

Trading in "Foreigns"

Growing interest and activity in such corporations make knowledge of transfer problems essential.

Increased interest and activity in securities of foreign corporations, and the possibility that interest in these issues will be on a widening scale in the future, suggested to the National Uniform Practice Committee that members, cashiers, etc., should familiarize themselves with delivery and transfer problems involved in dealings in such securities.

Harold C. Patterson, Chairman of the Committee, has prepared a memorandum on these subjects. He and his Committee feel that members would find it helpful to have the suggestions contained in the memorandum always in mind in their dealings in foreign shares. The memorandum follows:

"Recent activity in shares of foreign corporations has brought to the attention of the Committee the many important differences between the procedure for delivery and transfer of securities in the United States, and the methods used in European markets. So far the greatest activity has taken place in shares of enterprises incorporated in Great Britain, where procedure for delivery differs from the American system in the following respects:

1—The Uniform Practice Code provides that delivery of shares shall be made in amounts from which units of 100 shares each can be aggregated. In London the unit of delivery is for the amount of the contract, if the seller so elects.

2—The Code requires that assignments shall be properly guaranteed. Certificates assigned in Great Britain require no guaran-

(Continued on page 2, column 1)

SEC Asks Congress to Amend Act

Recommends that 12, 13, 14 and 16, "Insider" and reporting Sections, be changed to reach corporations having \$3,000,000 assets, 300 stockholders; NASD organizes District analyses of proposals.

RECAPTURE CLAUSE

The following is an extract from the agreement among underwriters in connection with the Cincinnati Gas and Electric common stock "standby" arrangement:

"Each underwriter severally agrees to pay to Columbia [Columbia Gas and Electric, holding company], through the Representatives, an amount equal to 75% of the excess, if any of (a) the aggregate proceeds received by such underwriter (without deduction for dealers' discounts or commissions granted to dealers or underwriters) from the sale of the shares of unsubscribed stock purchased hereunder over (b) the amount paid by such underwriter to Columbia for such shares.

"For the purpose of computing the amount, if any, due from each underwriter under the foregoing provision of this paragraph, all unsubscribed stock held by each underwriter at the close of business on the fifth business day following the termination of the agreement among underwriters shall be included in the computation as if sold by such underwriter at the last sale price of Cincinnati common stock on the New York Stock Exchange on such fifth business day, or, if there has been no such sale, at the closing bid price on such day on such exchange, or, if such stock is not then listed on such exchange, at the closing bid price of such stock on the over-the-counter market in New York City."

The Securities and Exchange Commission has recommended to Congress extension of the proxy, "insider-trading," short-term trading profits and the "insider" reporting sections of the Securities Exchange Act to corporations having \$3,000,000 in assets and 300 stockholders. These sections have applied only to registered securities and to securities listed on stock exchanges.

The SEC report was filed with Congress late in June. It is not expected any action may be taken on the proposals made until the next session of Congress. In the meantime, the Commission's proposals will be carefully studied by NASD's Board of Governors and District Committees. The latter are in the process of forming local Committees to consider the SEC proposals and to submit their views on these to the Association. In particular, these Committees are being asked to weigh the possible effects of adoption of the proposed amendments upon issuers and dealers in securities in their own areas.

Members will be advised of all future developments in this matter.

In addition to recommending extension of the Act to companies not heretofore covered by sections 12, 13, 14 and 16, the Commission advocates amendments of sections dealing with unlisted trading privileges on exchanges and delisting of issues admitted thereunder.

The essence of these amendments is that the issuing corporation may oppose an application by an exchange for unlisted trading privileges in securities of the company and the company may petition the Commission to have its securities removed from unlisted trading on the basis of "detriment" to it.

(Continued on page 3, column 2)

TRADING IN "FOREIGNS"

(Continued from page 1)

tee, and English shares assigned outside of Great Britain require only an acknowledgment of the signature of the assignor.

3—The Code provides that delivery shall be made on the third full business day after the date of the transaction. Failure to deliver on time subjects the seller to a buy-in. In London a seller may deliver whenever he wishes.

4—Transfer of securities can be accomplished in the United States in a few days. In London, under present conditions, transfer may take several months.

"The foregoing list of differences in procedure is by no means complete, but is used to illustrate the problems with which traders in foreign shares are confronted. In order to overcome such problems, dealers who have been selling to American buyers have been accommodating them by accepting transfer instructions against prompt payment of the purchase price by the buyer.

"The Committee has been informed that several New York banks are making arrangements whereby they will hold in safekeeping, in the names of their London nominees, any shares of British corporations deposited with them for that purpose. The methods adopted by various banks may differ in detail, but they will all provide for the same general procedure. The banks will issue official letters acknowledging receipt of the securities from depositors. Upon sale of all or any part of any of the securities held in safekeeping for him, a seller may effect the equivalent of delivery to a buyer by instructing his bank on a form provided for that purpose, to terminate his safekeeping account with respect to the number of shares called for in the contract of sale. The request will be accompanied by a form previously signed by the buyer, asking the bank to place the securities in safekeeping for him. Upon receipt of matched instructions, the bank will issue letters to both parties confirming that the safekeeping instructions have been duly completed. As compensation for their services, the banks will charge a moderate safe-keeping fee, which will be payable by the depositor.

"Because of its simplicity, and the fact that the equivalent of delivery

can be effected in a few days, the Committee believes that the safekeeping plan is the most satisfactory one yet devised for the purpose of handling foreign shares in this country. It might be advisable for interested dealers to adopt such a delivery procedure, and by mutual agreement, designate one or more New York banks with London offices as acceptable agents. The Committee would be glad to offer its cooperation toward this end.

"The Committee is also of the opinion that all transactions in foreign shares should be made subject to Section I of the National Uniform Practice Code by specifying, at the time of the transaction, all the conditions under which the contract is to be settled."

B. Howell Griswold, Jr.

Benjamin Howell Griswold, Jr., first Chairman of the Board of Governors of the Association, died at his home in Baltimore, July 27. Mr. Griswold was senior partner of Alex. Brown and Sons. His age was 72. He was born in Hagerstown, Md.

Mr. Griswold throughout his life took an active part in civic and business affairs. He was elected Chairman of NASD upon its formation after having served as chairman of the predecessor, Investment Bankers Conference, Inc., prior to which he had been Chairman of the Investment Bankers Code Committee under the National Recovery Administration. Mr. Griswold was a member of the Board of Trustees of Johns Hopkins University, of which he was a graduate.

Surviving are his wife and four children, Alexander Brown Griswold, Benjamin H. Griswold, 3d, Mrs. Louis McLane Fisher and Mrs. McKenny W. Egerton and a brother, Robertson Griswold.

Caffrey Elected

Former New York Administrator named Chairman of SEC; Boston-born; Harvard-Suffolk Graduate.

James J. Caffrey, who was appointed a Commissioner in April, 1945, has been elected Chairman of the Securities and Exchange Commission.

Mr. Caffrey, prior to his appointment to membership in the Commission, was for nine years an Administrator, first of the Boston Regional Office of the SEC and then of the New York Regional Office. He joined the Commission originally in 1935 as an attorney, having previously served as Trial Counsel to the NRA.

A graduate in 1919 of Harvard University and in 1923 of Suffolk University where he received his LL.B. degree, Chairman Caffrey was engaged in the general practice of law in Boston during the period 1923 to 1935 when he joined the NRA staff in Washington.

The other members of the Commission are: Robert E. Healy, Robert K. McConnaughey, Richard B. McEntire and Edmond M. Hanrahan.

NASD BOOKLET

A booklet containing a brief description of the National Association of Securities Dealers, Inc., covering its origin, objectives and major developments since it was formed, is being printed and will be available to all members on request. The booklet should prove particularly useful in promoting customer goodwill through increased knowledge on the part of the customer of the significance of membership in NASD.

When a similar booklet was printed several years ago, many members obtained copies in quantities sufficient for distribution to customers and others. The booklet presently being printed will also be made available in quantity to members at cost. One booklet will be supplied without cost to members requesting it.

NASD NEWS

Published periodically for members and employees under supervision of Public Relations Committee for the Board of Governors.

(Notify us promptly change of address)

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Transfer Taxes

NASD efforts to simplify method of payment are successful; checks can replace stamps.

Efforts to secure an amendment of the New York State tax law pertaining to stock transfer taxes so that over-the-counter dealers would not be obliged to use gummed stamps, have been successful. Stock transfer taxes may now be paid by over-the-counter dealers weekly by check.

This arrangement is the result of two years' work on the part of the Tax Committee of District No. 13 (New York) and members of the staff. A bill providing for the simplified method of paying transfer taxes was passed by the New York legislature in 1945 but was vetoed by Governor Dewey; this spring a new bill was again passed by the legislature and signed by Mr. Dewey.

Effective August 1 last, the Department of Taxation and Finance, State Tax Commission, promulgated a regulation permitting dealers registered in New York to pay stock transfer taxes without the use of stamps on sales or transfers within the State of New York if the dealer so elects. Dealers so electing are required to file a notice in writing with the State Tax Commission that on and after a specified date, the tax is to be paid without the use of stamps. Such dealers thereafter must file with the Commission a weekly report in duplicate on the form prescribed by the Commission, such report to show the daily amount of stock transfer taxes payable on all sales and transfers due for settlement within the period for which the report is filed. Such reports must be mailed or delivered to the Miscellaneous Tax Bureau, Department of Taxation and Finance, Albany 1, New York, together with a remittance for the taxes shown on the report to be payable. The report and tax payments are due not later than the second business day of the week following that for which the report is made. Checks payable to the State Tax Commission may be used in making remittances.

Dealers employing this means of transfer tax payment are required to rubber-stamp on each memorandum of sale a statement substantially as follows:

"N. Y. tax paid direct to Tax Commission (Dealer's Signature)."

SEC Asks Change

(Continued from page 1)

The Commission estimated that there are 3,090 companies, excluding banks, (banks are not affected by the amendments) with assets of \$3,000,000 and more than 300 security holders of which about 1,000 would be affected.

"The proposed amendment" the SEC said, "would put an end to any tendency on the part of corporate management to select that market for its security holders which is available with fewest restrictions upon management. Any tendency on the part of management to deny security holders the facilities of an organized securities exchange in order to avoid the attendant disclosure responsibility would disappear.

"Moreover the benefits of requiring the registration of all substantial issuers with publicly-held securities would not be limited to investors and the exchanges. This proposal would end the necessity on the part of dealers to choose securities for their customers on half-facts and hunches. It would afford brokers and dealers the tools with which to select securities on a truly informed basis." A decrease in "private placements" is foreseen as one result of the amendment's being adopted.

Of interest to dealers are these remarks in the report to Congress:

"As a matter of practice, the determination whether a particular security shall be listed on an exchange is commonly left by the issuing company to the investment bankers who launched the issue. These persons may be primarily interested in maintaining a dominant position as specialists in the particular security, and may prefer the over-the-counter market for that reason. In any event the available evidence suggests that the onerousness of these statutory requirements, if any, is a less weighty consideration than the preference of the underwriters.

"For the over-the-counter dealer the amendment would involve certain advantages and disadvantages. As to the latter, it may be noted that added impetus would be given to exchange trading by the fact that a company desiring to list its securities on an exchange would, as a rule, be able to do so simply by filing with the exchange its registration statements and its intervening reports, plus such other information as the exchange might require.

"Furthermore, adoption of the amendment may well result in an increase in the extent of unlisted trading on exchanges. At present the policy of the Act is that unlisted trading privileges shall not be extended to securities which are not subject to protective provisions on behalf of investors substantially equivalent to those applicable in the case of listed securities; and, as a general matter, the Commission has not deemed it advisable to grant exemptions from this broad requirement although it has statutory power to do so in appropriate cases.

"The proposed amendment would automatically create such an equivalence of duties, and make unlisted trading potentially available wherever adequate public trading activity and public distribution exist in the vicinity of the exchange and unlisted trading is otherwise in the public interest. It should be noted, however, that by the terms of the proposed amendment the company involved would be given an influential if not controlling voice on the question whether its securities shall be admitted to unlisted trading in such cases.

"As to the advantages to the over-the-counter dealer, one consequence of the proposed amendment, it should be noted, may be a decrease in private placements. To the extent that companies reluctant to yield information to investors may have resorted to private financing to supply their new capital needs, thereby avoiding public offerings of new securities and the attendant duty of registration, the amendment with its uniform registration requirements would redound to the benefit of the securities dealer, for there would be no incentive to avoiding public offerings on account of the disclosure provisions of the Securities Act of 1933.

"Moreover, the broker or dealer interested in trading securities for his own account would no longer be acting in the dark. At present, when dealing in securities which are not registered with the Commission and concerning which information is not available in the public files of other governmental agencies, the dealer proceeds largely upon guesswork, or upon the basis of his own investigations, which are expensive, time-consuming, and often inadequate. The dealer, like the investor, sometimes purchases relatively worthless securities.

"This may happen, for example, in the course of large distributions of

(Continued on page 4, column 3)

Registered Representatives

Disability Bar Removed In SEC Test

In the first case of its kind, the SEC recently, on application of the Association, permitted a member to continue in membership while having associated with him an individual who had previously been expelled from NASD because of violations of the Rules of Fair Practice.

Section 2 of Article I of the By-Laws prohibits, without SEC approval or direction, continuing in membership any firm having as an employee or partner one who is found to have been the "cause" of an expulsion from the Association or a stock exchange. In this instance, the expelled individual had filed an application for registration with the Association as a "Registered Representative." The application disclosed the "disability" arising from the fact of his previous expulsion from the NASD. However, the individual's employer and the Association joined in petitioning the SEC to permit the member to continue in membership and to continue to employ the person involved.

The Commission in its decision found that the individual since 1942 had "conducted himself in a manner above reproach" and has not "been subject to any disciplinary action or faced any law suit or complaint growing out of his securities business." The Commission further pointed out that the individual had signified his current familiarity with the Rules of the NASD "and that it is his intention to abide by them."

RE-REGISTER!

A "Registered Representative" who leaves the firm or company through which he was originally qualified for registration must re-register if he becomes associated with another NASD member. If he does not so re-register he is not qualified to engage in securities transactions for the member with whom he has become associated.

Notice of termination of employment or association with a member should be submitted immediately to the Executive Office of the Association. Such notice should be supplied by the member concerned with the termination.

DEFINITION

"The term 'registered representative' means an officer, partner, employee or other representative of a member engaged in the managing, supervision, solicitation, or handling of listed or unlisted business in securities; or in the trading of listed or unlisted securities; or in the sale of listed or unlisted securities on an agency or principal basis; or engaged in the solicitation of subscriptions to investment advisory or to investment management services furnished on a fee basis. . . ."

EDUCATIONAL PROGRAM

Members of the Association and their employees are being offered an opportunity to participate in the educational program being conducted by the IBA to attract and train new men in the securities business.

The IBA is printing a series of booklets containing lectures being given in various parts of the country as part of the training program. A total of 12 booklets will be printed and it is these which are being made available for subscription by NASD members.

The 12 booklets are being offered at \$35 for the set. Address inquiries and orders to the Executive Office of NASD. *Do not send checks in payment.*

23,655 REGISTERED

Roll of "Registered Representatives" of members of the Association continues to grow.

As of July 31, 23,655 applicants for registration had qualified. Evidencing expansion of employment in the securities business is the fact that during the month of July 339 new applicants were registered.

Members adding new partners or officers and who are employing new salesmen, traders, etc., should have these persons apply for registration as promptly as possible.

3d Day Delivery Plan Adopted

The major markets of the country have for some time been considering the advisability of providing for "regular way" delivery of securities on the third full business day after the date of the transaction, instead of the second full business day, as at present.

After careful consideration, the Board of Governors has decided that such a change would be appropriate and in the interest of members. Accordingly, they have approved the amendment of Sections 4(b), 4(c), and 4(d) of the National Uniform Practice Code to provide for the third day delivery system.

The Board has also approved amendments to Sections 5(a)1, 5(a)2, 6(a)1, 6(a)2 and 6(a)3 of the Code to synchronize ex-dividend and ex-interest dates with the new system.

No change was made in Section 12 of the Code, which states that delivery shall be made between the hours established by rule or practice in the community where the office of the purchaser is located. District Uniform Practice Committees will still determine what hours for delivery have been established by "rule or practice" in their respective communities.

SEC Asks Change

(Continued from page 3)

securities by non-controlling stockholders, to which the registration provisions of the Securities Act of 1933 are not applicable. The competition of dealers among themselves in these cases makes for a willingness to accept large blocks of securities even though reliable information is lacking upon which a valid judgment as to investment merit may be based. The availability of pertinent information in the offices of the Commission, or through secondary sources derived from filings with the Commission, would make it possible to weed out the bad and to recognize the good.

"To a considerable extent, the opportunities to trade upon inside information would be curtailed. However, there would be the advantages of trading in a well-ordered and more stable market, with the element of risk better appraised. . . ."