NASD News

PUBLISHED BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Back the Attack—
Try
~~Buy~~ More Than Before

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SEC HOLDS HEARING ON NASD; "RULE" OR "INTERPRETATION" IS ISSUE

Acting on petitions filed by the New York Security Dealers' Association and a "Securities Dealers' Committee," the Securities and Exchange Commission held a public hearing June 13 on the matter of a letter addressed to members of NASD under date of October 25, 1943, and one sent to District Business Conduct Committees under date of November 9, 1943. At the conclusion of the hearing, the Commission said it would consider arguments presented and allow two weeks for the filing of briefs by the several Counsel. A decision might be expected within a reasonable time thereafter.

The following made statements at the hearing: Frank Dunne, president, New York Security Dealers' Association; Edward A. Kole, attorney for the "Securities Dealers' Committee"; Frank J. Maguire, attorney for S. C. Parker & Company, Inc., of Buffalo, N. Y.

At the conclusion of statements by the above, Counsel for NASD asked leave to file a brief for the Association upon opportunity to read the transcript of the hearing and to file answering briefs to those submitted by other Counsel. These requests were granted.

Due to the length of statements made by those who spoke at the hearing, the NEWS is not able to reprint them in full nor is it practical to offer summaries of the statements. However, a principal contention was that NASD in the letters mentioned above had promulgated a "rule" and not an "interpretation" of a standing rule and that therefore its action should be abrogated. It was also argued that the practical effect of the "interpretation" would be the same as though a "rule" had been adopted by the Board.

Answers of the Association to published criticisms of the action of the Board of Governors will be found on page 3. It was apparent some months ago that the Association's action would ultimately come before the SEC regardless of statements made by NASD and for this reason it was felt advisable to withhold such answers until this had transpired.

Since the Securities Dealers' Committee in its petition had requested a broad hearing into the subject of NASD and asked, among other things, that the hearing be before a trial examiner for the taking of testimony of witnesses, the spokesman for the Committee objected at the opening of the hearing to the form of the proceeding then under way. He pointed out that the Committee he represented sought to extend the matter before the Commission beyond the limits of the questions raised by the letters of October 25 and November 9. In this connection, the Committee, in its petition, alleged that the Maloney Act was unconstitutional and monopolistic and that "the Congress had neither the intention nor the power to delegate to NASD" a legislative function.

In answer to a question by Chairman Ganson Purcell, Counsel for the Securities Dealers' Committee said that two of the three petitioners for the Committee were not members of NASD. He also said that the Committee had received contributions from 82 dealers in nearly every state.

Advertising NASD Membership Approved by Governors

Members of the Association are to be permitted to advertise that they are members of NASD as a result of a resolution adopted by the Board of Governors at its meeting June 5-6. Members also will be supplied certificates of membership to be displayed in their offices.

Members desiring to advertise their NASD membership should address a letter to the Executive Office of the Association advising the Association of that fact. As soon as possible thereafter, each member serving such notice on the Association will be provided with his certificate of membership. Upon receipt of the certificate, he may then publicize his membership in newspaper and other advertisements, on letterheads, confirmations and in other ways covered under the authorization printed below.

NO MEMBER SHOULD ADVERTISE HIS MEMBERSHIP PRIOR TO RECEIPT OF HIS CERTIFICATE OF MEMBERSHIP. In addition, the fact of membership can be stated only in the following manner:

"Member of National Association of Securities Dealers, Inc."

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Quotations Problem Studied; Opinions Being Polled

The National Quotations Committee, after several months' study of quotations sponsored by NASD, is conducting a survey of opinion among quotations committees throughout the country with a view toward making final recommendations to the Executive Committee and Board of Governors at a meeting in the near future.

REPORT OF EXECUTIVE DIRECTOR TO BOARD OF GOVERNORS, JUNE 5, 1944

Following are extracts from the report of Wallace H. Fulton, Executive Director:

In the interval since the last meeting of the Board, there have occurred numerous developments vital to major activities of the Association. One of the purposes of this report will be to bring them to your attention with whatever background appears appropriate. I shall also touch upon administrative matters of interest to the Board.

Before reviewing these events, I would like to say a word about the loss of Paul Frum of Counsel. Over a period of several years he participated for Counsel in many Association projects, and during the last year was increasingly active in our work, always giving liberally of himself to the task at hand. His death in April deprived us of a valued associate and friend who will long be remembered by those of us whose privilege it was to work with him and to know him personally.

Membership

The Association had 2,188 members as of May 15, a net decline of 5 from the figure as of December 31, 1943. On October 31, 1943, members numbered 2,210. Fluctuations that have occurred in the meantime have been normal with the times. In the first quarter of the year, 19 resignations occurred, 6 new members being admitted. In April, 10 new members were added against 5 resignations. As of May 15, 8 resignations were pending, while 7 applications for membership were awaiting approval.

PSI

Oral argument was had before the Commission April 12, 1944, on the PSI cases. It will be recalled that last December, some months after hearings had ended and briefs had been filed, the Department of Justice notified the Commission of its desire to appear, and that the Department subsequently was granted the right to intervene in the case over opposition of our Counsel. Formal appearance of the Department in the case cast the PSI matter in a new rôle: a full-dress governmental attack on the NASD as a boycot device which violated the Sherman Act, and on the agreement among underwriters and the selling group agreement, as violations of the anti-trust law.

We now await the decision of the Commission. The record is a long one, briefs are numerous, and the issues obviously are of paramount importance to the NASD and to the underwriting profession. The Commission has made but one formal statement on the case. In rejecting the motion of our Counsel that the Department of Justice be barred from the proceedings, the Commission said that the issues in the case "raise questions concerning the relationship between Section 15A (the Maloney Act) of the Exchange Act and the public policy embraced in the Federal anti-trust laws." The Commission went on to say that it was not prepared at that time to decide whether "our final determination on the merits will involve a construction of the anti-trust laws." It went on to say, "Thus we may have to decide, among other things, whether and to what extent the securities business in general, and transactions by NASD members in particular, are subject to the prohibitions of the Sherman Act . . . and what effect, if any, the provisions of Section 15A have upon those prohibitions." Section 15A is, of course, the Maloney Act.

It is useless to conjecture as to the date when the Commission will render its decision.

Applications for Unlisted Trading Privileges

Two years ago the Board of Governors adopted a policy of examining certain applications made to the SEC for authority on the part of Stock Exchanges to extend unlisted trading privileges to issues of securities being dealt in in the over-the-counter market. The Board decided that the Association would oppose such applications as would appear to infringe upon the over-the-counter market and would be detrimental to the interests of investors. Since adoption of that policy, the Association has opposed two applications of the New York Curb Exchange, one involving three issues of public utility bonds and another five issues of common stock. As to the public utility bond issues, the Commission granted unlisted trading privileges for two and refused such privileges as to one. The decision granting unlisted trading privileges to the two bond issues was appealed to the United States Circuit Court of Appeals at Philadelphia. The Court upheld the Commission's decision.

As to the applications involving common stock issues mentioned, namely, Warner & Swasey, Lukens Steel, Merck & Co., Northern Natural Gas, and Public Service of Indiana, hearings before a Trial Examiner were had and briefs have been filed. A decision by the Commission should be forthcoming in the near future. That decision may have an important bearing on this whole subject from the standpoint of NASD.

Questionnaire Program

It is gratifying to be able to report that over 50 per cent of the membership has been covered to date in this year's questionnaire program. Two mailings of over 600 questionnaires each were made, and fair progress can be reported in the computing work on questionnaires returned to the Executive Office. I think I need not dwell on the problem facing the administrative staff this year in handling questionnaires returned by members since the over-all job itself, entirely apart from personnel, is heavier by the inclusion of branch offices. However, progress is being made in our analyzing and computing work. Time has not permitted development of any statistical summaries as to general mark-up practices this year, but studies of this kind will be made as soon as practicable and the information obtained presented to members of the Board and District Chairmen.

Complaint Picture

Three complaints were filed during the month of April, bringing to 8 the number filed in the first four months of

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CHARGES AND CLAIMS ABOUT NASD CITED AND ANSWERED

"What is all the shooting about?"

On one or more occasions in the last several months you, as a member of NASD, may have asked that question of yourself or heard others ask it. The question would have been provoked by attacks made on the Association since last October when the Board of Governors sent a letter to members on the subject of mark-up practices disclosed by the membership in 1943 questionnaires. In that letter the Board also reported the interpretation made of so-called Rule One.

In the course of these attacks, the loyalty and integrity of officers of the Association were indicted as well as the honest intent of the letter itself. More recently, the whole NASD program, including the constitutionality of the legislation under which the Association operates, were questioned and condemned. A so-called Securities Dealers Committee was formed to solicit contributions for the declared purpose of taking the Association into the courts. This "Committee" filed a petition with the SEC, asking for a public hearing on NASD. Two of the three men instituting action for the "Committee" are not members of NASD. The New York Security Dealers Association had earlier filed a petition. [See page 1.]

All of these efforts to undermine, if not destroy, the NASD are motivated by reasons not entirely clear, but one thing *is* clear. They can be damaging to morale in the over-the-counter business. The Governors of your Association are conscious of the confusion that has been engendered in the minds of members. Such confusion is unhealthy, detrimental to the members' own business and to the welfare of the over-the-counter business as a whole.

The Board of Governors has chosen not to answer the attacks made by people *entirely outside* the Association. But individual Governors, the Officers and District Committees of the Association have met with numerous groups of members in various parts of the country and more such meetings are scheduled—all for the purpose of answering members' questions and to remove any cause of misunderstanding; inquiries from members on the October letter have been answered promptly and directly. Any reasonable demand for information has always been satisfied. The Board welcomes letters from members of this or any other NASD subject. It is anxious that its purposes and objectives be clearly understood by members at all times.

It is impossible to examine in detail the attacks made by outside sources, simply because many are without substance. Those most directly concerned with the Association's program may be summarized as follows: that the Board of Governors exceeded its authority in adopting the interpretation of Article III, Section 1, of the Rules of Fair Practice; that the interpretation constitutes a *rule* which could not be adopted without approval of the members of the Association; that the Board imposed a "5 per cent profit limitation"; that small dealers and small issuers will be adversely affected by the Board's action; that statistical studies reviewed in the letter of October 25 were incomplete, inconclusive, and improperly collected and analyzed.

In addition, it has been charged that the Board of Governors overwhelmingly represents and is under the domination of large underwriters and New York Stock Exchange members; that members who disagree with actions taken by the Board of Governors are fearful that, if such disagreement is registered, reprisals in one form or another will result.

As pointed out in the letter of October 25, the Board arrived at its decision to promulgate an interpretation of "Rule One" after four years of experience in administering the affairs of the Association.

A little retrospection may not be amiss. NASD was formed in 1939 as a result of several years' effort to set up an instrument of self-regulation which could represent the interests of the vast over-the-counter business, theretofore unorganized, and promote its general and public welfare. The alternative, as pointed out by the business and more particularly by the SEC, was a greatly expanded SEC force of investigators and lawyers in a new field of governmental securities regulation. The SEC supported the business' own program for self-regulation rather than undertake, at the time, regulation of the over-the-counter business on the scale being applied to stock exchanges and underwriting.

Admittedly, one of NASD's prime duties is to promote high standards of commercial honor and just and equitable principles of trade among the membership. No informed member can deny that a need for this existed.

NASD has *not* pursued a policy of filing complaints against members who have violated rules of fair practice on the theory that those who abuse such rules should be dealt with summarily and with no attempt made to remove causes for violations. NASD has known that the business, always highly competitive and without the means for learning standards being observed by the vast majority, needed to have some positive guides upon which it could rely. A common inquiry among NASD members for several years was: "What is fair?" "What amount of mark-up can I make?" "What are other people in the business doing?" Successive Boards of Governors sought to develop guides in answer to these questions. The Board, in 1943, decided to employ a questionnaire, confining the inquiry therein to actual transactions made, in order to gather statistics on mark-up practices observed by all members.

When study of the questionnaires was completed, the Board had before it for the first time unassailable facts as to the practice of members in principal sales to customers. It promptly presented these to the membership and offered them as the guides members had asked for. Thus, the views of the Board presented in the letter of October 25 were not arrived at either spontaneously or without facts to justify them. They were based solely on facts.

As to certain other of the charges made: Obviously, in adopting the following interpretation of "Rule One"—

"It shall be deemed conduct inconsistent with just and equitable principles of trade for a member to enter

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into any transaction with a customer in any security at any price not reasonably related to the current market price of the security."—

the Governors carefully examined any question of their authority to do so, even though, as practical business men, they were unanimous that such an interpretation should be made in the interest of the soundness and prosperity of the over-the-counter business. Counsel of the Association confirmed the Board in its belief that it would act well within its powers to adopt the interpretation. The Chairman of the SEC described the Board's action as a "very good move" in the direction of solving problems facing the Association.

The letter of October 25 was at particular pains to put the members on notice that the interpretation was not intended to be and was not to be construed as a rule for it stated:

"The Board has the strongest possible conviction that it would be impracticable and unwise, if not impossible, to write a rule which would attempt to define specifically what constitutes a fair spread or fair profit, or to say in exact percentage or dollars what would result in each and every transaction in a price to the customer which bears a reasonable relationship to the current market."

The Board has wondered how it could have more plainly, forcefully, and directly express its intent and purpose and its desire for flexibility.

Since it did not write a "rule," the Board fixed no limitation upon profits of members. It might be added that the NASD is not concerned with *profits,* as such, but only with the price at which a security is sold to a customer. It has said *that* price must bear a reasonable relation to the current market. Being actively engaged in the securities business, members of the Board are well aware that profits (losses, too) of varying sizes can accrue to members due to market action of securities owned by them. Further, the Board has always defended, and always will defend, the fundamental right of the member to a reasonable profit, regardless of the type of transaction.

If the Board of 21 Governors is dominated by any one individual or by any particular group or class of members, the following facts may be enlightening:

The personnel of one Board member's firm numbers 2;
the firm of another has a personnel of 4;
one a personnel of 5;
one a personnel of 6;
one of 7;
one of 8;
one of 10;
one of 19;
three of 21;
one of 22;
one of 34;
one of 36;
one of 66;
one of 68;
one of 97;
one of 144;
one of 182;
one of 326;
and one of 372.

Thus, 7 Governors are with firms employing 10 or fewer. An additional 5 employ 25 or fewer. Three so-called large underwriters are represented on the Board, while six of the Governors are members of firms with New York Stock Exchange memberships. The firms of these underwriters and Stock Exchange members all are active in over-the-counter market. Governors, as the above figures show, represent all sizes and classes of firms. Of the five Chairmen who have served since formation of NASD, two have been Stock Exchange firm partners. Of the 2,200 NASD members, nearly 400 are members of the New York Stock Exchange.

As to the completeness, accuracy, and propriety of the references in the letter of October 25 to the volume of transactions handled by members at mark-ups of not over 5 per cent: First and foremost, it should be remembered that the basic figures which disclosed the mark-up practice discussed in the letter were supplied *by the members* in their answers to questionnaires filed in 1943. The Board of Governors did not know precisely what the majority practice was among members until the questionnaires filed by members were analyzed, computed, and the findings summarized. When the Board had the FACTS, it presented them to the membership. As pointed out before, there had been a persistent demand from members for information as to general practice in the business. The Board, when it was able to answer that demand, did so.

One of the most vicious and wholly unjustified ideas fostered in the attack on NASD is that members who criticized the Association would suffer reprisals if their identity became known. This is hitting below the belt with a vengeance. Three years ago 700 members disagreed with the *majority* vote on minimum capital requirements for members of the Association proposed by the Board at the time. So far as is known, every one of those 700 firms, *each of which signed its ballot,* is still in business. We know of no untoward visitations of the majority upon those who disagreed with it then. There could be none then nor at any time.

Another phase of the attack, which seeks to pit class against class among the membership, proclams dire things for small dealers and small issuers under NASD's fair practice standards. Governors voted unanimously for the interpretation and policy set forth in the letter of October 25. The majority of the Board are themselves "small" dealers; "small" dealers accounted for the great majority of the transactions analyzed, showing 71 per cent of transactions

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When-Issued Trading Studied

After careful study of problems growing out of trading in when-issued securities, notably of railroads in reorganization, meetings have been held between representatives of NASD and the New York Stock Exchange for the purpose of developing procedure to be employed in the business in handling transactions in such securities. It is expected that a formal statement on the matter will be forthcoming in the near future.

BACK THE ATTACK—TRY MORE THAN BEFORE

Underwriters Asked to Urge Stockholders to Use Own Dealer for Purchase of Refunding Issue

The Board of Governors of NASD, at its recent meeting, approved a resolution calling upon underwriters to urge that stockholders owning an outstanding issue employ the services of their own broker or dealer to effect the purchase of a new refunding issue.

In refundings, particularly of preferred stock issues, the practice has developed of supplying the underwriting syndicate with lists of stockholders of the outstanding shares. In itself, this is considered a sound and constructive practice, especially since the issuer is naturally anxious to have existing stockholders, who may have held their stock a considerable time, remain as stockholders of the company. On the other hand, it is also conceded that an enormous amount of inertia on the part of such stockholders has to be overcome so that they need to be impelled to act. The problem for members of NASD has arisen when exchanges for new securities are urged upon existing stockholders by the underwriter without recommending action through the medium of the stockholders' established connections in the business. In some instances, of course, participants in the underwriting of the outstanding issue have gone out of business, but in other cases the new underwriting group may well be made up of firms which were not a part of the original underwriting group. When there is no competitive problem, it is urged that stockholders should have recourse to their own dealer.

It was the unanimous decision of the Governors, including representatives of large underwriting organizations, that NASD call upon all underwriters, in verbal or written communications with stockholders, to request that the latter make use of their own broker or own investment dealer to purchase the new stock being issued.

Charges and Claims About NASD

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at 5 per cent or less. NASD believes that the investor, the issuers, including potential issuers, and the over-the-counter business all will gain from observance by members of fair standards of practice in pricing securities sold to customers. The small dealer could benefit more proportionately than the larger one as public appreciation of such observance broadens.

In conclusion, it might be desirable to meet another charge or two. It has been said that the mark-up practices revealed by the study made of questionnaires were weighted by transactions of large underwriters, large dealers and Stock Exchange members as well as by municipal dealers. Since no member could report more than 50 transactions, no group could have weighted the over-all result without such weighting being exposed in breakdown studies which were made by class of member, size, etc. These breakdown studies revealed that no class of member, regardless of size or primary activity, influenced the over-all result in a material way and transactions in "municipals" were not even included on the questionnaires.

Moral Obligation of Members Is Raised in Complaint and Sustained by Conduct Committee

A District Business Conduct Committee recently upheld the claims of a member that another member had disregarded "moral obligations" assumed through conversations and exchanges of teletype messages. Contact between the members came about because of the interest of one in locating a block of notes for which he felt he had a market in his locality. The second member, located in another section of the country, indicated an ability to acquire one or more blocks of the notes. In time the second member was found to have distributed certain amounts of the notes in the locality of the first member. The Committee censured him and assessed him the cost of the hearing, $171.50.

The facts involved were not considered by the DBCC on the ground that a legal relationship or legal obligation was involved. However, the Committee did uphold the contentions of the first member that under fair practice standards of NASD—and in the light of commercial ethics of the business—that a moral obligation was incurred by the second member to co-operate mutually with the first member.

The facts as reviewed by the Committee in its decision were as follows:

In this proceeding we are asked to determine whether the conversations and correspondence between Complainant ("Roe") and Respondent ("Doe") with respect to Blank Corporation 5 per cent notes gave rise to a moral obligation on the part of Doe and whether such moral obligation was ignored in violation of our rule requiring members to observe high standards of commercial honor and just and equitable principles of trade.

Roe and Doe are dealers in. . . . In May, 1943, Roe participated in the distribution of a block of Blank Corporation notes and apparently found good demand for them, with the result that he was anxious to acquire, if possible, additional notes and to offer them for sale in the territory he serves.

On May 28, 1943, Roe and Doe exchanged two teletype messages. Roe told Doe that he had developed an interest in Blank Corporation notes and asked whether Doe thought he could locate some and make an offering to Roe. Doe replied, in substance, that he knew where holders were and inquired how many notes Roe needed and what price he could pay. Roe replied that he would like to get an option on a large block at a price somewhere in the neighborhood of 96¼. Doe said he would see what he could do.

A little later in the day Doe called Roe on the teletype and advised that he had talked to a substantial holder of the notes who had questioned whether he could sell without violating SEC registration requirements. Doe then asked what SEC permission had been obtained on the block of notes that Roe had been offering and also asked what other houses had been working on their distribution.

On June 1, 1943, Roe called Doe on the teletype and advised that the notes he had been offering did not represent notes held by a controlling interest. Doe advised that the block of notes on which he was working might be closer to

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control so that a ruling from the SEC might be necessary. Roe thereupon acknowledged he would have to wait for the SEC ruling and expressed hope for speed. Doe replied that he would let Roe know as soon as he could.

Later, on June 1, 1943, Roe and Doe had a second telephone conversation in which they discussed the advisability of making definite arrangements under which the notes, if secured, would be offered. Doe told Roe, in substance, that such arrangements would be premature before they knew how many notes could be obtained, the price at which they could be bought and the price at which they could be resold.

On approximately June 14, 1943, Doe received from a third party what he described as a "firm bid" on 100M notes at 99.

On June 16, 1943, Roe and Doe again corresponded by teletype. Roe inquired whether Doe had gotten anywhere on the notes previously discussed. Doe replied that he had not; that the notes seemed to be too hard to get, but that he was trying to obtain some. Roe inquired about SEC clearance and Doe replied that clearance to a certain extent had been obtained, depending upon who sold the notes. He then said that obtaining the notes might take several days, but that it looked hopeful and that he would let Roe know as soon as possible.

The matter apparently drifted from June 16, 1943, until July 1, 1943, at which time Doe referred to his attorneys the question of SEC clearance.

On July 7, 1943, Roe called Doe by teletype and asked what had happened on the Blank Corporation note situation. Doe replied that he expected to have something for the complainant either the end of the week or the early part of the next week. Doe also said that he was working on the notes and had had good encouragement and inquired what the situation was in Roe's territory. The latter said he would like to see a block of the notes worked out so that he could go to work on them and inquired how many were involved in Doe's deal. Doe replied that it was a good-size block, but that he did not think he would be able to get firm offerings except for a very short time and did not believe he would be able to get an option. Roe inquired whether there might not be a chance of getting an option of from two weeks to thirty days if 100M notes were taken down "between us." Doe replied that he would let Roe know more definitely Monday or Tuesday "and before, if I can, when I get in shape so I can talk more accurately to you, but I will have something, I believe, for you, anyway."

By letter dated July 10, 1943, which was a Saturday, the Securities and Exchange Commission approved the purchase and sale by Doe, without registration, of certain Blank Corporation notes and the contents of that letter presumably became known to Doe on Monday, July 12, 1943, on which day Doe sold, without Roe's knowledge, 100M of such notes.

During the course of the next few days, various of the notes were offered for sale in Roe's territory, with the result that Roe eventually learned that the notes came from Doe. On July 20, 1943, Roe called Doe and purchased 60 notes at 98½.

It is not contended that the facts and circumstances reviewed above gave rise to any legal relationship or obligation. Roe does urge, however, that they did give rise to a moral obligation and that high standards of commercial honor and just and equitable principles of trade required that he be permitted, on some equitable basis, to participate in the distribution of the notes.

Doe sought to minimize the importance of the earlier conversations and said that he did not become actively interested in the Blank note situation until about June 14, 1943, when he received a firm bid of 99 for 100 of them. He then offered as explanation of not having done business with Roe, the statement that certain people to whom he sold notes had asked him not to sell to Roe because such sales would conflict in their territory. Consequently, Doe left instructions at his office not to sell notes to Roe.

It seems to us that the telephone and teletype conversations which took place prior to June 14, 1943, indicate on the part of Doe something more than mere casual interest, both in the Blank note situation as a whole and in the possibility of distributing them through Roe. Furthermore, assuming, as we must, that on or about June 14, 1943, Doe determined to do business with the firm that had bid him 99 for 100 notes rather than with Roe, we think that Doe's subsequent conversations with Roe were calculated to lead Roe to believe that if the notes were available, Roe would have a share in their distribution on some appropriate basis. Thus Doe assured himself to some extent that Roe would not acquire notes elsewhere. Furthermore, because Doe won the confidence and trust of Roe, the former was able to offer notes in the latter's territory without having to meet possible competition from Roe.

In our opinion, the conduct of Doe was purposely deceptive and, therefore, fell far short of high standards of commercial honor and just and equitable principles of trade. The observance of such standards and principles is required by Rule 1 and it follows that the conduct of Doe violated the rule.

While we earnestly deplore Doe's conduct, we are disposed to be lenient because, so far as we know, no similar case has been presented for the consideration of this or any other Business Conduct Committee. We therefore censure Doe and assess against him the sum of $171.50, representing such part of the cost of this proceeding as we deem fair and appropriate in the circumstances.

Members Cautioned on When-Issued Transactions in St. Paul Issues

With approval by the U. S. District Court, a new plan of reorganization of Chicago, Milwaukee, St. Paul and Pacific Railroad, it is pointed out by the National Uniform Practice Committee that trading may take place in two kinds of "when-issued" contracts—one under the new plan and one under a previous plan.

Members are cautioned by the Committee to assure themselves that all contracts in St. Paul issues for their own accounts or for the accounts of their customers, either in their original form or by supplemental agreement, clearly specify the plan of reorganization contemplated by the transaction.

Board Answers Inquiry on Mark-Up Policy Letters

Informed of a desire on the part of the District Committee for New York, Connecticut and New Jersey to receive a statement from the Board of Governors on the correct and intended meaning of a letter dated October 25, 1943, to members as well as one of November 9, 1943, to District Business Conduct Committees, the Board at its last meeting approved a letter to the Chairman of that Committee which has since been distributed to the members of the District. Due to the numerical size of the New York District, it has not been possible to hold meetings of members there with Chairman Ralph Chapman and other Governors such as have been held in numerous other parts of the country. At such meetings specific questions of members have been invited and answered and the whole subject of NASD's program reviewed.

Reprinted below are the letters from the Chairman of District Committee No. 13 and the reply of Mr. Chapman as directed by the Board of Governors:

"May 18, 1944.

"Mr. Ralph Chapman, Chairman,
National Association of Securities Dealers, Inc.
1616 Walnut Street,
Philadelphia 3, Pa.

"Dear Mr. Chapman:

"District Committee 13 has received numerous questions from its members under the policy outlined in the letters of the Board of Governors of October 25 and November 9, 1943.

"Would the Board of Governors advise us whether District Committee 13 is correct in interpreting the policy announced by those letters as constituting a desirable objective or yardstick to be considered by the District Business Conduct Committee in applying the Rules of Fair Practice in the light of the circumstances surrounding the particular transaction under examination?

"Very truly yours,
"Irving D. Fish, Chairman."

"June 6, 1944.

"Mr. Irving D. Fish, Chairman,
District No. 13 Committee,
111 Broadway,
New York 6, N. Y.

"Dear Mr. Fish:

"Your letter of May 18, 1944, was presented to the Board of Governors at its meeting June 5, 1944.

"I was directed by the Board to advise you that you are correct in your understanding that the policy announced by the Board in its letter of October 25, and the subsequent letter of November 9, 1943, is not a rule, but should be considered by District Business Conduct Committees as a desirable objective or yardstick, neither more nor less, and be employed by them in the light of the circumstances surrounding each transaction which may be the subject of examination or review under the Rules of Fair Practice.

"Very truly yours,
"Ralph Chapman, Chairman."

Executive Director's Report

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the year. During April, 11 complaints were disposed of by District Business Conduct Committees, and in the first four months of the year 21 complaints were disposed of. These 21 complaints handled in the first four months of the year resulted in the following decisions: 7 censures, 4 fines, 3 assessments of costs, 1 expulsion, 1 suspension, 2 pledges of future observance and compliance, and 9 dismissals.

At the end of April, 11 complaints were pending, and there were before the National Business Conduct Committee awaiting review 7 decisions of District Business Conduct Committees. Practically all complaints that have been filed in recent months grew out of the examination program of last year.

Meetings of Members

In keeping with the spirit of Board members expressed at the January meeting, the Chairman and the Executive Director have since participated in a number of group meetings of members in various parts of the country, including Nashville, Atlanta, Cleveland, San Antonio, and New Orleans.

The Chairman recently attended a meeting of Indianapolis members and all in all has willingly and freely given of his time to this and other vital and useful work among the members. Meetings which he will attend are to be held the end of this week in Baltimore and Washington. Plans are being made to hold meetings in Detroit and elsewhere, in the Middle West a little later on, as well as in the South. Tentative arrangements have been made to hold meetings early in the fall in St. Louis and Western points, with the prospect that it will be possible to hold several meetings on the Pacific Coast before the end of the year.

In addition to meetings with members for the purpose of discussing policy and activities of the Association, the announced purpose of the Board to cultivate understanding among members has been advanced in other ways. Early in March a meeting of District Chairmen and District Secretaries was held in New York, which meeting was attended by the Chairman and members of the Executive Committee, with Mr. Chapman, Mr. Riter, and Mr. Coggeshall making informal statements on various problems of the Association. District Chairmen have, through letters to their members and through calls upon members by District Committeemen and Secretaries, furthered the purpose of the Board.

Compulsory Arbitration

The subject of compulsory arbitration of disputes between members of the Association has been more actively before the Association in recent months. Two such disputes have had to be handled as complaints due to our inability to obtain consent of both parties to arbitration of their differences. In September, 1943, the Board adopted a resolution instructing Counsel to prepare formal procedure for arbitration of controversies between members. We have had numerous discussions in the interval. Counsel is prepared at this time to review progress made to date.

BACK THE ATTACK—TRY MORE THAN BEFORE

REPRESENTATION AT JUNE BOARD MEETING

The following attended the meeting June 5-6 of the Board of Governors and Advisory Council:

BOARD OF GOVERNORS

RALPH CHAPMAN, *Chairman*	*Farwell, Chapman & Co.*	Chicago
JAMES COGGESHALL, JR., *Vice Chairman*	*The First Boston Corporation*	New York
HERMANN F. CLARKE, *Vice Chairman*	*Estabrook & Co.*	Boston
ALBERT THEIS, JR., *Treasurer*	*Albert Theis & Sons, Inc.*	St. Louis
PETER BALL	*Ball, Burge & Co.*	Cleveland
JOHN H. BARRET	*Stern Brothers & Co.*	Kansas City
HARRY W. BEEBE	*Harriman Ripley & Co., Inc.*	New York
HAGOOD CLARKE	*Johnson, Lane, Space and Co.*	Atlanta
SAMUEL K. CUNNINGHAM	*S. K. Cunningham & Co., Inc.*	Pittsburgh
R. WINFIELD ELLIS	*Lee Higginson Corporation*	Chicago
P. B. GARRETT	*Garrett and Company, Inc.*	Dallas
JUNE S. JONES	*Atkinson, Jones & Co.*	Portland
ROBERT S. MORRIS	*Robert S. Morris & Co.*	Hartford
NORMAN NELSON	*Piper, Jaffray & Hopwood*	Minneapolis
JAMES PARKER NOLAN	*Folger, Nolan & Co., Inc.*	Washington, D. C.
RALPH E. PHILLIPS	*Dean Witter & Co.*	Los Angeles
JOHN J. QUAIL	*Quail & Co.*	Davenport
HENRY G. RITER, 3RD	*Riter & Co.*	New York
CLARENCE E. UNTERBERG	*C. E. Unterberg & Company*	New York
WALLACE H. FULTON	*Executive Director*	Philadelphia

ADVISORY COUNCIL

Dist. No. 3—EDWARD B. COUGHLIN	*Coughlin and Company*	Denver
Dist. No. 4—WILBER W. WITTENBERG	*Blyth & Co., Inc.*	Minneapolis
Dist. No. 5—WALTER I. COLE	*Beecroft, Cole & Company*	Topeka
Dist. No. 7—HUNTER BRECKENRIDGE	*McCourtney-Breckenridge & Co.*	St. Louis
Dist. No. 8—L. RAYMOND BILLETT	*Kebbon, McCormick & Co.*	Chicago
Dist. No. 9—CLEMENT A. EVANS	*Clement A. Evans & Company, Inc.*	Atlanta
Dist. No. 11—HAROLD C. PATTERSON	*Auchincloss, Parker & Redpath*	Washington, D. C.
Dist. No. 12—WILLIAM K. BARCLAY, JR.	*Stein Bros. & Boyce*	Philadelphia
Dist. No. 12—S. DAVIDSON HERRON	*Mellon Securities Corporation*	Pittsburgh
Dist. No. 13—IRVING D. FISH	*Smith, Barney & Co.*	New York
Dist. No. 13—GEORGE N. LINDSAY	*Swiss American Corporation*	New York
Dist. No. 14—B. EARLE APPLETON	*Pearson, Erhard & Co., Inc.*	Boston

OTHERS

HENRY B. RISING *Chairman,* National Uniform Practice Committee	*Whiting, Weeks & Stubbs, Inc.*	Boston
W. YOST FULTON *Vice Chairman,* Special Committee	*Maynard H. Murch & Co.*	Cleveland
H. H. DEWAR	*Dewar, Robertson & Pancoast*	San Antonio
ROBERT C. KIRCHOFER	*Kirchofer & Arnold, Inc.*	Raleigh
STEPHEN C. THAYER	*Of Counsel, Baker, Hostetler & Patterson*	Cleveland
JAMES P. CONWAY	*Executive Office*	Philadelphia

Advertising

(*Continued from page 1*)

Following is the text of the resolution adopted by the Board of Governors:

WHEREAS Section 2 of Article VIII of the By-Laws of the Association provides:

> "No member shall use the name of the corporation on letterheads, circulars, or other advertising matter or literature, except to the extent that may be authorized by the Board of Governors";

and

WHEREAS the Board of Governors has considered the extent to which the use by members of the name of the corporation on letterheads, circulars or other advertising matter or literature would be in the best interests of the Association and its members;

NOW, THEREFORE, BE IT RESOLVED that each member of the Association is hereby permitted to use the name of the corporation in the phrase "Member of National Association of Securities Dealers, Inc." upon its letterheads, circulars, confirmations or other advertising matter or literature, and upon the door or entranceway to the regularly established place or places of business of each member; but no member shall be authorized to use the name of the corporation other than in the phrase "Member of National Association of Securities Dealers, Inc."

RESOLVED FURTHER that no member of the Association who has been suspended from membership in the Association or who is delinquent in payment of dues or assessments to the Association may use the name of the corporation in any manner during the period of such suspension or delinquency in payment of dues or assessments.

RESOLVED FURTHER that each member of the Association shall be entitled to receive, upon request to the Association, an appropriate certificate of membership in the Association, but such certificate shall be and remain the property of the Association and shall be returned by each member to the Association upon request by the Board of Governors or the Executive Director of the Association.