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# N.A.S.D. NEWS

Published by the National Association of Securities Dealers, Inc.

"Progress toward our objectives is being made because of fine spirit of cooperation and energetic support of the membership."—ROBERT W. BAIRD, Chairman, NASD.

Volume II

Washington, D. C., January 1, 1942

Number 3

## Curb Gets Adjournment Of Unlisted Application Hearings Before SEC

**NASD Intervention, Exhibits Cause Exchange Request For More Time**

At the request of counsel for the New York Curb Exchange, SEC hearings on applications of the Curb to extend unlisted trading privileges to three issues of utility bonds were adjourned when evidence presented by NASD'S first witness in opposition to the Curb's requests had been put into the record.

The first hearing was brought to an abrupt end when Col. William A. Lockwood, counsel for the Curb, told the Examiner hearing the case: "You can see from the evidence submitted in this case it will be practically impossible for me to proceed without an adjournment \* \* \*". The requested adjournment was granted by the Trial Examiner. The hearings were expected to be resumed on or about December 15th but counsel for the Curb asked for a further postponement until some time in January.

The Curb seeks unlisted trading privileges for Central Power and Light first mortgage 3¾'s of August 1, 1969, Kentucky Utilities first mortgage 4's of January 1, 1970, and the Kentucky Utilities sinking fund mortgage 4½'s due February 1, 1955.

### NASD Intervention

Seeking to represent the interests of the vast majority of its membership, the NASD applied to the Commission for permission to intervene as a party in opposition to the Curb's applications and such permission was granted by the Commission.

Before the SEC can approve the Curb's applications, the Curb must establish to the satisfaction of the Commission, among other things, that there exists in the vicinity of the Curb sufficiently widespread public distribution of these issues and sufficient public trading activity therein to render the extension of unlisted trading privileges on the Curb to these issues necessary

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## 'Splendid Efforts'

# SEC CONGRATULATES NASD ON 1941 WORK; SEES HEAVIER DUTIES IN WAR

### What Others Say About NASD—

The following is reprinted from the Chicago Journal of Commerce of November 27, 1941.

## The Round Table

By WILLIAM L. AYERS

Managing Editor  
Chicago Journal of Commerce

ON JULY 15, 1939, there came into being in the United States the National Association of Securities Dealers, Inc., Its formation was given wide publicity at the time, but in the intervening period the general public has heard little or nothing of the organization or its doings.

This association, however, is having a profound influence on the general investment and securities business in this country and obviously should have an even greater effect. It is something in which every investor, more particularly the smaller or less sophisticated ones, should be interested.

THE N. A. S. D., its common designation, was formed under congressional mandate—the Maloney act—which was nothing more or less than an amendment to the securities and exchange act of 1934. It bore the same relationship to the unlisted or over-the-counter security business that the original act does to the New York Stock Exchange and other organized securities exchanges. Thus the SEC became possessed of the power to regulate the unlisted business.

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Following a two-hour conference with representatives of the National Association of Securities Dealers on the subject of the Association's program, the Securities and Exchange Commission, on December 12, wrote to NASD Chairman Robert W. Baird a letter of congratulation on the "splendid efforts" of NASD in 1941. The letter, signed by acting SEC Chairman Robert E. Healy, said the Commission "looks forward to this same cooperative spirit during 1942."

NASD, on December 9, the day after war was declared on Japan, communicated to the Commission "the assurance that this Association stands ready to accept and carry out such duties and responsibilities as the Government may assign to the organization during these critical times." This letter and the subsequent general discussion the Commission had with the NASD representatives "are most heartening," Mr. Healy said in his letter to the Commission. The Commission foresees heavier duties and responsibilities for the Association as a result of the war.

(Full texts of the letters referred to are on Page 2.)

### Commission, Staff Attend

The conference with the Commission was attended by the following for the Commission: Acting Chairman Healy, Commissioners Sumner T. Pike, Ganson Purcell and Edmund Burke, Jr. Chairman Edward C. Eicher was absent due to illness. The following members of the SEC staff also attended: Director James A. Treanor, Jr., Assistant Directors, Francis T. Greene and Walter C. Louchheim, Jr., of the Trading and Exchange Division; Assistant Director Geo. Otis Spencer, Chief Counsel Roger S. Foster and Supervising Analyst Leslie T. Fournier of the Public Utilities Division.

In addition to Chairman Baird, NASD was represented at the conference by

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## Nominations for Board of Governors Completed; New Group Meets January 16

Retiring Members Will Recommend Chairman; California, Denver Nominate

Candidates for vacancies on the Board of Governors and the "regular ticket" personnel for District Committees have been selected in all Districts of the NASD.

A contest for places on District Committee #4 is under way. (Details elsewhere in this edition).

The newly-constituted Board will meet in New York January 16 following a meeting of the retiring Board on the preceding day. Among other major considerations which will come before the new Board is the election of a Chairman and other officials for 1942. On this matter, the new Board will have the benefit of recommendations of the seven retiring Governors whose three-year terms expire in January.

On the basis of nomination in the Districts whose representations on the Board were up for succession, the new Board of Governors will be made up of the following: Robert W. Baird, The Wisconsin Company, Milwaukee; H. H. Dewar, Dewar, Robertson & Pancoast, San Antonio; William A. Fuller, Fuller, Cruttenden & Company, Chicago; B. Howell Griswold, Jr., Alex. Brown & Sons, Baltimore; Laurence M. Marks, Laurence M. Marks & Co., New York; John A. Prescott, Prescott, Wright, Snider Company, Kansas City, Mo.; Harvey Roney, Merrill Lynch, Pierce, Fenner & Beane, Los Angeles, all of whose terms expire in 1943; F. Edward Bosson, Putnam & Co., Hartford, Conn.; Edward Brockhaus, Edward Brockhaus & Co., Cincinnati; Hermann F. Clarke, Estabrook & Co., Boston; Lee M. Limbert, Blyth & Co., Inc., New York; Merville W. McInnis, McInnis, Van Dusen & Co., Seattle; Francis F. Patton, A. G. Becker & Co., Incorporated, Chicago; Lawrence B. Woodard, Woodard-Elwood & Co., Minneapolis, all of whose terms expire in 1944; Hagood Clarke, Johnson, Lane, Space and Co., Inc., Atlanta; James Coggeshall, Jr., The

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## Morgan Stanley & Co. Formed as Partnership

Formation of Morgan Stanley & Co., a partnership, to succeed Morgan Stanley and Company, Inc. was announced December 16. It is reported that the organization is to become a member of the New York Stock

## TEXT OF LETTER SENT BY NASD AND SEC REPLY

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Mr. Edward C. Eicher, Chairman,  
Securities and Exchange Commission,  
1778 Pennsylvania Ave., N. W.,  
Washington, D. C.

December 9, 1941.

Dear Mr. Eicher:

The Chairman of the Association, Robert W. Baird, has asked me to convey to you, for the Board of Governors, the assurance that this Association stands ready to accept and carry out such duties and responsibilities as the Government may assign to the organization during these critical times.

Very sincerely yours,

WALLACE H. FULTON (s)  
Executive Director.

SECURITIES AND EXCHANGE COMMISSION

Office of the Chairman

Mr. Robert W. Baird, Chairman,  
National Association of Securities Dealers, Inc.,  
821—15th Street, N. W.,  
Washington, D. C.

December 12, 1941.

Dear Mr. Baird:

The Commission wants to take this opportunity to congratulate the N.A.S.D. on its splendid efforts during the past year. The continued cooperation of your association becomes much more vital in view of the war in which this country is now engaged. The duties and responsibilities of this Commission, as well as your association, will be much heavier during this war period.

The letter of your association of December 9, and the general discussion which the Commission had yesterday morning with you and members of your Executive Committee and Executive Director, are most heartening. The Commission looks forward to this same cooperative spirit during 1942.

Sincerely yours,

ROBERT E. HEALY (s)  
Acting Chairman.

## SEC Conference—

(Continued from Page 1)

Vice Chairman Lee M. Limbert, Francis F. Patton, of the Executive Committee, and Executive Director Wallace H. Fulton.

The two-hour conference was devoted to a frank discussion of the year's activities of NASD and cooperative efforts and dual problems of the Association and the SEC. Chairman Baird's comment, upon conclusion of the meeting, was that the exchange of viewpoints and opinion as well as the review of the year's activities gave assurance of the continued progress of NASD toward its objectives.

Exchange and broaden the field of its activities. It is expected the firm will engage in retail distribution of securities and may establish trading departments. Heretofore, Morgan Stanley has engaged almost exclusively in wholesale distributions.

## SEC Requests Approval Be Obtained of Axis Securities Trades

The Securities and Exchange Commission requests that members of NASD who have open contracts in German, Italian or Japanese securities secure SEC approval of any transactions to close or consummate such contracts. Calling attention to the fact that trading in such securities has been suspended on the New York Stock and Curb Exchanges, James A. Treanor, Jr., Director of the Trading and Exchange Division of the SEC, in a letter to the Association, asks that members "inform the Commission of all relevant circumstances relating to their positions and open contracts before closing them by a purchase or a sale." Such cooperation is in the interest of national defense, Mr. Treanor's letter declared.

## Denver District Examination Reports Completed; Conduct Committee Considering Action

### Cases of Apparent Violations Brought to Attention Of Disciplining Group

Association examiners who conducted a mass examination of members in the Denver district have completed their reports on the 50-odd members reviewed. As a result, the District Business Conduct Committee (#3) for Arizona, Colorado, N. Mexico, Utah and Wyoming has received those reports which appear to provide bases for complaints against members in the District. The committee currently is engaged in its own study of such reports for the purpose of deciding action to be taken, if any.

The examination of the members in the Denver district was made at the invitation of the District Committee. Five Association secretaries and staff examiners conducted the examination. The material gathered is kept confidential except in instances where it appears that members have violated rules and regulations of a character warranting consideration by the DBCC of the filing of complaints or otherwise communicating with the offending members.

Aside from violations of this character, the examination in the Denver district disclosed certain departures from NASD rules which are not in conformity with good practice.

### Confirmation Practices

It was found, for instance, that a number of the members examined, either because of negligence or procrastination, had not familiarized themselves with well-established requirements as to confirmation disclosures. Ambiguous statements were employed in a number of instances to describe the relationship of the member with his customer, in transactions both as agent and principal. Failure properly to disclose commissions; omission of information for the customer as to his right to ascertain details of the other side of the transaction—these were among confirmation infractions.

Members in some instances also had been negligent or indolent in observing rules and regulations concerning keeping and preservation of books and records and the absence of properly maintained customer ledgers or similar records by which the member could ascertain debit and credit balances of each account was noted in certain cases—all with the result that adequate

## SEGREGATION OF 'WHEN-ISSUED' DEPOSITS ADVISABLE, MEMBERS TOLD

Members of the NASD were recently warned again of the possible dangers of not segregating deposits against "when-issued" transactions and the subject was also spot-lighted by action of State authorities against one firm which was declared to be insolvent at a time when it had commingled customers' funds with its own.

In an official communication, initiated in the New York District and subsequently broadcast to members elsewhere, the Association called attention to the problem and its inherent dangers.

"Deposits against 'when-issued' transactions should be segregated on the books of the firm in order to present a true picture of the firm's position and its commitments in transactions of this kind," the Association's notice said.

"It may be advantageous to segregate such deposits from the firm's general cash balances by keeping them in separate bank accounts, but whether or not such physical segregation is made, the Committee advises that no member should permit any part of deposits against 'when-issued' contracts to be used for any purpose whatsoever other than to secure such contracts.

"The Committee strongly recommends that as a minimum every member doing business in 'when-issued' securities see to it that the sum of his

information was not immediately available to complete examinations.

The Association has consistently pointed out to members the nature and extent of their obligations in these matters and has warned that "minor" rules violations can become breeding places for serious violations.

## Chicago Examination Completed

All members of NASD in Chicago have been examined by means of a questionnaire and a firm of certified public accountants is currently engaged in a study of each return. Except in cases where formal complaints or other action is deemed necessary by the Business Conduct Committee in District #8 all information supplied by members is kept confidential. The examination of Chicago members was the second to be made in #8 through the means of a questionnaire. Such an examination of members in Indianapolis was completed recently.

cash balances and any deposits with banks, clearing houses, or other brokers against 'when-issued' contracts always exceed the aggregate of all free credits and deposits against 'when-issued' contracts by an amount fully ample to conduct his business without touching any part of such deposits."

## Patton Addresses Cashiers

Francis F. Patton, A. G. Becker and Co., Chicago, and a member of the Executive Committee and of the Board of Governors of NASD, recently addressed a meeting of LaSalle Street Cashiers on the subject of the Association's work. Over 200 LaSalle Street firm representatives attended the meeting and numerous questions were asked concerning the Association. Mr. Patton discussed the effective educational work of the NASD since its organization, activities of various committees both national and district, and outlined progress being made in enforcement of Association rules and regulations. He stressed the importance of the latter effort and the important contribution being made to elevation of standards and ethics by NASD.

## NASD Topic at Law Institute

Paul W. Frum of Baker, Hostettler and Patterson, counsel for the NASD, delivered a lecture on the Association before the Practising Law Institute, New York City, on November 26. Mr. Frum discussed the origin of NASD, the problems which it seeks to solve through self-regulatory processes, the democratic theory underlying its operation and its work as related to dealers, the SEC and the public at large.

### NASD NEWS

Published periodically by the  
National Association of Securities  
Dealers, Inc.,  
Washington, D. C.

ROBERT W. BAIRD, *Chairman*

GEORGE W. DAVIS LEE M. LIMBERT  
*Vice Chairmen*

LAURENCE M. MARKS,  
*Treasurer*

WALLACE H. FULTON,  
*Executive Director*

## Round Table—

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**F**ORTUNATELY for the business and wisely on the part of the commission, however, the SEC left to the investment dealers their own regulation and the association was the instrument through which this was accomplished. The commission at all times has the power to review or inaugurate action or even to overturn, but in only one important instance has it assumed this power. The policing of the business, therefore, is almost wholly in the hands of its own members.

The association in its 28 months of existence has devoted the greater part of its effort to organization. It divided the country into 14 districts, established offices in each, set up various committees, under direction of the national office in Washington and launched a study of the problems and needed actions before them.

Now this effort is beginning to bear fruit which will react to public benefit. Through its various district committees it is pursuing regulation of its members and the institution of new rules entirely in favor of the investor.

The latest association bulletin, for instance, makes it known that all members of the association in Chicago recently were sent a questionnaire, asking data on the financial condition of members and inquiring into various other matters relating to conduct of their business. This mailing followed a similar review of members in Indianapolis. Like examinations have been made or are being made throughout the country. Wherever the questionnaire indicates something is not right, or where there is any ground for suspicion within the business or originating with the investing public, association examiners are sent in to investigate. There are business conduct inquiries in progress in almost all of the district offices at the present time. During October there were four fines and five penalties of censure imposed upon members. In November this total probably will be greater.

**T**HE association is enforcing fair rules of business conduct, strictly limiting the margin of profit that may be made, forcing less reliable dealers out of the business, and greatly raising the standard of ethics, particularly in the matter of "full disclosure" to customers.

Furthermore, the association has undertaken to provide reliable quotations on the unlisted securities markets throughout the United States. The Chi-

cago Journal of Commerce, for instance, receives practically all its over-the-counter quotations from the Chicago office of the association. Previously it was the practice to obtain such quotations from individual dealers. Today the quotations represent a consensus of those best informed on these markets and back of them is the N. A. S. D. maintaining constant watchfulness and responsibility, backed by the power to discipline. Best of all, the N. A. S. D. regulates the spreads between quotations and does so in the interest of the public as well as the dealers.

True, the association has barely started on the work of establishing the unlisted securities business on a high plane, something that was needed. It has made progress and undoubtedly will make much more. There is developing a new basis for investor confidence in a division of the securities business that probably has a far greater volume than is transacted upon the organized exchanges.

## Munger Interviews Chairman

Following is a reprint from the *Chicago Daily News* of November 26, 1941:

By ROYAL F. MUNGER  
(Financial Editor)

Robert W. Baird, president of the Wisconsin Company of Milwaukee, and chairman of the board of the National Association of Securities Dealers, made the suggestion in Chicago today that the state departments for the regulation of the securities business, far from being on the way out, were an indispensable part of the future conduct of the business. He believes that they will be found co-operating with and supporting the efforts of the Securities and Exchange Commission and providing a local contact which cannot be obtained entirely through a centralized federal agency.

"This should not be understood in any sense as a move in opposition to the SEC," said Mr. Baird with emphasis. "It is rather in cooperation with the SEC. Our business has nothing to hide and has no desire (as far as I can speak for it) for any business that does not result constructively in greater welfare for the country as a whole.

"Many situations in the security business are national in scope and can only be handled through the federal government. This obvious truth was long neglected and the correction was long

overdue when it came. But that does not mean that all raising of capital or sale or exchange of securities is to funnel through Washington.

\* \* \* \*

"State control of securities has a definite place in the picture. Such state control should be on its own budget, financed independently of any other department of the state, and should have ample authority to deal with situations which may arise in connection with local financing."

\* \* \* \*

It is a commonplace in government that the power to regulate goes to those who do the best job of regulation and it is equally a truism that the controlling power in any situation is that which is exercised with the greatest strictness.

\* \* \* \*

That is why, during the last few years, on both counts, the SEC has entirely eclipsed local agencies in security control. Its large staff and the broad powers given it under the law have made the state efforts look puny. Even more important is the fact that, particularly from the Chicago office, it has done an excellent piece of work.

\* \* \* \*

While the investment banking business would seem to have been regulated almost to the point of extinction, its members will do well to remember that it has to be the punching bag on which the SEC and the state security commissioners take turns demonstrating their prowess. That double tattoo is still worth while if it preserves a measure of local control of strictly local investment.

\* \* \* \*

It would seem, in theory, that the best interest of the country would be served by the preservation of a large number of small investment dealers. The channel ought to be kept open for an energetic young salesman of good character to go into business for himself, with capital saved or subscribed. The present investment firms started that way.

\* \* \* \*

In practice, regardless of the theory, any central control through Washington tends to make operation easy for the large and established group that can afford Washington or New York contacts, and to make it difficult for the small concern operating entirely within the limits of a local community.

## Confirmation Disclosures

### 'AGENT,' 'BROKER' SYNONYMOUS; ADVICE: 'INFORM CUSTOMER CLEARLY'

For all practical purposes, in connection with requirements on confirmation disclosures, agent and broker are synonymous, says a letter from the secretary of the National Uniform Practice Committee to a member inquiring as to the distinction between the two designations.

"Some confirmation forms have printed thereon a number of statements with blank lines or squares wherein, by means of a check mark or an "x," the dealer indicates to his customer the capacity in which he is acting in any particular transaction," said Frank Rizzo, NUPC secretary in the letter. "The way those forms read, they use the word 'agent' when referring to a transaction in which the dealer is acting as agent for the customer but they use the word 'broker' when the dealer is acting as agent for somebody else. This distinction is wholly artificial and tends to be misleading because for all practical purposes, in connection with the disclosure requirements, agent and broker are synonymous."

Any confusion on this score can be dissipated, Mr. Rizzo adds, by reference to definitions contained in Section 3 of the Securities Exchange Act. He points out that the term "broker" and "dealer" are carefully defined but: "You will notice that the word 'agent' does not appear anywhere in the section," no distinction being drawn between "broker" and "agent." Mr. Rizzo states there is no single set of phrases that must be used properly to describe relationships, adding: "The important thing is that the customer be told clearly what the law and the rules require" that he be told.

He offered the hypothetical case

### Clearing House Committee Making Progress

The Association's Special Clearing House Committee, appointed for the purpose of studying the feasibility of establishing a clearing organization for over-the-counter securities, reports that material progress is being made as a result of two recent meetings of the group. As yet the Committee is not prepared to present details of various plans under consideration but it is expected that at the January meeting of

where an order from a customer is filled by purchase of the security from another dealer. The confirmation to the customer, Mr. Rizzo advised, should read somewhat as follows under such a circumstance:

As your agent (or broker, if you prefer) we have bought for your account\* .....

\* Name of person from whom bought and the date and time when the transaction took place will be furnished upon request.

### Uniform Practice Committee Studies Experience With Code

Members of the National Uniform Practice Committee met in Milwaukee, Wis., November 12 and 13 for the purpose of reviewing experience of the membership under the National Uniform Practice Code. The Code went into effect August 1, 1941. The Committee will report to the Board of Governors on the subject matter of its meeting and changes in the Code, if any, which the Board should consider. The Board will meet January 16, 1942.

Among the various matters considered by the Committee at its Milwaukee meeting was the section of the code dealing with stamp taxes. Efforts are being made to make the language of this section more definite and suggestions along this line have been invited from chairmen of District Uniform Practice Committees. Consideration was also given to complaints of members respecting two other controversial sections of the Code and the Committee's conclusions will be incorporated in its report to the Board.

#### Johnson is Chairman

Joseph T. Johnson of the Milwaukee Company is chairman of the Committee. Other members are: Laurence B. Carroll, Prescott, Wright, Snider Company, Kansas City, Mo.; K. F. Deitrick, Blair, Bonner and Company, Chicago; A. L. Godie, Fuller, Crutten and Company, Chicago; Robert R. MacGregor, Elworthy and Company, San Francisco; Robert L. Osswalt, Blyth and Co., Inc., New York; William T.

the Board of Governors certain recommendations may be in readiness for formal discussion.

## Nominations—

(Continued from Page 1)

First Boston Corporation, New York; Mark C. Elworthy, Elworthy & Co., San Francisco; Joseph M. Scribner, Singer, Deane and Scribner, Pittsburgh; Albert Theis, Jr., Albert Theis & Sons, Inc., St. Louis; Clarence E. Unterberg, C. E. Unterberg & Co., New York; E. Warren Willard, Boettcher and Company, Denver, all of whose terms will expire in 1945.

#### California, Denver Elect

Accompanying the nominations for places on the Board District No. 2 (California and Nevada) and District No. 3 (Ariz., Colo., N. M., U., Wyo.) sent "regular candidate" selections by these Districts of new District Committee members. The following were nominated to the District Committee of No. 2: H. R. Baker, H. R. Baker & Co.; Spencer Brush, Brush, Slocumb & Co., both of San Francisco and Donald O'Melveny, O'Melveny-Wagenseller & Durst; Charles F. Sill, M. H. Lewis & Company, both of Los Angeles. They succeed, respectively: Harold G. Mason, Mason Brothers, Oakland; Mark C. Elworthy, Elworthy & Co., San Francisco; Carey S. Hill, Hill, Richards & Co., Los Angeles, and Bernadotte P. Lester, Lester & Co., Los Angeles. In District No. 3, District Committee nominations are as follows: Jerry C. Vasconcelles, Chairman, Vasconcelles, Hicks & Co.; Malcolm F. Roberts, vice chairman, Sidlo, Simons, Roberts and Company; Donald F. Brown, Donald F. Brown & Co.; Edward B. Coughlin, Coughlin and Company; Arthur H. Bosworth, Bosworth, Chanute, Loughridge and Co.; Paul E. Youmans, Sullivan and Company, all of Denver, and Robert D. Sims, Sims, Newman and Co., Colorado Springs.

In District No. 1, (Ida., Ore., Wash.) George R. Yancey, Murphy, Favre & Co., Spokane, was reelected to the District Committee.

Among newly-elected members of District Committee No. 9 (Ala., Fla., Ga., La., Miss., S. C., Tenn.) Atlanta will be represented by Julian Hirschberg, Norris & Hirschberg, Inc.

Patten, Jr., Badgley, Frederick, Rogers and Mortford, Inc., Seattle; Henry B. Rising, Whiting, Weeks and Stubbs, Incorporated, Boston; John J. Sullivan, Sullivan and Company, Denver; Clarence E. Unterberg, C. E. Unterberg and Co., New York. Frank Rizzo of the New York office of NASD is secretary of the Committee. C. H. Owsley of Counsel also attended the meeting.

**'Don't Sit Around'****IBA MEMBERS DISCUSS****'HOW TO MEET OVERHEAD'**

The recently-concluded annual convention of the Investment Bankers Association was featured by a panel discussion by representative dealers throughout the country, aided and abetted by a large audience, on the subject: "How to Meet the Overhead in 1942." Led by John Clifford Folger, Folger, Nolan & Co., Inc., Washington, the discussion was as realistically intensive and searching as the seriousness of the subject deserved. One observer of this "Information Please" feature summed up the concensus as follows:

1. Pick your deals carefully. Don't try to participate in any one of them, if you don't feel you can contribute something to the distribution of the security issue.

2. Forget "institutional order-taking." Try more merchandising of securities direct to the individual investor.

3. Seek well-qualified young men to enter the investment business, give them a good training, both practical and academic, and talk optimism to them.

**Don't Wait for '20's to Return**

4. Don't sit around waiting for the lush 1920's to come back or permit your salesmen to do so. Go out and create them by hard work and sound merchandising and service.

5. Cut out the deadwood. Overhead goes up when the salesman, or the partner doesn't produce. Reorganize your business at least once a year.

6. Develop and participate in your local financing, both municipal and corporate. Local dealers should cooperate in keeping at home and distributing the local underwritings.

7. Give more attention to the small investor. There are plenty of people with \$2,000 to \$5,000 that don't know they can get 6 per cent returns, or that there are investment yields not seen in years on high grade issues. Advertise to him, he is not restricted by income taxes and is a large potential buyer.

8. Combat the negative point of view. The investment business is still a good one.

John S. Fleek of Hayden, Miller & Company, Cleveland, was elected president of the IBA for the ensuing year. He is taking a leave of absence from his firm to devote full time to the Association's public information program.

**Examiners' Constructive Suggestions**

The NASD examiners are trained men, highly regarded in their profession. And they are doing excellent work, not only in the interests of the Association but in the interest of members' own operations. In instance after instance examiners have corrected mistaken practices of members and numerous cases could be cited where suggestions of direct profit to members were volunteered. After a study of one member's books and records, a NASD examiner recommended a new system for the cage—which was adopted at considerable saving in overhead expense of the firm. Another member was indignant when an examiner called to review his accounts but before the examiner left he had offered several suggestions of value to the member with the result that the head of the firm called the District office to express his appreciation for the help rendered.

**Curb Gets Adjournment—**

*(Continued from Page 1)*

or appropriate in the public interest or for the protection of investors.

At the hearing the Curb claimed all the territory east of the Mississippi River to be the "vicinity" of the New York Curb Exchange. Presumably to support this contention, the Curb introduced evidence of the extent to which its ticker service and membership covered this area.

**Association's "Vicinity" Exhibit**

The Association introduced an exhibit which indicated that it might claim the "vicinity" of the New York Curb Exchange to be either (1) the City of New York, (2) the area within one hour's commuting distance of New York, or (3) the area half way between New York and surrounding cities in which are located other exchanges which permit trading on an unlisted basis. The Association also introduced

in evidence an analysis of the registered regular and associate member firms of the Curb, showing the number of such firms which are members of the NASD, the IBA, the NSTA, and other stock exchanges. This exhibit indicates that of 196 registered firms of regular members, 140 are members of the NASD and 147 are members of the New York Stock Exchange. Of the 248 registered firms of associate members, the analysis shows that 213 are members of the NASD and 229 are members of the New York Stock Exchange.

Apparently to show present distribution in the vicinity of the exchange, the Curb introduced underwriting participation figures or original placement figures covering the three issues. The Association introduced evidence showing that the issues involved are presently held largely by institutions. For example, one exhibit showed that 87 institutions own 71 per cent of the Central Power and Light issue.

The Association also introduced an analysis of all bond issues which had been admitted to unlisted trading privileges on the Curb since the 1936 Amendment to the Exchange Act, and which are still so traded, showing the volume and nature of exchange trading in these issues over a representative period. Mr. David L. Wachspress, chief statistician of Bristol and Willett, New York City, a witness for NASD, compared the three subject issues with actual exchange trading in like issues already admitted to show likely future exchange trading in the three subject issues, should the Commission grant the Curb's applications.

**State Commission Relations 'Cordial'**

The Pennsylvania Securities Commission in its 18th annual report dated June 1, 1941, compliments NASD District No. 12 (Del., Pa.) for its cooperative efforts. "The National Association of Securities Dealers, an organization set up under Federal law for the purpose of regulating the over-the-counter securities business, is represented in the State of Pennsylvania by one of its committees which supervises District No. 12," the report, signed by Walter C. Miller, Chairman, and Raymond A. Cox and J. Myron Honigman, Commissioners, says. "Relations between the Committee and the Commission have been very cordial. Particularly is this true of the subcommittee on business conduct, whose function it is to set a standard of fair practice for investment dealers of the District."

## Contest In District #4 For Committee Positions; Members Recently Examined

### Two Minneapolis Candidates Named To Run Against "Regular" Ticket

Opposition candidates for two of the three vacancies on the NASD District Committee (#4) for Minnesota, Montana, North and South Dakota have been nominated to run against "regular candidates" chosen by the nominating committee of the District. Three "regular candidates" were nominated to succeed to positions of three committee members whose terms expire January 15, 1942. The opposition slate consists of two nominees, leaving one "regular candidate" unopposed.

In keeping with the Association's By-Laws procedure, the District Committee of #4 some weeks ago named a nominating committee to select candidates for the three places on the DC. The nominating committee (see page 2) named Dewey F. Gruenhagen, Thrall West Company, Minneapolis; William Mannheimer, Mannheimer-Caldwell Inc., St. Paul, and Joseph L. Seybold, Kalman & Company, Minneapolis. These became the "regular candidates" to succeed, respectively, James MacRae, Blyth & Co., Inc., Minneapolis; G. M. Phillips, Caldwell Phillips Co., St. Paul and Robert J. Stallman, Wells-Dickey Company, Minneapolis.

Also following procedure prescribed in the By-Laws—wherein provision is made for nomination of opposing candidates by at least 10 per cent of the members of the District—a group of members in District #4 placed the following in nomination: Douglas M. Warner, Paine, Webber & Co., and Wilber W. Wittenberg, Wittenberg-Merrick Company, both of Minneapolis. The latter were nominated by petition signed by ten of the forty-nine members of the District to succeed Mr. MacRae and Mr. Stallman.

### Contest Under Way

As a result, a contest is under way in District #4 for two positions on the nine-man Committee. All members of the District will vote on the two slates by a secret ballot. (See pages B-25, 26 of NASD MANUAL.)

Normally, "regular candidates" are automatically elected if no opposition is named. Candidates must be elected in time to fill expiring terms of the retiring members of the Committee.

This is the first contest members have provoked for any Association office. An interesting sidelight is the fact that the

## Trade Practice Complaints— Origin, Handling Procedure

Complaints against members originate in four ways—with the public, another member, the Association itself or the through information submitted to the Association by the SEC. The basis for a complaint can be minor in character or of major, serious import. It must be based upon infractions of the rules of Fair Practice and it can involve a variety of abuses, any one of which could result in serious consequences for the offending member. Among the more common bases for formal complaints against members are unfair prices, secret profits, manipulative and fraudulent practices, transacting a securities business while insolvent, improper pledging of customers' securities, excessive trading in customers' accounts and the like. The Association has broad powers for regulating the conduct of its members. Number 1 of the Rules of Fair Practice, to which all members subscribe upon admission, says: "A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade." Admittedly, this rule gives the Association vast authority and imposes upon members an obligation of the highest order. It is symbolic of the objectives of the Association.

There are fourteen so-called District Business Conduct Committees which hear and decide complaints against members. These committees can originate complaints or file them as a result of information supplied to them by investors or the SEC.

### Complaints In Writing

All complaints against a member must be in writing. Upon filing of a

present Committee recently sponsored a mass examination of all members in District #4.

Including the above-mentioned retiring members, the District Committee (#4) now consists of: Norman Nelson, Chairman, Piper, Jaffray & Hopwood, Clyde C. Needham, Needham & Company, Inc., and Elmer L. Williams, Allison-Williams Company, all of Minneapolis; Homer Collins, Homer Collins & Company, Duluth and Stanley Gates, Stanley Gates & Co., and Almon A. Greenman, Greenman & Cook, Inc., both of St. Paul.

complaint, the member named in the complaint is first supplied with a copy of the complaint. The member must answer the complaint in writing. Where no answer is received, a second, registered-mail notice of the complaint is sent to the member. If the second notice is not answered, the DBCC may consider the allegations of the complaint to be admitted by the member. Action is then taken by the DBCC on the basis of the charges against the member.

When the member files an answer to a complaint against him, either he or the complainant (an investor, the DBCC or another member) can request a hearing. A hearing shall then be granted before the appropriate DBCC. The committee can itself order a hearing if no request for one is made. If a hearing is held, both sides may be represented by counsel. Upon hearing the case, the DBCC must write its decision on the complaint whether or not a penalty is imposed. A penalty may take the form of a censure of the member's practice and require strict future observance of the Association's rules and examination to insure such observance; a fine up to \$500 on each count in the complaint; suspension of membership in the Association or expulsion of the member. Copies of the decision, regardless of its character, must be sent to the complainant and member.

### Appeal of Decisions

Decisions of the DBCC, whether disciplinary or dismissive, may be appealed by the member to the Board of Governors through a National Business Conduct Committee, which acts for the board, or the latter may, on its own motion, acting for the Board call up the case for review. The board may reverse, affirm, amend or remand any decision. Action by the Board can be appealed to the SEC or the latter may, on its own motion, call up the decision of the Board for review. SEC decisions then are subject to appeal in the appropriate Circuit Court of Appeals of the United States.

*Ed. Note: The above is, obviously, an over-simplified outline of the NASD Code of Procedure for Handling Trade Practice Complaints. It is a condensation of the major points of that Code and is published solely in the interests of acquainting members with these major provisions. For complete information read "Procedure for Handling Trade Practice Complaints" which is a separate section of the National Association of Securities Dealers, Inc. MANUAL.*



## 25 Complaints Filed Against Members During November; 105 to Date

**7 Memberships Cancelled  
One Suspended, Fines Up  
To \$1,400 Imposed**

Twenty-five new complaints were filed against members of the NASD during November.

The month was one of the most active of the year for Business Conduct Committees of the various Districts. In addition to the complaints filed during the month, opening new cases for inquiry by these Committees, fifteen complaints were closed by Business Conduct Committees in November. There were thirty-seven pending at the start of the month.

Severe penalties were imposed in a number of the cases disposed of last month.

Seven memberships were cancelled and one membership was suspended for thirty days. In addition, six fines were assessed against offending members. One fine amounted to \$1,400 and one was for \$900. The other four were for amounts of \$500, \$250, \$100 and \$50. Censures accompanied the fines of five of these members and one other member also was censured.

### Appeals of Decisions

Decisions of District Business Conduct Committees in these and all other cases may be appealed by the disciplined member to the Board of Governors within thirty days after receipt by the member of the Committee's decision. For an additional thirty days, the Board has the power to review such decisions on its own motion. In addition, the SEC is empowered to call up decisions for review.

(For information on Complaint Procedure see page 7)

### One Complaint Dismissed

A complaint against one member was dismissed by a Business Conduct Committee after consideration of all the evidence in the case.

In the period from January 1 to November 30, 1941, 105 complaints were filed against NASD members. Forty-eight such complaints are pending at the present time. Five cases decided by District Business Conduct Committees are up for review by the National Business Conduct Committee acting for the Board of Governors.

## NASD NEWS— 'Tremendously Important'

Mr. Martin J. Bayly, Field Secretary,  
District Committee No. 11,  
National Association of Securities Dealers, Inc.,  
821 Fifteenth Street, N. W.  
Washington, D. C.

Dear Mr. Bayly:

The NASD News is, in my opinion, a tremendously important publication—possibly more so than might have been apparent when it was first started. I regard it as an authoritative "source record" as to expressions, attitudes, and decisions which are helpful to us in adapting and conducting our business along required lines.

The value of the publication, however, is partially lost, in my opinion, by our attempting to put to complete utility only one copy. What I should like to see is a copy in the hands of each officer and executive and, what is fully as important, a copy in the hands of each salesman.

Cordially yours,

KIRCHOFER & ARNOLD,  
INC.,

R. C. Kirchofer (s)  
President.

*Ed. Note: All NASD members can obtain as many copies of the NEWS as they need for the purposes mentioned by Mr. Kirchofer. There is no charge for extra copies.*

Mr. Wallace Fulton,  
Nat'l Ass'n of Sec. Dealers, Inc.  
Washington, D. C.

Dear Sir:

We wish to take this occasion of thanking you in mailing copies of the NASD NEWS, which has proven of considerable interest to us.

We believe this publication should be placed in the hands of every investment dealer throughout the land, together with the salesmen and traders of each investment house.

Very truly yours,

PAINE, WEBBER & Co.

C. W. Green (s)  
Resident Manager,  
Grand Rapids, Mich.

## NASD Representative of All Interests in Securities Business, Survey Shows

**50% of Membership  
Employ Fewer Than  
Four; Largest Included**

Members of the National Association of Securities Dealers, Inc., represent every branch of the investment banking and securities business and they range in size from the smallest to the largest organizations in the business.

A current analysis of the membership roll discloses that nearly 50 per cent of the membership employ fewer than four people in the conduct of their securities business. Approximately 80 per cent of the membership has fewer than eleven engaged in securities business activities as defined in personnel provisions of assessment classifications. Over 90 per cent of the membership is rated as employing 35 or less in personnel classifications of the Association.

### Over 2,900 Members

The Association has over 2,900 members. Of these, approximately 1 per cent are "originators"—underwriters of more than \$20,000,000 worth of securities annually; "occasional underwriters" (\$1,100,000 to \$3,000,000) account for 2½ per cent of the membership by number; "substantial underwriters" (\$3,000,000 to \$8,500,000) 1.10 per cent and "major underwriters," 1.21 per cent.

NASD members are widely represented among members of stock exchanges throughout the country. The Association has 374 members who are also members of the New York Stock Exchange. It has 140 who are members of the New York Curb and 213 who are "associate" members of that exchange. In addition, NASD members to the number of 139 are members of the Chicago Board of Trade and 77 are members of the Chicago Stock Exchange. Other exchanges are proportionately represented on the analysis of exchange memberships held by NASD members.

The above summarization of membership statistics is based upon reports submitted to the Association by all members. It shows that the Association is truly representative of all branches of the securities business but that the smaller organizations with one to three people engaged in securities activities make up by far the largest class of members.