

NASD

newsletter

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. • 1735 K STREET N.W. • WASHINGTON, D.C. 20006

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HEARD ON CAPITOL HILL

The Omnibus Securities Bill authored by Rep. John E. Moss, H.R. 5050, died with the 93rd Congress. However, one of the 1975 revisions of that Bill, H.R. 4111, will probably become law this year. The Association has offered comments about pending legislation including H.R. 4457 which would have created a National Market Board with the power, subject to SEC approval, to regulate the authority of and perhaps replace existing self-regulators. In recent testimony before the Subcommittee on Consumer Protection and Finance of the House Committee on Interstate and Foreign Commerce, Gordon S. Macklin, President of the National Association of Securities Dealers, Inc., presented the views of the NASD Board:

On The Proposed National Market Board's Power To Become A Self-Regulator With All Of The Power And Authority Of Any Or All Of The Existing Self-Regulators

"The effect of this provision is that there could be a drastic and complete revamping of the regulatory structure of the entire securities industry. We strongly believe that an in-depth study must be a prerequisite to any such far-reaching legislation."

On The Structure Of The Proposed National Market Board

"If created, its composition should be predominantly industry oriented and it should be required to be representative not only of all the various types and sizes of broker/dealers which make up the industry, but should be sufficiently geographically dispersed so that all sections of the country are represented."

On A National Market System

"The Association's Board of Governors generally supports the establishment of a national system for the trading of securities including, as part thereof, a national system for the clearance and settlement of securities transactions, possibly with a central body overseeing it for purposes of eliminating duplication to the fullest extent."

On The Prospects For A Central Market System

"We are moving toward a revolutionary occurrence in our industry on May 1, the elimination of fixed commission rates. Yet unknown results could flow from that event. At least one of them, we believe, could well be an impetus on the part of the indus-

try itself to move aggressively toward attaining a central market system."

On H.R. 4111

"The Bill provides for a study and a report to Congress on how a central market system should be structured and we support its approach which would enable the concepts espoused by H.R. 4457 to be reasoned out and the ramifications of various alternatives discussed and analyzed for long term solutions . . . the Association believes that H.R. 4111 should be enacted forthwith. . ."

H.R. 4111 was approved by the House Commerce Committee on March 26. Incorporated in the reported version of H.R. 4111 are sections of H.R. 4457 authored by Rep. W. S. Stuckey (D-Ga.) including the provision for a National Market Board to advise the SEC on the need for a central market system and to report to the Congress on the steps to be taken to establish such a system. However, the proposed Board would be an advisory one and not a central-market regulator.

HARVARD BUSINESS SCHOOL CLUB OF CLEVELAND HEARS MACKLIN

In a March 18, 1975 address to the Harvard Business School Club of Cleveland, Gordon Macklin stated that "the Association looks for improvements in the structure of the securities industry which will consolidate, coordinate and simplify the regulatory activities of market centers."

Endorsing self-regulatory efforts, Mr. Macklin noted that those who understand and have experience in the industry are better able to direct its development with government oversight. After highlighting the NASD's surveillance mechanisms, examination and audit programs, and review procedures for new offerings and sales literature, he pointed out that these consumer-protection activities were performed "without direct cost to the U.S. Taxpayer".

In the speech entitled "Self-Regulation: Old, But Not Hard of Hearing", Mr. Macklin explained that the NASD, the self-regulatory body for the over-the-counter securities market, was established back in 1938 with "a mandate as contemporary as any reform legislation now before the U. S. Congress." He continued, "As a representative of, and a conscience for, the securities industry, the NASD conceived and nurtured investor-oriented programs long before the Nader-Knauer Era.

Having done so, the securities industry can note with pride that consumer protection is not the sole province of politicians and academicians."

Mr. Macklin observed that the NASD is "democratic in design and operation." He added, "the Association's 'open door' policy applies to broker/dealer organizations of all sizes, to investment advisers, insurance companies, and individuals prepared to qualify as registered representatives. Regardless of size, business mix and geographic distribution, all interests are accommodated."

INTERIM EXEMPTION FROM PENSION REFORM ACT GRANTED

The enactment of the Pension Reform Act of 1974 should provide a new source of business for members, but it may also mean new headaches. Fortunately, efforts by interested parties, including the NASD, prompted the Internal Revenue Service and the Department of Labor to grant an "Interim Exemption from Prohibitions on Securities Transactions between Employee Benefit Plans and Certain Broker-Dealers, Reporting Dealers and Banks."

In a letter to the Commissioner of the Internal Revenue Service, NASD President Gordon S. Macklin expressed concern about the fiduciary responsibility provisions of the Employee Retirement Income Security Act of 1974. Mr. Macklin noted that these broad provisions (effective as of January 1, 1975) could be interpreted in a number of ways, that the definitions of "fiduciary" and "party-in-interest" needed further clarification and that members had experienced difficulty in trying to determine whether, or under what circumstances, they could continue providing services to employee welfare and employee pension plans. He also noted that fear of violating the Act could lead to the severance of long-term relationships between plans and broker/dealers. In response to applications for interim relief, including the Association's, the IRS and Department of Labor proposed temporary exemptions and scheduled public hearings at which they were discussed. With regard to the proposed exemptions, the Association submitted formal written comments and presented its position orally at the public hearing.

The nature and extent of the Act's applicability to fairly routine transactions between plans and broker/dealers has not been determined. However, the Government has acknowledged that plans require the research, custodial, portfolio valuation, management, recordkeeping and other administrative services provided by members; that broad prohibitions might prevent plans from dealing with those most capable of handling their transactions; and that broad prohibitions might disrupt the securities markets, increase costs to plans, and impede proper plan management to the detriment of participants and beneficiaries.

To allow further study of these considerations interim exemptions were granted. As a result, the restrictions of Section 406 of the Act and Section 4975 of the Internal Revenue Code do not presently apply to certain transactions of broker/dealers registered under the Securities Exchange Act of 1934, and those of dealers who make markets primarily in government securities and report daily to the Federal Reserve Bank of New York. A purchase or sale of a security between an employee benefit plan and a registered broker/dealer or a reporting dealer may be exempt if the final settlement date is prior to May 1, 1975. A dealer rendering investment advice to a plan in a particular manner or a dealer having discretionary authority or discretionary control respecting the management of the plan or the disposition of its assets may not qualify for the exemptions. However, the prohibitions are not blanket ones and some investment advisers or dealers with discretionary authority or control may be eligible for the transactions exemptions. The NASD will continue its efforts to bring about clarification of the Act's provisions and will advise the membership of important further developments in this area. Members should note that the exemptions expire on April 30, 1975, and that participation in prohibited transactions may subject both the investment adviser and the broker/dealer to significant liabilities and penalties.

GOLD TRANSACTIONS PROMPT CAUTIONS

Members involved in gold bullion or other precious metals transactions have been cautioned to become familiar with the business credentials and reputation of firms and individuals who present themselves as experts in the field and with all applicable federal and state regulations covering the trading of gold or interests in gold.

Certain federal securities regulations, including some Association rules, may also be applicable to transactions related to gold and other precious metals, regardless of whether the transaction itself constitutes one in a security or a commodity. For example, a member would be required to satisfy NASD suitability requirements in justifying the liquidation of a securities portfolio to make possible the purchase of gold bullion. Even without a liquidating transaction, suitability questions could arise when a member recommends the purchase of gold or interests therein. This is a real concern since it appears that because of various attendant charges and costs, the market price of gold purchases may have to rise as much as 25% to 35% for the investor to recapture his investment. Other NASD rules covering supervision of personnel and review of sales literature or advertising may also apply.

It is the Association's position that members have a responsibility to disclose fully to customers all relevant facts and circumstances relating to any transaction in gold or other precious metals. Customers should know that such transactions may not be protected under the Securities Investor Protection Act. Further, all charges and costs relating to transfer, storage, insurance, analysis, reprocessing and resale of gold or other precious metals should be disclosed and fully explained. The quality of the gold (for example, fineness and weight), and names and locations of depositories for bullion should be specified. In addition, any special risks and expenses which may be involved should be fully disclosed.

It should be noted that the SEC's proposed Rule 15c3-5 provides for broker/dealer financial responsibility standards; possession, custody and control requirements; and recordkeeping obligations. The SEC has also published several "no-action" letters which may provide some guidance as to which plans for the sale of gold may be subject to the registration requirements of the Securities Act of 1933. The regulatory picture may be further complicated, however, by the responsibilities and activities proposed for the recently-created Commodity Futures Trading Commission.

The Association polled its members in January 1975 regarding their actions or intentions relating to dealings in gold or other precious metals. Responses indicate that less than 10% of NASD members are involved or contemplate becoming involved in such transactions. However, the Association will continue to keep members posted on developments in this area and will provide guidance when requested.

90-DAY COMMITMENT RULE PROPOSED

At its November 22, 1974 meeting, the NASD Board of Governors approved an amendment to the Association's By-Laws that would impose a new obligation on those broker/dealers making markets in the NASDAQ System. The amendment would require NASDAQ market makers to commit themselves to at least 90 days of continuous quotations when they register in a NASDAQ security. Further, should a market maker withdraw his quotation of a NASDAQ issue before the expiration of the 90-day period, he would be prohibited from registering again as a market maker in that security for 90 days.

The Board's action is a manifestation of the Association's policy to develop rules which will continue to add to depth and liquidity in the NASDAQ market. The commitment rule is a corollary of the Association's requirements that a market maker maintain firm quotations, that his quotations be reasonably related to the current market, and that he not withdraw and re-enter quotations during the trading day without Association permission.

The Board has provided an exemption to the proposed rule for those situations where a market maker is required by law to suspend market making activities, such as a registered distribution. The exemption would allow market makers participating in such a distribution to resume quotations upon removal of the legal restrictions.

The Board is awaiting comment on the proposed amendment from the SEC, which, under the provisions of the Maloney Act (Section 15A of the Securities Exchange Act of 1934), must express its "non-disapproval" of all changes in the Association's By-Laws before they become effective.

MESSRS. MASON, WEBB, CLELAND AND EDELSTEIN ASSUME OFFICERSHIPS

In January, four men who have devoted considerable time and energy to NASD activities began one-year terms as officers of the Association's Board of Governors. All four are former District Committee Chairmen and have served on the Board since 1973.

R. A. (Chip) Mason, President of Legg Mason, First Regional Securities, Inc. (Washington, D.C.), is this year's Board Chairman. He has served as a member of the National Business Conduct Committee, the Committee on Entry Standards and the NASDAQ Committee. In 1974 he chaired the Information Committee and became a member of the Committee for Third Market Rules and Disclosure. Mr. Mason is a member of the Young Presidents Organization, the Washington Board of Trade, and various committees of the Securities Industry Association. An active alumnus of William and Mary (B.A. in Economics), Mr. Mason serves the College as a Trustee, Finance Committee Chairman, and as a member of its Executive Committee and Endowment Board. He is also a member of the Business School's Board and Executive Committee.

Harry C. Webb, Jr., Executive Vice President of Underwood, Neuhaus & Co., Inc. (Houston), is one of the Board's Vice Chairmen. He has served as a member of the Information Committee and the National Business Conduct Committee. In 1974, he became Chairman of the NBCC and a member of the Association's Executive, Automation, Margin, and Options Committees. Mr. Webb is a member of the Houston Stock & Bond Club and the Executive Committee of the Securities Industry Association's Texas Group. He holds a Bachelor's Degree in Business Administration from the University of Texas and serves his alma mater as a member of its Alumni Investment Committee. Other civic activities include membership on the Board of Trustees of both the Bishop Quin Foundation and the Chinquapin School.

John D. Cleland, Vice President and Director of Security Distributors, Inc. and of Security Manage-

ment Company, Inc. (Topeka) is also a Vice Chairman. He has served on the National Business Conduct, Executive, Investment Companies, and NASDAQ Committees. Currently he is a Director of both Bossler & Associates and Kansan Towers, Inc., and a member of the Financial Analysts Society and the National Security Traders Association. Mr. Cleland received his undergraduate degree from the University of Kansas and an M.B.A. from the Wharton School of the University of Pennsylvania.

Joseph F. Edelstein, a general partner in Edelstein, Campbell & Co. (San Francisco), is this year's Vice Chairman-Finance. He has worked on the Finance Committee, the Committee on Entry Standards, and the National Business Conduct Committee, becoming the NBCC's Vice Chairman in 1974. He is a member of the Financial Analysts Federation and the Financial Analysts Society of San Francisco, serving as President of the latter organization from 1960 to 1961. Mr. Edelstein sat on the Board of Governors of the Pacific Stock Exchange, and in 1970 he chaired a special committee to oversee Pacific Stock Exchange member firms in financial difficulty. A graduate of San Francisco State University (B.A. in Economics), he now serves on the university's Advisory Board.

EIGHT NEW GOVERNORS BEGIN THREE-YEAR TERMS

Seven securities industry leaders, all having served on District Committees, and a senior officer of a NASDAQ company became members of the Association's Board of Governors in January 1975.

Eugene Arnold, Jr., President of Hopper Soliday & Co., Inc. (Philadelphia) is also President of the Bond Club of Philadelphia and a member of the Philadelphia Securities Association. A 1948 graduate of the Wharton School of the University of Pennsylvania, Mr. Arnold began his career with Elkins Morris & Co.

Richard L. Bové is Vice President-Administration of American Securities Corporation (New York City). A graduate of St. John's University, Mr. Bové has been in the securities business for fourteen years.

Joseph A. Crisler III, the General Partner of Leftwich, Ross & Crisler (Memphis), is a member of the Memphis Securities Dealers Association and Future Memphis, Inc. A graduate of Vanderbilt University, Mr. Crisler has been with his firm for almost twenty years.

Ralph L. Gosselin, Treasurer of Coughlin and Company, Inc. (Denver), is a member of the Municipal Bond Club of Denver and Treasurer of that city's St. Vincent de Paul Society. A holder of a Bachelor's degree from Regis College and a Master's degree from the University of Colorado, Mr. Gosselin has been with Coughlin and Company since 1966.

Robert E. Linton, Senior Executive Vice President of Drexel Burnham & Co. Incorporated (New York City), is a member of the New York Society of Security Analysts and a Trustee of Hillside Hospital in Glen Oaks, New York. Mr. Linton served two terms as a member of the National Council of Consultants to the Small Business Administration (1958-1959) and joined the Burnham organization twenty-nine years ago.

John E. McClelland is a Vice President of Halsey, Stuart & Co. Inc. (an affiliate of Bache & Co. Incorporated) and is Manager of Halsey, Stuart's Atlanta office. He is a past President of the Georgia Security Dealers Association and is a member of the Atlanta Society of Financial Analysts. An Emory University graduate, college and law school, Mr. McClelland has been in the securities business since 1946.

Robert P. Mann, President of Davis, Skaggs & Co., Inc. (San Francisco), has served as a governor of the NASD since May, 1974, when he was appointed to complete the unexpired term of B. P. Lester, Jr. A former Chairman of the Board of Governors of the Pacific Stock Exchange (1973), Mr. Mann is a member of the Pacific Union Club, the Bohemian Club and the San Francisco Bond Club as well as several community organizations. He has been associated with Davis, Skaggs since 1949, joining the firm upon his graduation from Stanford University.

Roger H. Morley, Executive Vice President and Senior Financial Officer of the American Express Company (New York City), fills an at-large position on the Board. He is the first member of the Association's Board of Governors to represent the community of companies whose securities are quoted on NASDAQ. The Board's decision to fill an at-large spot with a representative of a NASDAQ-quoted corporation stems from its desire to involve corporate issuers in the Association's decision-making processes.

Mr. Morley received an M.B.A. degree from Harvard Business School in 1957, after graduating from Ohio University. He served as Executive Vice President of Gould, Inc. (Chicago) before joining American Express. Mr. Morley is currently Vice Chairman of the Fund for the Lincoln Center and a Director of the Visiting Nurse Service of New York. He is also a member of the Newcomen Society of North America and the Harvard Business School Club of Greater New York.

NEW VICE PRESIDENTS APPOINTED

The NASD Board of Governors has elevated five key staff executives to the position of Vice President.

As Vice President-Automation Programs, Robert L. Andrews supervises the Association's monitoring of the technical and financial performance of the NASDAQ System, and plans its future development. Mr. Andrews is a member of the Data Processing Management Association and holds a Certificate in Data Processing. He

received a B.A. in Mathematics from the University of Tennessee.

As Vice President-Regulatory Policy and Procedures, Douglas F. Parrillo is in charge of the development of regulatory proposals, Regulation Division functions, and examiner selection and training procedures. Currently Mr. Parrillo is a member of the Securities and Exchange Commission Report Coordinating Group. He earned his B.S. in Business Administration and his M.B.A. in Finance from Seton Hall University.

As Vice President-NASDAQ Operations, Richard Peters supervises the System's operations, including qualification matters and the dissemination of OTC stock quotations to the press. Mr. Peters attended the University of Virginia and was graduated from the Wharton School of the University of Pennsylvania.

As Vice President-Enforcement, John T. Wall oversees the operation of all fourteen NASD District offices, the NASDAQ Market Surveillance Department, and the Anti-Fraud Section. Mr. Wall received a B.A. in Economics from the University of Notre Dame and is a member of the Notre Dame Club, Wall Street Cashiers Association, and the University Club.

As Vice President-EDP Services, Edward Zier directs the department's activities of providing data processing support for the Association's regulatory and administrative functions. Mr. Zier is a member of the Association for Computing Machinery, Institute of Electrical and Electronics Engineers, National Microfilm Association, and the EDP Auditors Association. He holds a B.S. in Electrical Engineering from Fairleigh Dickinson University.

BOARD OF DIRECTORS

The National Clearing Corporation has announced the election of five prominent members of the securities industry to its Board of Directors. Three of these men fill vacancies on NCC's Board; the election of the other two increases the size of the Board to 16.

Robert M. Flannagan, Executive Vice President and a Director of Dean Witter & Co. Incorporated (New York City), was the first President of the EDP Association of Wall Street and has served on numerous committees of the Securities Industry Association. Mr. Flannagan is a member of the Society of Certified Data Processors and a member of the Business Advisory Board of Manhattan Community College.

David E. Kreid, a CPA, is a Partner of McDonald & Company (Cleveland). He has served on the Association's Financial Reporting Committee and is the current Chairman of the NASD's District 9 Committee. Mr. Kreid is also a member of the Operations Advisory Committee to the Chairman of the New York Stock Exchange and the Advisory Board to the Midwest Stock Exchange Service Corporation.

Carl F. Mahoney, also a CPA, is a Senior Vice President of The Robinson-Humphrey Company, Inc. (Atlanta). He is a member of the Financial Executives Institute, the American Institute of Certified Public Accountants, the Georgia Society of Certified Public Accountants, and is a Governor and member of the Executive Committee of the Midwest Stock Exchange. Mr. Mahoney serves as a Trustee of the Village of St. Joseph's and as Chairman of the Catholic Archdiocese of Atlanta-Financial Council.

Robert P. Rittreiser, a Vice President of Merrill Lynch, Pierce, Fenner & Smith Inc. (New York City), is a member of the Operations Committee of the Securities Industry Association. He is also a member of the Board of Advisors to the New York Institute of Finance, and has served as a member of the Department of Agriculture's Industry Futures Trading Study Team. Author of the textbook *Margin Regulations and Practices*, he has worked with the NASD in the development of OTC margin regulations and in various phases of the Association's training course for examiners.

Harry C. Webb, Jr., will also serve as a Director of the National Clearing Corporation. Mr. Webb's activities and accomplishments are noted in this newsletter in connection with his election as Vice Chairman of the NASD's Board of Governors.

MARKET AND STATISTICS

Trading volume on NASDAQ, the automated quotations system for the over-the-counter market, averaged 4,662,935 shares per day in 1974, compared with 6,566,656 shares per day in 1973. Total aggregate volume on NASDAQ reached 1.2 billion shares in 1974, compared to 485 million shares on the American Stock Exchange and 3.5 billion on the New York Stock Exchange.

Reflecting generally weak market conditions, all leading stock market averages registered substantial losses in 1974. Two averages that measure performance of the over-the-counter securities market, the NASDAQ Composite Index and the National Quotations Bureau Industrial Index, declined 35.1% and 38.8% respectively.

The Dow Jones Thirty Industrials closed down 27.6% on the year, while the New York Stock Exchange Industrial Index and the Standard and Poor's 425 Industrial Average, both broader-based indexes of stocks on the New York Stock Exchange, lost 30.8% and 29.8% respectively. The AMEX Index declined 33.2% on the year.

Set forth on the next page is a table comparing the leading market indexes, a table showing the highs and lows for NASDAQ Indexes, and general NASDAQ Statistics.

MONTHLY COMPARISON OF MARKET INDICES

	1973	1974	6/28	9/30	12/31	Changes (%)	
	12/31	3/29				4th Quar.	Year
NASDAQ Composite	92.19	92.27	75.96	55.67	59.82	+7.5	-35.1
NASDAQ Industrials	83.57	86.53	75.44	54.53	56.46	+3.5	-32.4
NQB Industrials	476.46	467.68	417.46	281.60	291.72	+3.6	-38.8
DJI (NYSE)	850.56	846.68	802.41	607.87	616.24	+1.4	-27.6
S & P 425 (NYSE)	108.95	105.08	97.39	71.01	76.47	+7.7	-29.8
NYSE (Industrials)	56.60	54.76	50.31	36.37	39.15	+7.6	-30.8
AMEX (Market Value)	90.33	96.37	79.10	62.85	60.32	-4.0	-33.2

NASDAQ INDEXES: YEARLY RANGE - 1974 (Daily Close)

	HIGH	LOW
Composite	96.53 (Mar. 15)	54.87 (Oct. 3)
Industrials	89.78 (Mar. 15)	54.21 (Oct. 3)
Banks	105.21 (Jan. 18)	59.43 (Oct. 4)
Insurance	113.46 (Jan. 17)	57.57 (Oct. 3)
Other Financial	111.60 (Jan. 23)	57.16 (Oct. 3)
Transportation	96.66 (Mar. 15)	61.24 (Dec. 23)
Utilities	76.55 (Mar. 6)	48.22 (Dec. 24)

GENERAL NASDAQ STATISTICS

	December 31, 1973	December 31, 1974
Securities in the System	2,932	2,596
Active Market Makers	495	391
Average number of market makers per security	4.8	5.1
Aggregate Volume	1,681,064,400	1,179,722,546
Number of Terminals:		
Level I	28,500	27,100
Level II	165	126
Level III	1,341	1,048
Number of Inquiries:		
Daily Average	984,122	841,144

NASDAQ BLOCK DISPLAY SYSTEM IN THE OFFING

The Association's Board of Governors has authorized negotiations with the Bunker Ramo Corporation pointing toward the addition of a block information display capability to the NASDAQ System. Utilization of present NASDAQ computers, communications lines and terminals should allow the Association to offer a block display system at substantial savings to members as compared with any block display system in use or being planned. Upon completion of negotiations with Bunker Ramo, work will proceed subject to final approval of the Board of Governors. It is estimated that an NASD block system could be operational, upon non-disapproval by the Securities and Exchange Commission of the necessary rule modifications, within one year from the time that a contract to build the system is signed.