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## Business Conduct

### Chairman of Committee Reviews Work, Problems

Charles L. Bergmann, a Governor and Chairman of the National Business Conduct Committee, submitted a special report at a recent meeting of the Board and the Chairmen of the fourteen District Committees.

Mr. Bergmann opened his remarks by recalling that he had served seventeen months on the Board, the last five as head of the Business Conduct Committee. His comments, he said, "stem from a very sobering influence" his experience has had upon him, having in mind "the power which this organization holds over the business life and death of its members and a recognition of the need, on our part, to keep our house in order, to defend against encroachment or intervention by government authorities."

Excerpts from his further comment follow:

"The basic function of the NASD is to promote and enforce high standards of business conduct. That is not something that we just choose to do—it is something that the law requires . . . When you view it that way, you must realize that everyone of us who takes a position with the organization must be dedicated (and I really mean that word) to the achievement of that objective, otherwise we personally are derelict and, in the eyes of the law, are subject to removal.

"The organizational strength of the NASD is based on 'Adminis-

## What's News . . .

Supervise . . . supervise . . . supervise . . . that word wraps up a lot of advice business conduct committees around the country would give members if they want to avoid getting into trouble due to a salesman's over-reaching—or worse.

Sentiment of at least one Governor on the subject: "There should be no profit in wilful free-riding."

The Board of Governors is dissatisfied with the rate at which examinations of members is being made and has authorized hiring up to 5 more examiners, immediately.

Expulsion of a member will hereafter be publicly announced, the Board has decided.

The NASD was recently the subject of a TV panel program on Chicago's educational station, WTTD. A kinescope of the program is available for member group showings. Write the executive office in Washington for information.

The National Quotations Committee plans to hold several "regional" meetings on quotations.

You may think Regulation T is one of these *technical* requirements that don't have to be taken very seriously. Business conduct committees have made violations of it costly to a number of members in recent months.

tration' at the District level. Therefore it is very important that the Districts be fully aware of the philosophy and policies of the Board . . . If we are to be effective there is

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## 14 Members Expelled

### 11 Individuals Revoked as Registrants

Business conduct proceedings involving charges against members for alleged violations of the Rules of Fair Practice are under way in unprecedented volume.

Already in 1957, 14 members have been expelled and, in addition, 11 registered representatives of members have had their registrations revoked. These severest of NASD penalties were imposed in the first five months of 1957. Also, 15 members were fined in the amount of \$15,950.00.

From January 1 to May 31, 53 new complaints were filed against members while 44 were being closed. As a result, there were 105 complaints pending against members as of June 1.

At its last meeting, the Board of Governors had before it 19 cases either on review or appeal. It disposed of 12 of these. There are 5 NASD cases on appeal to the Securities and Exchange Commission.

## Over-the-Counter Handbook

The 1957 edition of the "Over-the-Counter Handbook of Common Stocks" is ready for distribution. This handbook is one of the few informational guides being published on a broad representation of over-the-counter common stocks. The NASD cooperated in the preparation of the material being used and in the original distribution to members by the publishers, Commodity Research, 82 Beaver St., New York, N. Y. It is the hope of the Board of Governors that members will make extensive use of this year's handbook for circulation among registered representatives, customers, institutions, etc.

## Variable Annuity

The question of whether a "variable annuity" is a security or a type of insurance is now before the District Court for the District of Columbia and NASD is an intervenor in the case contending that the contract being sponsored by insurance companies is a security. The case was initiated by the SEC which is seeking to require registration of variable annuities on the ground that they are securities.

A variable annuity differs from the traditional annuity sold by insurance companies in that funds are invested in equity-type securities, including common stocks, rather than in bonds and mortgages. The purchaser of a variable annuity receives "units" of the fund having a variable value whereas with the conventional annuity his return is in a stated amount of dollars.

NASD's contention from the start has been that it is not, in principle, opposed to the sale of variable annuities, although it takes some exception to the use of the word "annuity" to describe the medium. The Association's position has been that this type of contract is, in essence, an offering to the public of shares in a common stock fund. Suitable regulation is desirable in the public interest, the NASD said, including registration of the securities, offering of them by means of a prospectus, and observance of appropriate standards for their sale in keeping with established methods respecting literature and selling methods for all other securities.

## Member Fined \$500

The Board of Governors has upheld a District Business Conduct Committee decision fining a member \$500 and costs of \$222 for violations of the Rules of Fair Practice. A registered representative named in the complaint was fined \$500 and his registration was suspended for a period of 90 days.

The registered representative and the member "encouraged" mutual fund transactions on the part of customers "immediately preceding the record date for a distribution."

## In Memoriam

RESOLVED, that the Board of Governors of the National Association of Securities Dealers, Inc., is appreciative of the valuable contribution made to the securities business and the public interest by Newton P. Frye during his term as Governor of this Association, as a member of District Committee No. 8 from January, 1951, to January, 1954, and as Chairman of that Committee in 1953. He gave unsparingly of his time and energy to the affairs of the organization and thereby earned the gratitude of his contemporaries in the securities business and the Association, whose purposes and objectives he so ably advanced.

*Resolution adopted by the Board of Governors, May 21, 1957.*

## "Minor" Violations

The Board of Governors has adopted a simplified method of handling complaints against members for minor violations of the Rules of Fair Practice.

Object of the minor violation procedure is to provide machinery whereby a member, against whom a complaint is filed, may avoid hearings and the incurring of expenses connected therewith; and the business conduct committees of the Association may be relieved of holding such hearings when the circumstances are such that both the member and the committee believe causes for the complaint did not warrant such formalities.

To put the new procedure into effect, the Board adopted an amendment of the Code of Procedure for Handling Trade Practice Complaints, which reads as follows:

"In issuing a complaint, where the District Business Conduct Committee is of the opinion that the alleged violations are minor in nature, the Committee may offer the Respondent the opportunity to follow a minor violation procedure pursuant to which respondent will admit the violations as charged, waive a hearing, furnish a statement pledging future observance and compliance, and accept a penalty as specified in the offer, which penalty, however, shall not exceed censure, or a fine of not more than \$100, or both."

## Fulbright Bill

The Association has again voiced its opposition to a new set of proposals which would broaden the application of the Securities Acts to hundreds if not thousands of companies now exempt from their provisions.

Frank L. Reissner, chairman of the Board of Governors, recently appeared before a sub-committee of the Senate Banking and Currency Committee to register NASD opposition to a revised "Fulbright bill" which, among other provisions, would compel over-the-counter issuers to comply with sections of the acts from which they are now exempt.

While taking the position that members of the Association favor supplying stockholders with information about their companies in sufficient detail and regularity where present practices are inadequate, NASD has contended that it does not favor more regulation as the method for accomplishing desirable goals in this direction.

Mr. Reissner said in his statement to the Sub-committee: "We have consistently opposed the enactment of similar legislation. We do so now. The reasons we opposed this legislation are that we feel this legislation is unnecessary; that this proposal involves new broad corporate regulation; and more than this we feel that the information that would be required to be filed with a governmental agency will result in procedures very expensive both to taxpayers and to corporations generally for little, if any, added protection to the public and investors."

He also said: "It is with the thousands of small and medium-sized corporations that this Association and its members are primarily concerned in considering the ultimate consequences of these proposed changes in the law (dealing with proxy rules)."

Mr. Reissner recommended the Senate support a joint study by the business and SEC of all facets of proxy rule experience, as well as securities transactions of officers and directors, and the problem of foreign bank participations in U. S. securities activities.

## SPRING MEETING OF BOARD OF GOVERNORS AND ADVISORY COUNCIL



*Top panel, front row, left to right: Counsel John W. Lindsey, Vice-Chairman Jo M. French, Chairman Frank L. Reissner, Assistant to Executive Director Donald H. Burns, Vice-Chairman Edward H. Austin and Treasurer Earl K. Bassett; back row: Staffers Richard Peters and Ray Moulden, Secretary of Investment Companies Committee, and Public Relations Counsel, James P. Conway.*  
*Middle panel, front row: Quotation Committee Chairman Albert C. Purkiss, Haworth F. Hoch, James S. Graham, Donald L. Patterson, Bernard F. Kennedy and Robert Revel Miller; back row: Thomas G. Foster, William G. Hobbs, Jr., Arthur A. Christophel, Edward J. McKendrick, Joseph P. Kreeger, Frederick H. Foster, Edmond E. Hammond, Richard Lawson and Frederick T. Seving.*  
*Lower panel, front row: Lee H. Ostrander, Charles L. Bergmann, Earl F. Waterman, James F. Miller, Dale F. Linch, Elbridge S. Warner, Harold H. Cook and Howard H. Fitch; back row: Alexander Yearley, IV, Joseph J. Muldowney, Allen J. Nix, Ernest W. Borkland, Jr., Ralph C. Sheets, James T. Beeson, Francis M. Brooke, Jr., Donald K. Clinger and James G. Dern.*

### ✓ License Revoked

Improper use of customers' securities, unauthorized transactions in customers' accounts and misuse of customers' names on letters and documents resulted in revocation by the Board of Governors of registration of two representatives of two members. One of the individuals has been deprived of his State license and action along this line on the other is pending.

### Fewer Branch Offices

At the end of May there was a total of 2,653 branch offices of member firms, compared with 2,665 at the end of 1956. However, memberships rose to 3,834 at the end of May compared with 3,757 at the end of 1956. During the same period, the number of registered representatives rose to 56,683 from 52,877 on December 31, 1956.

### ✓ 2 Firms Expelled

The first firm failed to maintain books and records as required, had failed to register representatives and had conducted a securities business when its liabilities exceeded its assets. The second sold securities at prices found to be unfair, failed to approve all transactions made by its registered representatives and also continued to function even though liabilities exceeded assets.

## Business Conduct

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need for continuity of performance as between one year and the next.

"... high standards of the type we seek cannot vary materially between districts. Therefore, it becomes very much the function of the Board [in applying the rules] to promote 'uniformity of concept' without unduly interfering with the right of judicial discretion at the District level.

"Now, how do we achieve 'uniformity of concept?' As I see it, we do it by education, by continuity of philosophy and by experience."

Mr. Bergmann said that "education" is a continuing responsibility best met by keeping the membership fully advised of Association actions, policies, problems and plans. "Continuity," he said, is afforded District Committees and the Board through the staffs at the District level and the Executive Office and both continuity and experience are derived, he added, through close counselling between District Committees and Governors of the Districts and the staffs, as well, plus reference files on past cases that are on file in all offices.

The speaker went on to recommend that District Committee complaints "be drawn with great care" and stressed "the importance of developing a clear record at the District level." He added: "We want a fair, impartial hearing. We want a hearing that gives every party the proper opportunity to be heard." He warned District Committees, "as businessmen," not to be "overwhelmed by the contentions of a lawyer who objects on specious grounds . . . or for any other of a variety of reasons . . . to confuse the issue." Avoidance of any "semblance of bias or summary procedure" are at the keystone of proper NASD procedure, Mr. Bergmann said.

"The real foundation for the achievement of our objectives is laid at the District level," Mr. Bergmann said. "That is the area of personal experience, the area of familiarity with the people involved and, in conjunction with that, an understanding of local problems."



Edmond E. "Ned" Hammond, partner, Paine, Webber, Jackson & Curtis, Boston, now serving as Chairman of the Finance Committee.

## "Facts"

Early in May, the Association distributed to members a folder titled: "FACTS about the National Association of Securities Dealers."

Within a few days, members had ordered well over 100,000 copies to be distributed by them to customers, banks and other institutions. To date, 160,000 copies have been ordered for these purposes and a number of letters have been received at the Executive Office commenting upon the folder.

"... believe the brochure sent out about the NASD is one of the finest things of its type I have ever seen . . ." said one member.

Another member advised the Association that he regularly receives inquiries about the over-the-counter market and the NASD and one such recent inquiry grew out of a high school program. He recommended that our FACTS folder be made available to all groups of this kind and the Association would welcome suggestions from members who know of similar groups or organizations to whom this folder might be sent. The folder's use as an educational medium was in mind when it was prepared.

Members who may have overlooked the folder when it was originally received in their offices may write to the Executive Office for additional copies and quantities may also be ordered for redistribution by members in their communities. There is no charge.

## Riders in the Dark

*This poem appears through the courtesy of the Boston Booze Bureau, a humorous newspaper published annually by the Boston Bond Club.*

To the Rules of Fair Practice we  
must pay heed  
In ethics and morals we should take  
the lead  
Watch what you sell  
Or you may catch some hell  
For the NASD will punish your  
greed.  
To keep for yourself an over round  
lot  
Of an issue that may turn out to be  
hot  
This is a sin  
You never can win  
And you'll find yourself in a terrible  
spot.

Charge a fair price for the service  
you render  
Or your fine will be stiff and in hard  
legal tender  
Six percent is too much  
Oh! These rules are such  
As to face you off on a bender.

When you trade an account, better  
do it with care  
For the Fair Practice boys soon will  
be there  
Into your books  
As though you were crooks  
They will delve and your secrets lay  
bare.

Even our friends at the funds and  
the banks  
Because of the rules are now draw-  
ing blanks  
For any old deal  
That has a hot feel  
We must sell where we get little  
thanks.

This poem which for sure is not very  
witty  
Must end with a plea to that potent  
committee  
When you find us in error  
And fill us with terror  
Remember we're friends and take  
pity.

## NASD News

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