NASD News

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New Officers

Seven governors also take office at annual Board meeting in Washington, D. C.

Four new officers and seven new governors of the National Association of Securities Dealers, Inc., assumed office at the meeting of the Board held at the Shoreham Hotel, Washington, D. C., on Feb. 26, 27 and 28, 1950.

The officers for the ensuing year are:

Chairman: John J. Sullivan, Bosworth, Sullivan & Co., Denver.

Vice Chairmen: Francis Kernan, White, Weld & Co., New York City and Eaton Taylor, Dean, Witter & Co., San Francisco.

Treasurer: S. Davidson Herron, The First Boston Corporation, Pittsburgh.

Executive Director: Wallace H. Fulton.

Following the installation of the new officers Chairman Sullivan announced the membership of the Executive Committee. In addition to the four officers and the Executive Director it will include Howard E. Buhse, chairman of the Finance Committee: Clement A. Evans, the immediate past chairman, and Sampson Rogers, Jr., chairman of the National Business Conduct Committee.

The seven new governors of the Association who took office at this meeting were:

Clarence A. Bickel, Robert W. Baird & Co., Milwaukee.

Ewing T. Boles, The Ohio Company, Columbus.

Charles P. Cooley, Jr., Cooley & Company, Hartford.

W. Fenton Johnston, Smith, Barney & Co., New York.

Harper Joy, Pacific Northwest Company, Spokane.

Ira D. Owen, Allison-Williams Company, Minneapolis.

Albert William Tweedy, H. C. Wainwright & Co., Boston.

1950 CHAIRMAN

John J. Sullivan

Each of the association's 14 districts is represented by one or more governors and seven new governors are elected each year to serve for three years. Officers serve for one year.

The new Chairman of the Association, John J. Sullivan is well known in the investment securities business throughout the United States. While a young man he started his own firm in 1927 under the name, Sullivan & Company. In 1946 he consolidated with Bosworth, Chanute, Loughridge & Co. to form Bosworth, Sullivan & Company, and Mr. Sullivan became president of the firm. Recently the firm became members of the New York Stock Exchange. He is active in civic affairs and in philanthropic and religious circles, as well as in the investment business. He is a member of the National Board of Directors, United Service Organizations; past president and present vice-president

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Section 5

Legislative Committee Ordered to draft bill preparatory to going direct to Congress for amendment.

The NASD is preparing to go direct to Congress for amendment of Section 5 of the Securities Act of 1933, if agreement with the Securities and Exchange Commission proves unattainable. The Board voted to continue negotiations with the SEC but instructed the Legislative Advisory Committee meanwhile to draft an appropriate amendment of the section, and to have it ready for the September meeting for consideration in the event that legislation which can be jointly sponsored by the SEC and the Association has not been agreed upon.

This action by the Board came after the presentation of the Executive Director's report in which he touched upon the negotiations which have been carried on with successive administrations of the Commission which have thus far proven fruitless. It was the Director's recommendation that the Association consider going directly to Congress for relief of the restrictive provisions of Section 5.

A resolution was introduced by the chairman of the Legislative Advisory Committee, Howard E. Buhse, which said:

"Be It Resolved:

This Board of Governors of the NASD, representing, as it does, the entire securities industry continues to be concerned over the operation of Section 5 of the Securities Act of 1933.

In doing business under this section it is virtually impossible for our members not to technically violate the law at various times.

"Our representatives have been in negotiation with members of the Securities and Exchange Commission and its staff for a number of years in an effort to solve this difficult prob-

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Francis Kernan

and member of executive committee, Denver Community Chest; past treasurer and present member of Board of Trustees, Colorado Hospital Service (Blue Cross); President, Denver Rotary Club; treasurer and member of executive committee, Catholic Charities of the Archdiocese of Denver; Trustee, The Denver Foundation; Member, Board of Directors, Central City Opera House Association; member, Board of Directors, Denver Civic Theater.

The two vice-chairmen represent the opposite ends of the nation, Eaton Taylor on the West Coast and Francis Kernan on the East. Both have served in numerous capacities on NASD district committees as well as nationally.

Sketches of the seven new governors introduced to the Board in February follow:

S. Davidson Herron

CLARENCE A. BICKEL

Clarence A. Bickel is a partner in the firm of Robert W. Baird & Co., Milwaukee, and vice president and treasurer of the affiliated corporation, Robert W. Baird & Co., Incorporated.

He was born in Fort Wayne, Indiana, in 1904; attended Walton School of Commerce and Northwestern University in Chicago; received his C.P.A. degree in Illinois in 1929.

He became associated with Robert W. Baird & Co., Incorporated (then known as the First Wisconsin Company) in 1933, was elected treasurer in 1934, a director in 1936 and a vice-president in 1948. He became a general partner of Robert W. Baird & Co. upon formation of the firm in 1948.

Mr. Bickel was chairman of NASD's District Committee No. 8 during the past year. He is vice-president and a director of the Milwaukee Control of the Controllers Institute of America, a director and past president of the Milwaukee Travelers Aid Society, and a director of the Milwaukee Chapter of the American Red Cross. He is married and has one son, Robert.

EWING T. BOLES

Ewing T. Boles, president of The Ohio Company, Columbus, was born in Williamstown, Kentucky, in 1895. He attended Centre College and the University of Illinois and received his A.B. degree from Centre College in 1916. He also attended the College of Law, University of Kentucky, 1916-17.

He served as an ensign, U.S.N.R., in World War I. He became sales manager of the Banc-Ohio Securities Company, predecessor of The Ohio Company, in 1929 and president in 1935.

Mr. Boles also is a governor of the Investment Bankers Association of America. He was chairman of NASD's District No. 10 in 1941-42, vice-chairman of the Ohio Valley Group of the Investment Bankers Association, 1944-45, and chairman, 1945-47. He is a member of the Columbus Club and the Athletic Club of Columbus and past national president of Phi Kappa Tau fraternity.

Eaton Taylor

CHARLES P. COOLEY, JR.

Charles P. Cooley, Jr. is a partner in Cooley & Company, Hartford, and a member of the New York Stock Exchange. He was born in Hartford in 1903, graduated from Pomfret School, Pomfret, Conn., in 1922 and Yale University in 1926.

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Wallace H. Fulton

NASD Plays Leading Role in Frear Bill Hearing

Text of statement to Committee by Clement A. Evans as Chairman and Memorandum discussing collateral aspects of proposed legislation.

Representatives of the National Association of Securities Dealers, Inc. played an important part in pressing for amendment of the Frear Bill and and as a result obtained, by agreement, substantial changes in the text. A number of the objectionable provisions of the Bill, still in Committee in the Senate, were eliminated or amended, as a result of the efforts of NASD.

Two important papers were filed by the Association during hearings on the Bill. These were a statement by Clement A. Evans as chairman of the NASD and a memorandum presented by Mr. Frank Dunne setting forth some of the collateral aspects of the bill.

The text of these follows:

STATEMENT

My name is Clement A. Evans.

I am Chairman of the Board of Governors of the National Association of Securities Dealers, Inc. and in addition have my own securities firm which is located in Atlanta, Georgia.

Associated with me in this statement is Mr. Frank Dunne of Dunne & Co. New York. With the permission of the Chairman, I would like to refer any questions the Committee may have relating to the technical aspects of the Association's position on this proposed bill to Mr. Dunne. Attached to this statement is a memorandum which deals with some of the collateral aspects of this bill, which relate to unlisted trading privileges pursuant to Section 12(f), clause 3 of the Securities and Exchange Act of 1934.

The National Association of Securities Dealers, Inc., is a non-profit membership corporation of 2,743 members, registered with the Securities and Exchange Commission pursuant to Section 15A of the Securities Exchange Act of 1934 and generally is designed to promote high standards of commercial honor and just and equitable principles of trade in the securities business.

A very large percentage of the membership of our Association has a vital interest in the collateral aspects of the bill here under consideration, particularly those aspects of the bill which would affect securities markets. Because of this interest, all fourteen of our district committees have given careful consideration to this proposal.

In addition, a Special Committee of the Board of Governors of our Association studied this matter and reported to a regular meeting of our Board on October 5-6, 1949. As a result of this study and the recommendations of that Committee, the Board of Governors has unanimously advocated approval of the basic principle, incorporated in this bill, namely that a "stockholder is entitled to complete information about his company, whether or not the securities of the company are listed."

Our Special Committee was of the certain opinion, however, that competition within the securities business, between listed and unlisted, or over-the-counter markets, would be adversely affected and the public interest harmed thereby, unless certain suggested changes in the bill are adopted, which are as follows:

1. The privilege of admission to trading on registered securities exchanges of securities, on an unlisted basis, pursuant to the present provisions of Section 12(f), clause 3 of the Securities Exchange Act of 1934, should be eliminated.

2. The present provisions of the Securities Exchange Act should be amended to permit securities, whether listed or unlisted, if subject to the registration requirements of this Act, and wherever traded, to be eligible for margin, pursuant to appropriate rule and regulation of the Federal Reserve Board.

3. We express no opinion as to the appropriateness of the determinative feature of the bill, namely, $3,000,000 in assets and 300 securities holders.

It is apparent to us that the provisions of this proposed bill will make it likely that securities of many of the companies affected will be the subject of applications by exchanges for unlisted trading privileges under Section 12(f), clause 3 of the present Act. It has been our experience that the extension of unlisted trading privileges to securities which are not otherwise listed on national securities exchanges often results in a failure of an adequate market on the exchange and damage to the best market for the securities in the over-the-counter market. We feel that the potential results arising out of the further extension of unlisted trading privileges upon the request of any exchange pursuant to the present provision, Section 12(f), clause 3 would certainly not be in the public interest if our past experience is indicative of what may be expected. Therefore we advocate the elimination of Section 12(f), clause 3 of the present Act.

On the other hand, it is clear to us that many securities of companies affected by this bill will become fully listed on exchanges. In that event, the competition between the listed and over-the-counter markets will be enhanced and the interest of the public and the investor furthered. We have no disagreement with further extensions of full listings provided that securities so listed are properly susceptible to auction market trading and are listed pursuant to appropriate standards. It is for that reason that our Special Committee and the Board advocated that an attempt be made to reach agreement with the exchanges concerning uniform standards for listing and delisting with respect to fully listed securities before advocating the inclusion of such standards in the statute. Such an attempt has been made, and, as at the present time, at least, has not been successful. Therefore, we would be in accord with a proposal that a study of listing and delisting standards and procedures be made by the Securities and Exchange Commission and a report be rendered to the Congress within two years of the enactment of this bill.

The basic approach of the Special Committee in recommending the statement of policy and of the Board of Governors in *unanimously* adopting it was "to determine the logical basis for the provisions and requirements of the bill and the obvious results of the adoption of the bill from the point of view of the public interest, investors generally, and the membership of the Association."

It is my understanding that conferences have been had with the Securities and Exchange Commission, as a result of which the Commission will

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or has recommended amendment of this Bill in such form that it will encompass the substance of most of the points advocated by the Board of Governors of our Association.

The foregoing conclusions were based upon the Board's considered judgment that these suggested changes are necessary in the public interest, in order to preserve and to make more truly competitive, the relationship between the listed and the unlisted, or over-the-counter markets. It is our firm opinion that these amendments to the proposed Bill which have been or will be recommended by the Securities and Exchange Commission should be adopted in order clearly to delineate and define in the public interest, the proper scope and functions of the unlisted, or over-the-counter markets and the listed or auction markets. If such suggested additional proposals be not adopted, and S. 2408, enacted in its present form, it is the considered judgment of our Board of Governors that the public interest will be harmed in direct relationship to the degree in which the competitive aspects between the two markets are decreased.

Attached to my prepared statement is the statement of policy, adopted on October 5-6, 1949 by our Board of Governors, and which was made public sometime ago. This statement sets forth at greater length some of the considerations which impel these recommendations.

As a result of conferences with the Securities and Exchange Commission, we understand that provision for certain other items which are not covered in our statement of policy, will be made by the Commission under its rule making authority. There are potential problems arising out of the application of the present provisions of Section 16 of the Act to certain situations relating to investment companies registered under the Investment Company Act of 1940, as well as the application of that section to potential situations which may arise and affect markets for securities of corporations in which there is neither national interest nor national distribution. I am advised that representatives of the Commission have stated or will state to this Committee that the Commission is fully cognizant of these problems and will confer with industry representatives with respect to the rules and regulations to be drafted, if this bill is enacted.

OTIS & CO. FINDINGS

The report of the National Business Conduct Committee concerning the matter of Otis & Co., et al., together with the resolutions in connection therewith passed by the Board of Governors have been printed in booklet form for distribution to Association members. Members have been sent a copy. Others desiring copies may obtain them by writing to the Association's office, 1625 K Street, N. W., Washington, D. C.

Otis & Co. have since appealed the Board's decision to the SEC.

I am expressing herein the judgment of the Board of Governors of the Association. We have not had an opportunity to poll our individual members but are of the opinion that this position would be fully supported by the very great majority of such members.

In conclusion, I wish to restate that, subject to the foregoing suggested changes which relate to the collateral aspects of this Bill, the Board of Governors of the National Association of Securities Dealers, Inc., believe in and supports the basic principle of this bill that a stockholder is entitled to basic information concerning the company in which he holds securities.

Respectfully submitted,
on Behalf of the Board of Governors,
National Association of Securities Dealers, Inc.

MEMORANDUM

Bill S. 2408 is proposed to amend Sections 12, 13, 14 and 16 of the Securities and Exchange Act of 1934, so that these sections of the act will apply to all corporations with more than $3,000,000 of assets, and 300 or more security holders.

If this bill is enacted, then all of the corporations within the above category will be obliged to furnish information now required of corporations whose issues are registered on exchanges. Their securities would then become eligible for application for unlisted trading privileges on exchanges, unless Section 12(f) is also amended.

The over-the-counter market made up of thousands of small dealers in securities throughout the country and which has served as the marketplace for these issues over the years would be destroyed or very seriously damaged. Long established over-the-counter dealers would be put out of business—inferior exchange markets for securities not suitable for auction trading would follow with resultant loss to the public—and therein lies the greatest danger involved in the proposed bill as now written.

Even so, we do not quarrel with the principle of disclosure of information which the measure seeks to bring about but support this principle if certain other changes in the present Act are adopted.

Many securities that enjoy the unlisted trading privilege, and many fully listed as well, have inferior markets on exchanges. The public interest would better be served if those issues were traded exclusively in the over-the-counter market.

The incidental but highly important result brought about by S. 2408 in its present form would be the broadening of unlisted trading privileges on exchanges, and the chief beneficiary would be the New York Curb Exchange where approximately 45% of all issues are traded on an "unlisted" basis.

It is not intended here to discuss the merits of Sections 14 and 16 as they influence the volume of listed trading, nor the justification for extending these sections to a great number of over-the-counter securities. These questions should be settled in a manner consistent with "the public interest and protection of investors."

The purpose of this memorandum is to demonstrate and make crystal clear the fact that Sections 12, 13, 14 and 16 also have a great bearing on Section 12(f) of the Act, governing unlisted trading on exchanges. The broadening of the application of Sections 14 and 16 to cover many unlisted securities would automatically disrupt the relationship of auction and negotiated markets and disturb the present impact of Section 12(f) on securities markets.

To explain the connection between Sections 12, 13, 14 and 16 and Section 12(f) it will be helpful to restate briefly the history of this legislation. Originally, the Securities Exchange Act of 1934 provided for the discontinuance of unlisted trading privileges on exchanges on June 1, 1936. However, the Act also instructed the Securities and Exchange Commission to study the problem and render a report to the Congress. The Commission made such a report on the subject and upon its suggestion,

Section 12(f) of the Act was amended in May 1936 to allow unlisted trading on exchanges to continue.

The Commission was apparently of the opinion that the sudden discontinuance of unlisted trading privileges would unduly disturb the securities markets.

In addition, provision was also made for admitting additional securities to Unlisted trading privileges. The conditions for such admission of new securities, however, were circumscribed so that in practice a negligible amount of new securities could be admitted. The limitations included the following provision:

> Section 12(f)—". . . No application to extend unlisted trading privileges to any security pursuant to clause (3) of this subsection shall be approved except upon such terms and conditions as will subject the *issuer thereof, the officers and directors of such issuer, and every beneficial owner of more than 10 per centum of such security to duties substantially equivalent to the duties which would arise pursuant to this title if such security were duly listed and registered on a national securities exchange,* except that such terms and conditions need not be imposed in any case or class of cases in which it shall appear to the Commission that the public interest and the protection of investors would nevertheless best be served by such extension of unlisted trading privileges . . ." (Italics added)

If Sections 12, 13, 14 and 16 were now to be imposed on a great many securities not traded on an Exchange, it would result in the removal of a major restraint on admissions to unlisted trading privileges on exchanges and would make available for exchanges a considerable amount of information necessary for the support of applications to the Commission for unlisted trading privileges pursuant to Section 12 (f)(3). This, it is believed, would then be followed by a flood of applications by exchanges for admission to unlisted trading privileges of those equity securities of corporations affected by this bill.

The problem presented is not how to prevent extension of modification of Sections 12, 13, 14 and 16, but how to effect such modifications without disturbing other parts of the Act, and inadvertently bringing back a condition which the Act originally sought to abolish, and finally circumscribed within some limits.

It is apparent therefore that if the Congress determines that it is feasible and desirable to extend the application of Sections 12, 13, 14 and 16 to a great many over-the-counter securities so as to make available information similar to that on listed securities, such changes should be so devised as to prevent the secondary undesirable and collateral consequence of broadening unlisted trading privileges on exchanges,—a result which is contrary to the original intent of the 1934 Act, and which would be harmful to the public interest and destructive of markets in many securities so affected.

At this point it might be helpful to review the whole subject of unlisted trading privileges on exchanges.

The problem of unlisted trading privileges is not a new one. This device has been the subject of many investigations, and has been found in conflict with the public interest. As far back as 1909, a committee of the New York State Legislature, headed by former Chief Justice Hughes, investigated the then existing unlisted trading department of the New York Stock Exchange. Following its recommendations, the New York Stock Exchange discontinued its unlisted department.

Again in 1933, the Attorney-General of New York investigated unlisted trading on the New York Curb Exchange and forced certain drastic modifications of the rules governing admission of securities to such privileges.

As previously stated, when the Securities Exchange Act of 1934 was drafted, Congress at first sought to abolish the practice of exchange trading of securities on an unlisted basis, and these privileges would have expired on June 1, 1936 under the terms of the original act.

However, the S. E. C. under the Chairmanship of Mr. James M. Landis investigated the problem and submitted a report to Congress on January 3, 1936. Following this the provisions now in force were enacted after extensive congressional hearings. These amendments provided among other things:

1) for continuance of unlisted Trading Privileges on exchanges for those securities which already were dealt in on exchanges on this basis prior to March 1, 1934.

2) for the admission to such trading on exchanges of securities with respect to which there is information filed under the 1933 Act provided such securities could be subjected to the Sec. 14 (proxy provision) and Sec. 16 (insider trading provision).

It was admitted by Mr. Landis at the time of the hearing leading to the enactment of these provisions that compliance with Sections 14 and 16 could not be made mandatory.

Mr. Landis testified as follows:

> "With reference to getting out information on over-the-counter securities we have not met the problem of getting that information identical with the information on the exchanges. As to Sections 14 and 16, we have not met that problem . . . if the exchange in some way succeeds in devising a technique for meeting that problem, if they do succeed in doing it, then under those circumstances we would consider the question of whether or not unlisted trading, *where an overwhelming interest demands it,* should be granted." (Italics added)

Since the passage of this legislation, the exchanges have not succeeded in obtaining compliance with Sections 14 and 16. As a consequence, relatively few equity securities have been admitted to unlisted trading privileges.

Since the 1934 Act, there have been many securities which even after full listing have had a less satisfactory market on the exchange than they had previously over-the-counter. This is due to the fact that these securities were not suited for auction trading.

The theory of the exchange market, as we know it in this country, is that of an auction market, i.e., a focal point where buyers and sellers come

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Ewing T. Boles

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He began his business career with the Hartford National Bank & Trust Company in 1926. The following year he became associated with Thompson, Fenn & Company which later became Stevenson, Gregory & Company. From 1930 until 1934 he was with Francis R. Cooley & Company. In 1934 he acquired a seat on the New York Stock Exchange and became a partner in Cooley & Company which succeeded to the business of Francis R. Cooley & Co.

Mr. Cooley is a director of the following companies: Aetna Insurance Company, Century Indemnity Company, World Fire & Marine Insurance Co., and Standard Insurance Company, New York.

W. FENTON JOHNSTON

W. Fenton Johnston is a partner in Smith, Barney & Co., New York City. He was born in Massillon, Ohio in 1895, and was graduated from Ohio State University with a Bachelor of Arts degree in 1919.

He entered the investment banking business in 1922 with Harris Forbes & Co., New York. He was associated with Chas. D. Barney & Co., New York from 1928 through 1937. He has been with Smith, Barney & Co., New York, since 1938.

Mr. Johnston is a member of the Recess Club, the Rockaway Hunting Club, the Lawrence Beach Club, and the University Club. He is married and has one daughter.

HARPER JOY

Harper Joy is executive vice-president of the Pacific Northwest Company, Spokane. He was born in Sedalia, Missouri, in 1894, received his early education in the public school of Walla Walla, Washington and graduated from Whitman College in 1922 with degrees of B.S. and L.L.D.

He has been with the Pacific Northwest Company and the predecessor company, Ferris & Hardgrove, since June, 1922.

Mr. Joy is a member of the advisory board of the Spokane & Eastern Division of the Seattle First National Bank; a director of the Coeur d' Alene Hotel Company; vice chairman of the Spokane Shriners Hospital for Crippled Children; past president of the Shrine Directors' Association; member of the board of trustees of Whitman College and chairman of its finance committee; a life member of the Spokane Press Club; a member of the University Club and Phi Delta Theta; Delta Sigma Rho; chairman of the Spokane County War Finance Committee during World War II.

IRA D. OWEN

Ira D. Owen is vice president of Allison-Williams Company, Minneapolis.

C. P. Cooley, Jr.

Clarence A. Bickel

He was born in Chicago in 1894. He was educated in the public schools of Fairmont, Minnesota and Carleton College.

After serving in World War I from April, 1917 to August, 1919 he entered the investment business in the company which was the predecessor to Allison-Williams Company. He became secretary of the Allison-Williams Company in 1932 and vice president in 1944.

Mr. Owen has served as secretary and treasurer and a member of the executive committee of the Minnesota Group of the Investment Bankers Association, as secretary and chairman of NASD's District Committee, and as a member of the Board of Governors of the Twin City Bond Club.

ALBERT WILLIAM TWEEDY

Albert William Tweedy is a general partner of H. C. Wainwright & Co., Boston. He was born in Poughkeepsie, New York, in 1890 and attended Poughkeepsie schools. He later graduated from New York University Law School and after being admitted to the New York Bar in 1916, joined the firm of Harrington, Bigham & Englar. Three years later he joined the bond department of the Guaranty Trust Company of New York and served that company in various capacities until 1934 when the Guaranty

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Executive Director's Report to the Board of Governors

Top administrative official divides report in two sections, the first covering work of the association and second some problems of future. Announces joint conference on problems.

This is the 30th meeting of the Board of Governors of the National Association of Securities Dealers, Inc. and the 11th organization meeting.

My report to the Board at this time is in effect an annual report of Association activities although the Board has been kept fully informed on current activities at the interim meetings held during the year. This report is supplemented by some of the materials in the "kit" which you all have.

The report will be divided into two main parts: the first to be devoted to a brief review of the work during 1949 and the second to a brief discussion of some of the problems of the Association in the years ahead.

Membership

There has been a further increase in membership, although we are still somewhat below the all time high figure of 2,977 which was established in July, 1941. As of December 31, 1949 membership stood at 2,730 compared with 2,687 at the close of the preceding year and the highest since the 1941 peak, and as of February 24, 1950, totaled 2,732. In addition there are 1,246 branch offices as of February 24, 1950.

Registered representatives at the close of 1949 stood at 28,054 against 26,562 on December 31, 1948. On February 24, 1950, the figure was 28,298.

Examinations

To conserve the Board's time, a detailed report on member examinations has been included in the "kit" but there are two facts of importance which should be mentioned here. First is that 922 members were examined in 1949, which is approximately 200 more than in 1948, and embracing over 1/3 of the total membership. Second is that examinations disclosed that 80.6% of the computed transactions, numbering over 17,000, were effected with mark-ups of 5% or under. This figure is believed to be representative of the practices throughout the membership.

Philadelphia Tax Case

In accordance with the wishes of the Board, the Association intervened, along with other organizations, in a law suit arising out of an interpretation of the wage tax ordinance of the City of Philadelphia which would have imposed a tax upon residents and nonresidents of Philadelphia upon their net income and capital gains derived from investment accounts located there. I have previously reported the success of our efforts in connection with the case of Murray v. Philadelphia and am now pleased to advise that a new city ordinance which was adopted on December 9, 1949 designed to accomplish what the courts would not allow to be done by interpretation has, within the last two weeks, been declared invalid by the Supreme Court of Pennsylvania. The Association was active in the matter before the Court. This ordinance, had it been declared valid, would have had a serious effect upon the business of our members located in Pennsylvania inasmuch as there are indications that some customers already had withdrawn their investment accounts from Philadelphia. The Association's prompt action in this instance was definitely of benefit to the membership.

World Bank Participations

Members of the Board will be interested in figures I have obtained from the President of the International Bank for Reconstruction and Development —Mr. Eugene R. Black—bearing on the dealer participation in the recent offering by competitive bidding of $100,000,000 in serial 1 to 10 year bonds, which were awarded as 2's at a premium above par. Analysis of the participation in the four competing underwriting groups revealed that there were a total of 393 bidders, of which 63 were banks and 330 were securities dealers. The syndicate which was awarded the bonds included 37 banks and 99 dealers.

Wharton School Survey

I have no detailed report to offer on the Wharton School survey at this time. I can state, however, that this work is proceeding satisfactorily. The Advisory Committee appointed to assist in that survey met with the staff of the Securities Research Unit of the Wharton School on February 10 and received an encouraging report of progress. It is anticipated that the first two monographs covering partial results of the survey will be published before the end of 1950.

Radio Misstatements

From time to time there have been radio references in various parts of the country to "bucket shops," in which these were usually identified as "the popular name of the office of a broker who is not a member of the official stock exchange". Whenever such references have been reported, the Executive Office has taken the matter up with the radio station and invariably has secured a correction on the air. Only recently, however, have we been able to trace the source of this information, and have taken steps to correct it.

The statement appears in a quiz or reference book published by Harper & Bros., a Book of the Month selection, under the title "A Book About a Thousand Things." There were about 700,000 copies distributed. A conference was held with the author who has promised every cooperation in correcting this misstatement in future editions of the book.

Lobby Act Registration

Your Executive Director and the Association's Counsel, John W. Lindsey, have registered as lobbyists under the Federal Lobbying Act pursuant to previous authorization of this Board. It was deemed advisable to take this step in view of the increasing activity of the Executive Staff in connection with legislation now pending before the Congress. It is contemplated that such registration will be filed only when necessary.

SECTION TWO

There are certain additional matters concerning the conduct of the Association's affairs which at this time should be brought to the Board's attention.

Joint Conference on Problems

At the time of the meeting of the Association of Stock Exchange Firms held in Washington early this month a meeting was held, attended by the

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following: Clement A. Evans, John J. Sullivan and Wallace H. Fulton representing the NASD, Benjamin H. Griswold, III, Joseph M. Scribner, Hans A. Widenmann and James A. Hogle for the Association of Stock Exchange Firms and Hal Dewar for the I.B.A. During discussion at this meeting Mr. Griswold proposed that, in the interest of the entire business, joint meetings of representatives of these three Associations be held throughout the country for the purpose of acquainting the members of the Associations with current problems confronting the business and the steps which have been taken toward their solution. On the basis of this proposal, plans are now under way to hold the first of such joint meetings in San Antonio on Wednesday, May 3. Members of the three Associations located in Texas, Louisiana, Oklahoma and Arkansas, will be asked to attend.

Section 5 of the '33 Act

As this Board knows, your Executive staff and designated committees have had negotiations since 1939 with the Securities and Exchange Commission in an endeavor to work out mutually satisfactory changes in the Securities Act of 1933, particularly in Section 5, having to do with the general problem of prospectus delivery requirements.

Time and again, through successive administrations in the Commission it has been felt that we were approaching agreement, only to run into snags which forced us to start over again. The history of these negotiations, conferences and discussions seems almost endless and is too lengthy to permit of review here. In 1941 there were introduced into Congress Bills which proposed amendments to 86 sections and sub-sections of the Acts. Because of the war the whole matter was dropped. However discussions were renewed in 1946 with particular emphasis on Section 5 of the 1939 Act.

Through 1947, 1948, 1949, there were many discussions of the entire problem. The industry has submitted language to the Commission, the Commission has submitted proposals to the industry and there is presently no concrete proposed solution to the Section 5 problem which appears to be acceptable to all. The suggestions which have been made run from a statute which would permit the dissemination of any written material after the filing date of a registration statement, with delivery of a final prospectus if the customer asked for one, to suggestions of the Commission that certain solicitations might be made in the pre-effective period provided the customer had a completed prospectus 24 hours before he could be bound to a contract. In the event the customer agreed to buy and had not had a prospectus the requisite period of time the customer would then be accorded the right to rescind within a specified period of time. There have been many variations and many suggestions made between these two positions. The Board will recall that the latest Commission proposals of last August were discussed at the Board meeting at Del Monte at which time it was felt that perhaps with some further modification the Commission's proposal might present a workable but probably inadequate solution from the business point of view. Since that time Chairman McDonald has advanced certain ideas which I believe it correct to say do not have the approval of the balance of the Commission.

One of the other aspects of this Section 5 program is the fact that it has long been recognized both by the Commission and representatives of the industry that there is probably little chance of legislation unless there is agreement between the Commission and the business. That fact is in part responsible for the delay in obtaining any changes in the statute. Whether anything can be done in this session of the Congress will depend upon whether or not speedy agreement can be reached with representatives of the Commission.

I would be remiss if I did not state to this Board that this entire Section 5 situation presents a problem which I believe is serious to the business. This failure to agree has become chronic and may in the end result in a continuation of the present statute which everyone agrees is not operating in the best interest of the public and the business. Perhaps our endeavors to reach a solution with the Commission based upon a unified approach to the Congress have been in error. This approach frankly has been predicated upon the belief that the business could not obtain, against Commission opposition, the type of solution which it believes necessary for the business and which at the same time, in the opinion of the business, protects the public interest.

Perhaps another alternative should be considered and that is a direct approach to the Congress, either in the form of a proposal in legislative language or by a statement setting forth the development of negotiations with the Commission up to this date and a request that the appropriate Committees of each House cooperate with the Commission and the business and perhaps act as an intermediary between the conflicting points of view. This is an important problem but I am beginning to question whether the solution of it is of such importance as to obstruct development of other changes in the Act which are deemed necessary and desirable. I hope that during the course of this meeting, a discussion of this suggestion can be had.

The Frear Bill

At the October meeting the Board expressed its position regarding the Frear Bill and directed certain action by the Executive Staff to gain amendment of this proposed legislation. Subsequent to the Board meeting our position was published and was made known to the Securities and Exchange Commission, to the Federal Reserve Board and to Senator Frear. Discussions were also held with the Commissioners and with Senator Frear. The latter asked that we provide statutory language to accomplish the provisions of the Board's proposal. After this was given to the Senator the Commission invited Mr. Lindsey and me to a conference at which an agreement was reached whereby the Commission would suggest changes in the bill provided we would support the principle of the Bill. These changes were worked out and the bill presently before the Senate provides for the elimination of unlisted trading privileges for securities not listed on an exchange; the extension of marginability to securities registered pursuant to the Act but not listed on an exchange, and for a study and report by the Commission of trading on and off exchanges to the Congress with respect to standards of listing and delisting of securities. It was not possible within the time allotted prior to the opening of the hearings to submit this proposed agreement to the full Board of Governors. However, the Chairman of the Board, the two vice-chairmen and the Chairman of the Legislative Committee authorized the Executive Office to go ahead inasmuch as the Commission adopted substantially all of the Association's proposals as set forth in the statement of policy of October 5 and 6, 1949. As you

MORE NEW FACES ON BOARD

W. Fenton Johnston

Harper Joy

I. D. Owen

know the Chairman of the Board of Governors appeared before the Sub-Committee on Securities Acts of the Senate Banking and Currency Committee in support of the principle of the Frear Bill.

This bill has not as yet been acted upon by the Senate but there is good reason to expect favorable action in the near future. It is believed that hearings will be held before the Interstate and Foreign Commerce Committee of the House of Representatives late in March or early April.

Report to Congress

The Board, at the meeting in October, authorized the preparation of a Report to Congress covering the activities during the first ten years of the Association. The report was to be prepared by the staff in cooperation with the Public and Member Relations Committee. The report is being prepared, but due to the current workload confronting the staff it is not yet in such form that would permit a first draft to be presented to the Board at this time. It is contemplated that the first draft of the report will be available to the Committee late in the Spring.

In closing I would like to state to the Board that in my opinion the Association is working more as a unit than at any time in the past. It is quite evident to me that the District

Albert W. Tweedy

Committees are more aware now than at any time in the past of the reasons for the aims, purposes and actions of this Board and that sectional feelings, which have been apparent at various times in the past, are today relatively minor or nonexistent. The Board should know that the relationship between the Executive Office and the District Offices and Committees is one of mutual cooperation.

I cannot close without paying tribute to the hardworking staff of the Executive Office. Theirs is the day to day job of handling the many routine problems and other matters and they do so efficiently and creditably.

I wish also to pay my respects to the retiring Chairman who has contributed freely of his time and energy in the past year and has always been most helpful. Mr. Evans and the other officers and Committee Chairmen have given unstintingly of their time and have been unswerving in their support of the aims of this Association in the interest of all the members.

Wallace H. Fulton,
Executive Director.

National Business Conduct

The National Business Conduct Committee will be headed this year by Sampson Rogers, Jr., of McMaster Hutchinson & Co., Chicago, it is announced by John J. Sullivan, Chairman. Other members of this important committee are: Frederick H. MacDonald, Burke & MacDonald, Kansas City; John D. McCutcheon, John D. McCutcheon and Co., Inc., St. Louis; Warren H. Crowell, Crowell, Weedon & Co., Los Angeles; Clarence A. Bickel, Robert W. Baird & Co., Milwaukee; Charles P. Cooley, Jr., Cooley & Co., Hartford, Conn., and Ira D. Owen, Allison-Williams Company, Minneapolis.

FREAR BILL

(Continued from page 5)

together through their representatives and the buying and selling orders are matched up at a fixed rate of commission. Unquestionably, this method has functioned successfully in the case of securities suited to auction trading. However, the technique of an exchange cannot be and has not in the past been successfully applied to securities having the following characteristics:

1) Lack of speculative interest.
2) Small capitalization.
3) Limited distribution.
4) High price.
5) Desirability for portfolios of institutions, such as insurance companies, which often wish to negotiate on a sizeable block at a given price.

A large percentage of the issues that would be affected by the present bill have these characteristics.

Injury to the public arises when exchange technique is applied to the restricted volume type of security. In such instances the auction principle cannot function successfully, and the operation of the over-the-counter market is impeded by the "power of the print." Therefore, the buyer and seller are not brought together. The reason for this is that an essential part of the over-the-counter technique in this type of security is the process of merchandising, i.e.,—intensive effort by way of circulars, telephone calls, newspaper advertising, etc.—to bring together buyer and seller who otherwise would not get in touch with each other.

This principle is recognized by the S. E. C., which in its "Report on Trading in Unlisted Securities Upon Exchanges" (pp. 10-11) states:

> "It has frequently been alleged, particularly by over-the-counter dealers, that the purported exchange market for an unlisted security is all too often spurious. In such cases, it is asserted, prices quoted on the exchange are not practically available to buyers or sellers; they fluctuate abruptly and precipitously; and they are a constant source of embarrassment to the over-the-counter dealers who maintain the true market. This, of course, is a very serious charge. To understand it, and to determine the appropriate course of remedial action, it is necessary to examine the background of the allegations.
>
> "When an exchange admits a security to unlisted trading and posts a price therefor, it in effect represents to the world that there is a real market for that security on that exchange, and that the price is a fair reflection of the forces which enter into a real market. If there has been no adequate public distribution of the security, or if there is no substantial trading activity therein, this representation would ordinarily be misleading. The continuance of unlisted trading on exchanges should therefore be permitted only in securities which are the subject of general public distribution and substantial local trading activity. The validity of such requirements has been recognized by the exchanges themselves. . . .
>
> ". . . As in the case of requirements for information, the Commission has the legal power and the duty to make effective requirements concerning public distribution of the security and trading activity. The Commission appreciates the practical obstacles which often lie in the way of obtaining data concerning distribution of and activity in a security. But it will endeavor to perfect regulations to this effect and a program of administration thereof as soon as the future course of unlisted trading has been determined by the Congress."

In view of the above quotations it might be advanced that there is no cause for apprehension as to the possible admission to unlisted trading privileges of securities unsuited to auction trading. It might be said that the S. E. C. has clearly indicated its awareness of the whole problem and its determination to consider carefully the question of suitability before granting any applications for unlisted trading privileges. However, in view of the continued unlisted trading on exchanges, and as a result of our observation of it over the years, we are certain that the proposals contained in S. 2408 would lead to extensive admissions of additional securities of this nature and would result in still further harm to the investing public. The total number of stocks listed and admitted to unlisted trading privileges on the New York Curb at the close of January 1950 was 791. The unlisted issues represent 45% of that total.

As has been pointed out by the Commission itself in the matter of the American District Telegraph Company (N. J.) 7% Convertible Preferred when the stock was removed from unlisted trading privileges, (on the application of an interested over-the-counter dealer be it noted.)

> ". . . in effect, therefore, the market in this stock on the New York Curb Exchange appears, on the record herein, to be primarily a private dealer's market, maintained by the specialist in competition with the private markets made by the over-the-counter dealers. It is clear that this kind of market activity is not '*public* trading activity' (italics supplied) within the meaning of Section 12(f). Implicit in the general tenor and specific standards of Section 12(f) is the conception of an exchange as primarily a public auction market. When account is taken of this factor, it must be recognized that the data set forth above indicate insufficient public trading activity to justify the continuance of unlisted trading in this stock on the New York Curb Exchange."

If the dealer, who brought the action for removal of American District Telegraph Preferred from the Curb, on his own initiative, and at his own expense had not done so, the "private dealers market" would have continued on the Curb.

In permitting the continuance of unlisted trading in issues that lack public trading activity, the Commission might have reasoned that, other things being equal, exchange trading in a security is preferable to over-the-counter trading as the job of supervision in the former case can be done more readily. However, since the organization of the National Association of Securities Dealers, Inc., it has become entirely practicable for the Commission to keep close watch on the over-the-counter markets.

It is difficult, certainly, to see any justification to demoralize the over-the-counter market, which antedates all exchanges, and which is, after all, the backbone of the securities business, being a negotiation market, for the benefit of the New York Curb Exchange. An exchange is only an adjunct to the investment business, and its primary purpose is to take care of transactions in those securities susceptible to auction trading. In spite of all that is said about the exchanges being public institutions, they are, in

(Continued on page 12, column 2)

Report on Wharton School Project

W. Yost Fulton discusses progress in various studies underway and on over-the-counter market research at University of Pennsylvania.

W. Yost Fulton, of Maynard H. Murch & Co., Cleveland, who is chairman of the Association's Special Research Committee recently made public a progress report concerning the various studies underway concerning financing methods and the part played by investment banking. He also presented an interim report on the project of the Wharton School, in which the industry has been cooperating.

Following is the statement by Mr. Yost on overall research and study:

"It will be recalled that the National Bureau of Economic Research published a short pamphlet in 1946 entitled 'Research in Securities Markets,' proposing a long-range and extensive program of studies. The report grew out of the interests of a number of public and private groups—including the Special Research Committee of the National Association of Securities Dealers—in problems concerning the financing of business and, in particular, the role of investment banking and the securities exchanges in facilitating economic growth. While it was not feasible at the time of the report's completion for the National Bureau to undertake the full range of proposed research projects, it is possible to report at this time that very considerable progress has been made in completing studies of the type suggested in this early document.

"First, a study is now under way with the support of the Investment Research Committee of the Life Insurance Association of America the purpose of which is to develop measures of the volume of savings performed in the American economy over a long period of years and, so far as possible, to break down this overall volume so as to reveal the various sources from which savings have come. This study is being made by Dr. Raymond Goldsmith and reports of its progress are very encouraging, indeed. Its completion will fill a gap in financial knowledge which has for many years made it impossible satisfactorily to analyze a number of critical economic problems and, what is of equal importance, to test the validity of assumptions that many people are prone to make concerning the volume of savings, their trend and their consequences for the American economy.

"Another segment of the research program proposed in 'Research in Securities Markets' called for a study of the institutions of the securities markets, their development, present status, and methods of operation. Much work remains to be done in this general area but the study of the over-the-counter market being made at the Wharton School of the University of Pennsylvania under a grant from the Merrill Foundation will supply an important part of this need.

"Third, the National Bureau plans to undertake work in the near future that will fill another major gap in this general range of financial questions. Working with the support of the Investment Research Committee of the Life Insurance Association of America, the National Bureau will shortly initiate a study on what may be tentatively labeled the "Capital Requirements of the American Economy." One of the major financial questions of our times is whether the demand for capital generated by our economy will be sufficient to absorb available savings on terms consistent with the continuation of our present institutional structure.

"How, for example, has the amount and composition of the total demand for capital changed over a number of years and what are the prospects for future change? What bearing does the nature of the demand for capital, and shifts in the relative important of different segments of that demand, have on the relative position in our economy of different types of investment agencies? These questions are easily supplemented by others of equal import but they will suffice, perhaps, to indicate in a general manner the range of problems that should be illuminated by the proposed studies.

"Finally, it is important always to encourage the interchange of ideas among research people themselves, and occasionally to take an inventory of research in progress throughout the country. To this end the National Bureau has planned a Conference on Research in Business Finance for June, 1950. Some ten or twelve individuals have been invited to prepare papers on the researches now being made in the principal sub-areas of this general field, and to make suggestions as to needed additional studies. A group of specialists, selected to provide a broad and complete representation of those interested in financial matters, will be given an opportunity to discuss, and to supplement, these contributed papers.

"This short statement is intended only to indicate in a general way some of the progress in pushing forward our financial knowledge that has been made in the three years following the National Bureau's publication of its pamphlet on 'Research in Securities Markets.' Specific mention has been made only of studies that are closely related to the undertakings proposed in that report; much additional work is under way, however, on other and related matters, giving every reason for confidence that research agencies and individual investigators have a live and active interest in the problems of the investment process, and that this interest and activity will continue to make interesting and useful contributions to our understanding of the financial system."

Wharton School Report

The interim report of the Securities Research Unit, Wharton School, University of Pennsylvania, to the Advisory Committee is largely a discussion of approach and methods of study on over-the-counter securities markets. To a large extent it covers the questionnaires sent to the industry, their form and content, and the first results obtained.

The Wharton School report concludes as follows:

"Among the larger number of firms giving serious consideration to our project but asking to be relieved from reporting, the most frequent reason given was the amount of work involved. We anticipated this difficulty before sending out our questionnaire but did not know how to avoid it. Where detailed factual answers are required (in contrast to summary, general ones) the number of items of response must be large for reliable interpretation. We have reason to believe that in most cases where firms 'begged off' they were sincere. A few firms, but only a few, gave as their reason the confidential character of the information. We must report that in a few cases firms were unwilling to cooperate if it meant they had to do anything at all.

"For those firms who have responded, we believe the quality of re-

sponse is quite good. There are a variety of internal checks useful in testing the character of answers supplied. We have had, of course, a considerable number of inquiries asking for interpretation on selected points: in some cases the precise classification of data was difficult; but on the whole the tabulations were consistent and well done. We hope that out of these individual reports we will be able to construct a reasonably accurate picture of the present-day structure and operation of over-the-counter markets. If this can be done, and done well, it should promote a fuller understanding of these markets—of value in industry planning, in education work and in matters of public relations."

SECTION 5

(*Continued from page 1*)

lem. We believe that it is imperative that a solution be found in the near future. To that end we direct our Legislative Advisory Committee and our Executive Director and his staff to continue negotiations with the SEC using the utmost diligence to secure a satisfactory agreement with them.

Bt It Further Resolved:

"That while these negotiations with the SEC continue, the Legislative Advisory Committee draft an appropriate amendment to Section 5 of the Securities Act of 1933.

"It is directed that the Legislative Advisory Committee have the proposed legislation ready for presentation at the September meeting for consideration by this Board in the event that legislation which can be jointly sponsored by the SEC and our association has not been agreed upon."

Legislative Advisory Committee

In recognition of his past experience in such matters Ewing T. Boles, of The Ohio Company, Columbus, has been appointed Chairman of the Legislative Advisory Committee of NASD, although he has just been elected to the Board. Other members of the committee are Philip L. Carret, Howard E. Buhse, Harper Joy, Clarence A. Bickel, W. Fenton Johnston and Wallace H. Fulton.

MEMORANDUM ON FREAR BILL

(*Continued from page 10*)

reality, still in the nature of private clubs which operate for the benefit of their members, whose seats—or memberships—represent substantial investments. Is it reasonable to injure a national market comprising some 4,000 dealers so that the New York Curb Exchange, may better support its speculative equipment?

It is understood that the Securities and Exchange Commission has or will recommend to this Committee and to the Congress that the present statute be amended to eliminate present Section 12(f), clause (3). This memorandum is designed to set forth in greater detail the reasons why it is believed that the elimination of this section is essential in the public interest and in the interest of investors if the other provisions of S. 2408 are adopted as proposed.

Fixed Formula Quotations

Board sends report to district committees containing objection to pricing system and individual firm sponsorship of published lists.

Following presentation of the report of the National Quotations Committee at the Washington meeting the Board of Governors voted to send it to all District Committees. The committee report follows:

Jan. 26, 1950

"This committee wishes to bring to the attention of the Board of Governors two items of business as expressed in the minutes of said meeting; viz.

"Item # 1—'The Committee members expressed concern over the quotations situation in Connecticut where quotations were published in individual lists each under the name of some one of four or five dealers; also in Boston where quotations for publication were arrived at by the fixed formula system. In both cases these published markets are not under the sponsorship of NASD. The committe registered their disapproval as a matter of record as follows:

> Resolved that it is the unanimous opinion of its members that the practice of publishing over-the-counter quotations under the sponsorship of individual dealers and the practice of compiling quotations for publication by the fixed formula system are detrimental to the best interests of the over-the-counter markets.
>
> Be It Further Resolved that a copy of this resolution be submitted to the Board of Governors of the Association with the request that they take action to correct this situation.' "

"Item # 2—'In conclusion, the Chairman was of the opinion that our member-dealers should be made more conscious of the importance of the quotations activities of the Association. He felt that they should be encouraged to take a more active part in this department of our work. Not only are there securities which should be added to our market-release lists, but also greater representation in the financial columns of the Press should be attained. He felt that the NASD News could well be of help in educating our membership in the importance of this department of Association work. The members of his Committee are entirely in accord with him.' "

The Board in accepting the report stated ". . . the Board, while not taking definitive action, is sympathetic to the resolution of the Committee and we therefore refer it to the various District Committees."

A detailed report of the quotations activities in all 14 districts was made to the Board by the Quotations Committee of which Bradford W. Shaw, Chicago, is chairman and George B. Soule of the New York office is secretary.

These statistics revealed that all but two of the districts are furnishing regular daily quotations to newspapers in their area.

Report of

COMMITTEE ON EDUCATION

Board votes to continued support of program after hearing of joint results.

The NASD will continue its support of the work of the Joint Committee on Education, at a cost of $1,000 annually as a result of unanimous vote by the Board following the presentation of the committee report at the February meeting.

This work is financed jointly by the NASD, by the Association of Stock Exchange Firms, the Investment Bankers Association of America, the New York Curb Exchange and the New York Stock Exchange.

The report, presented by Wallace H. Fulton, who represents the Association on the joint committee, follows:

The primary function of the Joint Committee on Education is to grant fellowships to teachers in American universities enabling these faculty members to acquire first-hand knowledge of the workings of the financial center in New York.

The teachers are given an opportunity to study the New York Stock Exchange, the New York Curb Exchange and to watch the day-to-day operation of several types of security firms and are assisted in the investigation of any part of the operation of the financial community which may interest them.

Herewith are the names of the fourteen teachers who have been brought to the Street.

1948

Frank Graner, Professor of Finance, University of Wisconsin

Paul L. Howell, Assistant Professor of Finance, Northwestern University

John T. O'Neil, Associate Prof. of Finance, University of North Carolina

Leroy A. Shattuck, Jr., Associate Professor of Finance, University of Pittsburgh

1949

James A. Close, Associate Professor of Finance, Syracuse University

C. S. Cottle, Professor of Business Administration, Emory University

Carl H. Dauten, Associate Professor of Finance, Washington University

Donald A. Fergusson, Lecturer, University of California at Berkeley

John M. Griest, Associate Professor of Finance, University of Colorado

Paul Kircher, Instructor of Accounting, University of Chicago

Charles B. McCaffrey, Instructor, Wharton School, University of Pennsylvania

Franc M. Ricciardi, Assistant Professor, University of Vermont

J. G. Taylor, Investment Officer and Asst. Professor of Finance, University of Texas

Robert D. Tucker, Lecturer, University of California at Los Angeles

As the value of this fellowship program can best be judged by the teachers themselves we quote below from a letter from Professor Close of Syracuse University, which summarizes the opinions of the teachers better than we could.

"In the first place, I am sure I have been able to do a more effective job of teaching the nearly 600 different students I talked to each week of this past term. Not only have I been able to inject a more personal element into my courses but while in New York I had an opportunity to ask questions and to secure frank answers to things about which I needed information. I find myself constantly drawing on something I learned or saw to drive home a point or to answer someone's question.

"In the second place, I feel that the (college) community has in some measure shared in my fellowship experience. I have spoken briefly or at length to the faculty of the University, student groups from other colleges of the University, a group of the presidents of all the local commercial and savings banks, a group of young business men, and others. To all of them I tried to give a picture of what Wall Street is really trying to do. From the questions which were asked and from the comments afterward, I think the curtain of darkness may have been drawn back a little.

"Another by-product gain from the fellowship program has been greatly improved relations between the executives of your cooperating institutions and us college professors. Several in New York expressed surprise at the degree to which their work paralleled mine. Since leaving New York I have exchanged ideas with several men whom I met. This continuing exchange of ideas is undoubtedly mutually beneficial. I was happy to see several of the men whom I talked to last summer at the December meetings of the American Finance Association.

"I think your contributing organizations deserve a world of credit for their work in making possible this fellowship program. I think that many of the Street's problems result from public ignorance. If we teachers have an understanding of your problems first, the public's education will inevitably follow."

The Joint Committee on Education recommends a continuation of this fellowship program to its supporting organizations and if this recommendation is accepted will again offer ten fellowships in 1950.

The financial report of the committee is submitted below:

To the balance of $3,211.64 as of Jan. 1, 1949 was added $5,000 received from the five sponsors. Expenses were: Printing $88.23, Fellowship payments $3,300, Travelling expenses $1,473.63 and payment for services of Dr. Sheppard, N. Y. U. $400, or a grand total of $5,261.86. This left a balance on hand on Feb. 1, 1950 of $2,949.78.

Although it will not quite cover the expected cost of the 1950 fellowship program, it is recommended that each of the supporting organizations pay $1,000 again in 1950 as in each of the past few years.

The Joint Committee appreciates the help and backing given to its fellowship program by Dean Collins of New York University. His assistant, Dr. Sheppard, has handled the appointments for the fellowship holders and

(Continued on page 16, column 3)

New Form Annual Report

Style of Statement is changed by auditing firm to more clearly present financial results.

The annual report of the National Association of Securities Dealers, Inc. presented to the Board at the Washington meeting by Wilbur G. Hoye, treasurer, was in a new form. Commenting on this change Mr. Hoye stated:

"This year Price, Waterhouse & Co. submitted one statement of receipts, expenditures and unexpended funds, rather than the balance sheet and statement of income and expense. This they consider as more clearly presenting the financial results of an organization such as ours."

The report showed an excess of expenditures over receipts of $67,744.78 in the year ended Sept. 30, 1949. In the preceding fiscal year excess expenditures amounted to $62,787. As of the close of the last fiscal year NASD had unexpended funds of $475,473 as against $543,217 at Sept. 30, 1948.

A breakdown of Assessment No. 16, contained in the treasurer's report presents detail as to the number of member firms billed in each dollar category. This data is shown below. If it had not been for the $5,000 ceiling in effect during the fiscal year ended September 30, 1949, a total of $17,105 additional would have been paid by five firms:

Member	Assessable Personnel	Assessment No. 16	Assessment without Ceiling: Membership Fee	Personnel Fee	Underwritings Fee	Total
A	296	$ 5,000.00	$ 40.00	$1,184.00	$12,433.44	$13,657.44
B	466	5,000.00	40.00	1,864.00	10,729.17	12,633.17
C	221	5,000.00	40.00	884.00	4,522.63	5,446.63
D	227	5,000.00	40.00	908.00	4,278.34	5,226.34
E	520	5,000.00	40.00	2,080.00	3,021.49	5,141.49
		$25,000.00	$200.00	$6,920.00	$34,985.07	$42,105.07

A further breakdown of Assessment No. 16 shows billings as follows: Membership fees, $108,590 or 28.7%; personnel fees $122,969 or 32.5%; and underwriting fees of $146,394 or 38.8%, the total of all three being $377,953. Detailed data follows:

	Number of Members Billed	Total Amount
Under $50.00	971	$43,492.37
$ 50.00 to $ 99.99	1,326	83,399.62
100.00 to 199.99	293	38,943.73
200.00 to 299.99	70	16,496.84
300.00 to 399.99	40	13,099.75
400.00 to 499.99	27	12,000.45
500.00 to 999.99	47	31,825.70
1,000.00 to 1,499.99	20	24,763.13
1,500.00 to 1,999.99	14	22,245.65
2,000.00 to 2,999.99	12	28,539.19
3,000.00 to 3,999.99	6	19,493.18
4,000.00 to 4,999.99	4	18,653.91
$5,000.00	5	25,000.00
	2,835	$377,953.52

Price, Waterhouse & Co.

January 9, 1950

National Association of
Securities Dealers, Inc.
1625 K Street, N. W.
Washington 6, D. C.

We have examined the statement of receipts and expenditures of the National Association of Securities Dealers, Inc., for the year ended September 30, 1949. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying comparative statement presents fairly the receipts and expenditures of the National Association of Securities Dealers, Inc., for the two years ended September 30, 1948 and September 30, 1949 and the composition of the funds remaining in its custody at those dates.

(signed)

PRICE, WATERHOUSE & CO.

Finance Committee

Howard E. Buhse of Hornblower & Weeks, Chicago, has been appointed chairman of the Finance Committee. Other members are Charles H. Pinkerton, S. Davidson Herron, James J. Lee, John J. Sullivan and Wallace H. Fulton.

Ballot Return

Of the 2,715 ballots mailed to the membership on Dec. 9, 1949 for voting on proposed amendments to bylaws, 1,589 or 58.5% valid ballots were returned. All amendments were adopted by overwhelming majorities.

NEW GOVERNORS

(Continued from page 6)

Company joined Edward B. Smith & Co. He was associated with Edward B. Smith & Co. until 1938 when the firm combined with C. D. Barney & Co. to form Smith, Barney & Co. He remained with Smith, Barney until 1942 when he joined H. C. Wainwright & Co. as a general partner.

He is active in the civic affairs of Hingham, Massachusetts, trustee of the Hingham Institution for Savings and director of the Hingham Trust Company. He is also: past president and member of the Board of Governors of the Bond Club of Boston; member of the Board of Governors of the Boston Association of New York Stock Evchange Firms; former chairman of the New England Group of the Investment Bankers Association of America; former governor of the Investment Bankers Association and former chairman of NASD District No. 14. He is also a member of several lodges, clubs and associations, including the Union Club of Boston.

Financial Report for Fiscal Year

	Year ended September 30,	
	1949	1948
Balance, October 1	$543,217.88	$606,004.90
Receipts:		
Assessments	$377,852.02	$352,132.43
Interest on U. S. Treasury Securities	4,117.50	3,491.25
Dues from branch office registration	3,430.00	3,500.00
Fines and costs collected in prior year	1,314.80	987.00
Subscriptions to Manual	310.00	355.42
Reinstatement fees	30.00	39.65
Total	$387,054.32	$360,505.75
	$930,272.20	$966,510.65
Expenditures:		
National office:		
Salaries	$ 90,439.39	$ 95,798.90
Printing and stationery	20,950.27	15,941.39
Rent	8,502.50	9,540.00
Telephone and telegraph	4,907.84	3,790.46
Postage	4,226.09	3,318.95
Office equipment	2,120.91	3,971.50
Incidental office expense	1,718.56	2,531.30
Amortization of leasehold improvements	682.44	138.95
	$133,548.00	$135,031.45
Traveling and meeting expense:		
Board of Governors and Advisory Council	$ 32,422.63	$ 31,958.83
National standing and special committees	26,913.49	28,452.92
Employees and others	8,815.23	9,789.09
	$ 68,151.35	$ 70,200.84
District Committees' expense	$230,211.76	$209,441.46
General expense:		
Legal fees and expense	$ 15,541.73	$ 2,129.13
Insurance and taxes	6,296.26	5,439.89
Accounting fees	1,050.00	1,050.00
	$ 22,887.99	$ 8,619.02
Total	$454,799.10	$423,292.77
Balance, September 30, consisting of:		
Cash in banks and on hand	$136,961.36	$210,788.48
U. S. Treasury 1¼% Certificates of Indebtedness, at cost	345,000.00	345,000.00
Advances to Trustees—Insurance Trust	5,135.05	2,199.25
Advances for traveling expenses	3,298.41	2,000.00
Deposits	775.00	775.00
Accrued interest on U. S. Treasury Certificates of Indebtedness	2,362.50	2,126.25
Leasehold improvements, less amortization	2,559.15	2,640.13
Accounts payable	(14,748.39)	(18,498.58)
Accrued payroll taxes and taxes withheld from salaries	(2,854.66)	(2,497.85)
Fines and costs collected, pending review	(3,015.32)	(1,314.80)
Total	$475,473.10	$543,217.88

Regulation T

Amendments secured by NASD result in 54% decline in request for time extensions.

As a result of the relaxations in Regulation T recently obtained, a material decline occurred in the number of requests for time extension by NASD members.

In reporting on this matter in his report to the Board, Wallace H. Fulton, Executive Director, said:

"The Executive staff has been in frequent consultation with officials of the Federal Reserve Board regarding the provisions and application of Regulation T as they affect our members. As has been previously reported there have been various desirable changes accomplished as a result of these discussions. That our efforts have been productive is indicated by the decline in the number of requests for time extensions. For the first four months of 1949, through April 30, ten of the Association's fourteen districts processed 1,780 requests for extension of time. In the succeeding eight months, after certain amendments were obtained, only 1,645 requests were handled, a reduction of 54% despite an increased volume of business in the last five months of the year."

The amendments referred to went into effect on May 1, 1949. They provided that the period of seven calendar days within which customer purchases in excess of $50 had to be paid for should be changed to seven full business days and the amount of the transactions involved raised to $100.

Requests for time extensions, which could be allowed in exceptional circumstances, during the succeeding eight months totalled less than in the preceding four months prior to the amendments.

District 13 reported 530 requests before and 460 after amendments; District 11 had 162 requests before and 135 after; District 9 had 352 before and 315 after; District 8 had 198 before and 214 after; District 3 had 177 before and 191 after. All other districts were in lesser numbers, as these mentioned were the most active districts.

Mr. Fulton concluded his report with the statement:

"We will maintain our contacts with the Board and hope to be able to be of future assistance to the members through these contacts."

REPORT OF UNIFORM PRACTICE COMMITTEE

Following is the complete text of the report of the National Uniform Practice Committee submitted to the Board by Harold C. Patterson, chairman:

There has been no meeting of the full Committee during the past year. However, problems that have come before us have been resolved by means of conference in New York and Washington between various members of the Committee.

In the last report which was submitted to the Board of Governors on October 5, 1949, by the Committee certain amendments to the National Uniform Practice Code were proposed. These proposals were approved by the Board and the amendments became effective January 30, 1950. They will be most helpful to this Committee in administering the National Uniform Practice Code. The powers of the Committee with respect to transactions in securities traded "when distributed" are now clearly defined and that particular portion of the code which formerly gave rise to considerable confusion has been clarified.

The Committee has been supplying the members with legends to be used on contracts in transactions in securities traded "when, as and if distributed" and "when, as and if issued." These announcements are receiving broad circulation through the Daily Quotation Sheets and are printed on the Dow Jones ticker. The suggested legends have had wide use among the membership and have done much to eliminate misunderstanding with respect to these contracts. At the request of the Committee a Special Advisory Committee was appointed by the Chairman of the Board of Governors to assist the Committee in making rulings and interpretations on all securities traded on a "when issued" and "when distributed" basis promptly at the time trading commences.

There has been a request that the Committee provide our members with a uniform contract to be used in confirming "when, as and if issued" and "when, as and if distributed" transactions. This matter is now under consideration and it is hoped that a form of contract can be prepared which will be satisfactory and may be used in intermediate clearances.

With the cooperation of the underwriters the National Uniform Practice Committee was able to make an announcement with respect to transactions in U. S. Fidelity and Guaranty Company Stock. The problem arose because the record date for the distribution of the rights was prior to the date when the registration statement covering these shares would become effective. Since the announcement was made sufficiently in advance the members were informed of the ruling prior to the time of trading.

This Committee's attention was recently called to an offering of 1,500,000 shares of Southern Company common stock. This stock was offered by prospectus dated November 29, 1949, to be issued on or about December 6, 1949.

On September 26, 1949, the Board of Directors of Southern Company declared a dividend of 20¢ per share payable on December 30, 1949, to holders of record December 5, 1949. This stock is listed on the New York Stock Exchange and under its rules as well as Section 5 of the National Uniform Practice Code would sell ex-dividend on December 1st and all trades prior to that date would carry the dividend. In explaining the dividend action of the company, the prospectus stated that "the record date of December 5, 1949, was prior to the proposed date of issue of the 1,500,000 shares of stock covered by the prospectus." This was the only indication that purchasers of this stock would not receive this dividend. Transactions were made on the New York Stock Exchange with "dividend on" the same day that the stock was offered by the underwriter "ex-dividend" and the stock could, in fact, be purchased on the New York Stock Exchange at a lower price than that at which it was being offered by the underwriters. We believe this matter should be considered by the Board of Governors.

The National Uniform Practice Committee has been cooperating with the District Uniform Practice Committees with respect to delivery rulings. Under the provisions of the Code, District Uniform Practice Committees should designate dates for the settlement of "when issued" and "when distributed" contracts in their respective Districts. All District Uniform Practice Committees should be asked to comply with these provisions to insure orderly procedure in deliveries of these contracts.

It is hoped that the amendment to the New York State Tax Law which will provide tax free transfers on out-of-state transactions will be adopted at the current session of the legislature. In any event your committee hopes it will be shortly instructed by the Board as to the policy it should follow with regard to the California Tax Deduction Method. Pending receipt of such instructions no action has been or is being taken.

I would like to comment briefly on the new Secretary of the Committee, Tom Barrett. In succeeding George Rieber, who is now Secretary of District # 13, he has done excellent work in handling the many technical and routine matters that have come before the Committee.

In closing I would like to say that it has been a pleasure to serve on this Committee since 1944 and as its Chairman for the past three years. The members of this Committee have devoted much of their time to this work and I wish to express my thanks to them at this time. To the new Chairman and his committee I extend my sincere wish for great success in the dispatch of their duties.

HAROLD C. PATTERSON,
Chairman.

EDUCATION

(*Continued from page 13*)

has helped the committee in many ways. New York University has made a major contribution to the success of the program by allowing us to use their Graduate School of Business Administration at 90 Trinity Place as headquarters for the fellowship holders.

No report on the activities of this committee would be complete without comment on the fact that one of the primary reasons for the success of this fellowship program and its acceptance by the universities has been the joint nature of the enterprise. It is a field in which joint activity by all parts of the security industry is particularly effective.

AMYAS AMES, *Chairman*

The Internal Revenue Code and Regulations impose liability for taxes in a securities transaction in such a way that failure of one party to pay the tax under an agreement by the parties does not relieve others from their liability.

The Board on 'Free-Riding'

Letter to members calls attention to practices inconsistent with "just and equitable principles of trade."

The following letter was sent to all members of NASD under date of March 13, 1950, and signed by John J. Sullivan, Chairman, on behalf of the Board of Governors.

To Members of the
National Association of Securities Dealers, Inc.:

In April 1946 the SEC proposed the adoption of Rule X-15C2-3. This rule related to activities of underwriters, selling group members and dealers participating in underwritings and to particular types of sales by such firms and to certain specified persons, in connection with offerings of new securities. The intent of the rule was to stop the practice of "free-riding". At that time, Committees of this Association and representatives of the Board of Governors conferred with the Commission and recommended that certain phases of this problem could best be handled pursuant to rule or interpretations of existing rules of the Association. In the fall of 1946 this matter ceased to be of immediate importance. There have been, however, some recent offerings which have again raised the matter so this whole question of "free-riding" was again considered by the Board of Governors at its recent meeting. At that time a special committee of the Board of Governors and Advisory Council which had been appointed to consider this matter rendered a report, which was, with some modifications and clarifications, adopted by the Board of Governors. The report as approved states in substance:

1. Members have a moral obligation to make a bona fide public offering of securities acquired in a participation in an initial public offering. It is the concensus of the Board of Governors and Advisory Council of this Association that, the sale of such securities to any officer, partner, employee or director of a member or to the immediate family of such persons, in excess of their normal investment practices, except as otherwise provided in a prospectus, does not as far as that member is concerned constitute a bona fide public offering consistent with high standards of commercial honor and just and equitable principles of trade.

2. Further: The Board concluded that

It is contrary to high standards of commercial honor and just and equitable principles of trade for a member of an underwriting and distributing group to sell all or any part of his participation, during the period of original distribution, at a price above the public offering price. For a member of such a group to refuse to make, or refrain from making, a public offering of all or any part of his participation in order to make an extra profit, over and above his normal compensation as a member of such a group, is also contrary to high standards of commercial honor and just and equitable principles of trade.

Examples of the types of activity which the Board of Governors and Advisory Council believe would appear to constitute activity in contravention of the principles of Section 1 of Article III of the Rules of Fair Practice are:

A. Failure of a member who participates in a public distribution of securities to make a genuine effort, for a reasonable period of time, to sell its allotment to bona fide investors at prices not exceeding the public offering price.

B. The withholding of all or any portion of a participant's allotment from public purchasers, in order that the securities withheld may be disposed of at prices above the initial public offering price, regardless of whether such withholding is accomplished directly in the participant's firm account or indirectly by any of the following means:

(1) Allotment to the account of any officer, director, partner, employee or agent of the participant;

(2) In the account of a member of the immediate family of any of the persons specified under (1);

(3) In any account in which any person specified under (1) and (2) has a beneficial interest;

(4) Sale to another broker-dealer under any arrangement or reciprocity with the participant; or

(5) By any other means designed to accomplish any of the above ends.

C. Representing to prospective purchasers that the member's allotment has been wholly disposed of, when, in fact, some portions of it is withheld from public purchasers as a speculation, either directly in the participant's firm account or indirectly by any of the means specified in paragraph B.

For the purposes of this interpretation the term "initial public offering" or "period of original distribution" is intended to mean a sufficient period within which a bona fide public offering can be and has been made to the investing public, and investors have had an opportunity to purchase the issue at the initial public offering price.

It is not the object of the Board of Governors to interfere with sales practices of members which do not conflict with a member's responsibilities and obligations as a participant in a distribution. The Board believes that members, partners, officers, directors and employees of members may invest in new issues and that sales to them for bona fide investment in accordance with their normal investment practices are not contrary to high standards of commercial honor and just and equitable principles of trade. The same is true of sales under similar circumstances for investment to members of the families of these persons.

The Board of Governors is also of the opinion that short selling by members of an underwriting or selling group, or inducing customers to sell, with the intention of covering such sales out of an allotment to participants, are related practices and constitute conduct contrary to high standards of commercial honor and just and equitable principles of trade.

The type of abuses which are the subject of this letter have occurred. The Board and Advisory Council are of the opinion that a notice to the members will correct such abuses and, it is hoped, will forestall the issuance of a definitive rule by the SEC, which would define such actions to be fraudulent.

The Board wishes, in relation to this

(*Continued on page 20*)

Transfer Tax

New York Commission warned NASD will continue campaign for outside agencies.

The National Association of Securities Dealers, Inc., can be expected to "intensify and continue" its campaign for the establishment of transfer agencies outside New York State. The Chairman of the New York State Tax Commission—Spencer E. Bates—has been informed of that fact in a letter signed by Wallace H. Fulton, executive director.

This letter becomes the more important because of the fact that the New York State Legislature ended its session in mid-March without acting on amendments which had been introduced just before the deadline and which had been approved in principle by the N. Y. State Tax Commission, and which would have corrected the existing inequities.

Mr. Fulton's letter to the Commission, dated Feb. 11, 1950 was a statement of the Association's position regarding the New York discriminatory tax, and was supplemental to a letter previously sent to the commission by J. E. Williams of the Chase National Bank of the City of New York. With Mr. Williams' letter was a memorandum dealing with the New York State stock transfer tax, and giving various suggested remedies for reversing the "diversion of business from New York banks and brokers" which followed the new law which became effective on July 1, 1949. The memorandum represented the joint effort of the New York Stock Transfer Association, the Association of Stock Exchange Firms, the New York Stock Exchange and the Committee of Banking Institutions on Taxation. The covering letter said: "It is strongly felt by all concerned that the State of New York will benefit greatly by taking the necessary action to arrest the diversion of business from our state."

The NASD letter to Chairman Bates follows:

Dear Mr. Bates:

I have had the opportunity of studying the memorandum dealing with New York State Stock Transfer Taxes which was forwarded to you by Mr. Joseph Williams of the Chase National Bank under date of January 11, 1950. The memorandum relates, in part, to the efforts of this Association directed to the establishment of transfer agencies outside the State of New York. I would like to review the circumstances contributing to the stand which the Association has taken.

The National Association of Securities Dealers, Inc., was formed under the provisions of the Maloney Act passed by the Congress in 1938. It has more than 2700 members representing all sections of the country. These members, including members and non-members of registered stock exchanges, are engaged in the investment securities business. Many of them specialize in the sale of new issues of securities to the public but the larger part of their activity is devoted to effecting transactions in the "Over-the-Counter" market. All transactions in securities not made on stock exchanges take place in the "Over-the-Counter" market. In size and diversity of issues dealt in, that market is greater than all the nation's stock exchanges combined.

For efficiency in administration certain of the operations of the Association are carried on by fourteen District Committees. District No. 13 comprises the States of New York, New Jersey and Connecticut. Its local affairs are administered by a District Committee of twelve, representing firms who are in the investment securities business and who are members of the Association located in District No. 13. A Board of Governors of twenty-one men, all in the investment securities business, administers the affairs of the Association and is its policy forming body.

Prior to 1949, Section 270-5 of the New York State Stock Transfer Tax Law exempted from tax those transfers where any broker in the United States transferred securities to the name of the customer for whom and upon whose order he had purchased them. However, on March 17, 1949 this section of the New York State Stock Transfer Tax Law was amended to provide that exemption could be claimed only on those transfers which were made from the name of a broker to the name of a customer for whom and upon whose order he had purchased the same. This action on the part of the State Legislature was ill-received by our members not resident in New York. With justifiable resentment they considered the amendment to be discriminatory inasmuch as all the essential elements of transferring title from a seller to a buyer for whom they are acting had taken place outside of New York State.

Prompted by the antipathy of Association members to the amendment the Board of Governors of the Association instituted a program designed to encourage the establishment of transfer offices outside of New York State. To implement that program a letter was sent to each member of the Association which reviewed the circumstances resulting in the Board's action and which urged members to use their contacts with companies whose securities they traded to induce either the removal of a transfer agency from New York State or the establishment of a dual transfer agency outside of New York. It is the present intention of the Board to continue its activities in this direction.

The memorandum sent to you on January 11, 1950 by Mr. Williams cites two remedies whereby it is hoped that the flight of transfer agencies from New York State can be stopped. One of these is the suggestion that no taxes be assessed on book transfers made on records of transfer agents located in New York. Such procedure might be effective. The Association, however, can offer no guarantee that the processes which it has started can be stopped now that the advantage of maintaining transfer agencies outside of the State of New York has been so thoroughly demonstrated to the members of the Association.

The other remedy calls for an amendment to the law to provide that the tax would reach only the original entry on books within the State of a sale executed from or within New York. This would impose upon New York dealers a transfer tax which they are not now called upon to pay because the situs of their transaction is outside the State. That being so, it follows that such a suggestion would serve only to aggravate the condition which already exists since it would induce certain New York dealers to advocate the establishment not only of transfer agencies but also the business itself outside of New York State.

Until such a time as the New York State Tax Commission sees fit to advocate changes in the law which will correct the inequitable situation growing out of the March 17th Amendment the National Association of Securities Dealers, Inc., will have no alternative but to itensify and continue its campaign for the establishment of transfer agencies in jurisdictions foreign to New York State.

Yours sincerely,

WALLACE H. FULTON,
Executive Director.

Cancellation

Board concurs with District Business Conduct Committee that an offer to repurchase may be an unintentional act of unfair discrimination

A somewhat unique case involving two members of the National Association of Securities Dealers, Inc. was presented to a District Business Conduct Committee during 1949. This case was not reviewed by the Board of Governors but the principles involved in the disposition of the case by the District Committee were the subject of discussion at the October 1949 meeting of the Board.

An important principle was involved which makes the case and the decision of general interest to members. The conclusion of the District Committee was adopted as a statement of policy by the Board on the basis of the specific facts involved.

In this case the complainant was a participating underwriter in an offering of securities of which the respondent was one of the principal underwriters and a representative of the underwriters. The agreement among underwriters contained the usual provisions as to maintenance of the offering price, stabilization and termination of the agreement before the expiration of fifteen days. The complainant took down 7500 shares on the offering date and three days later, having sold his entire allotment, took down additional stock on selling group terms. On that afternoon, complainant was advised that the agreements were terminated and also that 215,000 shares of the original 350,000 shares remained unsold in the hands of the underwriters and selling group.

Four days after the offering date complainant received a call from a customer to whom it had sold 210 shares during the offering at the public offering price. The customer advised complainant that shares also had been purchased from the respondent and that a representative of the respondent had called offering to let her cancel the sale and substitute an order to buy the shares on the exchange. Substitution of an exchange order was not a prerequisite to cancellation. Stabilization had ceased and the exchange price had dropped about 3 points. The customer was of the opinion that since one of the underwriters had done this, the complainant firm should also do the same with the 210 shares she had purchased from it, but took no formal action.

Based upon the foregoing, the complainant filed its complaint alleging a violation of Section 1 of Article III. The respondent in answer stated that it had made the same offer to all of its retail purchasers in an amount of 1488 shares and did not require that the customers purchase shares on the exchange as a condition to cancellation. All of the respondent's customers accepted cancellation and some placed orders for stock on the exchange.

Complainant contended that the cancellation of the original purchase and the substitution of a market order at a lower price amounted to a technical violation of the price maintenance provisions of the agreement among purchasers and, secondly, that respondent's offer of cancellation was unfair to other underwriters and members of the selling group.

The District Committee, after reviewing all the facts, stated as follows:

> "If cancellation offers of the kind described in this case, under similar circumstances, were made repeatedly by a member in the course of its business, we would have no hesitation in holding such transactions to be violations of Section 1, Article III of the Rules of Fair Practice.
>
> "In this case, it does not appear that respondent thought of the natural and destructive consequences of its acts. We accept the respondent's statement that its transactions here were not effected as a matter of usual practice, but were unique in its experience and are not apt to be repeated. For these reasons, we are not disposed in this instance to find any violation on its part. We construe respondent's offer of cancellation, in the circumstances, as a misguided but unintentional act of unfair discrimination, calling for none of the penalties prescribed bv the Rules of the Association."

This statement was adopted by the Board as a statement of policy on the basis of the specific facts involved, and determined further that the above facts, together with this statement be published in the next issue of the NASD News, without any reference to the names of the parties involved.

Investment Trusts

Regulation to be undertaken by NASD at request of industry in order to eliminate abuses.

The Investment Company industry will undertake, through the National Association of Securities Dealers, Inc., a program of self-regulation, as a result of a report to the Board by a committee from the industry, and a vote of the Governors.

This action was taken on recommendation of a committee from the industry headed by H. I. Prankard, 2d, of Lord, Abbett & Co., New York and including on it leaders in the investment company field such as Herbert W. Anderson, Harold W. Cameron, Edward B. Conway, Charles F. Eaton, Jr., Woodford A. Matlock, George S. McEwan, Walter L. Morgan and Henry T. Vance.

The report of the committee follows:

"Since closed-end investment companies have distributed no substantial amount of new shares of capital stock in the past several years, we shall confine this report to the distribution activities of open-end investment companies. These companies were first organized about 25 years ago and the distribution of their shares of capital stock has become an important part of the business of many of the members of our Association.

Importance to Association

"The increasing interest in open-end investment companies is evidenced by statistics released by the National Association of Investment Companies. These statistics show that on December 31, 1949 there were 91 open-end investment companies, with total assets of $1,973,000,000, and that in the year ended that date sales of new shares amounted to $385,000,000. About 90 per cent of these sales of new shares were made by dealer members of our Association. We estimate that over 1,000 dealer organizations participated in this riskless distribution and received about $20,000,000 in commissions.

Sales Problems

"As might be expected, the rapid growth of investment companies has in some instances been accompanied by sales practices which have been questioned by both the Securities and Exchange Commission and the State

Securities Administrators. During the past year, our Committee has had meetings with both the Staff and the Members of the Securities and Exchange Commission at which some of these sales practices were discussed.

"It is clear to us that there are questionable sales practices in the field of literature prepared by underwriters and by dealer organizations, and in the field of advertising in newspapers, periodicals and by radio. In our opinion, most of the elements objected to in the literature and advertising matter which has been brought to our attention result from a lack of understanding by some underwriters and dealers of Federal and state rules, of the rules of our Association, or of the results which investment companies may be expected to accomplish.

"There are other problems relating to the distribution of investment company shares which require attention. The Securities and Exchange Commission has taken the position that a comparison of the record of an investment company with a general market index is misleading and that all such comparisons should be avoided. We have readily agreed with the Commission that unfair comparisons should be avoided but neither we nor the Commission have as yet been able to find a procedure for distinguishing between fair and unfair comparisons. The problem of the reasonableness of sales commissions is always with us. At a recent meeting, one of the members of the Securities and Exchange Commission asked us to study the problem of unwarranted switches by dealers from one investment company to another and the practice of some dealers of assisting customers in obtaining loans from note brokers so that a customer might buy more investment company shares than he could with his own capital.

Our Start Toward a Solution

"On January 10 of this year, representatives of our Committee and the Executive Director of the Association had a conference with Mr. Andrew Jackson and various members of the Staff of the Securities and Exchange Commission and a meeting with the Commissioners at which we discussed the problems mentioned above and possible steps which our Association might take to solve them.

"To accomplish this objective, it seemed to us that first we should make sure that all underwriters of investment company shares and all dealers distributing them have a clear understanding of the types of advertising, literature or sales practices that are objectionable, and that thereafter we should establish procedures to guard against their recurrence.

"As a preliminary step, our Committee agreed to cooperate with the Commission in a review of sales literature and advertising matter currently being used in the solicitation of sales of investment company shares and the Executive Director, with the approval of the Executive Committee, mailed a letter to all members asking for copies of such material. Much of it has now been received, and a copy of each piece will be forwarded to the Securities and Exchange Commission so that they may mark those parts which they think have the capacity to mislead. Our Committee intends to make a study of all the points which are brought to our attention and hopes to find a practical method of eliminating any unfair sales practices, either by an expansion of Rule 26 of the Association's Rules of Fair Practice or otherwise, as may be worked out by our Committee and the Executive Director, subject to the approval of the Board of Governors.

Self-Regulation Versus Government Regulation

"It is our opinion that the investment company industry has attained a size which makes it necessary to exercise a greater amount of self-regulation through this Association or submit to greater regulation by Federal and state authorities. We believe that self-regulation is the more desirable and we are hopeful that if it is undertaken in a spirit of cooperation by underwriters and dealers, substantially all of such abuses as may now exist can be eliminated in 1950.

Recommendation to the Board of Governors

"In the judgment of this Committee, accomplishment of the objectives herein outlined will require not only a great deal of the time of the members of this Committee but also the full time of a paid employee and a secretary, for there will be a great deal of work in the coming year in getting the program under way, and thereafter, there will continue to be a large amount of work in examining all new literature and other advertising matter and in studying new problems as they arise. We respectfully recommend, therefore, that the Board of Governors authorize the Executive Director to employ a competent individual, and such assistants as he may need, to implement the work of this Committee.

"While we are confident that the results we hope to accomplish will be beneficial to the investment business in general as well as to investment company underwriters, we are aware of the fact that the costs involved might be a deterrent in the adoption of our suggestion. We have therefore discussed the subject of cost with many of the investment company underwriters and we believe that the members of this Association who are underwriters of investment company shares would be willing to make a voluntary contribution, which would not be an assessment, to pay the major part of the additional costs involved."

The governors rejected the suggestion that voluntary contributions from the industry be accepted to defray the expense of the voluntary regulating program. It was the sense of the meeting that if the program were to be continued by the NASD the extra cost could be equitably distributed by an assessment on the Investment Trust Underwriters.

"FREE-RIDING"

(*Continued from page 17*)

problem, to call the attention of members to Section 10 Article III of the Rules of Fair Practice which deals with "*influencing or rewarding employees of others*".

A number of the reports submitted in 1946 by the District Committees, which were carefully considered by the Board, criticized the practice of "free-riding" permitted to certain other classes of individuals, notably employees in the buying department of institutions and other large buyers. In connection with transactions with such persons, care should be taken to see to it that violations of Section 10 of the Rules of Fair Practice of the Association do not occur.

Very truly yours,

For the Board of Governors,

JOHN J. SULLIVAN,
Chairman.

Change in Name

The Traders Committee has been redesignated as the Unlisted Trading Committee. Jesse A. Sanders, Jr., of Sanders & Newsom, Dallas has been reappointed Chairman.