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NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC., 888-17TH ST., N.W., WASHINGTON, D.C.

To NASD Members and Registered Representatives:

WALBERT TO RELINQUISH NASD POST TO ACCEPT HALSEY-STUART PRESIDENCY

On December 30, 1969, **Kenneth H. Sayre**, NASD Chairman, announced that **Richard B. Walbert**, the Association's president for the past two years, will resign his position within the near future to accept the presidency of Halsey, Stuart & Co., Inc., an old and prestigious brokerage firm in Chicago.

Sayre emphasized, however, that Walbert would not leave his duties with the NASD in Washington, D.C. until such time as a successor is named and certain important NASD projects are well on their way to successful completion. In the past year, two of the NASD's major projects have been continued progress in the establishment of a national automated quotations system for OTC stocks and the development of a national OTC stock clearing program which hopefully will untangle the development of the massive paper work and delivery problems which have plagued the industry.

Sayre said that Walbert's impending resignation would be accepted with deep regret by the 23-man NASD Board, and he praised Walbert's leadership abilities during a difficult transition period when the securities business has been beset by internal problems as it prepares to accept new challenges and expand for the future.

Sayre pointed out that while Walbert's leaving the NASD would be a substantial loss for both the Association and the securities industry, the challenge and opportunity presented by the Halsey, Stuart position was more than the 53-year-old native Chicagoan could in good conscience turn down.

The Association's 7-man Executive Committee met in New York City on January 8 and appointed the following Nominating Committee of industry leaders to choose Walbert's successor:

Chairman, **Kenneth Sayre**, Managing Partner of Irving, Lundborg & Co. in San Francisco; **Gordon L. Teach**, 1970 Chairman of the Board and First Vice President, Shearson, Hammill & Co., Incorporated in Chicago, Illinois; **Phil E. Pearce**, former Chairman of the Board and President of G. H. Crawford Co., Inc. in Columbia, S.C.; **C. Rader McCulley**, a member of the 1969 Board of Governors, Chairman of the NASD Finance Committee and Senior Vice President of the First Southwest Company, Dallas, Texas; **S. Whitney Bradley**, Chairman of the Association's Investment Companies Committee and Senior Vice President of Eaton & Howard Incorporated, Boston, Massachusetts; **Charles C. Glavin**, Chairman of the Executive Committee of the First Boston Corporation in New York City; **George Fox**, President, Chief Operating Officer and Director of Piper Jaffray & Hopwood, Minneapolis, Minnesota; **Willard G. De Groot**, Chairman of the Board and Chief Executive Officer of Bateman Eichler, Hill Richards, Incorporated; Los Angeles, Calif.; and **John A. Orb**, Group Vice President of Merrill Lynch, Pierce, Fenner & Smith, Inc., in New York City.

**NASD PRESIDENT WALBERT
AFFIRMS GENERAL SUPPORT
FOR MUTUAL FUND BILL**

The committee members were chosen carefully for their long experience in the securities business and to represent all phases of the industry, different size member firms, as well as appropriate geographical distribution. Their recommendation must be approved by the full NASD Board.

Hearings on new mutual fund legislation unfolded in November in a House Subcommittee with all the subtle undercurrents of a television courtroom drama. Stage center were members of the Commerce & Finance Subcommittee (Chaired by Rep. John Moss, D.-Calif.) of the House Interstate and Foreign Commerce Committee and a potpourri of industry spokesman, including NASD president, Richard Walbert. Their combined objective was the careful scrutiny of the mutual fund legislation (H.R. 11995) now pending in the House. The Bill is identical to S.2224 introduced by Senator John Sparkman (D.-Ala.) and passed by the Senate in May.

Before the committee, Mr. Walbert recorded the Association's general endorsement of the Bill, including the NASD's willingness to establish rules to determine the fairness of mutual fund sales charges. He indicated that this would require an in-depth study involving much expense, the probable expansion of the NASD staff, and a considerable amount of time. (The Bill gives the NASD 18 months to establish rules in this area.) Again, he explained that the Association has no preconceived ideas concerning the definition of a "fair" mutual fund sales charge, but the Association in its study would take into consideration such factors as salesmen's compensation, servicing costs, and what an acceptable breakpoint for particular size funds would be.

Mr. Walbert voiced the Association's disapproval of the section of the Bill which would allow banks to sell mutual funds, citing the separation of banks and the securities industry set forth in the Glass-Steagall Act. (The Association is now petitioning the Supreme Court to review a case in this area).

In addition, he mentioned the Association's concern about the alternative provision relating to contractual plans which would allow an investor to redeem his shares during the first three years, receiving a refund of the sales load over 15 percent of his total payments. The Association feels that this period may be too long and could cause an unfair handicap to those who manage or sell contractual plans.

Although Moss had warned the industry against attempts to delay the Bill, it became obvious early in the hearings that there were still some obstacles to its passage. The first stumbling block became apparent when Chairman Budge of the Securities and Exchange Commission indicated that a misunderstanding between the contractual plan segment of the industry and the SEC had arisen over what the SEC had thought to be a tentative agreement between the two groups regarding the legislation.

Later, David Grayson (President of the First Investors Corporation and spokesman for the Association of Mutual Fund Plan Sponsors) replied that, to his knowledge, no agreement had been reached. He said that his industry opposed the three-year redemption provision because of the funds' inability to maintain adequate cash reserves for possible redemptions. Grayson's group also opposes the provision of the Bill which would allow an investor to spread the front-end load out over a four year period, rather than paying 50% in the first year. This provision, according to Grayson, would destroy a salesman's incentive to seek out small investors who would then miss participation in a regular investment program.

The management fee provision of the Bill, which states that a mutual fund advisor has a "fiduciary duty" to his investors, was challenged by some industry representatives because of their belief that it would increase the number of "strike suits" and lead to costly litigation. The language in this section was based on a previous agreement between the SEC and the Investment Company Institute. Robert Augenblick, President of the ICI, did not "object" to the provisions, but greeted it now "without any enthusiasm" and without a belief that "this type of legislation . . . was really necessary."

In his appearance before the Committee, Augenblick made a surprise suggestion to establish a new self-regulatory agency for mutual funds as an alternative to the management fee provision of the Bill. Augenblick suggested that this organization be set up under the Bill and operate under SEC oversight. Rep. Moss responded to his suggestion by inviting industry representatives to meet with the Committee staff to explore this possibility.

Several meetings were consequently held, with representatives of the ICI, the NASD, and the SEC discussing the self-regulatory proposal with committee staff members.

In the meantime, Chairman Budge of the SEC at a subsequent appearance before the Committee pressed for adoption of the bill in its present form, and expressed strong doubts that the ICI's proposal for self-regulation of mutual funds would be desirable.

Chairman Moss has made his position clear: he intends to bring the bill to the floor of the House as soon as possible. It appears that the Committee will not consider the ICI proposal seriously in its current deliberations.

Fifteen securities industry executives have been chosen as Chairmen of the Association's District Committees in 1970.

These men and their fellow committee members devote an extraordinary number of man hours to carrying out the privileges and responsibilities of self regulation through the enforcement of NASD rules and regulations. The responsibilities of the committees include working closely with the NASD Board of Governors and with their district staff offices to insure that the rights of each member and individual that becomes involved in a business conduct case are protected and at the same time to encourage and enforce ethical standards of conduct in the securities business. The new Chairmen are:

District No. 1—**James E. Snow**, Piper, Jaffray & Hopwood, Incorporated, Great Falls, Montana; District No. 2—Co-chairmen **Donald W. Crowell**, Crowell, Weedon & Co., Los Angeles, California and **Joseph F. Edelstein**, Edelstein Campbell & Co., San Francisco, California; District No. 3—**Philip M. Young**, Young, Smith & Peacock, Inc.; Phoenix, Arizona; District No. 4—**John D. Cleland**, Security Distributors, Inc., Topeka, Kansas; District No. 5—**Tunstall B. Perry, III**, Berny Perry & Company, Birmingham, Alabama; District No. 6—**Harry C. Webb, Jr.**, Goodbody & Co., Houston, Texas; District No. 7—**David R. Murphey, III**, Pierce, Wulbern, Murphey, Inc., Tampa, Florida; District No. 8—**Robert G. Dickinson**, R. G. Dickinson & Co., Des Moines, Iowa; District No. 9—**Gerald B. Brenzel**, Stifel, Nicolaus & Company, Incorporated, Louisville, Kentucky; District No. 10—**Raymond A. Mason**, Mason & Company, Inc., Washington, D.C.; District No. 11—**G. Pearson Rhodes, Jr.**, Parker/Hunter Incorporated, Pittsburgh, and **Joseph E. Smith**, Newburger & Co., Philadelphia, Pennsylvania—Co-Chairmen; District 12—**James T. Gahan**, E. F. Hutton & Company, Inc., New York; District No. 13—**Chenery Salmon**, Advest Co., Boston, Massachusetts.

1970 DISTRICT COMMITTEE CHAIRMEN TO TAKE OFFICE

**NEW CLEARING PROGRAM
TO LIGHTEN INDUSTRY
SECURITY, FAILS PROBLEMS**

Will the NASD's proposed new clearing service help resolve the OTC market's problem of stolen and lost securities? David Morgan, new President of the National Clearing Corporation, is certain that the corporation has that potential.

Speaking before the Security Control Conference in New York City, Morgan stressed that "non-system," or lack of accounting as well as physical control of securities certificates, is a basic contribution to the problem of lost or stolen securities. He remarked that the NASD will be well on its way toward minimizing this problem through the clearing corporation which will introduce an "environment of systems discipline and control" seriously needed in the OTC market.

In his words, "failure of the industry to recognize certain facts of life through the past few years have resulted in lack of security. Fails, talked about pointedly for over a year, are a form of lack of security." In addition, "accounting and cashiering errors . . . mean that accounting and cashiering activities have not been controlled."

The Clearing Corporation should usher in a new era of security through its systematic "continuous net settlement" clearing program. Here's how it will work: all trades between clearing members will be reported to the system for clearance. Only those trades for which both sides are compared will be entered into clearing records. Daily balances will be merged and carried forward and all fail items will be left in the system until settlement activity occurs.

Basically, the system will benefit broker/dealers in the following ways: (1) A daily transaction blotter will be substituted for individual confirmations prepared by brokers, thus cutting down on costs and time. (2) The constant merging and flexible settlement formula of the system will tend to absorb fails daily instead of "isolating them for a later day of reckoning." Results of current studies indicate the possibility of perhaps as much as 50% reduction in fails through the continuous netting process. (3) Each firm will carry one net position for each security and will maintain one clearing account with one net money position, whether "due to" or "due from"—a feature which will eliminate many subsidiary or detail clearing accounts, and the attendant accounting requirements. (4) At settlement time, securities will be received from and delivered in bulk to one location, rather than to main brokerage offices, reducing messenger time and eliminating the preparation of individual broker envelopes. A pilot program now underway between East and West Coast firms has resulted in a 68% reduction of receipts and deliveries for trades processed through the system. (5) The clearing system will assume the responsibility for dividend payment, eliminating check preparation and parallel accounting procedures. (6) The system will contain a transfer service and will monitor the securities being transferred. (7) The Clearing Corporation will borrow securities from member firms at current market prices to meet the settlement requirements of firms which otherwise might be failing to receive. Borrowing and loaning securities from one central point will minimize broker clerical requirements.

Morgan is confident that "the system will do as much to improve the overall control of inter-broker activity as any other single recent development in the industry."

Shortly after Morgan's appearance before the Security Control Conference, a Board of Directors was selected for the National Clearing Corporation. Members are: **Richard B. Walbert**, NASD President; **David H. Morgan**, President, National

Clearing Corporation; **James J. Barbi**, Partner, W. E. Hutton & Co., New York, New York; **Watson B. Dabney**, Partner, J. J. B. Hilliard, W. L. Lyons & Co., Louisville, Kentucky; **Allan C. Eustis, Jr.**, Senior Vice President, Spencer Trask & Co., Inc., New York, New York; **Robert M. Gardiner**, Partner, Reynolds & Co., New York, New York; **W. Stewart Storie**, Vice President & Treasurer, First South-west Company, Dallas, Texas.

The function of the Directors will be to set policy, operational goals, and rules for the Corporation. All rules must be approved by the NASD Board of Governors and the SEC.

A comprehensive set of rules for the clearing system has been circulated to pertinent industry organizations along with a projected operating program for the National Clearing Corporation for 1970. Among those asked for comments on the proposed rules are the regional exchanges that have been proposed to function as area clearing centers.

In addition, changes have been proposed for the NASD By-Laws in order to accommodate the NCC and its proposed rules. These will be presented at the January Board meeting for official approval, and, if approved, will later be presented to the membership for a vote.

**SEC "TRUTH IN LENDING"
RULE REQUIRES BROKERS
TO DISCLOSE CREDIT COST**

Although the "truth in lending" law exempted brokers' margin loans, a recently adopted SEC rule (10-b - 16) requires similar disclosure of the cost of credit to brokerage firm customers. The rule will go into effect on April 1, 1970, in order to give broker/dealers time to gear up for the accompanying operational changes.

Two types of disclosure will be required—an initial disclosure and quarterly periodic disclosures. Under the initial disclosure, a customer opening a margin account must be given statements disclosing "under what conditions interest can be charged; the annual rates of interest; the method of computing interest; when interest rates can be changed without prior notice; how debit balances are determined; what other credit charges can be imposed; the nature of any lien or other interest that can be retained by the broker or dealer; and when additional collateral can be required."

These disclosures may be made on one or more than one statement, but all must be furnished for the customer before any transaction in the account so the customer will understand the terms and conditions of the credit charges.

After the initial statement, customers must be given quarterly statements showing the cost of credit. These must contain "the beginning and closing balances; the balance at the end of the interest period; debits and credits entered during the period; the interest charge; the beginning and ending dates of the interest period; the rate or rates of interest and the interest charge for each different rate; the debit balance or balances or the average debit balance upon which interest was computed; and other credit charges."

Again, this information does not have to be contained on a single statement. But, if separate statements are issued, each must explain to the customer that he should retain and examine it in connection with another statement. This provision is designed to allow brokers to send their already existing periodic statement forms with a disclosure sheet added or sent at a different time, rather than immediately resorting to the use of new forms. A broker's extending credit is not legal unless he has established such a procedure.

Unless specifically enumerated in the initial statement, customers must be notified of changes affecting credit charges before such changes are augmented.

NASD NEWS TO KICK-OFF LETTERS TO EDITOR COLUMN

Beginning with the March issue of the NASD NEWS, space will be reserved for a "Letters to the Editor" column. It is our hope that in this way we will tie our readers into a two-way communications link that will benefit all concerned.

We welcome your suggestions and questions about any of the Association's many activities. Because of space limitations, not all letters and/or answers will be printed in the NEWS. An attempt will be made to include those letters that will be most interesting and informative to the wide spectrum of NEWS readers.

All letters will receive our careful attention and, where applicable, a knowledgeable answer.

Please address all letters to: Editor, NASD NEWS, 888 17th Street, N.W., Washington, D.C. 20006.

FBI URGES BROKERS TO BE ON ALERT FOR TWO FUGITIVES

The FBI recently requested the NASD to alert all employees of brokerage firms to watch for two fugitives, Herbert Charles Engle (also known as Neal Herbert Kurfiss) and his associate, Mary Elizabeth Kurfiss. The two fled from the Sacramento, California, area with Engle reportedly carrying a briefcase containing \$200,000 of Treasury Bonds.

Engle, who has maintained margin accounts in the name of Neal H. Kurfiss, is a 49 year old white male who is 6 feet tall, 330 pounds, has brown hair and is bald in the front and at the top of the back of his head. He has grey eyes, but also wears green contact lenses. His companion is white, 33 years old, 5'7", 135 to 150 pounds with brown hair and brown eyes. She often wears glasses and blond wigs.

Any information relating to these two persons should be reported immediately to the nearest FBI office.

MANAGEMENT & SUPERVISION

NOTES

PRINCIPAL DRAWS SUSPENSION FOR SELLING MUTUAL FUNDS BELOW INITIAL BREAKPOINTS

A ninety-day NASD suspension for a brokerage firm and one of its registered principals was the price paid for selling mutual fund shares below the breakpoint.

During a routine examination of the firm's books, the NASD discovered that the principal had sold a number of different mutual funds to a joint account with all but one showing sales beneath the initial breakpoint, and the other failing to take advantage of a second breakpoint.

In hearings before the Association, the respondent produced a statement signed by one of the participants in the joint account stating that the participant was aware of the breakpoints and the money that would be saved in sales commissions if it were invested in a different manner. In addition a notarized

statement was presented by the joint customers attesting to their knowledge and approval of the transactions in their account.

The individual denied that he was trying to take advantage of a higher sales commission and stated that, although he realized that the customers' method of investing was not to their advantage, he was bound by and could not alter their wishes. He considered that informing them of the existence of a "breakpoint" absolved him from further responsibility.

After weighing the situation, the NASD determined that, although the customers cheerfully and willingly paid unnecessary sales commissions and also signed statements signifying their intention to do so, this did not in any way excuse the conduct of the principal.