

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1823 SUPERIOR BUILDING, CLEVELAND, OHIO 44114

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August 16, 1967

Board of Governors
National Association of
Securities Dealers, Inc.
888 Seventeenth Street, N.W.
Washington, D. C. 20006

Attention: Mr. Robert M. Gardiner

Gentlemen:

The subject of this letter concerns a matter about which I have, on another occasion, personally written to the Chairman of the National Business Conduct Committee and to the Association's General Counsel. I based my initial inquiry into this matter on what I had concluded to be a dissatisfaction on behalf of various members of the Committee, including myself, with the limitations placed by the Rules of Fair Practice on the Committee with respect to its ability to impose penalties on formal complaint matters.

During the most recent meeting of the District No. 9 Committee, I reported the steps which I had taken. After discussion the Committee formalized its position on this subject, which had heretofore been more a matter of individual concern.

It is the feeling of the Committee that it constitutes a group of businessmen within a particular area who have a responsibility to use its best business judgment to impose, after formal proceedings, a penalty which is most suitable under the circumstances involved and as a result of violations committed. Yet the Committee feels that it is not always able to use its best business judgment, but instead must choose from the inflexible list of penalties available and arrive at a determination which may not be entirely adequate or suitable.

Accordingly, the Committee has directed that I write this letter on its behalf and requests that consideration be given to conducting a general review of the adequacy of penalties with a view toward making a determination whether the limitations that now exist in this area best serve the investment community and in particular the Association in its important responsibility in the field of self-regulation.

In connection with the Committee's suggestion for a general review of the subject of penalties, the Committee suggests two specific proposals for the adoption of new penalties: (1) that suspension or revocation of individual registrations as principals be adopted in addition to the now existing all-inclusive penalties of suspension or revocation of registrations, and (2) that fines imposed by the Committee may, at its own option, be suspended in part or in full either temporarily or permanently.

With respect to the first proposal it is logical that if the Association is to make a distinction in the registration of individuals as either a principal or representative, it should have the right to make such distinction when suspending or revoking a registration. Many times a Committee is faced with the problem of imposing a penalty of suspension or revocation against a principal of a member after making a finding of violation. Quite often the determination comes down to the question: Is the violation sufficiently serious to completely exclude the individual from his chosen profession and the occupation by which he has gained his economic livelihood for a number of years? We must make a decision which will affect the individual's entire future. We accept this and make the decision because it is our responsibility and duty, but is the penalty we impose the most fitting penalty under the circumstances? Suspension may be too lenient and revocation too severe.

There is an in-between ground which we propose--suspend or revoke the individual's registration as a principal. Let us suppose, for example, that a firm has been found to be in violation of the net capital requirements and that it is clear that the good intentioned operator of the firm is clearly responsible either because of bad management or because he was trying to run a "shoe-string" operation. Let us further suppose that no member of the public or broker/dealer was harmed by this situation, or that the principal has demonstrated his intention to repay losses. It may be that in this hypothetical case the most suitable penalty would be to revoke his registration as a principal or impose a very long suspension of that particular type of registration and at the same time permit him to continue in the business as a salesman. It may also be suitable, as an additional penalty, to bar him from association with a member in any capacity for a short period of time.

We are aware of the possibilities of permitting a person with a permanent bar against registration to become registered as a "controlled" person, but we feel that this is a less practical and equitable alternative. In our opinion there is a void which can be filled and we request consideration of the above proposal.

Another proposal which we make has to do with the suspension of fines. This is done every day by the courts. Perhaps it is even more appropriate in connection with proceedings of the Association. For

example, if the Committee has determined that a temporary violation of the Net Capital Rule which has been corrected does not warrant expulsion of the member, then what are the alternatives available to the Committee? All of the penalties which can be imposed, except censure, have an economic effect which may only add to the financial ills of the firm. We may, in fact, be depleting some of the additional capital that has been put into the firm to enable it to pay its bills and continue to operate. Under particular circumstances it may best serve the purposes of the industry and Association to in some way suspend or postpone payment of a fine and yet still impose a penalty which "fits the crime." In our opinion, this is another manner in which the penalties should be revised and we request consideration of this proposal.

Other types of penalty are possible and should be considered. It is common knowledge that certain of the regulatory organizations take steps on what are perhaps an administrative level and institute such requirements as the retaking of qualification examinations. Whether this and other such possibilities are feasible and appropriate is a matter which should also receive attention.

Many years have passed since the adoption of the existing group of penalties which can be imposed for violation of the Association's Rules. In recent years the Association has taken many steps to update its activities and procedures. The District No. 9 Committee feels that it is now time for the Association to reassess the alternatives for penalty which are available to Business Conduct Committees in formal complaint matters.

Our Committee appreciates the guidance which it has been given in the past by the Board of Governors and appreciates the Board's consideration of this matter.

Sincerely,


Donald G. Randle, Chairman
for the District Committee No. 9

ECD:jle

cc: Phil E. Pearce
Gordon S. Macklin, Jr.
✓ Lloyd J. Derrickson

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