

Stabilization

Board considers subject and refers to legislative committee; joint action follows

The National Association of Securities Dealers, Inc., the Investment Bankers Association of America and the Association of Stock Exchange Firms joined in preliminary conferences and discussions with the Securities and Exchange Commission relative to the request for a report or comment upon the SEC release titled "Notice of Opportunity to Submit Proposals for Regulations or Legislation Regarding the Stabilization of Market Prices by Persons Offering Securities to the Public."

This matter was given consideration and serious discussion by the Board of Governors at their Skytop gathering. It finally was determined that in view of the fact that the SEC had requested a response by Nov. 1 the matter should be referred to the Legislative Committee. The legislative Committee subsequently joined with the two other organizations and the following joint committee was appointed:

Eugene Barry, Shields & Co., New York; Paul Devlin, Blyth & Co., New York; Albert Armitage, Coffin & Burr, Boston; Richard Dunn, Auchincloss, Parker & Redpath, Washington; Amyas Ames, Kidder, Peabody & Co., New York; Phillip W. Brown, Smith, Barney & Co., New York; James Lemon, Johnston, Lemon & Co., Washington, William Chappell, First Boston Corporation, New York; Norman Smith, Merrill Lynch, Pierce, Fenner & Beane, New York.

This committee was arranging, at the time the NEWS went to press to hold a series of meetings and later to present the respective views and opinions to the commission.

Paul Devlin, Chairman, invites any suggestions or comment from NASD members.

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RETIRING SECRETARY



FRANK SCHEFFEY

Fall Meeting

Governors hold autumn session at Skytop, Pa., but proceedings largely routine.

The Fall meeting of the Board of Governors held at Skytop Lodge, Skytop, Pa., on Sept. 27-28 was largely routine. The meeting was well attended and resulted in active participation both by the Board and by the Advisory Council. Only one member of either group was unable to be present.

One of the highlights was the report of the Executive Director, which among other things, announced a further rise in membership to the highest total in six years, also an expanding volume of insurance being written under the Association's Group policy.

The report of the treasurer and financial statements as of June 30 were filed with the Board. The balance sheet at the end of nine months of the NASD fiscal year indicated a total surplus of \$580,867, with cash of \$334,288 and treasury certificates of \$345,000.

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Scheffey Retires

Veteran of Securities Business, Secretary of District 13, takes position with Albany house.

Frank Scheffey, who has been active in NASD since its inception, retired on October 1 as Secretary of District #13, the largest, from the standpoint of membership, in the national organization.

Having been active in IBA work for many years, and secretary of the New York group for twelve of them, it was natural that Frank Scheffey should be called upon in 1933 to act as Vice Chairman of the Code Drafting Committee for the Investment Bankers Code. He was active in its administration, and when it was discontinued he remained in the Washington office to assist in the negotiations already in progress with the Securities and Exchange Commission, looking to the formation of the National Association of Securities Dealers, Inc. He continued in this preliminary work and participated in the formation in 1936 of the Investment Bankers Conference.

The objective of those early planners and organizers was realized in 1938 when the Maloney Act was passed and brought to fruition on August 7, 1939 when the SEC granted the application to register the NASD as a national securities association. With this goal reached, Frank Scheffey was placed in charge of the important work in District #13. He has been Secretary ever since, and the members of NASD, both in his district and elsewhere throughout the country, have expressed keen regret in his retirement from the Association. His long experience and knowledge of the securities business, however, will be utilized in his capacity as Vice President, in charge of the New York office, of George R. Cooley & Co., Inc., Investment Bankers of Albany, N. Y.

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Uniform Practice Committee Reports

At the September meeting of the Board a review of the general activities of the National Uniform Practice Committee was delivered by its chairman, Harold C. Patterson, of the Washington office of Auchincloss, Parker & Redpath. Although the committee made a special report to the board at its May meeting, it had not reported on its general activities since the January meeting of the board. The report in full follows:

"The National Uniform Practice Committee operates along two main lines. One is the administration of procedures and principles which have been firmly established as promoting uniformity of practice in the profession. The other consists of investigating new problems and exploring new methods by which our present practices can be improved.

During the eight months which have elapsed since our last regular report, much of the work of the Committee has been directed to the settlement of differences of opinion among members arising from failure to correctly interpret our present rules. These most frequently cover the payment of dividends and the condition of securities presented for delivery. In most cases the Committee is able to settle these differences, in others a more formal approach is required, and after proper investigation of the problem, a written opinion is handed down.

The Committee has also issued seven formal rulings, all of which dealt with the treatment of interest and dividends paid on "when issued" and "when distributed" securities. Although none of these rulings were lengthy, they all required considerable preliminary study and a thorough working knowledge of the circumstances which brought about the payments discussed in the rulings. One additional announcement explained to the members a new all purpose tax waiver which had been approved by the Treasury Department.

One ruling covered a dividend of 30 cents per share declared by the Philadelphia Transportation Company payable July 30, 1948 to stockholders of record July 9, 1948. After a thorough consideration of all of the circumstances connected with the declaration of this dividend the Committee found it appropriate to rule that Philadelphia Transportation stock should be "ex" the dividend on July 7, 1948 and that any seller of this stock on or before July 6, 1948, including sellers on a "when-distributed" basis, who made delivery of stock too late for transfer on or before the rec-

ord date should attach a Due Bill to his delivery for the amount of the distribution to be made.

This ruling caused a little disturbance among arbitrageurs who were holding Transit Investment Corporation stock and who, in expectation of receiving Philadelphia Transportation stock in liquidation of their holdings of Transit Investment, had sold Philadelphia Transportation on a "when-distributed" basis. Inasmuch as they had expected that the dividend would be declared in such a way that they would not be obliged to pass it over to the buyer, the arbitrageurs had offered their Philadelphia Transportation stock at a price which they claimed did not include payment of the dividend to the buyer.

The Committee was able to show to the satisfaction of the arbitrageurs that the unusual circumstances under which the dividend was declared constituted one of the risks which is inherent in arbitrage and that the uniformity of trading procedure should not be altered merely because of that fact.

Shortly thereafter a similar but more complicated situation arose with reference to a dividend declared by directors of Southern Natural Gas Company. In this instance the Federal Water and Gas Corporation announced its intentions to distribute the holdings of Southern Natural Gas Company to stockholders of record September 1, 1948 and about the same time Southern Natural Gas Company declared a dividend of 50 cents a share payable September 13, 1948 to stockholders of record August 30, 1948.

Following the precedent established in the case of the Philadelphia Transportation Company dividend the Committee ruled the "when distributed" contract in Southern Natural Gas should be "ex" this dividend on and after August 26, 1948. This was a consistent ruling inasmuch as Southern Natural Gas "when distributed" was admitted to trading on the New York Stock Exchange on August 26, 1948 and the Exchange has ruled that "when distributed" contracts made on

the Exchange on and after August 26, 1948 will not carry the dividend.

It was noted that sellers of "when-distributed" contracts in Southern Natural Gas on or before August 25, 1948 would be required to pass over to a buyer a dividend which he would not receive because the Federal Water and Gas Company was the stockholder of record to receive the dividend which had been declared by Southern Natural Gas Company. However, Federal Water and Gas Company announced its intention to pay a dividend to its stockholders in the amount of 45 cents a share and to pay that dividend out of the funds which it had received from Southern Natural Gas Company.

Consequently, sellers of Southern Natural Gas Company who sold their stock "dividend-on" indirectly recovered the dividend in a form of distribution by Federal Water and Gas Company.

The foregoing two instances are cited as indicative of the complicated problems with which the Committee is often confronted. Such problems are by no means confined to those which result in formal rulings and many such problems which call for thorough study are often settled by an informal statement handed down in letter form, or by the informal solution of a problem between two contending parties.

At a conference recently held between representatives of the Committee and officials of the Treasury Department, for the purpose of exploring a method of payment of Federal Transfer Stamp Taxes by means of a return and a check, members of the staff of the Treasury Department advised us of their opinion that legislation would be necessary to permit such a procedure. The Committee has serious doubts that Congress would consider such legislation.

The standard Due Bill forms upon which the Committee has been working have now been approved, and have become a part of the "Kit" prepared by the Executive Office.

The Committee regrets that it must report no progress in its negotiation for the acceptance by transfer agents of assignments guaranteed by members of the Association. Transfer agents are firm in their belief that a guaranty covers the entire transaction, includ-

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Fall Report of the Executive Director

Further Rise in Membership Is Highlight of Summary Presented by Wallace H. Fulton; Also Reports on Stabilization, Security Act Revisions, Investment Trust Charts, and Other Current Matters of Concern to the Industry.

In presenting his report to the Board Mr. Fulton stated that there had been few new activities initiated by the headquarters office in Washington since his previous report to the governors at the meeting of May 24-25. His report, therefore, was largely in the nature of a record of progress on matters pending. The principal sections of the report follow:

Membership

As of September 20, membership was 2,690, the largest membership total in the last six years, and comparing with 2,672 on May 15.

The total of registered representatives on September 20 was 26,470, a gain of 37 since May 15.

Public Relations

There has been some increase in public relations activities with the employment of William L. Ayers and Associates. Mr. Ayers has maintained regular contact with our office and has been most helpful in the several matters that have arisen. Following the last meeting of the Board, his office prepared the copy for the NASD NEWS which issue was the largest ever published by the Association and upon which we received a number of favorable comments. Contacts have been maintained with the New York and Chicago newspapers and there has been correspondence with certain magazines concerning the publication of articles about the Association or in correction of statements. We have instituted the policy of challenging inaccuracies that appear in print concerning the Association and its activities and seeking a correction of errors, merely in the interest of general public information concerning NASD. There is currently under consideration a program submitted by Mr. Ayers involving wider dissemination of the NASD news releases, particularly those concerning additions to membership, and routine informational announcements. His office also has virtually completed layout and copy for the proposed booklet dealing with the language and operation of trading desks, based on the material supplied by the Trading Committee headed by B. Winthrop Pizzini. When this booklet has been finally approved by Mr. Pizzini's

Committee, it will, of course, be submitted to the Board for decision as to publication.

Stabilization

There will be placed before you during this meeting a copy of a Commission release dated September 16, 1948 with reference to a Commission request for the submission of suggestions for either regulations or legislation relative to the stabilization of market prices by persons offering securities to the public. This release has been sent to all brokers and dealers and all other interested persons. It is known that any proposal for either new rules or amendments to the Securities Act will be released for comment prior to any action to make such regulations effective or prior to the introduction of legislation into the Congress.

Examinations

A comprehensive examination program is now in effect in District No. 13. There are nine men at work on examinations in that District at the present time and in accordance with the program worked out with the Chairman of District Committee No. 13 the examiners presently working will be available to the District through the month of October. I am hopeful that a minimum of 300 examinations can be completed in that time. Since the May meeting of the Board, examinations have been conducted in other Districts, numbering 29. In addition to routine examinations, the various Secretaries have also made examinations and inquiries into various members' participation in the Kaiser-Frazer underwriting.

Membership Cases

There are at the present time no cases pending before the Association or the Securities and Exchange Commission for admission to membership or registration as registered representatives of individuals who are barred by reason of advisability within the meaning of Section 2 of Article I of the By-Laws. At the last meeting of the Board of Governors there were six cases pending. The recommendations of the Association to the Securities and Exchange Commission in respect to

those cases have now been approved by the Commission.

Forms

After several vexatious delays the kit of bookkeeping forms and other basic documents essential to the conduct of members' business were finally made available and met a gratifying reception. It will be recalled that in view of the fact that the kit had been designed for the use of new members, it was decided that distribution other than to new members would be made only upon request and a statement to that effect was made in the last issue of the NASD NEWS. We have received requests for 335 copies. Demand has come from large firms as well as small ones and comment has been wholly favorable; it is therefore believed that the kit definitely serves a useful purpose.

Investment Trust

The Board will recall that the Investment Trust Underwriters Committee submitted a report at the May meeting with reference to the views of the Commission as stated in a release dated April 2, 1948, having to do with the use of certain types of charts by investment companies and distributors of investment company shares for the purpose of showing the performance record over a specific period of time.

Subsequent to the Board meeting, a meeting was held with the Commission staff, and later with the Commission, at which time the views of the staff and the business were thoroughly explored. Thereafter, the Investment Trust Underwriters Committee had a second meeting with the staff and the Commission and made certain proposals looking toward the satisfaction of the staff's views in connection with such performance charts. A conference has been arranged for October with the staff and Commission with a view toward trying to adjust outstanding differences.

Statements Filed with SEC

There has been no decision by the SEC in regard to the matter of publication of financial statements filed with it and concerning which the Board passed a formal resolution at its
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last meeting. There have been, however, discussions with the staff and informal discussions with the Commissioners. The latter have been attempting to find a solution to the problem but as yet there has been no positive action.

World Bank

The Board will recall that at the May Board meeting, it was determined to oppose certain aspects of the legislation proposed by the World Bank to amend the Securities Acts. Briefly that legislation would have exempted the securities of the World Bank from the registration process required by the 1933 Act and would have exempted from registration the securities of foreign corporations or foreign governments, guaranteed by the Bank.

The actions taken in connection with the Association's position have been fully reported to the Board and membership. I appeared as a witness in behalf of the Association to state the Association's position in connection with the suggestion made by the World Bank to alter their proposed amendment. I believe that if the World Bank proposes legislation in the next session of Congress that the Association will be consulted.

UNIFORM PRACTICES REPORT

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ing the genuineness of the certificate whereas the insurance companies feel that they should be required to accept liability only for the genuineness of the signature and for the capacity of the assignor to act. The whole question involves deep legal complications which make it advisable for your Committee to probe it thoroughly and to continue its study and investigation of the subject.

The Committee has met with the members of the Board of Governors who had been appointed by the Chairman to study the problems involved in the California Tax Deduction system, and a report will be made by Mr. John Sullivan, Chairman of the Joint Committee.

Respectfully submitted,

HAROLD C. PATTERSON,
Chairman,

SCHEFFEY RETIRES

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He had been educated in electrical engineering and cost accounting and worked at both for Crocker-Wheeler Company.

Meanwhile he was studying the economics and practices of the investment banking business, and when the Crocker-Wheeler Company needed additional capital, he undertook to assist in raising it. He accomplished this largely through the pulling power of a single paragraph letter sent to a list of personal friends and acquaintances. As a result of this successful experience, he opened an office, despite the fact that he had no previous experience in the securities business. He had, however, a host of friends from whom he received orders to buy and sell securities.

In 1912 he decided to broaden his practical experience by associating with a Stock Exchange House and in 1929 was made a partner of Callaway, Fish & Company. He remained with them until he withdrew to devote all his time as Co-director of the Investment Banker's Code.

Meanwhile, he was active in the New York Group of the I.B.A. He served during the years 1921-1933 as secretary of the New York groups, and during that period was governor of the I.B.A., Chairman of the Business Conduct Committee, Chairman of the Group Chairman's Committee, and member of the Aviation Securities Committee.

Mr. Scheffey lives in Glen Ridge, New Jersey, where he has been active in local affairs. He has been president of the Borough Council, commissioner of Police and Chairman of the Finance Committee. He has also served as Warden and Treasurer of Christ Church Episcopal of Glen Ridge.

GOVERNORS' FALL MEETING

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A large part of the meeting period was devoted to a consideration of and reports on the situation arising from the cancelled Kaiser-Frazer underwriting. Reports were heard from District 2, District 10 and District 13. While there is no phase of the dispute before the Board of Governors at this time the Board has followed the policy of keeping informed as to progress of the matter in the various districts.

STABILIZATION

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While there is no definite program for the enactment of rules or regulations regarding stabilization procedure, the SEC has been conducting an investigation of the matter since a question was raised some months ago at the time of stabilization operations, in connection with the proposed offering of Kaiser-Frazer stock. In its public press release the commission pointed out that "the line between fraud or manipulation and lawful stabilization with respect to unregistered securities rests at present on interpretation of the general anti-fraud provisions" of the act. It further pointed out that "there are no judicial precedents defining the difference between stabilization and other forms of manipulation."

The Commission advised the Association that it was interested in these phases of the matter:

1. Whether the commission, by rule, should prohibit all stabilizing to facilitate offerings of securities or whether it should prohibit specific types or aspects of stabilizing.

2. Whether the commission should impose limitations on the nature or extent of stabilizing and related activities.

3. Whether the right to stabilize should be conditioned on the assumption by the stabilizer of any affirmative obligations.

4. Whether there should be any added requirements for the disclosure of stabilizing either generally or in each transaction or quotation.

5. Whether, in order to avoid violations of law, members of stabilizing syndicates should receive from the syndicate manager more information than they do under current practices regarding the status of the distribution and the commencement and termination of stabilizing.

7. Whether any action should be taken regarding problems arising under special circumstances.

8. Whether any other changes are appropriate in the commission's present rules and interpretations regarding stabilizing.

No SEC decision or action is anticipated for sometime.

In this issue of the NEWS there are printed the two principal reports delivered at the meeting, together with short reports on other action taken.