

SUPPLEMENTAL STATEMENT OF NATIONAL ASSOCIATION OF  
SECURITIES DEALERS, INC., ON S. 1179 AND H.R. 2480

The Securities and Exchange Commission has made various changes in its final recommendation to the Senate and House on certain parts of the Bill, introduced at the Commission's request, to amend the Securities Exchange Act of 1934.

After hearing industry comment before the Senate Subcommittee on Securities of the Committee on Banking and Currency, the Commission, on June 25, 1959, informed the Senate that further consideration would be given to several sections of the Bill.

On August 4, 1959, Chairman Gadsby appeared before the House Subcommittee on Commerce and Finance and introduced memoranda on the matters which had been restudied. The comments here will be limited to the sections of the Bill the Securities and Exchange Commission now proposes to amend prior to any possible action by Congress.

Section 7 of the Bill relates to Commission rule-making powers in the matter of borrowing, lending or holding of securities carried for the accounts of customers.

In its memorandum on this Section, the Commission states:

"In summary, the Commission would have no objection to modifying Section 7 of the Bill to spell out more specifically the areas within which its rules should operate, which are primarily the segregation of customers' fully paid securities and excess collateral and the borrowing of customers' securities by the broker-dealer himself, or their lending to others."

In the light of the Commission's position on this Section, the Association no longer opposes the Commission's request with the modification included.

The Commission also reconsidered Section 30 of the Bill which would impose a forfeiture of one hundred dollars a day for failure to file information, documents or reports. (Transcript before House Subcommittee on Commerce and Finance, August 4, 1959, Page 353, et. seq.)

The Commission stated that upon re-examination, in light of industry comments, it would limit the filing requirements to reports filed pursuant to Sections 13 and 16 of the Act and that recovery of the forfeiture would bar any criminal proceedings for the same delinquency but the Commission would have the option as to how it determined to proceed. This proposed change is under study at the Department of Justice but the Commission expects to receive that agency's approval of the Section of the Bill as amended.

In view of the fact that the Commission stresses the court's discretion under this Section, it is believed that the industry request for notice to a party who may be inadvertently delinquent is somewhat taken care of. In the light of the legislative history of this particular Section, it is not believed a court would permit a forfeiture for the failure to file a report, due either to inadvertence or because of conflicting opinions upon the basic necessity of filing the report in the first instance.

Therefore, the Association is no longer in opposition to the enactment of this Section as amended.

It is interesting to note that the Commission does not accede to the Association's comments on Section 14 of the Bill which would grant the Commission rule making authority with respect to over-the-counter trading on a "when issued" or "when distributed" basis. The Commission states that the Rules of the Association (Uniform Practice Code) in this regard are procedural rather than substantive and further do not apply to broker-dealers who are not members of the Association. While on other issues where the Commission sought to explain the reasons for its proposals by substantial memoranda introduced before the Senate and House, there has been no such memorandum prepared on this particular request. It may well be if the Commission could demonstrate the need for this Section, the Association would not be opposed to its enactment. However, based upon the information at hand, the Association maintains its position with regard to this Section.

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