

PUBLISHED BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC., WASHINGTON, D. C.**What's News . . .****Rules Govern
Registered Reps;
Free-Riding Dodges**

When you become a registered representative with NASD, you assume the same responsibilities to abide by the Rules of Fair Practice as does a member. Fifty-seven registered reps named in complaints this year will testify to that fact. Those hit with fines up to \$1,000 or who had their registrations revoked (nice way of saying "lost their jobs") are particularly well informed on the point.

Some of the dodges people can contrive to get aboard a "hot issue" make you wonder: if that kind of resourcefulness were employed in direct moneymaking efforts how much more rewarding it could be!

"Twice 'n Out" would be a fitting headline over the story of a member (former, that is) who didn't take very seriously the first complaint filed against him. The second got him expelled from the Association.

The Board of Governors at its last meeting adopted a resolution setting forth NASD's acknowledgement of the constructive work Bill Fuller of Chicago has done over the last twenty-five years on over-the-counter quotations. Culmination was adoption of the "Fuller Plan" on which issues quoted nation-wide are now compiled. Take a bow, Bill!

A fresh look is going to be given the subject of part-time salesmen. Chairman Frank Reissner has appointed a Committee, with Alexander Yearley of Atlanta heading it, to study the subject.

CHAIRMAN**CHARLES L. BERGMANN**

Charlie Bergmann was born in Newark, N. J. 51 years ago, grew up in Belleville where he got his elementary schooling, graduating from high school in 1924. His first job: page boy at the Stock Exchange. He became a bond clerk on the floor, went to work for Vilas & Hickey, bond brokers.

Left V & H in 1931, going to R. W. Pressprich & Co. as a railroad bond trader. Been a partner since 1940 and current responsibilities include management of bond and preferred stock trading departments, supervision of transportation research and internal management duties.

Charlie's been doing NASD work since 1940 and has served the IBA, notably as chairman of its Railroad Securities Committee for six years.

It will surprise no one who knows him to learn that a hobby of Charlie's is the trumpet. He's a model railroader. Likes to spend a little time on the golf course—where he can be expected to—well, enjoy himself.

Officers for '58**Bergmann Chairman;
Hammond, Simmons,
Linch, Fulton Also Named**

Charles L. Bergmann of New York will be Chairman of the Board of Governors in 1958.

Other officers chosen by the Nominating Committee of seven retiring Governors are:

Vice Chairmen

Edmond E. Hammond, Boston
Richard W. Simmons, Chicago

Treasurer

Dale F. Linch, Louisville

Executive Director

Wallace H. Fulton, Washington

Charlie Bergmann is a partner of R. W. Pressprich & Co. In 1957 he served as Chairman of the National Business Conduct Committee.

Ned Hammond, a partner of Paine, Webber, Jackson & Curtis, has been serving as Chairman of the Finance Committee.

Dick Simmons, a partner of Blunt Ellis & Simmons is a past Chairman of District Committee No. 8.

Dale Linch, vice president of Berwyn T. Moore & Company, Inc., is Chairman of the Legislation Committee.

Wally Fulton's reelection as Executive Director continues him in the administrative post he has held since 1939 when the Association was formed.

In keeping with the tradition that has held since NASD was established, this year's Nominating Committee consisted of the "graduating class" of Governors, namely:

Frank L. Reissner, 1957's Chairman of the Board and president of Indianapolis Bond and Share Corporation; Jo M. French, Blyth & Co., Inc., Los

(Continued on page 6)

Business Conduct

100 Complaints Filed First Nine Months; 26 Members, 27 Salesmen Expelled

District Committees filed a total of exactly 100 complaints against members in the first nine months of 1957. It was one of the most active periods for business conduct filings since the Association began.

All but one of the fourteen Districts initiated complaints and as many as nineteen were filed in a single District. On September 30, last, there were 93 complaints still to be closed before District Committees and the Board of Governors.

Here are the highlights of disciplinary actions taken:

- 26 members were expelled
- 27 registered representatives were revoked
- 1 member and 7 registered representatives were suspended
- 38 fines for a total of \$31,450 were imposed
- 38 members were censured, as were 11 registered representatives

Several of the individual cases are summarized in the following:

An NASD examiner was assigned by a District Committee to examine a member who a year earlier had been fined \$2,000 and costs for unfair prices charged customers. The examiner's report to the Committee included examples of recent pricing practices showing mark-ups by the member ranging as high as 40 per cent on transactions involving as much as \$7,900. Numerous mark-ups of from 7 to more than 20 per cent were cited. Excessive profits were also cited on "proceeds" transactions. The complaint was filed on the basis of the examiner's report. The Committee in its decision in the case said it was "appalled" at examples of the member's mark-up practices. "We believe," the Committee said in its decision, "they (the member) conducted themselves as though there were no NASD or, for that matter, an SEC and that their actions are indicative of an attitude of contempt for the Rules of the Association."

This member was expelled.

"We are shocked by the telephonic solicitation system to sell highly speculative securities to individuals not known to the firm or its salesmen," said the decision of a District Committee in a complaint against a branch office of a member.

The office was closed while the complaint proceedings were under way.

"We feel that the individual salesmen who were connected with this firm were misled by their own lack of knowledge and at the instruction of responsible officials to 'push' a particular security without any basic knowledge of the securities business or the issue itself," the Committee also commented.

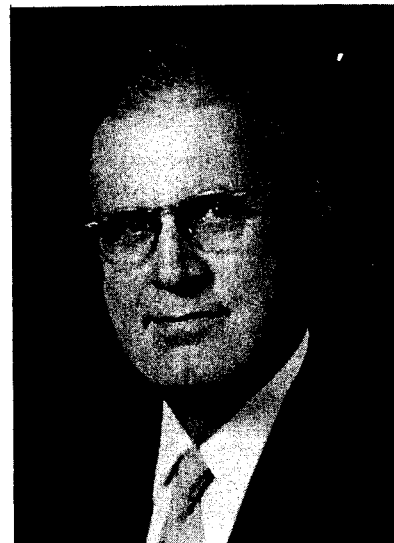
"An endeavor was made in the hearings before us to consider the failure to register individuals as a technical requirement and merely a minor infraction. We do not so regard it. The registration of new representatives in the securities business is an extremely important function and represents an endeavor to protect investors and insure the public that responsible representatives will contact them. To fail to register and to fail to meet examination requirements by a firm is to us a most serious omission."

A fine of \$1,000 was imposed on the member, a statement pledging that the member would be in future compliance with By-Laws and Rules of the Association was exacted, several officers and salesmen were censured and costs of the proceedings added to the fine.

Seven causes of complaint were listed in an action against a member and registered representatives enrolled with the Association which resulted in a fine against the member of \$650, costs of \$349 and fines of \$200 and \$100 against representatives involved.

One cause alleged use by the member of 45 pieces of literature intended to induce purchase of various mutual funds, each piece being found to contain violations of

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EDWARD J. MCKENDRICK

the Statement of Policy pertaining to such literature.

Another cause was recommendations to customers which deprived them of benefits of reduced sales charges on large purchases of funds.

Unsuitable recommendations to customers; confirming mutual funds transactions to customers as "agent"; failure to register personnel of the member and neglect of the member to approve transactions of personnel were additional causes and violations of Association Rules, the Committee found.

Failure of a member to "keep inter-office memoranda and correspondence and to keep correspondence with customers" is "more than a merely technical violation of the Rules", a District Committee found in resolving a complaint against a member by imposing a fine of \$250. The Committee also criticized use by the member of a statement in a letter to a customer to the effect that SEC and NASD Rules "governed" transactions with him. The member's response was that this was an "inept" statement and not intended to mislead. The Committee said: "We believe any reference to the Association's examinations may be improper . . . it is often a physical impossibility for examiners to check more than a brief sample of transactions."

A \$17,530 Tab

One of the largest fines ever imposed in an NASD complaint proceeding, amounting to \$17,530, including costs, was assessed recently against a member and its principal officers for a series of violations of Association Rules.

The local District Business Conduct Committee found a total of 206 violations committed over a period of four years, through mid-1956. The firm itself was fined \$8,240, one of the principals \$5,000, and another \$1,000. Four other officers were fined \$500 each. In addition, \$1,290 was levied against the firm to cover the costs of proceedings. The firm and the seven individual respondents were censured.

The complaint charged multiple violations of the Rules of Fair Practice, of the interpretation of the Board of Governors with respect to "free-riding" and of Regulation T of the Federal Reserve Board.

Registered Reps

Traffic of salesmen and other personnel in and out of the securities business is still pretty brisk, although it's not been of jamming proportions of late. In the first ten months of 1957, the Association handled 18,159 applications for registration and processed 11,813 notices to cancel registration. The net addition to the rolls of registered representatives was 6,346 to bring the October 31, 1957 total to 59,223.

Rutgers Requests

Rutgers University Library would like to receive copies of bulletins and other material issued by investment firms, including prospectuses. Publications on financial and investment topics of all kinds are wanted. Send them to:

John Cotton Dana Library
Rutgers University
40 Rector St.,
Newark 2, N. J.

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ERNEST W. BORKLAND

Men at Work

Examiners for the Association completed 921 examinations of members in the first ten months of 1957. That compares with 892 examinations completed in the same period last year.

Since January 1, last, the Association has added 10 new examiners to its staff. The Executive Office and District Offices now employ a total of 33 examiners and District Secretaries.

The Board of Governors intends to increase the volume of examinations in order to cover a growing number of members each year.

Registration

Satisfactory progress is being made in the re-registration program being carried out under changes to the By-Laws providing for amended standards of admission of registered representatives. As of August 31, application forms have been sent to members in all Districts with the exception of District No. 13. It was found that about 200 individuals who were not registered should have been and there were over 2,000 registrations terminated as a result of this program.

Variable Annuities

The fight to make "variable annuities" comply with Federal securities regulation is headed for further litigation.

At present the issue is before the U. S. Court of Appeals in Washington. The NASD and the SEC have individually appealed to that tribunal from a decision of the U. S. District Court for the District of Columbia which denied the Association's and the Commission's contentions that an injunction should issue to stop the sale of these contracts without compliance with the Federal Securities Statutes.

In its Findings of Fact, the Court found that a purchaser of a "variable annuity" contract:

"... invests money with the respective defendants with the hope or expectation that a profit will accrue to him as a result of the management of the portfolio of securities purchased by VALIC and EALIC with the money invested by the contract holder, and his expectation of profit based upon the efforts of others applies to both the "accumulation period" and to the repayment or variable annuity period."

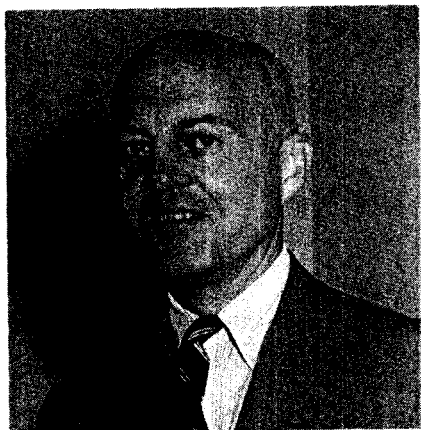
This Finding by the Court describes that which is generally considered to be a security.

Association counsel have indicated that it is their opinion that contracts denominated as "variable annuity" are not the "business of insurance" and therefore the McCarran-Ferguson Act is not applicable.

Technical Reaction?

More members withdrew from NASD than were admitted to membership in October, the net decline amounting to 37. As of October 31, the Association had 3,861 members. Membership is still over 50 per cent greater than it was in 1945, so that figure has a long way to slide before it catches up to the "averages." The Association has a record number of branch offices registered with it—2,723.

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ALEXANDER YEARLEY, IV

Statement of Policy

The Securities and Exchange Commission has substantially revised that portion of the Statement of Policy covering investment company sales literature having to do with the presentation of performance data. The revisions were effective November 5, 1957, as to all material prepared after that date. Material presently in use that does not conform to the new standards may be used until February 1, 1958.

The revisions are contained in a new Section (j); in addition, Section (n)(4) which was adopted in January, 1955, is rescinded. All other sections of the Statement of Policy remain unchanged. In the main, the revisions involve these principles:

1. The right is granted to show performance data and investor experience for the life of an investment company or for periods shorter than the life of the company (when the company is older than 10 years) for ten years or longer, in multiples of five years; i.e., for 10, 15, 20 or 25 years. (Since January, 1955, most performance data and all investor experience has been limited to the most recent 10 years.)

2. It will now be permissible to show in summary form results for a series of beginning and ending periods within the over-all period covered, i.e., in conjunction with data for the 20 years ending December 31, 1957, summaries can be

shown for the periods 1937-1947, 1938-1948, 1939-1949, etc., or summarized results for 19, 18, 17, 16 years, etc.

3. Annual results of assumed investment in continuous investment plans and in dividend reinvestment plans may now be shown in charts as well as in tables, and for periods up to the life of the company. Also those distributing contractual plans (such as are registered with the Securities and Exchange Commission under Section 27(a) of the 1940 Investment Company Act) may now use in their supplemental sales literature the type of tables of assumed investment results prescribed by the Commission for use in their prospectuses.

The Investment Company Department of the Executive Office will advise on any matter of interpretation in connection with these new provisions.

Late Payment

The Board of Governors has authorized certain new procedures to govern transactions in investment company (mutual fund) shares designed substantially to eliminate delays in the transmission of payment by dealers to underwriters for such shares.

These procedures, among other things, provide for certain specific time limits within which dealers must transmit payment to underwriters and within which underwriters must arrange to pay issuers for shares acquired to fill dealer orders. It is also provided that in the event a dealer does not pay for the shares within the time prescribed the underwriter must redeem the shares involved and notify the Executive Office of the Association of such action.

The new procedures also allow for an extension of time for payment between dealers and underwriters upon application by dealers to the appropriate District Offices of the Association where legitimate reasons make it impossible for the dealer to comply within the time limit prescribed.

Where no extension of time is obtained and the shares are re-

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THOMAS G. FOSTER

deemed, it is required that the shares be turned back to the issuer at the asset value at the date of transaction, unless the asset value is lower, in which event the shares will be turned back at the asset value at the date of redemption and dealers will be charged with the loss.

Complete details of the procedures, the effective date, etc., have been sent to all members.

Exams

Qualification examinations for prospective registered representatives and applicants with less than a year's service in the securities business, have been made tougher with the addition of 97 new questions. Also, the passing grade has been raised from 65 to 70. Since the start of the program in June, 1956, a total of 24,700 have taken the exams at an average rate of 1,300 a month.

Minor Violations

A new method for disposing of complaints involving "minor" violations of Association Rules of Fair Practice, provided by the Board of Governors, has served satisfactorily in a half-dozen situations recently. Miscues on the part of the front or back office can, when fully acceded to by the member, be promptly settled by nominal fines that, in any event, may not exceed \$100. A few Regulation T and books and records slips have been involved to date.



ARTHUR A. CHRISTOPHEL

Philadelphia Story

The Association during the past seven years has managed to make some headway in stamping out "free-riding" in "hot" issues on the part of members and their personnel. It has accomplished this by education, by interpretive statements to the membership, by warnings and by slapping down with complaints.

But the problem of "free-riding" is no longer solely internal in nature. Officials in the buying departments of large securities buyers are, in some cases, not above using their positions to secure preferential treatment. Other persons equally hungry have applied the pressure directly and indirectly, and one means that was being employed in this latter manner resulted in steps being taken to slam the door on the itchy fingers.

The initiative was taken by major banks in Philadelphia. What they acted to deal with was the practice of some individuals to place orders for "hot issues" through these banks, thereby using the banks' buying power and prestige to acquire securities which otherwise would have been available to them only on the same basis as other investors. These "free-riders" are a small group "but well informed about issues likely to be in such demand as to sell at a premium immediately." What was the consequence of such unbridled seeking for advantage? The banks found

The Sacrifice Is Great—But So Is The Challenge And The Reward

(Reprinted from Investment Dealers' Digest, October 28, 1957)

This is the time of year when security men all over the country are being approached to serve their business on regional committees or the board of governors of the National Assn. of Securities Dealers. Those who are asked to serve are not being invited into an exclusive club; they are being invited to contribute a lot of time, thought and plain hard work to their business and are likely to receive no thanks for their efforts.

But NASD is unique of all organizations in this democratic nation of ours; it is a self-regulating association run by those in the business as contrasted—for instance—to the other and rather rare self-regulating undertakings such as the baseball and moving picture industries, each of which has what used to be termed a "Czar." The struc-

themselves being pitted against each other to get the largest allotment, with the deposits of the instigator the prize!

Pity the banker on that spot! Pity the investment firm on its spot!

The banks decided to impose the kind of controls they needed to avoid being used in this manner. Meantime, Association members in Philadelphia have been told by their District Committee what's expected of them, including avoidance of any recommendations that customers order through banks; that members are not to feel it incumbent upon them to fill orders from these banks for "hot issues"; that any apparent preferential treatment may subject the member to possible complaint for violation of NASD Rules. Members were also advised to seek understanding and cooperation of banks not immediately participating in the combined effort.

NASD News

Published periodically by the Board of Governors under the supervision of the Information Committee.

Allen J. Nix, *Chairman*
Editor, James P. Conway
1625 K St., N.W., Washington, D.C.

ture of NASD is—like the nation—democratic to its very roots.

As such, service on one of its regional committees or its board represents a real challenge calling for technical proficiency and intellectual independence. Many will be called upon to pass judgment on colleagues—perhaps friends. This is not a pleasant task—but it is sometimes a necessary one in the interests of self-regulation and the maintenance of the high character of the business. Those who accept the challenge of serving NASD must be dedicated to the public service. In our conversations with the many who have served NASD in prior years we have been impressed by their sense of great satisfaction with an important job well done and much knowledge gained.

"Oversight Committee"

House Speaker Rayburn in the last session of Congress sponsored a proposal for a study of the activities of independent agencies, created by Congress. Among these is the SEC. A Congressional Committee with the intriguing name of "Committee on Legislative Oversight" was appointed to do the looking into. Many groups having dealings with the agencies have been called upon to submit reports. NASD is one such and it complied promptly with a request from Chairman Moulder for a review of its activities, with a particular emphasis on the period 1952-55. The document is 160 pages long with 12 voluminous exhibits—not exactly the kind of reading a member would wittingly pick up but one which ought to satisfy the request of Mr. Moulder.

Carter et al

Three new common stock offerings of recent months were the subject of NASD questionnaires to establish if any underwriting or selling group members engaged in "free-riding." The issues: Carter Products, Florida Steel and American Heritage Life Insurance.

VICE CHAIRMAN



EDMOND E. HAMMOND

(Continued from page 1)

Angeles; Edward H. Austin, Austin, Hart & Parvin, San Antonio; Earl K. Bassett, W. E. Hutton & Co., New York; Howard H. Fitch, Barret, Fitch, North & Co., Kansas City; Joseph J. Muldowney, Scott & Stringfellow, Richmond; Lee H. Ostrander, William Blair & Company, Chicago.

Here are some personal facts about the new officers, other than Bergmann (see Page 1):

Ned Hammond speaks of himself as a bit of a "stick-in-the-mud" because he's been with one firm (and its merged entity) since he started in the business as an office boy. That was with Jackson & Curtis an unspecified number of years ago. He became J & C's first trader, then a partner in 1927—just in time to learn how it feels to be a partner during a crash and a depression. J & C and Paine Webber joined in 1942 and Ned's been one of the bosses since.

"It's been a lot of fun to be an old stick-in-the-mud" says Ned.

Dick Simmons is a former Lee Higginson v.p. and sales manager. He and two other Lee Higg men—Jack Blunt and Win Ellis—formed their present firm in 1948. Dick's been busy in NASD and IBA affairs for many years and did his stint

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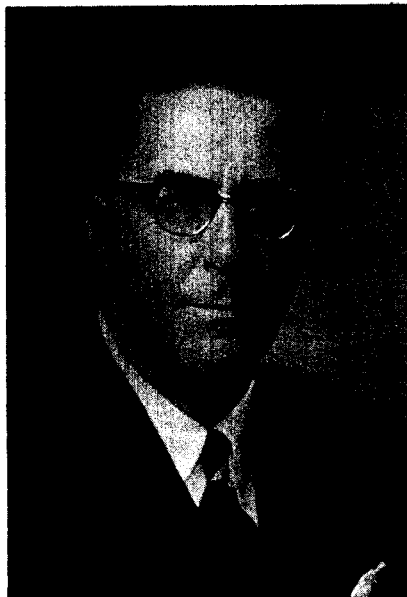


DALE F. LINCH

too as president of the Bond Traders Club and the Bond Club of Chicago.

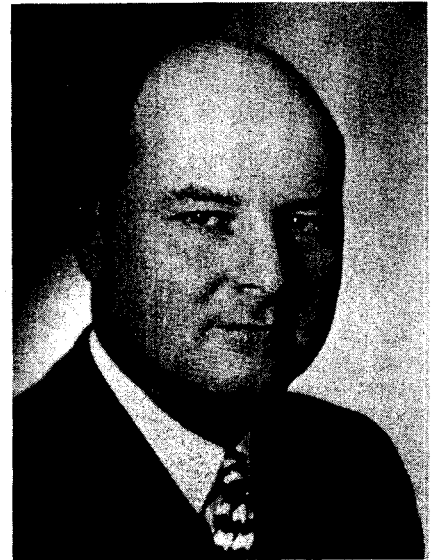
Around Louisville, Dale Linch is known as the "good humor man"—an acknowledgement not of his "frozen" assets, but of his warm, personal friendliness and jolly nature. He became an adopted Kentuckian in 1928 when he came to Louisville from his native town of Lincoln, Neb. He went to Nebraska Wesleyan. Started in the securities business in 1930 and has been with his present firm since 1935 when he

EXECUTIVE DIRECTOR



WALLACE H. FULTON

VICE CHAIRMAN



RICHARD W. SIMMONS

helped in its founding.

Wally Fulton's a native Californian and was initiated into the financial district in 1924 when he joined Walker's Manual. He became president of the publishing house in 1930. In 1933-35 he was Director of Compliance of the Investment Bankers Code Committee. He returned to Washington in 1936 to be director of the Investment Bankers Conference, Inc., and when NASD was formed in 1939, became its Executive Director.

Dear Reader . . .

The Association would like to know if members are getting too many copies of the NASD News, if they are getting too few and, in any event, if the paper is being read. Every registered representative ought to know what the score is as well as the boss, so the NEWS is available to members in the quantity they need for coverage of salesmen, cashiers — and partners and officers, too. A member now gets the number of copies he's supposed to need to cover all personnel. If the number you're getting is too many or too few, write the Executive Office in Washington—as you will be requested to do in a special letter on the subject in a few days. Your cooperation will be appreciated.