

# NASD

*News*

VOLUME XXXI—NO. 1

FEBRUARY 1971

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC., 1700 K STREET, N.W., WASHINGTON, D.C.

*To NASD Members and Registered Representatives:*

## **MUTUAL FUND LAW NOW ON THE BOOKS**

During its last frenzied spurts of activity, the 91st Congress passed legislation to amend the Investment Company Act of 1940. President Nixon signed the bill in December, making Public Law 91-547 a fact of life for the securities industry.

Of most importance to the NASD was the section of the law which gives the Association the responsibility for determining rules and regulations governing a fair and reasonable sales charge for mutual fund shares. Shortly after the bill was passed, the NASD announced that it would be conducting an intensive study of mutual fund sales charges, and that it had retained the firm of Booz, Allen and Hamilton as consultants for the study. Booz, Allen will in turn be working with Foster Associates, an economic consulting firm based in Washington, D.C., to determine a non-excessive sales charge.

The NASD, which is now working with Booz Allen on this project, has established the goal of completing the study within twelve months, and, immediately after the study's completion, of formulating appropriate rules and regulations.

The section of the law which regulates contractual, or front-end load mutual fund plans, allows the sponsors of such plans to operate under two alternatives:

(1) The first alternative retains the 50% maximum first-year sales load and 9% overall sales charge provisions previously in effect. If a periodic plan certificate is sold with such load, the following refund provisions apply:

The holder may surrender the certificate at any time within the first eighteen months after issuance and receive the value of his account plus the excess of any sales load paid over 15% of the total payments made by the investor. The registered investment company issuing the periodic plan certificate, or any depositor of an underwriter for such company must give written notice of the right to surrender described in the sentence above within 30 days following the expiration of fifteen months after the issuance of the certificate to each certificate holder who has missed three payments or more.

(2) A second alternative may be selected in which case not more than 20% of any one payment may be deducted for sales load, and the entire deduction during the first four years may not exceed 64%. Again, the total sales charge may not exceed 9% of the total investment over the life of the plan. Under this alternative a seller would be entitled to deduct a 16% sales load each year for the four-year period or 20% in each of the first three years and 4% in the fourth year.

The law also gives a specific fiduciary duty to a fund's investment adviser—a provision which would allow either the Securities and Exchange Commission or a shareholder to bring litigation against an investment adviser alleging that he had breached his fiduciary duty—particularly regarding compensation for his services.

Conspicuous in its absence was a provision that had been formerly considered—that of allowing banks to operate mutual funds. The question now rests with the Supreme Court.

## **NASD AUTHORIZES STUDY OF RR TRAINING METHODS**

The NASD Board of Governors has authorized a comprehensive study of the functions of registered representatives, with particular emphasis on how individuals are trained for their work. The purposes of this study are to determine the training needs of the registered representative, to evaluate the level of training in the industry, to establish the feasibility of NASD involvement in this training area, and to provide the basis for possible changes in the registration and qualification procedures of the RR.

Kendall, Bowers & Co., Inc., an educational consulting firm headquartered in White Plains, New York, has been selected to conduct the study. The firm has a thorough background in subject material dealing with the securities markets, and has worked with the NASD before in connection with its qualification examination program. KBC, Inc., will report to the Committee on Qualification Examination Program which is headed by Eugene A. Shurtleff of Blyth & Co., Inc.

The first step in the study will be an in-depth, detailed examination of the duties and responsibilities of registered representatives. The information needed for this analysis will be obtained from the NASD staff and members, from the representatives themselves, and from investors. The information obtained through questionnaires or through individual interviews will be treated as confidential material. In any reports or summaries the participation of individual firms will be acknowledged, but the source of specific comments will not be revealed.

KBC, Inc., professional staff assigned to the study will be Drs. Raold W. Bowers and William E. Kendall, who is also the project director. Instrux, Incorporated, which will be associated with KBC in the study, has assigned two senior staff members to the project: Robert K. Daker, President, and Charles W. Freeburn, Vice President.

Frank McAuliffe of the NASD's Qualification Examination Department, will work with the consultants in a liaison capacity, and any questions concerning the study should be directed to him at the NASD Executive Office in Washington, D.C.

According to McAuliffe, the target date for completion of the study is late summer of 1971.

## **SELF-UNDERWRITING, OIL AND GAS COMMITTEES APPOINTED BY ASSOCIATION**

The NASD Board of Governors has established two new committees: one to study in depth the ramifications of NASD members underwriting their own securities; and the other to look into the practices presently utilized in oil and gas offerings.

Currently, the Board disallows any self-underwriting activities among its members. The present policy states that "a member firm of the Association desiring to go to the public market for funds may not underwrite its own securities, either directly or indirectly, through parent or subsidiary, or participate in any capacity in the distribution of those securities."

The pros and cons of the problem have been reviewed by the Board before and, in view of the past experiences with this policy, the present market conditions and other factors, the Board has decided to study the question again in order to determine if the policy should be changed.

The new Committee to Study Self-Underwriting is being headed by Howard E. Buhse, Chairman of the Board of Directing Partners, with Hornblower & Weeks—Hemphill, Noyes and former Chairman of the Board of Governors of NASD. The other members of the Committee are R. Marshall Barnes, Chairman of Howe, Barnes & Johnson, Inc.; John F. Fogarty, Vice President of Stern Brothers & Co.; G. Shelby Friedrichs, President of Howard, Weil, Labouisse, Friedrichs and Company; Harvey B. Gram, Jr., Managing Partner of Johnston, Lemon & Co.; Richard W. Jones, President of Mitchum, Jones & Templeton, Inc.; and L. Emery Katzenbach, Managing Partner of White, Weld & Co.

The purpose of the new Oil and Gas Committee is to study all aspects of the distribution of investment programs. This would necessarily include studying sales literature used in connection with distribution, sales practices and suitability of the programs for customers, among other things. After studying these practices in detail, the Committee will make recommendations to the Board setting certain standards to be used as guidelines by our members involved in this type of offering.

Jonathan C. Calvert, Rotan, Mosle-Dallas Union, Inc., an NASD Governor, will be the Chairman of the Oil and Gas Committee. The other members are Robert K. Green, White, Weld & Co.; G. Charles Hann, of Apache Corporation; Raymond J. Kerester, Prudential Funds, Inc.; Gilbert M. Kiggins, Hornblower & Weeks-Hemphill, Noyes; Jerome A. Lewis, Petro-Lewis Securities Corporation; Marcus C. Low, Jr. of Robert W. Baird & Co.; Ronald D. Mousel of Natural Resources Fund, Inc.; and Donald M. Wright, Paine, Webber, Jackson & Curtis.

**MEMBERS ARE URGED  
TO AVOID RR MIX-UPS  
REGARDING MUTUAL FUND  
SALES COMMISSIONS**

In recent months, the NASD has experienced a significant increase in the number of inquiries and complaints from members and registered representatives regarding their rights to receive continuing commissions on mutual fund plan accounts. A number of disputes and uncertainties in this respect have arisen as a result of mergers, acquisitions, and liquidations which members have found to be necessary or desirable. In several such instances it appears that little consideration has been given to the disposition of such commissions or to the potential or actual liability of a member to its salesmen.

The form and content of members' contracts in this area may vary significantly, and the Association cannot generally interfere in such contractual disputes unless there appear to be questions of compliance with NASD Rules. Members should be aware of their rights and obligations in this regard, and adequate consideration should be given to the effects of contemplated acquisitions of other members and liquidation on these rights and obligations. Also it is in the best interests of all parties concerned to insure that members' salesmen have a clear understanding of their rights to such commissions, if any, when employment with the member is terminated.

**INVESTOR PROTECTION  
PROVIDED THROUGH  
SIPC LEGISLATION**

President Nixon signed the Securities Investor Protection Act on December 30, 1970, thus creating the Securities Protection Corporation—the first “trust fund” that will insure customers against loss in case of financial problems in a brokerage firm. SIPC will insure investors up to \$50,000 per account, with no more than \$20,000 in cash coverage.

President Nixon also announced the appointees for the first Board of Governors to direct the Corporation. Heading the Board will be Byron D. Woodside, a former SEC Commissioner. Other members of the Board will be: Glenn E. Anderson, President and Director of the Carolina Securities Corporation; Andrew J. Melton, Jr., Chairman of the Executive Committee of Smith Barney & Co.; Bruce K. MacLaury, Deputy Undersecretary of the Treasury for Monetary Affairs; J. Charles Partee, Adviser to the Federal Reserve Board; Donald T. Regan, President of Merrill Lynch, Pierce, Fenner and Smith; and George J. Stigler, Professor of Economics, University of Chicago.

SIPC will be funded through assessments on its members. The fund is required to amount to \$75 million within 120 days of enactment, that is by April 29, 1971. This start up fund will be composed of a combination of assessments, monies to be transferred from existing trust funds and confirmed bank lines of credit. The fund thus raised will gradually be expanded by assessments to \$150 million and lines of credit will be phased out.

All registered brokers and dealers and members of national securities exchanges, as of December 30, 1970 and thereafter, are automatically members of SIPC unless exempt under the Act. Only brokers and dealers whose business is limited exclusively to the sale of mutual funds, the sale of variable annuities, the business of insurance, or the rendering of advice to investment companies are exempt. These firms may elect to join subject to such terms and conditions as SIPC may impose.

All members of SIPC will be examined for compliance with financial responsibility rules, and these examinations will be carried out by the appropriate self-regulatory agency. SIPC members will not be allowed to advertise the fact that they are members of SIPC until the Board of Governors of SIPC issues rules or guidelines covering such advertising.

Questions regarding the new law should be directed to Bruce Simpson, Vice President, Membership Department, at the NASD's Executive Office.

An audio-visual presentation describing the proposed NASDAQ-OTC Educational Program was shown to members in New York and Washington, D. C. in December resulting in voluntary contributions of \$250,000 pledged or collected. The presentation will go on the road in February and March appearing in Los Angeles on February 18 and 19; San Francisco on February 22 and 23 and Chicago on March 17 and 18. Tentative dates of March 22 and 23 have also been selected for a Dallas showing. The presentation will dramatically demonstrate how members can, by joining together, best take advantage of the tremendous technological breakthrough offered by NASDAQ. This is not, however, a technical demonstration of how the NASDAQ system works, but rather a comprehensive presentation of the NASD's plans for a multi-media promotion of the system aimed at the public using institutional type advertising; T.V. and radio commercials; a color motion picture; seminar programs; booklets and point-of-purchase materials; reprints and a comprehensive public relations program.

**NASDAQ-OTC  
EDUCATION SHOW  
TO GO  
ON ROAD  
IN FEBRUARY  
AND MARCH**