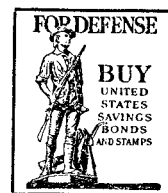


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N.A.S.D. NEWS



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Volume II

Philadelphia, Pa., April 15, 1942

Number 5

Securities Industry Active In Government Defense Bond Sales Program

Nation-Wide Representation Set Up To Cooperate With State Organizations

The securities industry today is solidly and vigorously supporting the Government's Defense Bond sales program. State committees have been organized and coordinated through the representative national organizations of the industry—the NASD, the Association of Stock Exchange Firms, the Investment Bankers Association of America and the New York Stock Exchange. T. Jerrold Bryce, partner of Clark, Dodge & Co., has just been appointed liaison officer on the Defense Bond Staff of the Treasury to coordinate the industry's program with the efforts of that Staff. Mr. Bryce is serving as a volunteer in this work.

Efforts of the securities industry are proceeding along several lines. Representatives in the various states have placed the energies of their organizations at the disposal of the State Administrator and in many States are assisting in arranging adoption of payroll allotment plans by employers; serving

(Turn to Page 6, Column 3)

House Sub-Committee Named On Securities Acts Changes

Representative Clarence F. Lea, Chairman of the House Interstate and Foreign Commerce Committee has named a sub-committee of that group to draft a bill incorporating proposed amendments to the Securities Acts. In addition to Chairman Lea, the committee is composed of Representatives Cole (Md.), Crosser (O.), Paddock (Ill.) and Wadsworth (N.Y.). At last report, the voluminous record of the hearings held during the Winter before the Lea Committee had not been completely printed. No definite date could be set as to the time when the sub-committee would complete its work on the measure to be proposed. It is expected to begin working on the draft around April 20.

ATTENTION

Partners, Cashiers, Salesmen, Traders

Important and valuable information on confirmation legends will be found on Pages 3, 4, 5 and 6 of this issue of the NASD NEWS. The Association's examinations of members have disclosed misuse of terms and statements intended to define the capacity in which the member acts for customers and information which is available to the latter. It is felt that the discussion and examples cited may be helpful to members. A current suggestion from the National Uniform Practice Committee on ways and means of making dealings with non-members subject to NASD rules and regulations is also a feature of this discussion.

8 Complaints Filed In February; 31 Pending

Eight formal complaints were filed against members of the Association in February for alleged violation of the Rules of Fair Practice. Six such complaints were filed in January.

During February, Business Conduct Committees in the various Districts disposed of a total of 7 complaints. The decisions in these cases were as follows: one member expelled; one suspended for thirty days; three fines of \$1,000, \$500 and \$250 imposed; no action in two instances. In all cases, the

(Turn to Page 2, Column 2)

Free Copies of NASD NEWS Available

All members of the Association may obtain reasonable quantities of issues of the NASD NEWS for circulation among employes. As many as 100 extra copies are going to members for this purpose. Write to national headquarters of the Association for the number of copies you want.

New York District Members Get Questionnaire; Completes NASD Coverage

Over 1,000 In District #13 To File As Of February 28

With the distribution last month of a questionnaire to over 1,000 NASD members in New York, New Jersey and Connecticut (District #13), every section of the country has now been reached by one or another of the Association's examination processes. Including the New York District's membership, over 2,000 of NASD's 2,800 members have submitted to financial and business practice reviews by Business Conduct Committees of the fourteen NASD Districts.

Late in 1941 and early this year, members in Texas, New England and the South filled out questionnaire forms sent them by their respective Committees. Earlier questionnaire examinations were made in Chicago, Indianapolis and San Francisco. In other sections of the country, mass examinations were conducted by NASD staff members and in still other Districts spot examinations have been continuously underway by Field Secretaries.

Minority Violate Rules

The program of examination of members was begun upon formation of the Association in mid-1939 but it was accelerated and broadened in the Spring of 1941. In 1941, 120 complaints were filed against members. The program, as Wallace H. Fulton, Executive Director informed the Board of Governors at a meeting last January, has brought forth proof that only a small minority of NASD members have engaged in improper or unethical practices. Only six per cent or fewer of the cases handled last year, he said, involved serious charges against members.

The most recent questionnaire sent out by the 13th District requested report of condition as of February 28th. Replies are returnable April 15, 1942.

Since the business of the members of District #13 is so varied in type and

(Turn to Page 7, Column 3)

Conduct Committees Decide Published Quotations Not Profit Yardsticks

**Fines of \$200-\$250
Imposed In cases of
Excessive Prices**

Alleged excessive profits on over-the-counter transactions cannot be defended solely on the grounds that such profits were realized within spreads of published quotations. And a policy of realizing a fixed percentage of profit on individual transactions or on all transactions with an individual customer equally is no defense if the final result is an excessive profit.

Business Conduct Committees in two NASD Districts recently expressed these conclusions in decisions on several complaint cases involving almost identical charges of excessive profits. The common defense was that sales were made at the published asked price for the securities.

Fines of \$200 to \$250 were imposed.

The two separate Committees made it clear in their conclusions that market conditions reflected by spreads in published quotations do not afford an automatic, safe yardstick for measuring reasonable profits. In one of the cases under discussion the member stated that it was the established policy of the firm to sell securities at the published asked price or, on occasions, at what-ever price less than that the customer would bid.

Quotes Establish Spreads

In another case, the bid and asked prices were used as a basis for a dealer, on the one hand, to buy a security from a customer and, on the other, to sell the same security to another customer on the same day, the spread between the bid and the asked being, in one instance, 8 points on a security selling around 50. In this case, also, instances were cited of varying sales prices to different customers on transactions executed at the same time, the evidence on this score resulting in censure of the member for discrimination as between customers.

In still another case, the member defended examples of excessive prices on the ground that these were based upon the firm's policy of realizing a fixed percentage of profit. The disciplinary action against this member, of course, was not founded upon the policy as such, but upon the excessive prices resulting from it, which, it was found, neglected to take into account prevailing market conditions and other relevant circumstances.

Allegations of excessive profits are

founded upon Section 4 of Article III of the Rules of Fair Practice of the Association. That section reads: "In 'over-the-counter' transactions, whether in 'listed' or 'unlisted' securities, if a member buys for his own account from his customer, or sells for his own account to his customer, he shall buy or sell at a price which is fair, taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense involved, and the fact that he is entitled to a profit . . ."

Profits Up To 25%

One of the complaint cases grew out of an examination that disclosed a member made profits ranging to 25.7 per cent on transactions for six accounts. Asked to define the firm's mark-up policy, the head of the organization stated during a hearing of the case:

"Well, I think that our policy has been to sell a security at the published newspaper quotation, because we are limited by that price as to what the public, as a whole, will pay for a security." This witness was asked if the firm ever sold securities to clients at less than the offered prices quoted in newspapers and he answered, "Yes."

"Was that because of the bid that the client made, or because you had very little difficulty in obtaining the business?" was the next question.

The answer was, "Offhand, I would say that it was because that was what the client would pay."

In subsequent questioning, the member said that, since the complaint had been filed against the firm, it had adjusted its mark-up policy downward.

8 Complaints Filed

(Continued from Page 1)

action of Business Conduct Committees is subject to appeal to the Board of Governors or review by the latter and, beyond the Board, decisions may be appealed to or reviewed by the SEC.

On February 28, there were thirty-one complaints pending against members and awaiting action by District Business Conduct Committees. They were divided as follows between the various Districts: No. 1 (Ida., Ore., Wash.) one; No. 2 (Cal., Nev.), one; No. 3 (Ariz., Colo., N. M., Utah, Wyo.), three; No. 7 (Ark., east Mo., Ky.) one; No. 8 (Ill., Ind., Ia., Mich., Nebr., Wisc.) nine; No. 11 (D. of C., Md., N. C., Va., W. V.) one; No. 12 (Del., Pa.) three; No. 13 (Conn., N. J., N. Y.) eleven; No. 14 (Me., Mass., N. H., R. I., Vt.) one.

NASD OBJECTIVES

To promote through cooperative effort the investment banking and securities business, to standardize its principles and practices, to promote therein high standards of commercial honor, and to encourage and promote among members observance of Federal and State securities laws;

* * *

To provide a medium through which its membership may be enabled to confer, consult, and cooperate with governmental and other agencies in the solution of problems affecting investors, the public and the investment banking and securities business;

* * *

To adopt, administer and enforce rules of fair practice and rules to prevent fraudulent and manipulative acts and practices, and in general to promote just and equitable principles of trade for the protection of investors.

* * *

—Extracts from the Certificate of Incorporation.

Members in #10 Meet

Youngstown and Toledo members of NASD last month held meetings with the Chairman and Secretary of District #10 (Ohio) to discuss current developments in NASD affairs and others affecting the securities business. Chairman Peter Ball and Field Secretary Sheldon Clark informed members in particular of matters discussed at the February meeting in New York of all District Chairmen and District Secretaries, including such subjects as proposed amendments to the Securities Acts, Quotations and Defense Bond sales.

Quotations Committee Appointments

Frank Weeden, Weeden & Co., San Francisco, is Chairman of the National Quotations Committee for 1942. Other members of this Committee are: Edward E. Chase, Main Securities Company, Portland; Louis A. Gibbs, Laird, Bissell & Meeds, New York City; Robert H. Huff, Butler-Huff & Company of California, Los Angeles; Ralph S. Longstaff, Rogers & Tracy, Inc., Chicago; Charles B. Merrill, Merrill, Turben & Co., Cleveland and Chas. B. White, Chas. B. White & Co., Houston.

Uniform Practice Committee Approves Legend For Non-Member Transactions

Chairman Johnson
Outlines Method
To Be Applied

The following article on legends to be used to cover transactions with non-members should be read in conjunction with recommendations regarding other confirmation legends which appear on pages 4, 5 and 6. These informative discussions are published together in such a way as to allow these four pages to be removed from this issue and kept for reference purposes. Just tear out the four center pages of this issue of the NEWS and keep them in your desk or in some other convenient place. Additional supplies of this issue, to satisfy any reasonable demand, are available.

In answer to numerous requests, the National Uniform Practice Committee of the NASD has approved a legend for use on members' confirmations to make their over-the-counter transactions with non-members subject to the rules and rulings of the Association.

Joseph T. Johnson, Chairman of the NUPC in an official announcement to all NASD members points out that on and after August 1, 1941, all over-the-counter transactions in securities between members, except transactions in securities exempted under Section 3 (a) (12) of the Securities Exchange Act, became subject to the Uniform Practice Code of the Association. To make the provisions of the Code applicable to non-member transactions, Mr. Johnson says that counsel has suggested that members include on a confirmation of such a transaction, the following statement:

It is understood and agreed that all transactions listed hereon are subject to the pertinent provisions of the By-Laws, Rules of Fair Practice and Uniform Practice Code of the National Association of Securities Dealers, Inc., and all rulings and interpretations issued thereunder.

How To Use Legend

One way to accomplish this, Mr. Johnson said, would be to print the above at the bottom of the confirmation and to refer to it in the legend designed to disclose the capacity in which the member is acting, for example; "As your Broker (Agent), we have Bought

for you account and risk subject to the agreement printed below. . . ."

"Members are reminded," Mr. Johnson added, "that the mere inclusion of any legend or statement on a confirmation does not necessarily make it binding on a non-member—that there has to be mutual agreement between parties on this as well as other conditions of the transaction. One way to insure the existence of such mutual agreement is to have the non-member sign and return a duplicate of the confirmation. This procedure is particularly useful in connection with 'when-issued' transactions. Members are advised to consult with their own counsel regarding the procedure most suitable to their own arrangements.

Legend Use Optional

"The use of a legend such as that suggested is, of course, optional with each member and even though it may be included on a form it may be nullified or modified by additional express provisions included in a particular confirmation. Members who are also members of registered national securities exchanges and who do not use a different set of confirmations for transactions executed on exchanges may want to add this legend to or combine it with the appropriate clauses applicable to their exchange transactions.

"Members are also reminded that pending suggested changes in the Securities Acts may, if adopted, require definite changes in certain of their confirmation forms. If they plan currently to alter their forms to include a legend such as suggested, they should consider the possibility of subsequent required changes before ordering any large quantities."

Washington Office Moving to Philadelphia

National headquarters of the Association will be moved about April 15 to 1616 Walnut St., Philadelphia, Pa. Removal from Washington was decided upon by the Board of Governors in view of the growing needs of the Government for office space in the Capital as well as the fact that the Securities and Exchange Commission, with which NASD maintains close contact, was transferring its offices to Philadelphia in cooperation with the Government's decentralization program.

Uniform Qualification Form Adopted by 13 States

Considerable progress has been and is being made along the lines of cooperation between securities dealers and state commissioners. Particular evidence of this is the uniform qualification form which has been adopted by the following states: Alabama, Arkansas, Iowa, Minnesota, Nebraska, New Hampshire, North Carolina, Ohio, Rhode Island, Tennessee, Texas, Virginia, and Wisconsin. Copies of the form have been distributed to major underwriting houses, and, in addition, the Commerce Clearing House has published the form.

It is thought that additional states will adopt the form after they have had more opportunity to make a study of it and to relate its use to their particular law. It is suggested that dealers, residing in states that have not adopted the form, consult proper officials in that state and ascertain the reasons why that state has not adopted the form.

Form Use Urged

Underwriters are urged to use the form in the states that have adopted it, and they are urged particularly to call the attention of their counsel to the uniform qualification form.

Vern G. Zeller is head of a cooperative committee of the National Association of Securities Commissioners responsible for drafting of the uniform form. Mr. Zeller is Securities Commissioner of Wisconsin.

John F. Brady Named Secretary at Chicago

John F. Brady, former Securities Commissioner of Iowa and a past president of the National Association of Securities Commissioners has been employed as Field Secretary of District #8 with headquarters in Chicago. He succeeds William R. Mee. Mr. Brady was born in Council Bluffs and attended law school at Creighton University, Omaha.

District 11 Moves Office

Office of District #11 (District of Columbia, Maryland, North Carolina, Virginia and West Virginia) has moved from Washington D. C. to the Calvert Building, Fayette and St. Paul Sts., Baltimore, Md. Martin J. Bayly is Field Secretary.

Confirmation Disclosure Requirements Are Outlined After NASD Study

Minimum Amount of Information Shown In Sample Legends

A study by the NASD of confirmations in use in various sections of the country discloses the fact that improper legends are often employed to inform customers of the position of the member in the transaction. To clarify requirements of the NASD and the SEC on this matter, sample legends have been drafted containing the *minimum* disclosure to be made under given sets of circumstances. (These sample legends are set forth in adjoining columns).

Requirements with respect to confirmations are covered in Section 12 of NASD's Rules of Fair Practice. The Section reads:

"Section 12. A member at or before the completion of each transaction with a customer shall give or send to such customer written notification disclosing (1) whether such member is acting as a broker for such customer, as a dealer for his own account, as a broker for some other person, or as a broker for both such customer and some other person; and (2) in any case in which such member is acting as a broker for such customer or for both such customer and some other person, either the name of the person from whom the security was purchased or to whom it was sold for such customer and the date and time when such transaction took place or the fact that such information will be furnished upon the request of such customer, and the source and amount of any commission or other remuneration received or to be received by such member in connection with the transaction."

This Section is substantially identical with SEC Rule X-15C1-4. Therefore, compliance with NASD Section 12 will automatically constitute compliance with the SEC Rule.

Disclosure only to "Customer"

It is to be noted that prescribed disclosures are to be made by a member only to his "customer." The term "customer," does not include a broker or dealer. Hence, a member trading for or with another broker or dealer need not impart the information called for

HOW TO CONFIRM BROKER-DEALER

Where Member Buys As Principal

As Dealer (Principal) and for our own account, we confirm Purchase from you of— (the securities described below):

Where Member Sells As Principal

As Dealer (Principal) and for our own account, we confirm Sale to you of— (the securities described below):

Where Member Acts As Broker For Purchaser

As your Broker (Agent) we have Bought for your account and risk— (the securities described below):

Upon request we will furnish the name of the person from whom the within named securities were purchased and the date and time when such transaction took place.

Commission

Note to Member—The total amount of Commission must be disclosed in dollars and cents to the customer to whom confirmation is sent. If any other commission or remuneration is received or is to be received in connection with the transaction from any source other than the customer who is to receive the confirmation, both the source and the amount should be disclosed.

Where Member Acts As Broker For Seller

As your Broker (Agent) we have Sold for your account and risk— (the securities described below):

Upon request we will furnish the name of the person to whom the within named securities were sold and the date and time when such transaction took place.

Commission

Note to Member—The total amount of Commission must be disclosed in dollars and cents to the customer to whom confirmation is sent. If any other commission or remuneration is received or is to be received in connection with the transaction from any source other than the customer who is to receive the confirmation, both the source and the amount should be disclosed.

PRESERVE PAGES 3, 4, 5 and 6

On pages 3, 4, 5 and 6 of this issue are samples of legends which a broker-dealer may use to satisfy *minimum* requirements of NASD and SEC Rules respecting proper disclosure of capacity in which the broker-dealer is acting for his customer; also other legend recommendations of real value. These four pages can be preserved for future reference.

by Section 12. With this exception, any person for or with whom a member trades is entitled to the required information. Failure to supply the required information constitutes a violation of NASD and SEC rules.

With respect to the time when disclosure must be made, Section 12 makes

provision for the giving or sending of written notification at or before the completion of the transaction. (The phrase, "the completion of the transaction," is expressly defined in Section 1(j) of Article II of the Rules of Fair Practice.)

In the normal situation, where a cus-

TRANSACTIONS WITH CUSTOMERS

Where Member Acts As A Broker For Both Customer And Some Other Person

As your Broker (Agent) we have Bought for your account and risk—
(the securities described below):

Upon request we will furnish the name of the person from whom the within named securities were purchased and the date and time when such transaction took place.

In this transaction we are acting as Brokers (Agents) for both buyer and seller.

- Commission (from buyer) (Total in Dollars and Cents)
- Commission from seller (Total in Dollars and Cents)

Note to Member—If any other commission or remuneration is received or is to be received by the member from any source other than the customers (buyer and seller) in connection with the transaction, both the source and the amount should be indicated to both customers.

Where Member Acts As A Broker For Both Customer And Some Other Person

As your Broker (Agent) we have Sold for your account and risk—
(the securities described below):

Upon request we will furnish the name of the person to whom the within named securities were sold and the date and time when such transaction took place.

In this transaction we are acting as Brokers (Agents) for both buyer and seller.

- Commission (from seller) (Total in Dollars and Cents)
- Commission from buyer (Total in Dollars and Cents)

Note to Member—If any other commission or remuneration is received or is to be received by the member from any source other than the customers (buyer and seller) in connection with the transaction, both the source and the amount should be indicated to both customers.

Where Member Acts As Broker For Some Other Person And Sells

As Broker (Agent) for the seller (another) we confirm Sale to you of—
(the securities described below):

Where Member Acts As Broker For Some Other Person And Buys

As Broker (Agent) for the purchaser (another) we confirm Purchase from you of—
(the securities described below):

tomer buys a security, the completion of the transaction occurs when the customer, subsequent to the time of purchase, makes payment to the member of any part of the purchase price. Similarly, where a customer sells a security, the completion of the transaction normally occurs when the customer, subsequent to the time of sale, delivers the security to the member. Thus, the required disclosure should ordinarily be transmitted to the customer before he makes payment for the security he

is buying or makes delivery of the security he is selling.

If, before the transaction, the member already has custody of his customer's funds or securities, a different situation is presented. In such case, the completion of the transaction does not depend upon any act of the customer but is at the will of the member. Hence, the time of completion is defined as the moment when the member makes a bookkeeping entry of the payment of the purchase price by the cus-

tomers-purchaser or the member transfers the security from the account of the customer-seller.

A further contingency is provided for: where a customer, after the transaction is effected, anticipates payment or delivers the security to the member in advance of the time when he is requested to do so. In such cases, if the customer is a buyer, the completion of the transaction occurs when the member delivers the security to the customer or into his account; and if the customer is a seller, when the member makes payment to or into the account of the customer. By this provision a member is protected against the risk of a technical violation occasioned by the act of the customer in mailing the security or the check for payment after the transaction has been effected, but before the delivery date and before the member in the normal course of business would have dispatched the confirmation bearing the required disclosures.

Disclosure Requirements

Turning now, in more detail, to the nature of the disclosure to be made, Section 12 requires that, at or before the completion of each transaction involving a customer, the member notify the customer in writing of the capacity in which he is acting in the transaction. He must specify not only whether he is acting as dealer or as broker, but whether he is acting exclusively as broker for the customer, exclusively as broker for some other person, or as broker for both parties.

A further requirement in Section 12 is applicable only as between a broker and the customer for whom he is acting as agent. At or before the completion of each such transaction, a broker must disclose in writing to his customer the name of the other party to the transaction and the date and time of the transaction, or the fact that this information is available to the customer upon request, which request need not be written. The source and amount of any commission or other remuneration received by the broker in the transaction must also be revealed. The requirement for disclosing the name of the other party to the transaction is satisfied (if the other party acts through his own broker) by disclosing the name of such other broker.

It is important to note that the disclosures prescribed in Section 12 must be made in each transaction and that a general or "blanket" disclosure with respect to all future transactions with

(Continued on Page 6, Column 1)

RULES ON HYPOTHECATION, COMMINGLING ARE EXPLAINED

"The securities above described are or may be hypothecated under circumstances that will permit the commingling thereof with securities carried for the account of other customers. Such commingling, however, if any, ceases upon payment by you for the above described securities in the amount indicated above."

A question has been raised as to whether the above legend, in fairly common use, is both adequate and accurate in circumstances where confirmations are sent to customers on the day transactions are effected and be-

Confirmation Disclosure

(Continued from Page 5)

a particular customer is not sufficient.

The information should be furnished in language that is clear and unequivocal. The use of terms which have acquired a special significance to persons engaged in the securities business should be avoided if the same meaning would not be attributed to those terms by the average customer.

Early Clear Understanding

Although the time fixed for the disclosure of the capacity in which a member acts is "at or before the completion of the transaction," it has always been in accord with sound practice and with fundamental concepts of law that the customer and the member have a clear understanding at the earliest possible moment as to whether their relation is to be that of principal, agent or otherwise. Wherever feasible, the customer should be informed on this point before any contract is made with him or on his behalf.

Some members already have made appreciable progress in this direction by instructing their salesmen to inform each customer in advance of a transaction that the firm is selling its own securities or buying the customer's securities for its own account. In connection with sales, particularly, these firms have evolved an effective method of enforcing compliance with this policy. If it is not certain that a salesman has clearly explained to a customer the firm's capacity in the transaction, the firm executes the order on a brokerage basis with the result that the proportionate share of commission received by the salesman may be considerably diminished.

fore delivery and payment is due. Involved is observance by the member of Rules X-8C-1 and X-15C2-1 promulgated by the SEC under the Securities Exchange Act of 1934, as amended.

Legend Fault Discussed

It will be noted that the legend above contains two sentences. The first makes the disclosure required by the rule; the second purports to explain to the customer when hypothecation and commingling, if any, ceases. Insofar as the rule is concerned, the first sentence of the legend is really all that is required to secure the exemption afforded by paragraph (c) of the rules mentioned and so to that extent, the legend is adequate. However, the second sentence, if included on a confirmation sent to a customer on the day a transaction is effected and before delivery and payment is due, may well be inaccurate and misleading if payment is actually made by a customer before delivery is made and payment is due.

(The above legend is the one contained on Page E-25 of the NASD MANUAL. It is adequate and accurate to cover the specific example cited immediately preceding the legend, but it is to be noted that in the example the legend was included on the bill which was presented by messenger to the customer along with the securities for payment.)

Before Delivery, Payment

However, if members wish to make the required disclosure on confirmations sent to customers before delivery and payment is due, and at the same time want to explain to customers in the legend when hypothecation and commingling, if any, ceases, we suggest use of the following:

"The securities above described are or may be hypothecated under circumstances which will permit the commingling thereof with securities carried for the account of other customers. Such hypothecation and commingling, however, if any, ceases or will have ceased upon payment by you for the above described securities in the amount indicated above and delivery of such securities to you, to your order, or into your account."

The immediately foregoing legend has been informally cleared with the SEC.

Securities Industry Active

(Continued from Page 1)

on speakers' bureaus and in other ways actively supporting the general program of State Administrators' offices. In addition, a large number of firms are advising customers on purchase of Defense Bonds as a part of their investment program and have widely advised employes on similar programs as well as on payroll deduction plans providing for purchase of Defense Bonds.

As a result of numerous meetings with the Treasury and the Defense Bond staff, a new descriptive circular has been developed and will shortly be distributed throughout the industry. It is believed that this circular will facilitate the selling efforts of firms as well as the taking of orders. It will also afford a ready means for keeping of records on Defense Bond sales by firms in the industry.

New York Cautions On Discretionary Accounts

Frank L. Scheffey, Secretary of District #13 (Connecticut, New Jersey and New York) recently advised members in that area to review discretionary account agreements. He said that attention has recently been called to incomplete, loosely drawn or merely verbal agreements which have resulted in misunderstandings between members and customers involved. He referred members to Article III, Section 15 (a), (b) (c) of NASD Rules of Fair Practice having to do with discretionary accounts.

Investment Trust Committee

Henry T. Vance, Massachusetts Distributors, Inc., has been reappointed Chairman of the NASD Investment Trust Underwriters Committee for 1942. Associated with Mr. Vance on the Committee are: Robert S. Adler, Selected Investments Company, Chicago; Herbert A. Bradford, Calvin Bullock, New York City; Hugh W. Long, Hugh W. Long and Company, Inc., Jersey City, N. J.; Andrew J. Lord, Lord, Abbett & Co., Inc.; William A. Parker, The Parker Corporation, Boston and A. W. Smith, General Investors Corporation, Boston.

SEC Chairman Sees Big Post-War Task For Financial Machinery

**Advices Strict Economies
With An Eye To
Future Opportunities**

The financing machinery of the nation must be preserved for the great task of reconstruction after the war, Ganson Purcell, Chairman of the Securities and Exchange Commission declared recently in an address at the sixteenth annual dinner of the New York Security Dealers Association. Mr. Purcell advised the securities business to rid itself of "unwarranted and unwanted overhead" and "traditional but unnecessary appendages" so as to establish itself on a sound economic foundation to weather the difficult period of the war. Above all, he said, the financial economy should be prevented from going into a sickly decline.

Frank Dunne, president of NYSDA presided at the dinner which was attended by all SEC Commissioners.

"If the machinery of financial economy which exists today," said the SEC chairman, "is permitted, through lack of our foresight, to slip into sickly decline, the men of experience who make up that system will not be prepared to assume with ability the great task of reconstruction after the war when their services will be more sorely needed. By the same token they will not be in harness during the war period to keep a steady hand on the affairs of corporate finance and to care for the needs and guide the interests of the individual investors who must be the source of capital supply for the reconstruction.

Facilities Exceed Need

"I am told that even now you are in a period when your facilities and your personnel are in excess of the needs of finance. The indications are that as the war goes on this situation will become even more acute. For many in the securities business this presents business and personal problems of the first magnitude. It may even indicate to some that they cannot continue unless there is a change for the better.

"It seems to me, however, that the key to maintaining the business lies in the ability to eliminate the unwarranted and unwanted overhead which is today existent in so many instances. Through elimination of traditional but unnecessary appendages, and through the combination of many presently

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What Others Say About NASD—

The National Association of Securities Dealers does not break into the headlines very frequently but it has been doing a constructive job of improving practices within the industry.

The Association has approximately 2,900 members of which nearly 1,000 were examined during 1941. Formal complaints were filed against 120 members but many of the charges were rather technical. However, 26 firms were expelled, 6 were suspended, 29 were fined, with the fines ranging from \$36 to \$1,500, and 32 were censured.

This sort of self-policing by industry carries with it excellent possibilities for halting the spread of government regulation and control. It is not an easy job but it deserves the support of the responsible elements in the industry.—Robert P. Vanderpoel, in the *Chicago Herald-American*

separated functions, the financial world as a whole can find the means to economize and the incentive to progress.

"Today the investment business, like many other industries throughout the country, is facing curtailment because the material upon which it relies and must have in order to operate is needed and must be conserved for use in the prosecution of the war. While the public generally must limit itself in the use of commodities such as sugar, radios, automobiles and other consumer goods, your business must adjust itself to a contraction of the private financing which constitutes its very life blood.

"It is becoming apparent that industrial producers generally have failed to realize their full responsibility for financing the war. Instances are increasing where they have neglected to use their capital or credit for activities that are absolutely essential. The tend-

(Turn to Page 8, Column 2)

Questionnaire

(Continued from Page 1)

scope the form of the questionnaire is flexible enough to permit all types to use the same form for their replies. Its scope and form were determined after the Committee had digested the results of about 75 surveys of various firms made by its staff.

For the convenience of the members, the New York questionnaire is divided into two parts. Part one consists of seven questions designed to disclose the financial condition of the reporting firm. Part two also consists of seven questions, the purpose of which is to outline firm policy and procedure. Taken together, proper replies to the questions in both sections should present a comprehensive picture of the activities of a reporting firm and make it possible to bring about conformity to NASD regulations and procedure by cooperation with and instruction of our members.

The actual examination of the reports will be made by the staff. Therefore, competitive information will be kept confidential as is the case in all NASD examinations. Each member was given a code or reference number, which is to be used instead of his name on all material sent in to the Committee. The key to the code, together with all other information which might reveal the identity of the reporting firm, is kept under lock and key, so that all surveys will be made on an anonymous basis. Identity need be revealed only when the information submitted in the questionnaire discloses conditions which call for personal surveys.

Woodard Heads National Business Conduct Committee

The National Business Conduct Committee of the Association for 1942 is headed by Lawrence B. Woodard as Chairman. Mr. Woodard's firm is Woodard-Elwood & Co., Minneapolis. Other members of the Committee are: Edward Brockhaus, Edward Brockhaus & Co., Cincinnati; John A. Prescott, Prescott, Wright, Snider Company, Kansas City, Mo.; Harvey Roney, Merrill Lynch, Pierce, Fenner & Beane, Los Angeles; Joseph M. Scribner, Singer, Deane & Scribner, Pittsburgh; Albert Theis, Jr., Albert Theis & Sons, Inc., St. Louis; Clarence E. Unterberg, C. E. Unterberg & Co., New York City and E. Warren Willard, Boettcher and Company, Denver.

PSI Hearing Adjourned Subject to Examiner's Call; Initial Session Routine

**SEC Review of Six
Cases Gets Under Way;
Names Not Disclosed**

The Securities and Exchange Commission's review of NASD disciplinary action against members who were found to have violated the selling agreement in the Public Service Company of Indiana financing in late 1939, formally opened March 16 in the new Philadelphia headquarters of the Commission. Trial Examiner Edward C. Johnson, after admitting in evidence various SEC orders and files pertaining to the six cases called up by the Commission, adjourned the hearings subject to his call. The initial hearing was routine and the time for resumption of hearings is indefinite.

Names of the six firms involved in the review proceedings were not divulged during the initial hearing, each being identified by a code number. More than 70 NASD members were originally disciplined for various types of violations of the agreement. The SEC feels that no public interest would be served by disclosure of the names of the firms immediately affected by its review action and has stated their identity will not be divulged unless this becomes necessary for orderly conduct and disposition of the proceedings. The six cases selected by the Commission for review are considered exemplary of all forms of violations which resulted in disciplinary action by the Association.

Conduct Violated Rule I

The Association based its disciplinary action on the ground that conduct of disciplined members violated its Fair Practice Rule No. 1 which provides: "A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade."

Respecting its own action, the SEC has said: "The Commission in the review proceedings will seek to determine whether the Association in construing this rule as prohibiting the alleged conduct on the part of its members has adopted a construction inconsistent with the purposes of the statute under which the Association is registered with the Commission or otherwise contrary to public policy or inconsistent with the protection of investors and the public interest."

Your Investment Dealer

INVESTMENT dealers as a group have suffered heavily in recent years. Too often the industry has been made the "goat" by the public and the government for financial losses which were the inevitable result of the widespread speculative excesses of the late twenties and the unwillingness of many investors to follow conservative practices.

The future of any industry can be fairly well judged by the character of the people in it, especially that of the younger men. We are constantly being impressed with the high character and the thoughtfulness of the majority of the men and women we meet in the investment business today. One finds the younger men, on whom the future largely depends, low in numbers but high in quality. The field no longer attracts the get-rich-quick individual or the young graduate whose principal qualification is the number of well-to-do people he knows rather than his ability to do a constructive job.

MOST men in the investment business today have a healthy conception of their responsibilities. They believe that their success must be measured by the service they are able to render to individuals and institutions in their communities. These men are bringing a new tone and a new outlook to the entire industry.

The amount and quality of study and research being done by many organizations for the benefit of their clients is impressive. Salesmen are making a real effort better to equip themselves to serve their people on the basis of facts and informed opinion.

It is our considered opinion that the investment dealer fraternity is in a better position to serve the investor today than it has ever been. The very difficulties encountered in recent years have made the serious-minded investment salesman—and these are in the great majority today—better-equipped to help his people through the period ahead. There is a new humility, a new way of doing things, a return to first principles in many investment organizations today that should receive the encouragement of every investor.—*From 1941 Trustees' Annual Report The George Putnam Fund of Boston.*

SEC Chairman Sees Big Task

(Continued from Page 7)

ency has been to let the government—and indirectly the public—assume all of the risk. By the same token these consumers of capital have reduced the demand for the financial services afforded by the investment banking industry.

Hoarding by Corporations

"We recognize that capital is an essential material of war in the same or perhaps in a more basic sense than the materials which it produces. Its continued use in present or greater amounts, and without regard to the purposes of its employment, will rapidly reduce its availability. Therefore, it is clear that it must be conserved and its flow must be carefully guided to avoid waste or misuse. Should we permit a corporation at this time to sell notes to the public to increase its inventory account? Does not this very procedure smack of hoarding on a large scale?"

"Recent disclosures before Congressional committees have high-lighted what we have all noted with increasing concern. During time of war, taxes upon excess profits are resorted to as a substantial aid in defraying the cost

of war, but I am fearful that the shortsightedness of corporate management or its ingrained desire to reduce tax liability has given rise to many instances of capital waste.

"Many of our government contracts are based upon costs. This has always encouraged excessive salaries and bonus arrangements to management, excessive fees to agents, excessive advertising expenses, excessive payments for materials, and, in some cases, even excessive payments for labor. Some managements have seemed to adopt the attitude that since excess profits in large measure will not inure to the benefit of the owners of the enterprise they might as well build up costs, regardless of the need or justification for these excess costs. Should there not also be some check on such waste incidental to our program to conserve our capital funds?"

"These are some of the immediate problems, but undoubtedly others of equal challenge will face us in the transition from a war economy back to a peace time economy. Your obligations as an industry to help us successfully through that critical period will be equally as great as your responsibilities in time of war. Not only will they call for great breadth of vision but for sober restraint throughout the entire financial industry."