NASD News
VOLUME XXVII NO. 2
OCTOBER, 1967
NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC., 888 17TH ST., N.W., WASHINGTON, D.C.

*To NASD Members and Registered Representatives:*

**WALBERT NAMED PRESIDENT BY NASD BOARD**

Richard B. Walbert, a 51-year-old Chicago investment banker and securities dealer, has been named by the Board of Governors to be the Association's new president.

Mr. Walbert, currently a Vice President and Director of Blyth & Co., Inc., a major investment banking and underwriting firm headquartered in New York, has been a member of the NASD Board for the past two and a half years and is serving this year as Vice Chairman.

Mr. Walbert, who will assume his new duties in Washington, D. C. on January 1, 1968, as chief executive officer and NASD spokesman, replaces Robert W. Haack, president since 1964, who took over the presidency of the New York Stock Exchange from G. Keith Funston on September 10 this year.

The search for a new NASD president has been underway for the past five months, ever since Mr. Haack announced his intention to accept the "Big Board" position.

The selection of Mr. Walbert was the unanimous choice of a special committee headed by NASD Board Chairman Robert M. Gardiner, managing partner of Reynolds & Co., in New York. Other members of the selection committee included men from all phases of the securities business and all geographic sections of the country, and were as follows:

Clifford B. Barrus, Jr., Vice Chairman of the NASD Board and partner of Barrett & Co. in Providence, Rhode Island

Gordon S. Macklin, Jr., NASD Finance Committee Chairman and a partner of McDonald & Company in Cleveland, Ohio

Phil E. Pearce, Chairman of the Association's National Business Conduct Committee and a partner of G. H. Crawford Co., Inc. in Columbia, South Carolina

Avery Rockefeller, Jr., a former NASD Board Chairman and a partner of Dominick & Dominick in New York

Julian A. Kiser, a former Vice Chairman of the NASD Board and partner of Kiser, Cohn & Shumaker, Inc., Indianapolis, Indiana

Robert L. Cody, a former Board member and Vice President of American Funds Distributors, Inc., Los Angeles, California

Allen L. Oliver, Jr., a former President of the National Security Traders Association and a partner of Sanders & Co., Inc. in Dallas, Texas

Although Mr. Walbert was originally a member of the selection committee, he removed himself from all committee deliberations when it became evident that his candidacy as NASD president was being considered.

The selection committee proposal of Mr. Walbert's name as president of the Association was unanimously endorsed and accepted by the NASD's 21-man Board of Governors which met September 25-27 in Colorado Springs, Colorado.

Mr. Walbert, who lives in Wheaton, Illinois, with his wife, Jane, has four children: Mrs. Ann Schwandt, a school teacher in Detroit; David, 20, a junior at the University of Denver; and twins, Richard Jr. and Nancy, 17, senior students at Wheaton High School.

Mr. Walbert, who has spent his entire career of 32 years in the investment banking business, has for the past five years been the officer in charge of Blyth's midwest operations. This has involved the management of the Chicago office plus nine other branch offices located in the midwest region.

Born in Milford, Illinois, Mr. Walbert attended public schools in Wheaton, Illinois, and graduated from Hyde Park High School in Chicago. Subsequent to that, he attended Northwestern University.

In recent years Mr. Walbert has been president of the Chicago Bond Club, Chairman of the Central States Committee of the Investment Bankers Association, Governor of the IBA and president of the Executives' Club of Chicago. He holds memberships in the Chicago Club, the Attic Club and the Chicago Golf Club in Wheaton.

Commenting on Mr. Walbert's selection as NASD president, Board Chairman Gardiner stated that while he realized that the Association was now faced with some of the most difficult problems in its 26-year history, he was confident that Mr. Walbert's long experience in the securities business and intimate knowledge of NASD affairs would provide the outstanding and effective leadership necessary in the period ahead.

Mr. Gardiner said, "Although Mr. Walbert would not officially assume his new responsibilities until January 1, 1968, the new president-elect planned to use the intervening months to familiarize himself in detail with the attitudes, problems and opinions of various segments of the NASD membership."

Mr. Walbert said in accepting the NASD post that he anticipated increasing and enhancing the concept of self-regulation as a prime force serving the public investor, the securities markets and the NASD membership alike.

## BOARD NOMINATES NEW CHAIRMAN AND OFFICERS FOR 1968

The Board of Governors of the NASD has nominated Phil E. Pearce as 1968 Chairman succeeding Robert M. Gardiner, managing partner of Reynolds & Co. in New York.

Mr. Pearce, who has been an Association Governor since 1966 and served this year as Chairman of the NASD National Business Conduct Committee, is president of G. H. Crawford Co., Inc., Columbia, South Carolina. He is a graduate of the University of South Carolina and of the Institute of Investment Banking, Wharton School at the University of Pennsylvania.

Also nominated as Vice Chairmen of the NASD's Board in 1968 were: Charles E. Crary, succeeding Clifford B. Barrus, Jr., of Barrett & Company, Providence,

Rhode Island and Arthur Stansel, succeeding Richard B. Walbert, Vice President of Blyth & Co. of Chicago; president-elect of the NASD. Mr. Crary is Regional Vice President of E. F. Hutton and Company, Tucson, Arizona. Mr. Stansel is Vice President of Courts & Co. in Birmingham, Alabama. Both have served on the Board since 1966.

Ralph E. Phillips, Jr., a Vice President of Dean Witter & Co., Los Angeles, California, was selected to fill the office of Chairman of the Association's Finance Committee which is responsible for all financial and budgetary decisions of the organization. He will succeed Gordon S. Macklin, Jr., of McDonald and Company, Cleveland, Ohio.

The nominations were made at a regularly scheduled meeting of the NASD Board of Governors in Colorado Springs, Colorado. Although the officers for 1968 will not officially assume their duties until the next Board meeting in January, their nomination now is tantamount to election.

## NASD OPPOSITION TO SEC MUTUAL FUND PROPOSALS CONTINUES IN HOUSE HEARINGS

The second round of Congressional hearings on the SEC sponsored mutual fund bill began in the House Interstate and Foreign Commerce Committee October 10.

Senate Banking and Currency Committee hearings on this highly controversial legislation started on July 31 and concluded August 15 with little or no discernible change in the position of the SEC that fund management fees should be reduced substantially, sales charges on fund shares should be limited to 4.76 percent and front-end load contractual plans should be abolished.

Convincing arguments against these proposals were presented by industry representatives from the Investment Company Institute, the NASD and the Association of Mutual Fund Plan Sponsors, along with other organizations such as the Investment Bankers Association, the New York, American, Boston, Midwest and Pacific Coast Stock Exchanges and many representatives from fund management companies.

Particular interest was expressed by the Senate Committee members in a suggestion of Chairman John Sparkman of Alabama that the NASD assume responsibility for supervising mutual fund sales charges. This alternative to the SEC 4.76 percent proposal was advanced to the NASD on June 6, prior to the hearings, in a letter from Chairman Sparkman. In its reply to the Sparkman letter, the Association's Board of Governors stated, "Because it believes that supervision of the level of sales charges continues to be an appropriate and desirable function of a self-regulatory organization, the Board is willing to undertake the responsibility suggested in this area. However, because of the complexity and diverseness of this problem, it is believed that careful consideration should be given to the manner in which this is to be accomplished."

The NASD reply to Senator Sparkman pointed out that the SEC report was seriously lacking in economic data upon which enlightened judgments could be made as to appropriate sales charge levels. The Association stated that it would in good faith initiate the necessary study and develop in cooperation with all interested parties effective guidelines for mutual fund sales charges. This responsibility would take into account the needs and interest of all broker/dealer members as well as the public, bearing in mind that the results of such an objective study could not be predicted in advance.

In his testimony at the Senate hearings, NASD Chairman Robert M. Gardiner expressed strong opposition to the SEC's proposal to restrict mutual fund sales charges to a maximum of 4.76 percent of the public offering price, subject only to the SEC's power to grant exemptions by rule or order. It was emphasized in Chairman Gardiner's testimony that no attempt should be made to remold the mutual fund sales charge structure, whether by Congress, the SEC or the NASD, without there first having been a study in depth to develop the economic data upon which enlightened judgments and decisions might be made.

Gardiner told the Senate Committee that if the NASD was to be assigned greater responsibility in the area of mutual fund sales charges and the organization initiated a comprehensive economic study, the results of such a study could not be predicted in advance and clearly would not contemplate the adoption of a ceiling which would correspond with the 4.76 percent limitation currently proposed by the SEC.

Gardiner pointed out that the NASD now has authority to adopt rules to prohibit its members from selling mutual fund shares at prices which include "an unconscionable or grossly excessive sales load." "The SEC," he stated, "also has concurrent power to adopt its own rules to enforce the same standard, either in the absence of any regulation adopted by the NASD or to supersede any such regulation."

Gardiner stated that rather than a standard of "reasonableness" to replace "unconscionable or grossly excessive" as suggested in the original Sparkman letter to the NASD, the Association would prefer a more appropriate standard of "not excessive" if sales charges were to be subject to NASD self-regulation.

In his testimony Gardiner also reiterated certain statutory changes which had been outlined in the NASD reply to Senator Sparkman and which would be necessary or desirable if expanded responsibility were to be undertaken by the Association in the mutual fund sales charge area. One of the most important of these statutory changes was the removal of the duplicate or concurrent authority now granted to the SEC under the 1940 Investment Company Act. "Although we recognize that the SEC should have some oversight authority," Gardiner said, "it should be limited to that now possessed by the Commission under Section 15A of the Securities Exchange Act of 1934."

The NASD statement on mutual fund legislation also pointed to the serious problem of the relationship of sales charge regulation for broker/dealers that are not members of the Association but subject to SEC jurisdiction only. Gardiner stated that the concept of self-regulation would be nullified if the SEC were to exercise its rule-making authority in a manner which would in effect dictate the terms of any rules or guidelines adopted by the NASD in this area. "For example," Gardiner said, "if the NASD assumes responsibility for mutual fund sales charges, what regulation would apply to non-NASD members and what effect would any NASD standards have upon such non-member regulation?" Gardiner raised the question, "If the SEC were to propose rules for non-NASD members reflecting the Commission's recommendations as stated in their mutual fund report and the proposed bill that is now before Congress, what effect would this have upon the NASD?"

In summarizing the Association's position as to the inquiry from Chairman Sparkman, Gardiner strongly emphasized in his testimony that the Association was not proposing or seeking an extension of its authority. He said, however, "the Board

of Governors in its original reply to Senator Sparkman had indicated willingness as a self-regulatory body, established under Federal law and already having responsibility and authority for the supervision of compensation charged by its members in non-stock exchange transactions, to undertake the increased responsibility which had been suggested, provided certain acceptable statutory changes could be made and subject to the solutions of the many problems presented by the regulation of sales charges for non-NASD members.

## CONGRESS PASSES FOREIGN SECURITIES TAX DESPITE INDUSTRY OBJECTION

Over vigorous opposition from the securities business, the United States Congress has passed the Interest Equalization Tax Extension Act of 1967 increasing and extending for two years the tax American buyers and non-citizen residents of the U.S. must pay when purchasing securities of foreign issuers from foreigners.

The original draft of the bill as presented to the House Ways and Means Committee proposed a doubling of the tax rate. At that time Henri L. Froy, Chairman of the Association's Foreign Committee, stated that the NASD was unalterably opposed to the draft and stressed that no economic data had been submitted to support the recommended doubling of the tax. Mr. Froy's statement was enforced by similar presentations made by the New York and American Stock Exchanges and the Association of Stock Exchange Firms.

The bill that was passed by Congress increased the maximum tax that applies to foreign equity securities by only one-half the 100 percent boost requested by the administration. The new law increased the 15 percent maximum established in the 1964 Act to 22.5 percent. In the case of a foreign bond purchase, the new law imposes tax rates ranging from 1.58 percent to a maximum of 22.5 percent depending upon the maturity date of the bond. In both cases the bill authorizes the President to vary the tax rate from the maximum down to zero or no tax. On August 28 the President fixed the tax rate at 18.75 percent for equity securities and the same rate on a sliding scale basis depending upon the maturity date on debt securities.

The bill, which was sponsored by the Treasury Department, is aimed at curbing the outflow of money from the country and thus reduce the so-called deficit in the U.S. balance of payments. Theoretically, the increased tax discourages American citizens and non-citizen residents of the U.S. from purchasing foreign stocks and bonds by putting the securities of American owned corporations at a comparative advantage. However, the issues of companies in countries which have been deemed "underdeveloped" are exempt from the tax.

The Internal Revenue Service administers the new law for the Treasury Department and has established procedures for broker/dealers participating in the validation process. Currently about 600 New York Stock Exchange firms and 200 NASD members have been designated by the IRS as "participating firms." Other NASD members who wish to qualify for this category should make application to the Internal Revenue Service in Washington.

Under a resolution passed by the Board of Governors, all Association members who have been qualified by the Internal Revenue Service as "participating firms" may issue a confirmation that the tax has been paid only if it has complied with Association rules that have been, or will be, enacted in accordance with the requirements of the Treasury Department.

Requests for copies of present requirements, lists of exempted securities or other questions about the interest equalization tax should be directed to the Association's Foreign Committee located in the NASD's New York office.

## FINANCIAL REPORTING FORMS BEING TESTED WITH MEMBERS

In early August about 100 NASD members, representing various types of firm operations, were asked by the Association to participate in a one-month test of the SEC's latest draft version of financial reporting forms which the Commission will require all registered broker/dealers to file annually—first reports probably due in the spring of 1969 for the calendar year 1968. If this time schedule is met it will mean that record-keeping procedures should conform starting January 1, 1968.

The purpose of testing the proposed SEC forms with representative NASD firms is to help the Association determine and document the problems and burden of compliance with the Commission's new financial reporting requirement which has been the subject of discussion and negotiation for the past two years between the SEC's staff, NASD representatives and other securities industry organizations. In addition, the Association hopes that by developing actual case history experience through the test program it will be able to successfully substantiate that some sections of the current SEC forms are still too complicated or contain objectionable items.

The SEC has accepted the NASD suggestion that members be allowed to file their financial reports with the Association to be passed along to the Commission on a completely undisclosed basis so that the confidential nature of the information can be preserved and no specific firm can be identified by name with the material supplied. Also the SEC has agreed with the NASD that $500,000 of gross income should be established as a dividing point between those non-national exchange member firms required to file the "long" (NYSE) form and those permitted to file the "short" form. Of course, all New York Stock Exchange firms will be required to file the "long" form—NYSE Income and Expense Report and Balance Sheet.

In addition to the "long" form—for all national exchange members and those non-members with $500,000 or more gross income—the Commission has agreed to a simplified "short" form for firms that do not belong to a national exchange and have less than $500,000 gross income and, finally, a third form for firms deriving 80 percent or more of their gross income from mutual fund retailing or underwriting.

The SEC will probably promulgate its new reporting rule about December 15, 1967, and the NASD will continue efforts to simplify and minimize the burden of compliance.

## AUTOMATION STUDY NEARING COMPLETION

The special NASD committee on Automation headed by Chairman of the Board Robert M. Gardiner is nearing an end to its eight month old investigation into the feasibility of an automated quotations system for over-the-counter markets. Last January the Committee obtained Board approval to retain the management consultant firm Arthur D. Little which had demonstrated the needed expertise in the fields of electronic data processing and communications.

In the initial stages of the study, a team representing the committee contacted five system suppliers that had indicated an interest in furnishing the automation services to the Association. Each of the firms was interviewed for their suggestions.

The Committee, jointly with the Arthur D. Little study team, has drawn a very tentative operations plan for a possible quotations system with broad estimates of

costs. Envisioned is the use of electronic equipment in combination with existing communications facilities to produce a system responsive to members' need for current quotation information. The committee has decided that a system of matching or crossing orders would not be desirable and that the negotiated character of the market and the functions of the securities trader must be retained.

The tentative system would be divided into three separate levels to service the varying needs of the business. The first is aimed at the requirements of registered representatives and retail firms and would supply a current representative quotation on any security registered in the system. The second level would be designed for use by the trading department of a retail sales firm and could be interrogated to supply a complete list of market makers with their respective bid and asked prices. The third and most sophisticated system level would also be for use by trading departments but would include the accessories demanded by firms making a great many markets or handling a large number of transactions.

Currently, this very tentative plan is being presented to thirty broker/dealers representing a cross-section of firms with varying combinations of exchange memberships and non-exchange members with different product mixes. The committee is receiving suggestions and comments from these firms for further refinements and progress in the project.

It is hoped that the automation study will be completed before the end of the year. A detailed report and analysis of the study's findings will be sent to the general membership as soon as practically possible.

## COMMITTEE FORMED TO REVIEW SALES CONTESTS

At its May meeting the Board of Governors established a committee on mutual fund sales incentives to assist in administering the Association's By-Laws interpretation "Dealer Compensation for Sales of Investment Company Shares." Board Chairman Robert M. Gardiner appointed the members of the new seven-man committee and instructed them to develop procedures for implementing their duties.

The activities of the committee officially began with the passage of a resolution by the Board in July. The resolution described the Committee's duties and a notice to the membership was sent August 10 explaining the resolution.

The Committee on Mutual Fund Sales Incentives began on September 1, 1967, to review sales incentives including contests and campaigns undertaken by members to determine whether these incentives appear to be reasonable particularly with respect to the dealer discounts or cash concessions detailed in the prospectuses of the particular investment companies and in the sales agreements of the underwriters of those companies.

As of the September 1 effective date, every member which is an underwriter or a dealer in open-end investment companies shares is required to file all particulars of any sales incentives including campaigns or contests that the member is supporting. In the event that more than one dealer is involved in a special incentive or a combination of underwriter and dealer(s), each member must satisfy the filing requirement.

The information filed must be sufficient to make clear all material aspects of the incentives that are being offered, and in every case shall include at least the following:

(a) The sale of shares on which the incentives are or have been offered.

(b) The categories of persons such as salesmen, managers, branch offices, etc. to whom the incentives are available.

(c) The identity of the member or members:
(1) suggesting the campaign or contest;
(2) promoting the campaign or contest;
(3) providing the incentives.

(d) The nature, extent, and requirements for the receipt of the incentives, whether they represent participation in dealer discounts, reciprocal business, or a combination of such participations, and including, in the case of incentives other than cash, a description thereof and their estimated or actual cost.

(e) The normal schedule of compensation including participation in reciprocal business and any bonus arrangements, for sales of the shares involved; a clear description of the manner and the degree to which the normal compensation is enhanced by the incentives offered; and the date on which the normal schedule took effect.

(f) The period of time for which the incentives are to be in effect.

(g) Such other information as may be relevant or material, including in the case of underwriters such additional reciprocity information as the Committee may from time to time deem appropriate.

(h) Whether or not the filing is for advance comment.

Members are not required to file before the actual offering of any sales incentives but are given the option to submit the required information before the offering date for comment. Members requesting advance comment will be apprised of the committee's opinion before the offering if at all possible.

In the resolution, the Board ruled that the members of the committee will not be disclosed and that all filings should be directed to the committee staff in the Association's Washington office. All members filing information of special incentives will be notified of the committee's opinion of whether the incentives offered bear a reasonable relationship to the dealer discount or cash concession stated in the investment company prospectus or sales agreement.