date of the plan; except that, if any payment is made or declared directly or indirectly in connection with such securities prior to settlement date, transactions made on and after the "ex" date for such payment shall carry only payments made or declared in connection with such securities from such "ex" date.

Fixed Rate Securities

Securities of such companies with a fixed rate of interest, plus contingent additional payment, are to be traded "and accrued interest" at the rate of the fixed interest and "flat" in respect to the contingent payments.

To avoid misunderstandings and disputes with customers members should advise their customers of the above provisions of this interpretation and should include on their confirmations appropriate legends to the same effect.

Member Fined \$200 For Violations of Stabilizing Rules; Dangers Cited

Responsibility to Comply Rigidly with Rules Pointed Out by District Committee

At the request of the Securities and Exchange Commission, a District Business Conduct Committee of the NASD recently investigated stabilizing operations conducted by a member-underwriter. The case developed evidence upon which the member was fined \$200 and censured by the DBCC.

The case arose out of the activities of the member in connection with an offering of a listed stock "at the market" and involved violations by the member of the SEC's "stabilizing rules" and also Sections 1 and 18 of the Rules of Fair Practice of the Association. As this was the first time the member had conducted a stabilizing operation under the Commission's rules and as the consequences of any formal action by the Commission were so severe, the SEC., after investigation, referred the whole matter to the Association for such action as it deemed appropriate.

Activity Condemned

The member-underwriter, in effecting stabilizing purchases, among other things, purchased the stock on an exchange at a price equal to the last sale price on that exchange that day (such price also being the high price that day), which was in violation of the Commission's Rules, and also failed timely to file with the Commission required notices and reports, but rather filed all of them subsequent to the completion of the stabilization operation in violation of the Commission's rules".

Responsibilities of Underwriter

In its conclusions, the DBCC held "that the function of underwriter of securities entails high responsibilities to the public and to the members of his underwriting and distribution syndicates. The Securities Act and the Securities Exchange Act, and the Rules and Regulations pursuant thereto, impose definite restrictions on an underwriter who announces that he may stabilize; and if he does perform acts of stabilization, it is his responsibility to comply rigidly with the requirements of the Acts and their regulations. Failure to do so certainly violates the requirement of 'just and equitable principles of trade.'

Stabilizing Technical Violation

"With respect to Section 18 of Article III of the Rules of Fair Practice

SEC AGENCY VIEW RESTATED IN ALLEGED SECRET PROFITS CASE

The Securities and Exchange Commission in its recent opinion in the Allender Co. case held the following practices to be fraudulent:

A. Misrepresentation as to the amount of profits and as to the prevailing market prices of the securities involved.

This activity consisted of statements leading the customer to believe a small or no commission was being charged for services rendered, or that it was making a small profit when, in fact, this dealer's average profit on the account in question was 49.5% and on a single item, 193%.

Secret Profits as Agent

B. The taking of secret profits while acting as agent.

One transaction is illustrative of the nature of the activity here involved. Allender Co. sold securities, which had cost them \$1,145,00, to its customer for \$1,400.00. The confirmation form was that of a principal transaction. The Commission

of the Association, the Business Conduct Committee believes that certain stabilizing transactions admitted by the respondent did technically violate the restrictions imposed against the use of a 'manipulative device', but that such acts were neither wilful nor deliberate. Nevertheless, the Committee believes that such transactions may have 'induced transactions' in fact, as fully as though deliberate manipulation had been indulged in and censures respondent for the lack of care exercised by respondent, who relied on the personnel of its own organization and failed to advise itself adequately as to its legal responsibilities."

In a final comment on the case, the DBCC said: "Because of the comparatively severe consequence that might have ensued from any of the formal proceedings which the Commission was authorized to institute in this matter, this case was referred to the Association for action. However, it has also been stated to us, that it is doubtful whether the Commission would be willing to abstain from bringing proceedings of its own if similar violations were brought to its attention in the future."

emphasized the fact that the manner or form of confirmation was not controlling, if contrary to the true relation established by the conduct and the intentions of the parties.

C. The sale of securities at prices bearing no reasonable relation to prevailing market prices.

This dealer, in the transactions listed by the Commission, realized profits ranging from 9.8 to 193% of cost on individual transactions. The Commission emphasized that it is neither fair dealing, nor in accordance with the standards of the profession to exploit trust and ignorance for profits far higher than might be realized from an informed customer.

General Philosophy Outlined

The general philosophy and thesis of the *Jansen* and *Duker & Duker* cases followed throughout. Several statements in the opinion are of general interest and worth quoting.

In relation to the question of the capacity in which a broker-dealer acts, the opinion quotes from the *Restatement of the law of Agency*: "The understanding that one is to act primarily for the benefit of another is often the determinative feature in distinguishing the agency relationship from others. * * * The name which the parties give the relationship is not determinative." And again: "An agency may, of course, arise out of correspondence and a course of conduct between the parties, despite a subsequent allegation that the parties acted as principals."

Resolution

(Continued from Page 1)

(1) to require any such member to submit a report in writing with regard to any matter connected with such member's business or business practices, and

(2) to inspect the books, records and accounts of any such member;

and that any such committee or any such member or members shall add to any such agent or agents the name of any such examiner, be and hereby is granted such rights."