

NASD

News

VOLUME XXXII NO. 3
NOVEMBER, 1972

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. 1735 K ST., N.W. WASHINGTON, D.C.

OFFICERS CHOSEN FOR '73

At a recent meeting in Pebble Beach, California, the Board of Governors announced the nomination of NASD officers for 1973. Those nominated were: J. Logan Burke, Jr. as Chairman of the Board; J. Jerry Inskeep, Jr. as Vice Chairman of the Board; Ralph L. Gustin, Jr. as Vice Chairman of the Board; and G. Willard Miller, Jr. as Chairman of the Finance Committee.

Although these men will not formally assume their duties until the January 1973 Board of Governors meeting, the Board's unanimous approval of their nomination is tantamount to election.

J. Logan Burke, Jr., General Partner—Syndicate and Sales of W. E. Hutton & Co., New York City, has served with the Association this year as Co-Chairman of the National Business Conduct Committee, which reviews decisions made by the Association's District Committees regarding infractions of the Association's Rules of Fair Practice. He is also Chairman of the Committee on Corporate Financing and Chairman of the Committee Re Best Efforts Underwritings. From 1967 through 1969 he was a member of the NASD's District Committee #12, serving as Chairman in 1969. Mr. Burke is currently a member of the Bond Club of New York.

During 1972, Jerry Inskeep, Jr., Senior Vice President and Secretary of Rippey, Inskeep, Hess & McFaul, Inc., Portland, Oregon, has served as Co-Chairman of the NASD's National Business Conduct Committee and Chairman of the Committee on Election Procedures. The incoming Board Vice Chairman is also a member of the Association's Finance Committee. He served on the Association's District Committee #1 from 1967 to 1969, and chaired that Committee in 1969. He is President and Director of Columbia Growth Fund, Inc. of Portland, Oregon; Chairman of the Board and Director of Columbia Management Co., Portland, Oregon; and a Director of Community Bank, Lake Oswego, Oregon.

The second incoming Vice Chairman, Ralph L. Gustin, Jr., is Senior Vice President and General Counsel for John Hancock Mutual Life Insurance Company in Boston, Massachusetts. Since joining the NASD Board as an "At Large" Governor, he has served as a member of the Association's Investment Companies Committee, Real Estate Committee, Retirement Plan Review Committee, Variable Contracts Committee, and National Business Conduct Committee. Gustin chairs the Task Force on Variable Life Insurance, a joint effort of the American Life Convention and the Life Insurance Association of America. The Task Force was assigned to study variable life insurance and discuss this new insurance company product with the Securities and Exchange Commission. (Gustin is a member of the Bar of the United States Supreme Court, the State Bar of California and the Massachusetts Bar).

The new Chairman of the Finance Committee, G. Willard Miller, Jr., is President of Dean Witter & Co., Incorporated in San Francisco. This year, he is a member of the NASD's Committee on Qualifications and the Committee on the Free-Riding Interpretation. This Interpretation outlines the Association's policy to ensure that a bona fide public offering is made in the distribution of new issues. Miller is a member and former president of both the Merchants Exchange Club and the Street Club of San Francisco. He holds memberships in the San Francisco Bond Club.

These four men will serve until January of 1974 when their terms as Officers as well as members of the Board of Governors will expire.

A. A. SOMMER TO JOIN BOARD

A. A. Sommer, Jr., Partner in the Cleveland, Ohio law firm of Calfee, Halter, Calfee, Griswold & Sommer, has been elected to serve as an "At Large" member of the NASD Board of Governors. When his three year term begins January 15, 1973, Mr. Sommer will become the second member of the NASD Board to be selected from outside the securities industry.

Mr. Sommer is Chairman of the American Bar Association's Federal Securities Regulation Committee and a member of that Association's Committee on Stock Certificates. He is also a member of the Advisory Group, Federal Securities Code Project of the American Law Institute. Other professional activities include membership in the American Bar Association, Ohio State Bar Association, Cleveland Bar Association, and the Bureau of National Affairs Advisory Committee for the "Securities Regulation and Law Report".

Among Mr. Sommer's many published articles on corporate and securities law are: "Who's in Control?—SEC", included in *The Business Lawyer* 559; "SEC: 'Line of Business' Reporting Requirements", *St. John's Law Review*; and, "Random Thoughts on Disclosure as 'Consumer Protection'", *The Business Lawyer* 85 (1971).

He is active in many civic organizations in the Cleveland area, including: Director, Federation for Community Planning of Greater Cleveland; member of the Criminal Justice Advisory Committee; and a member of the Criminal Justice Coordinating Council. In the past he has served as President of the Welfare Federation of Greater Cleveland; President of the Citizens' League of Greater Cleveland; Chairman of the Community Committee on Taxation; and Director of the Cleveland Bar Association.

A graduate of the University of Notre Dame and the Harvard Law School, he has also undertaken graduate studies at Northwestern University and Notre Dame.

"The Association will benefit greatly from Al Sommer's extensive background and experience in corporation and securities matters," commented Peter C. Barnes, Chairman of the Board of Governors. "He is highly respected, not only for his knowledge of the securities industry, but his feel for its direction and future."

NASD TO CONSIDER REVAMPING OTC STOCK TABLES

The Association is investigating the possibility of changing the criteria for listing issues in the National Over-The-Counter Stock Tables carried in many newspapers across the country. Through NASDAQ, the Association supplies to wire services, for retransmission to newspapers, daily bid and ask quotations and volume figures for all 3,450 securities which are currently listed in NASDAQ. Roughly 1,650 of these OTC stocks are presently included in the National OTC Stock Tables.

The Association has asked members, NASDAQ issuers, and others for comments and suggestions on how these OTC stock tables could be improved. A possible alternative suggested was to relate the National List inclusion criteria more closely to newspaper reader interest by encouraging the publication of daily data on those issues with the highest share volume activity. Another alternative would be to continue to base National List selections primarily on the number of shareholders. However, obtaining current, accurate shareholder data is growing most difficult because of the large amount of stock outstanding with the public which is held in street name by broker/dealers for their customers.

After comments and suggestions are received and considered (comments are due November 17), the Association will release a formal plan for restructuring the National OTC Stock Tables.

DAILY PUBLICATION OF COMPLETE NASDAQ QUOTES WITH VOLUME

Beginning about December 1, Francis Emory Fitch, a New York City publisher of stock market data, will begin daily and weekly publication of the quotations and volume on the complete NASDAQ list of 3,450 securities. The publication will cover each stock's 11:00 a.m. and closing bid and asked price plus the trading volume for that day.

The NASD understands that the Fitch NASDAQ statistics will be sold under a variety of subscription plans and offered to subscribers daily or weekly by mail or messenger. Details of subscription rates may be obtained from:

Francis Emory Fitch
Printers and Publishers
80 Broad Street
New York, New York 10004

In addition, the *Financial Weekly*, published by Media General in Richmond, Virginia, offers quotations and volume on the entire NASDAQ stock list. The *OTC Market Chronicle*, published once a week in New York City, provides closing quotations for the entire NASDAQ list.

NASDAQ FILM RELEASED

The Association has just completed production on a 13½ minute, full-color, motion picture film, entitled "The Electronic Stock Market," and it is available for distribution. The film, which is an important part of the NASDAQ-OTC Education Program, has been produced in a documentary style using actual officers from NASD member firms on location in all corners of the country. It not only shows how the OTC market works, but it stresses the significance and application of NASDAQ and the improvements it has brought to all those concerned with investing in stocks and bonds.

The film goes behind the scenes, into the trading departments of the brokers and dealers, into the investment trust departments of the banks and into the board room of the NASD, to show just how NASDAQ operates and how it benefits the investing public.

Initially 100 prints of the film have been ordered and are available for use by broker/dealer firms in their investor relations seminars and in-house training classes and for distribution among NASDAQ issuers to be shown to Board of Directors and used in shareholder relations work. In addition, the film is designed for distribution to educational and commercial television stations, schools and colleges, and service and investment clubs.

For a limited time, members may borrow the film free of charge. To book a free-loan, 16 mm, color-sound, 13½ minute print of "The Electronic Stock Market", members should contact the nearest NASD District Office.

NASD PRESIDENT TESTIFIES ON CAPITOL HILL

In October, NASD President Gordon S. Macklin appeared before the Subcommittee on Securities of the Senate Committee on Banking, Housing and Urban Affairs, in a final round of hearings on the securities industry. Since the fall of 1971, the Subcommittee has been conducting an extensive study of the entire securities industry and the organizations that regulate it. In his testimony, President Macklin discussed cooperation between the agencies regulating the industry. He commented on the Association's long-standing willingness to cooperate and coordinate with other authorities in an effort to eliminate costly duplication. Further, he expressed the Association's intention "to explore with all other self-regulatory bodies the possible use of Association examination facilities throughout the nation on a cost sharing basis." He also said the Association would be willing to share securities surveillance information generated by NASDAQ and data on

the changing financial condition of broker/dealers generated by the National Clearing Corporation.

Focusing on recent NASD activities, he discussed changes in the composition of the Association's Board of Governors—specifically the addition of two governors from outside the securities industry. Dr. James H. Lorie, Professor of Business Administration at the University of Chicago School of Business, was elected to the Board in July. A. A. Sommer, Jr. of Calfee, Halter, Calfee, Griswold, and Sommer of Cleveland, a leading authority on securities law, will join the Board in January.

Macklin concluded his remarks by outlining recent developments with NASDAQ and the National Clearing Corporation. Securities in NASDAQ now number 3,450 and the system's computers currently process approximately a million and a quarter calls per day. Trading volume through NASDAQ continues to exceed the combined total volume on all exchanges in the country except the New York Stock Exchange.

NCC has been steadily expanding its operations, which now include pilot operations in Boston and Philadelphia. A hook-up with the Midwest Stock Clearing Corporation is scheduled to take place in early November. Plans for next year include the establishment of clearing connections in a number of key cities throughout the country. Even now, however, NCC is the second largest stock clearing corporation in the country, processing 10,000 to 15,000 trades every day.

"In sum," concluded Macklin, "we feel that we are progressing rapidly along the road toward a well regulated and highly automated over-the-counter market with access open to all qualified dealers. Needless to say, we greatly appreciate the help we have received with these programs from Congress and the Securities and Exchange Commission."

"INSURANCE-ONLY" NOT A DEFENSE IN NASD DISCIPLINARY ACTION

The NASD Board of Governors has barred a registered representative from association with any member in any capacity for attempting to deceive customers and his employer in connection with the sale of insurance policies. This was the first time that the Board addressed itself to the question of the Association's jurisdiction over a registered representative's activities outside the investment banking and securities business.

The individual in this case had been employed by a member to sell both insurance and security products; and his registration was required by the Association.

A complaint was issued at the District level, charging the individual with forging customers' signatures to insurance applications and paying the initial insurance premiums himself in an attempt to obtain his first year's commission in advance. The District Business Conduct Committee dismissed the complaint, believing the NASD did not have jurisdiction.

The case was called for review by the Board of Governors who determined that the Association did have jurisdiction over the registered representative's insurance-related activities in this case. The Board reversed the District Committee's decision and barred the individual from association with any NASD member in any capacity.

The following excerpt from the Board Decision explains the Board's reasoning; ". . . the nature of the offense (forgery) clearly brings it within the ambit and prohibitions of the Association's Rules of Fair Practice. This conduct is patently violative of the concepts of business ethics, commercial honor and fair dealing. . . . The respondent's activities represent a calculated scheme in pursuit of personal gain, to defraud both the public and the member company."

REPORTING REQUIREMENTS TO GET COMPLETE REVIEW

The reporting requirements of the self-regulatory organizations and the SEC will come under the close scrutiny of a special committee recently appointed by Commission Chairman William J. Casey. Special attention will be given to the elimination of duplicate reporting requirements. Anton G. Stepanek, Vice President-Director of Robert W. Baird & Co., Milwaukee, Wisconsin and currently Chairman of the NASD's Financial Reporting Committee, has been chosen to chair the Advisory Committee which will review reporting requirements as they pertain to broker/dealers.

Other areas to be considered by the committee are: re-examination of the purpose and format of filing requirements; merging of SEC reporting requirements with those of the states and the self-regulatory organizations; tailoring filing requirements to fit firms with widely varying volumes, business lines and histories; and use of more computer tapes in place of hand prepared reports.

NASD members who wish to comment or offer suggestions on reporting and other paperwork requirements should write to Mr. Stepanek at the following address:

Mr. Anton G. Stepanek
Vice President-Director
Robert W. Baird & Co. Incorporated
731 N. Water Street
Milwaukee, Wisconsin 53201

Mr. Stepanek requests comments on all reporting requirements—not just financial reporting.

The September NASD Board Meeting was clouded by the sudden death on September 12th of J. Robert Doyle, Vice-Chairman of the NASD Board and President of the Chicago-based securities firm of Doyle, O'Connor & Co., Inc.

Bob Doyle, a dynamic and respected industry leader, was deeply involved in areas critical to the over-the-counter securities market. As Chairman of the Association's NASDAQ Committee, he led the Association through the difficult days of NASDAQ's birth 21 months ago and was most instrumental in making sure that NASD actions since start-up were sensible and constructive.

He also served as Chairman of the committee studying capital standards for NASD membership and as a member of the Automation Committee, which considers all matters related to automation, the Trading Committee and the Third Market Rules and Disclosure Committee. As Vice Chairman of the Board of Governors and a member of the Executive Committee, he was a guiding force in every matter that came before the NASD.

Above all, his grasp of the changing forces affecting the industry and the need to channel these forces for the benefit of the public and those in the OTC market made him an outstanding industry leader. The NASD will miss his leadership. Those who worked closely with him will miss a fine friend.

**SEC CUSTOMER
PROTECTION RULE
NEARING FINAL FORM**

The Securities and Exchange Commission has released a third draft of its proposal to limit brokerage firm use of customers' cash and securities, and has announced its intent to adopt the rule in definitive form effective January 1, 1973.

The Commission's stated objective in the institution of this rule (Rule 15c3-3) is "the elimination of the use by broker/dealers of customer funds and securities to finance firm overhead and such firm activities as trading and underwriting." To achieve this goal, the Commission, working with the industry, has designed two basic proposals. The first deals with a broker/dealer's obligation to promptly obtain possession or control of customers' fully-paid and excess margin securities. The second is a requirement that broker/dealers maintain a Special Reserve Bank Account in an amount equal to the total of all funds which have customers' assets as their source (i.e., customers' credit balances held by the firm or cash realized through the utilization of customer's securities) minus customer-related debits.

The SEC first released its proposals regarding segregation of customer funds and securities in early November of 1971. The Commission was acting in response to a Congressional directive, included in the Security Investor Protection Act of 1970, to formulate rules regarding the acceptance, custody and use of customers' securities and the maintenance of reserves.

The industry responded to the SEC invitation for comments by forming a Joint Industry Committee consisting of representatives from the NASD, the American, Midwest, New York and Pacific Coast Stock Exchange, and the Security Industry Association. Comprehensive recommendations submitted by the Committee were, to a great extent, incorporated in subsequent revisions of the original proposals. Specifically, the Committee developed an all-inclusive formula which would result in an effective prohibition against the financing of firm-related activities with customer funds, without causing severe operational difficulties within most broker/dealer firms. The formula included in the SEC's proposal closely parallels that proposed by the Joint Industry Committee.

General areas of the proposed Rule 15c3-3 are outlined below:

Physical Possession or Control of Securities

Broker/dealers will be required to promptly obtain and maintain physical possession or control of all customers' fully-paid or excess margin securities. Securities which are in the custody or control of a clearing corporation, depository or bank; which are bona fide items of transfer; or which are in the custody of an approved foreign depository, clearing agency or custodian will be considered under the control of the broker/dealer. Securities which have been in transfer for more than 40 days will not be considered under the control of the broker/dealer, unless the firm has received a confirmation or a revalidation of a window ticket. Under the proposed rule a broker/dealer is permitted temporary lags in obtaining possession or control of a security, provided it has taken timely steps in a good faith effort to establish possession or control.

A broker/dealer will be required to check its records daily to determine those fully-paid and excess margin securities which are or are not in his possession or control. If he has not obtained possession, as required by the rule, and securities of the same issue and class are being used as collateral for a loan or have been loaned to another broker/dealer, he will have to retrieve the securities. If securities of the same issue and class are included in his records as fails to receive for more than 30 days, the broker/dealer must institute a buy-in to obtain the securities. Or, if securities of the same issue and class have been included in his records for more than 45 days as receivable because of a stock split or similar distribution, he will have to institute a buy-in.

Special Reserve Bank Account

Broker/dealers will be required to establish a "Special Reserve Bank Account for the Exclusive Benefit of Customers", composed only of cash or qualified securities—securities with the interest and principal guaranteed by the United States. The amount of this account will be equal to the customer related assets carried by the broker/dealer minus customer debits. The formula for determining the reserve account includes, on the credit side: (1) free credit balances and other credit balances in customers' security accounts; (2) money borrowed using customers' securities as collateral; (3) money received from the loan of customer securities; (4) customers' securities failed to receive; (5) credit balances in firm accounts except for those clearly due to firm transactions; (6) the market value of stock dividends and similar distributions which are recorded as outstanding receivable for more than 30 days; (7) the market value of short security count differences over 30 days old; (8) the market value of short securities and credits in all suspense accounts over 30 days old; and (9) the market value of securities which have been in transfer more than 40 days without confirmation.

On the debit side, the formula includes: (1) debit balances in customers' cash and margin accounts, excluding unsecured accounts and those doubtful of collection; (2) securities borrowed to make short sales by customers and to make delivery on customers' fails to deliver; and (3) customers' fails to deliver less than 30 days old.

Broker/dealers will be required to compute weekly the amount to be maintained in the reserve account. However, firms whose total indebtedness does not exceed 8 times their net capital and who carry customer funds (as computed in the formula) totalling \$1 million or less, may choose to make the required computations monthly. If they so choose, they must deposit 105% of the amount required in the reserve account.

Exemptions

Broker/dealers who meet any of the following conditions will be exempt from Rule 15c3-3:

1. carry no margin accounts, promptly transmit all customer funds and deliver all customer securities; and effect all transactions for customers through one or more special bank accounts;
2. clear all customer transactions on a fully disclosed basis with a clearing broker/dealer and promptly transmit all customer funds and securities to the clearing broker/dealers; or
3. whose dealer and agency transactions are limited to the sale and redemption of securities of registered investment companies or of interests in an insurance company separate account; or limited to the sale of shares in savings and loan associations; and who promptly transmit all customer funds and securities.

Two important features of the latest SEC draft of the rule were the result of Association suggestions. Pointing to the burden that weekly computations for the Special Reserve Bank Account would place on small broker/dealers, the Association suggested that firms who meet certain size and net capital criteria be permitted to compute the amount of the Reserve Account on a monthly basis. This suggestion was incorporated into the third draft of the proposal.

In another area, the Association pointed out that broker/dealers have no control over transfer agents and should, therefore, not be held responsible for delays on items in transfer. As a result, the SEC extended the time period a security may be in transfer, and still be considered under the control of the broker/dealer, from 30 to 40 days.

**LIFE INSURANCE OPEN TO
REGISTERED PERSONNEL
INDIVIDUALLY**

Registered personnel are now able, for the first time, to obtain NASD sponsored professional life insurance on an individual basis, regardless of their firm's participation in other NASD sponsored programs. Eligibility extends to all full or part-time Registered Principals and Registered Representatives who individually wish to apply. A significant feature of the program is portability of coverage—coverage which may be carried by the individual from one NASD member to another. Other features include: very low group rates; optional amounts ranging from \$10,000 to \$50,000; and, in the future, the possibility of dividends lowering premiums.

During the Charter Enrollment Period, the plan will be open to applicants up to age 70; and in addition, applicants under age 40 who request the basic \$10,000 coverage will be granted especially liberal underwriting.

Brochures and applications are being mailed to NASD members and their branches for distribution to registered personnel.

All inquiries should be referred to the Administrators of the program, Group Insurance Administrators, Inc., 888 Seventeenth Street, N.W., Washington, D.C. 20006, telephone—(202) 298-8350.

The NASD Member Operations Department (the staff servicing the former Uniform Practice Committee), has been integrated into the National Clearing Corporation and has moved to:

New Address: Two Broadway
New York, New York 10004

Telephone: (212) 269-6393 (has not changed)

Old Address: 17 Battery Place
New York, New York 10004