

February 24, 1942

Mr. H. H. Dewar,
Chairman, Board of Governors,
National Association of Securities Dealers, Inc.,
National Bank of Commerce Building,
San Antonio, Texas.

Dear Hal:

I haven't seen the resolutions passed by the New York District Committee, referred to in your letter of the 20th, and therefore am not familiar with them, I am sorry to say; but from the copy of your proposed memorandum to the Executive Committee which you enclose, I assume that they raise in some way an issue of the relationship between the District Committees and the national Board of Governors, and the question of District Committees' rights on matters of national policy.

Without fuller knowledge, I hesitate to submit the comments on your memorandum which you request; but if my assumption is correct, the issue raised is of course one of fundamental importance.

In item 3 of your memorandum, you bring up for question what was the Drafting Committee's original idea with relation to District Committees' rights in this sphere. This, of course, is very important, since one of the Drafting Committee's foremost concerns was the workability of any plan of organization devised, and every feature was weighed from the standpoint of seeking the utmost possible assurance of workability.

Important as that is, however, it is not the only criterion, since there was also the intent of the Act under which the Association was set up and that of the government authority whose approval was required and under whose general supervision the Association operates. During the formative period I had an opportunity for fairly intimate contact with the subject, having sat in on all the government conferences on it as special advisor to the SEC, and having been in constant touch with the Drafting Committee.

Foremost to be kept in mind, I feel, is that ultimate authority in the Association does not rest in any committee, either national or district, but in the membership. It is a democracy in reality as well as intent, and as such the authority of the various governing committees comes from the consent of the governed.

As you will remember, the Code was something very different. Both the Code and the Conference which grew out of it, were in essence very thinly disguised autocracies, as best exemplified by the appointive power whereby the Governing Committee in its own discretion set up all district committees. This was recognized as a wellnigh indispensable feature by the business if any organization attempting to perform the task laid upon it was to have maximum hope of succeeding. Nowhere, I believe, was the necessity of such autocratic central power in the Governing Committee more clearly recognized than in New York.

The NASD, however, has had to approach the problem from the opposite direction. To all the very substantial powers and freedoms from anti-trust restrictions afforded by the Maloney Act, there were attached some very definite strings. One of the strongest of these was the requirement of democracy. I know from interesting experience how literally this was construed in the governmental mind, and one of the hardest tasks to accomplish in those formative days was to prevent the crystallization of a plan based on pure democracy and functioning simply and wholly by the "Town Meeting" method.

Very wisely the business took the positive stand that any such form was foredoomed to failure, and had the plan taken such form it is certain to my mind that the business would have refused to make an attempt to function under it. We all remember the metaphor so frequently used of "14 teams of horses running in 14 directions". I know from experience how hard it was to get this idea across within government circles, and the fact that it did get across is the best possible evidence of the essential soundness of the basic principle adopted -- namely, that the Association was to function so far as possible on the basis of home rule, with only such powers in central authority as were needed to assure efficiency and harmony of operation, safety against conflicts and inconsistencies, and to provide appeal procedure.

Jurisdiction over matters of national policy is of the very essence of powers given to the National Committee in its function of maintaining consistency and harmony of operation through the country. To appreciate this it is necessary only to state the contrary, for one cannot conceive the Association's functioning successfully if each district is free to approach matters of national policy on a different tangent and from sectional or selfish points of view. I do not remember whether the By-Laws spell this out more specifically, and I have not had a chance to refresh my memory, but this is axiomatic. It is a point on which New York, I am sure, would have taken a very firm and energetic stand in the formative days.

This does not mean in any sense any detraction from democracy and the full right of members in every district, in addition to all their home rule powers, to have a voice in national matters. The By-Laws specifically provide the means, by full and equal franchise of all members in a district on district matters and an equally full and equal franchise of all members on national rules and for the election of members of the national Board of Governors to represent them in matters of national policy. So less effective an application of democracy, I am

confident, would have had any chance of passing the SEC, and I feel equally confident that no very much greater application of democracy would have had any chance of passing the business.

If I am right in my impression of the issue being raised by the New York Committee, they are acting diametrically in opposition to the basic philosophy of the whole structure and to the strong position taken by New York leaders among others, serving on the Drafting Committee. If the New York District Committee had such a right as here intimated -- namely a "legal right to take a stand on any matters of national policy", so also must other Districts have a similar right. By "legal right" I understand you to mean some right with accompanying powers of action. Every District, of course, has an advisory right, and this was recognized in the setting up of the Advisory Committee, consisting of District Chairmen. Legal rights of the Districts on national matters, however, flow through the avenue of the district vote on its member or members of the Board of Governors or on national rules.

New York's preponderance in size was reflected, insofar as it was possible, by the number of Board members assigned to that District. New York is different from other Districts only in this -- because of its size and importance it is clearer than in the case of any other District that any secession or rebellion on the part of New York would wreck the Association. New York should appreciate this and should recognize likewise the alternative. They would not be very effective or happy, in my opinion, were they to attempt to right the wrongs of recent times by setting up a New York association coming before the nation as the spokesman of Wall Street.

This is unfortunate, I am sorry that it is true, but it is still true. One of the greatest assets and safeguards New York can find in the Association, I firmly believe, is the protection afforded our business, and this includes Wall Street, by a better understanding on the part of the "hinterland" and the ability of New York to look to these regions for help in case of storm. Secession or rebellion by New York would wreck the Association; but this is no reason for the Board of Governors to give way on a matter involving such fundamental principles, for if such concession were to be made, the Association would be wrecked from another direction. If every District had such power, the Association would fly apart, and if only New York demanded such power, the rest of the country would rise in rebellion.

The situation is one which I am sure will mend itself with a little cool thinking and diplomacy. My reply has been delayed by the holiday, and in view of the near approach of your Executive Committee meeting on March 4, I have had to dictate this in great haste. If I have made any slip of fact or logic, please forgive it as due to this pressure, and I shall try to make amends.

With warmest regards,

Sincerely yours,

Frank

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