N-A-S-D News

VOLUME IX NUMBER 5
JUNE 1949

PUBLISHED BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC., WASHINGTON, D. C.

World Bank

New bill submitted to Congress substantially meets previous objections of NASD.

A new bill introduced in Congress during April which would authorize banks to deal in the bonds of the International Bank for Reconstruction and Development and would exempt its bonds from the 1933 and 1934 Securities Acts, "substantially meets the objections expressed by the Board in May, 1948 and since expressed informally by members of the Board and members of the Association."

This fact was reported to the Board of Governors. Also presented was a letter signed by John J. McCloy, president of the Bank, in which he confirmed these understandings.

In presenting both the text of the proposed bill, and a copy of a letter from Secretary Snyder, as Chairman of the National Advisory Council, relating to the Bank legislation, Mr. McCloy's letter said:

"You will note in particular that Section 1 of the proposed bill only authorizes national banks to deal in securities *issued* by the International Bank. Following our discussions with you, we deleted all reference in such section to securities *guaranteed* by the Bank and, accordingly, the proposed legislation would not authorize national banks to deal in securities so guaranteed.

"We are very appreciative of the fine cooperation you have extended to us on this matter."

On Monday, May 23, the Banking and Currency Committee of the House, held hearings on the merits of the Bill, and reported it out favorably to the House.

Black Heads World Bank

An investment banker, Eugene R. Black, has been elected President of

(Continued on page 12, column 1)

NASD MARK-UP POLICY

The following statement defining the scope and the limits of the NASD mark-up policy, which is sometimes referred to as the 5% philosophy, was prepared under the supervision of and by direction of the Board of Governors:

There appears to be an increasing misconception of what the "5% Policy or Philosophy" of the Board of Governors actually is. Put in another way, it is not clear in the minds of many of the members what this policy or philosophy is *not*.

The interpretation of Section 1 of Article III of the Rules of Fair Practice issued by the Board of Governors on October 25, 1943 states as follows:

> "'It shall be deemed conduct inconsistent with just and equitable principles of trade for a member to enter into any transaction with a customer in any security at any price not reasonably related to the current market price of the security.'"

Perhaps, to explain what the "5% Policy" is, is to state specifically what it is *not*.

First, the policy is not applicable to the sale of securities sold in a public offering under a prospectus in which underwriting concessions and dealers' discounts are set forth.

Second, the policy is not applicable to the sale of shares of investment trust companies sold by prospectus.

Third, the policy is not applicable to the sale by a dealer to a customer of securities held in inventory, except as hereafter set forth.

Fourth, the policy in view of the Herrick Waddell decision of the SEC, may not be applicable in the case of a transaction in which the member *fully* and *fairly* discloses the mark-up to his customer, whether the security be one sold out of inventory or other-

(Continued on page 2, column 1)

Mark-Up Policy

Board orders preparation of statement clarifying philosophy adopted in 1943.

The Board of Governors voted at the May meeting to have prepared and distributed a statement which would clarify and interpret the application of the NASD mark-up policy. The purpose of this action was to give closer definition to the policy and particularly to indicate both its scope and its limits.

This statement, as approved by the Board, is presented in full in an adjoining column. It is intended for the information of the members, as a guide to the Association's policy. The action of the Board followed a round-robin review at the Hot Springs meeting of the effectiveness and application of the mark-up policy. This was effected by calling upon the members of the Advisory Council who are District chairmen or vice-chairmen, to present the attitude of members in their district. Data and statistics were presented showing the mark-up practices being followed in the various districts. The consensus of both the Council members and the governors was that there is wide misunderstanding of both the purpose of the policy and its application.

The NASD policy on mark-ups, which governs the determination of a fair markup in individual transactions, resulted from a membership-wide questionnaire examination of mark-ups in retail or customer transactions in 1943. The resultant information, made known to members in October of that year, showed that 71 per cent of transactions computed were made at mark-ups of 5 per cent or less. This percentage of transactions under 5%, incidentally, has substantially increased in the intervening years.

The 5% policy since followed, was set forth in letters of the Board of

(Continued on page 12, column 3)

STATEMENT DEFINES NASD MARK-UP POLICY

wise. A reasonable relationship of price to customer to the current market is, of course, assumed.

To state the converse, the policy is applicable and has been applied by the Business Conduct Committees of the Association to the following types of transactions:

1) A transaction in which a member buys a security to fulfill a sale of the same security previously made to a customer. This transaction would include the so-called "riskless or simultaneous" transaction.

2) A transaction in which a dealer sells a security to a customer from inventory. In such case the policy is applicable and has bearing *only* as a guide, both to the dealer and to the Association's Business Conduct Committees, in determining how much of a mark-up above the then current market is justified. This, of course, has no bearing upon market appreciation or depreciation from initial cost to the dealer.

3) The purchase of a security by a dealer from a customer. In such case the policy is applicable again as a guide to the dealer and to the Business Conduct Committees of the Association, in determining the justification of price paid to a customer in relation to the then current market in that security.

4) A transaction in which the member acts as agent. In such case, the commission charged the customer must not be unfair and should not exceed the amount which, were the member to act as a principal, would be in accord with the standard set forth.

5) Transactions wherein a customer sells securities to, or through, a broker/dealer, the proceeds from which are utilized to pay for other securities sold to the customer by the broker/dealer. In such instances the policy has been considered, as a guide only, in determining the justification of the over all return accruing to the broker/dealer from such a combination of transactions. In other words, the policy is again a guide to Business Conduct Committees and members and would, when applied, encompass these related purchases and sales as being embraced in one transaction.

The policy was originally based upon statistics showing the practices of the overwhelming majority of dealers in the country; upon the doctrines expressed in many opinions by the SEC and the Courts that a dealer in securities, holding himself out to the public as such, represents that he will deal with individual members of the public and customers fairly; and further upon the doctrine that to buy from or sell securities to members of the general public at prices which do not bear a reasonable relationship to the current market price of such securities, may be an indication of unfair and perhaps fraudulent treatment.

The overwhelming majority of the members of the Association have indicated that their mark-up policies are within the 5% figure quoted as a guide and such mark-ups in their opinion result in prices to members of the general public which are reasonably related to the market.

Certain other factors which are to be considered by both dealers and Business Conduct Committees in connection with the application of the policy are (1) whether it is a low price stock or bond or high priced, (2) the amount of funds involved in the transaction, (3) whether the market is active or inactive, (4) whether more than the usual time and effort was involved in obtaining the security to consummate the sale, and (5) any extraordinary or unusual services rendered to the customer.

WHARTON SCHOOL LAUNCHES STUDY OF OVER-THE-COUNTER MARKET

The Wharton School of Finance and Commerce of the University of Pennsylvania is moving into action on its nation-wide survey of over-the-counter markets.

Started only five months ago, the Securities Research Unit of the Wharton School has completed plans for a series of studies dealing with separate but related aspects of the entire field of over-the-counter securities markets.

These studies will be released as they are completed. Pointed to the problems which currently face the industry, they promise to supply a much-needed factual basis for constructive action.

The entire project is under the direction of Willis Winn, Irwin Friend and G. Wright Hoffman. The plans which these men have made are an outgrowth of their research experience. In addition, they have had the benefit of extensive consultation with all types of firms—large and small, underwriting and trading, those who are members of exchanges and those who are not. They have received assurance of cooperation from the National Association of Securities Dealers.

As we see the picture, these men face two broad problems: (1) to frame their project in realistic factual terms which will yield results the industry can use; and (2) to obtain full cooperation of all types of houses in supplying necessary basic information.

Some Basic Questions

Those who know our industry best know that the time is long overdue for comprehensive information regarding its scope and services developed on a completely independent basis. Here are a few of the questions which the Wharton project will attempt to answer bearing on this need:

1. What is the extent of the over-the-counter markets?
2. How does the trading in over-the-counter markets compare with exchange markets?
3. To what extent do the various segments of the securities markets complement one another and to what extent do they conflict?
4. What are the operational costs of the over-the-counter securities business?
5. How important is the new issues business compared to the resale markets?
6. What proportion of over-the-counter trading is done in listed issues?
7. How important is the over-the-counter business in open-end

(Continued on page 10, column 2)

Executive Director's Report to the Board of Directors

Member meetings, rise in membership, progress of examination program, activities of staff in relations with government, New York transfer tax and proposed change in fiscal year discussed in summary presented by Wallace H. Fulton.

Following is the report of Wallace H. Fulton made to the Board of Governors on May 16 at the meeting at Hot Springs, Va.

Member Meetings

Since the last meeting of the Board, the Chairman and I have attended meetings in seventeen cities in ten districts, calling upon members individually, meeting with them in groups and conferring with the district officers and secretaries.

In each of the cities visited, many members have commented personally or by letter that such meetings result in a valuable exchange of information and serve to inculcate a better feeling on the part of the members. Many of the letters received emphasize the importance of the Association and what it means to the industry.

Membership

There has been a further increase in membership. Total membership on April 30, 1949 was 2,694, a net increase of 7 over membership at December 31, 1948. In the first four months of 1949, 49 firms were admitted to membership and 42 memberships terminated. As of April 30, last, there were pending 17 applications for membership and 10 terminations, so it is safe to say today the total membership figure now has gone over the 2,700 mark.

There were 26,915 individuals registered as "Registered Representatives" as of April 30, 1949, a net gain of 353 since January 1 of this year. In this time there have been 1,597 individuals so registered and the registration of 1,244 has been terminated. The figures indicate that 966 individuals have registered for the first time, during this four-month period.

5% Mark-Up Policy

In accordance with the instructions of the Board of Governors at the January meeting all new members are receiving in the "kit" sent them at the time of registration a memorandum reviewing the NASD mark-up policy. This review also was sent to all members admitted since January 1, 1948, likewise as instructed by the Board. In total some 250 reviews have been released.

Examination Program

The Board in January authorized continuance of the Association's examination program. No comprehensive report can be made on the basis of incomplete information developed thus far, but it is hoped that by the Fall meeting statistics will be sufficiently advanced to provide a more conclusive study of practices in the business. There are presented herewith the highlights of examination activity in several districts in which the program has been actively progressing:

District No. 1—It has been customary to conduct annual examinations of all members in this District. Continuance of this policy for 1949 is contemplated. One complaint has been filed and is pending, involving the misuse of customers' funds by a salesman of one of our members.

District No. 4—Arrangements have been made to have all of the members in this District examined later this year.

District No. 5—One complaint has been filed and another is contemplated. The first one was based on a reference received from the SEC, and the other on a continuance of improper practices which were noted during the course of an examination made in 1947, at which time all of the members in that District were examined. The Committee may, next fall, request that examinations be made of firms who have been admitted to membership since 1947.

District No. 6—The yearly examination of all members in District No. 6 is now in progress. No complaints have been filed, and none are pending.

District No. 7—It is contemplated by the District Committee that one half of the members in the St. Louis area will be examined this year and the balance in 1950.

District No. 8—Special situations arising in this District have curtailed, somewhat, the usual number of examinations made. Twenty members have been examined so far this year, and as a result formal disciplinary action has been filed in three cases, and information is being assembled in another one for Committee action. In addition to the formal complaints, letters of criticism have been issued and conferences held relating to sales of investment trust shares, over-trading, mark-ups and the handling of discretionary accounts.

District No. 9—District No. 9 for the first time is operating with a full-time Secretary, and I am pleased to report that his operations and assistance have been well received. Up until April 12 there were 20 examinations. It is hoped that all members within the District will be covered before the year-end.

District No. 10—The activity of the Committee and Secretary in this District has been confined largely, this year, to Legislative matters in the State of Ohio, accruing to the benefit of our members there. In addition, however, nine examinations have been made and 15 firms visited but not examined. Three complaints are pending. It is the desire of the Committee that the Secretary complete 45 examinations in 1949, which will cover about 1/3 of the members in that District.

District No. 11—One formal and one informal complaint are shortly to be considered by the Committee. Three examinations have been made and it is anticipated that at least half of the membership will be visited before the end of the year.

District No. 13—The examining staff in this District was implemented late last year, and for the first four months of 1949, 138 examinations had been completed, 24 of which were conducted by examiners assigned from the Executive Office. Two complaints have been filed, and in 33 instances letters were sent or interviews held. In addition, 11 reports of examinations are now before the Committee and 7 interviews are scheduled with members to discuss the results of the examinations.

Two unusual situations arose during the period which have occupied considerable time of the staff. One covered the insolvent condition of a member firm, and the other a conspiracy to defraud an investment trust.

District No. 14—Arrangements have been completed whereby examiners from the Executive Office will conduct examinations in this District sometime during the month of June.

For the country as a whole 9 complaints have been filed this year. 8 were carried over from the previous year. Four complaints have been closed, leaving 13 pending as of this date.

As a general observation I would like to state that the Districts were advised, subsequent to the January meeting of the Board, that during the course of examinations particular attention should be given to the manner in which members handle the safekeeping of customers securities.

Complete replies from all of the Districts pertaining to this matter have not been received, but the general comment would indicate that customers securities are being properly handled and segregated.

Legislation

The Chairman of the Legislative Advisory Committee will report to you later on Securities Acts negotiations but I would like to add that the staff of the Association together with representatives of the I.B.A. have met

(Continued on next page)

Executive Director's Report to the Board of Directors

Member meetings, rise in membership, progress of examination program, activities of staff in relations with government, New York transfer tax and proposed change in fiscal year discussed in summary presented by Wallace H. Fulton.

(Continued from preceding page)

frequently with Commissioner Robert K. McConnaughey in an attempt to find a better solution to the problems than those previously proposed. It is hoped that if agreement can be reached a bill will be introduced in Congress even though it may be late in the session.

Securities Exchange Act of 1934

The Board will recall that in June 1946 the SEC submitted a report to the Congress which contained recommendations for the amendment of Sections 12, 13, 14 and 16 of the Securities Exchange Act of 1934. This report has been labeled as a proposal to bring about universal registration with the Commission and to require certain reporting by corporations and officers, directors, and controlling persons, and would be applicable to companies having more than $3,000,000 in assets and over 300 stockholders.

This legislation was not introduced into the 80th Congress and has not so far been introduced into the 81st. Recently Mr. Louis Loss, Associate General Counsel for the Commission, in a speech in New York to the Young Republican Club raised this proposal. It appears that the Commission is, at the present time, making some movements in the direction of again requesting Congress to adopt these or comparable amendments to the '34 Act. It is not believed, however, that any action will be taken at this present session of the Congress.

Fiscal Year Change

Discussions have been had from time to time concerning the practicality of changing the dates of the fiscal year of the Association. The matter has been gone over with our auditors and they see no objection to such a change. However, any changes of this nature would necessitate certain amendments to the By-Laws. Our study as to just how to bring about the proposed change has not been completed but it is our intention to bring this matter before the Board, possibly by mail, after all the information is in hand.

Group Insurance

On the first of May, last, the Association's Group Insurance Plan reached its first birthday, and I would like to present a few statistics relating to the activity of the plan in its first year and also the status at the end of that period. 602 firms have entered the plan. For various reasons 30 firms have been terminated so that at the end of April 572 member firms were participating. There were numerous reasons for firms terminating: in two instances it was learned that the firm was not complying with policy regulations; 7 firms were withdrawn because of the termination of their NASD membership; death of sole proprietors accounted for 7 terminations; non-payment of premium was responsible for 5 more; 8 requested withdrawal and one was able to take advantage of a waiver of premium for one year under the terms of the policy.

As to individual lives insured, 3,625 became eligible under original participation. During the year firms in the group have added 236 employees and have terminated 373 so that as of April 30, policies are outstanding covering the lives of 3,488 persons.

$19,780,000 insurance was originally written but adjustments during the first year have resulted in a total of $19,338,500 being in effect at the end of April.

Premiums paid for the first year totaled $241,118.15, while, through March 31, death claims paid and those pending amounted to $170,500. In addition, $44,309 has been set aside as a reserve for unreported deaths or waiver claims.

New York State Transfer Tax

On March 17, 1949 an amendment to the New York State Transfer Tax law was adopted by the Legislature and signed by the Governor. This amendment greatly cuts down the present area of exemption to the out-of-state dealers in obtaining the transfer of securities for their customers. The amendment becomes operative on July 1, 1949 and it is estimated that, as a result thereof, additional taxes in the approximate amount of $2,000,000 will accrue to the State of New York, a substantial part of which will be paid by our members outside of New York. The whole matter is now under study with the hope that something may be worked out to counteract the effect of the amendment.

On our recent trip the Chairman and I had numerous talks with members about this matter. The opinion was expressed, not infrequently, that an effective method of eliminating, to some extent, the impact of the New York tax would be to initiate a movement to have corporations set up or utilize transfer agents outside of the State of New York and the other five transfer tax states.

Joint Committee on Education

The Board is familiar with the excellent progress made by the Joint Committee on Education which is supported by the five top organizations in the securities business including our Association. Fellowships have been awarded to faculty members of American universities enabling these men to acquire, in New York, first hand knowledge of the workings of the financial industry.

The fellowships are supported by contributions by the five organizations and our Association's support amounted to $1,000, which amount was authorized by the Executive and Finance Committees.

The fellowships provide for a preliminary three week period in New York, during which time each fellowship holder is paid $100 a week in addition to traveling expenses. The three week period may be extended if any of the recipients care to pursue some subject in greater detail for the purpose of either preparing a course or writing an article.

Numerous requests were received from all parts of the country following the initial announcement of the fellowships for 1949. The Committee in awarding the fellowships adhered to a policy that the ten fellowships should be divided geographically across the country; that local officers of the five supporting organizations should be asked to help in selecting the candidates and in representing the Committee with the universities in the various cities; and that the calibre of the teachers and the number and type of the students they are teaching should be given primary consideration. Amyas Ames, Chairman of the

(Continued on page 12, column 3)

Amendments Proposed to By-Laws

Board of Governors votes to submit to District Committees for reaction suggested changes in Articles I and XV. Reactions asked prior to action; ordered drawn in January for consideration at May meeting.

Five amendments proposed to two articles of the Association's by-laws were considered by the Board of Governors in their May meeting and it was voted to submit these suggested changes to the District Committees prior to final action. These amendments were directed to the tightening up of the section covering the approval and required conduct of registered representatives. The advisability of such amendments was first discussed in the January meeting and instructions were given to the Executive Director to prepare drafts of the amendments for submission at the May meeting.

Following is the complete text of the five proposed amendments, together with a short statement of purpose in each instance:

Proposed New Section 1 of Article XV of the By-Laws

Section 1. The term "Registered Representative" means every officer and every partner of a member; and every employee or representative of a member who is 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, or one to whom has been delegated general supervision over foreign business. The term "registered representative" does not apply to (a) employees who are engaged solely in the solicitation or handling of business in, or the sale of, exempted securities (as defined in Section 3(a)(12) of the Act), (b) employees who are engaged solely in the solicitation or handling of business in, or the sale of, cotton, grain, or other commodities, provided their duties in such respect require their registration with a recognized national cotton or commodities exchange, or (c) employees who are engaged solely in the solicitation or handling of business in, or the sale of, securities on a national securities exchange, provided their duties in such respect require their registration with a national securities exchange.

(The purpose of this proposal is to make it clear that all officers and partners of members shall be registered.)

Proposed New Section 4 of Article XV

Registration as a registered representative of a member of the Corporation may be voluntarily terminated at any time but only by formal resignation in writing and addressed to the Board of Governors. The Board of Governors shall immediately notify the member employing such registered representative. Such resignation shall not take effect until 15 days after receipt by the Board of Governors of such written resignation or so long as any complaint or action is pending against a member and to which complaint or action such registered representative of the member is also a respondent. The Board of Governors, however, may in its discretion declare the resignation of a registered representative effective at any time.

(The purpose of this proposal is to provide a period after notice of voluntary termination within which the Association's Business Conduct Committees may, if it appears desirable, audit the accounts of the representative. This is comparable to the provision with respect to resignation from the Association by a member.)

Proposed New Section 5 of Article XV of the By-Laws

No Registered Representative of a member of the Corporation may transfer his registration or any right arising therefrom. Promptly upon the termination of the employment of a Registered Representative by a member, such member shall give written notice to the Board of Governors of the termination of such employment. Termination of registration of such Registered Representative shall not take effect until 15 days after receipt thereof by the Board of Governors nor so long as any complaint or action is pending against a member and to which complaint or action such registered representative of the member is also a respondent.

(This is a companion proposal to proposed new section 4 of Article XV and is to cover termination by a member.)

Proposed New Section 6 of Article XV of the By-Laws

Any member, submitting a notice of termination of employment of a registered representative to the Board of Governors, shall (subject to such contrary advice as the member may receive from his own counsel), include in such notice any information available to the member of conduct outside the scope of authority of such Registered Representative, which, in the case of a member would appear to constitute a violation or breach of the Association's By-Laws and Rules of Fair Practice by the registered representative, which provided the basis for such termination.

(The purpose of this section is to require a member to advise the Association of termination resulting from improper conduct on the part of the registered representative within such time as to permit a Business Conduct Committee to take appropriate action, if desirable.)

Proposed New Section 13(d) of Article I of the By-Laws

Present section 13(d) to be re-numbered 13(e)

Present Section 13(d) of Article I of the By-Laws is to be redesignated as Section 13(e).

Proposed new Section 13(d) to read as follows:

If a member becomes subject to an order of suspension or expulsion from any national securities exchange or securities association (whether registered or affiliated) for violation of a rule which prohibits any act or transaction constituting conduct inconsistent with just and equitable principles of trade, or requires any act, the omission of which constitutes conduct inconsistent with just and equitable principles of trade, the membership of such member shall be summarily cancelled. Notice of such cancellation of membership shall be sent forthwith to the membership.

(The purpose of this proposal is to make it clear that a membership is au-

(Continued on page 10, column 3)

REPORT OF LEGISLATIVE ADVISORY COMMITTEE

Following is the text, substantially complete, of the report of the Legislative Advisory Committee, which was submitted to the Board of Governors on May 17 by Howard Buhse, of Hornblower & Weeks, Chicago, who is Chairman of the Committee:

"The Legislative Advisory Committee is currently operating in three sections, the work of each section being carried on by a subcommittee. The first of these divisions is the one which deals with State Blue Sky Laws and other State Laws which may affect our business.

"In this category there has been activity in three districts. In the 5th and 7th districts the membership was much alarmed over House Bill No. 114 which was introduced in the Missouri Legislature. Its purpose was to amend the present law by extending the intangible personal property tax to dividends on corporate stocks and to increase the rate of taxation from 4% to 8%. Howard Fitch, Chairman of District No. 5 and A.V.L. Brokaw, Chairman of District No. 7, explained the situation to all Missouri members in letters written early in March and called upon them to use their influence against the bill with their local representatives in the Senate and House. This joint action helped to defeat the measure.

"In District No. 8 Paul Alm, Chairman of the Legislative Committee, reports that all segments of the industry are now behind a new Blue Sky Law sponsored by the Bar Association. This is the first time that various Illinois elements have been able to get together in the last few years. It seems apparent that Mr. Alm's personal ability, coupled with the prestige of the Association, was largely responsible in bringing this about. The main things that the new bill seeks to accomplish are registration by notification and modifying some of the restrictions in trading in outstanding securities. The bill is not all that everyone wanted and certain amendments may be proposed in the Legislature, but the fact that the I.B.A., Illinois Securities Dealers Association, N.A.S.D. and the Bar Association have all been able to get together makes passage of the bill seem probable.

"In District No. 10 Ewing T. Boles, Chairman of the Legislative Committee and Joseph Van Heyde, Secretary of the District, have provided splendid leadership in their efforts to get House Bill No. 633 passed by the Ohio Legislature. The bill has passed the House and is now awaiting action by the Senate. The purpose of this bill is to equalize the tax between the un-incorporated and incorporated investment trusts. In Ohio the pure trust is exempt from the Capital Gains Tax, but the incorporated investment company is taxed on both Capital Gains and Income. This is an awkward situation which the final passage of the bill will correct.

"The second division of activity of the Legislative Committee is the Tax Committee. In discussing the matter with Chairman Evans it was decided that the Tax Committee should be a sub-committee of the Legislative Advisory Committee rather than a separate unit. Because much of the work of this sub-committee must be carried on in Washington, our Executive Director was placed at the head of this activity. He will be our representative on the joint committee of the various organizations which have appropriated funds for this work. Because this joint committee may meet in New York at various times to discuss matters of policy, Herbert Boynton was appointed as alternate. We are grateful to Herbert Boynton for accepting this appointment, as we know that the background of experience which he will bring to the job is invaluable.

"At a meeting in New York on February 17th, which was attended by Chairman Evans, Wallace Fulton, Ben Buttenwieser, Herbert Boynton and the writer, Boynton reported on his meeting with Emil Schram at which an effort was made to get an industry-wide program going on Federal Taxation.

"On April 13th, Chairman Evans called from San Francisco to state that Senate Bill No. 1070 was coming up for discussion before one of the Committees of the House of Representatives. This is the bill which deals with the issuance of bonds under the Housing Authority Act and which would permit banks to deal in them the same as in Governments. Inasmuch as the N.A.S.D. Governors had expressed themselves as being opposed to banks dealing in these bonds, Chairman Evans stated that he wanted a representative of the N.A.S.D. to appear before the Committee and oppose that aspect of the legislation. It was decided to appoint William Alden of O'Neal, Alden & Co. of Louisville, Ky., to be the N.A.S.D. representative, appearing before the House Committee.

"The third group of activities carried on by the Legislative Advisory Committee deals with efforts to work out with the SEC amendments to Section 5 of the Securities Act. The status of these activities which have been so ably carried on the last couple of years mainly by Ben Buttenwieser, Wallace Fulton and John Lindsey, is as follows:

"Discussions since the January Board meeting have been had with Commissioner McConnaughey in an endeavor to find another solution acceptable to the Commission and its staff but which does not have as many factors objectional to the business as were set forth in the original staff proposal with which the Board is familiar. The proposals which have been developed provide in substance that under certain conditions a member may, so long as a customer is fully informed of the availability of a prospectus in writing, sell securities to a customer on the effective date without any out-clause and without the further delivery of a prospectus with a confirmation of the transaction.

"Certain situations develop in which an outclause might be applicable if a sale involves a request by a customer for a prospectus and as at the time of the sale the customer has not received the prospectus. Under such circumstances a limited outclause arises. The period within which an out-clause could be exercised is limited to the period of distribution of the securities and until the termination of the syndicate. The out-clause requirement would, however, apply to all syndicate securities whenever sold. Prospectus requirements under other circumstances would be limited to three months after the effective date.

"It is hoped, even though it is late in session, that if an agreement can be reached, a bill can be introduced in this session of Congress and that some means of expediting the adoption thereof can be found."

NATIONAL UNIFORM PRACTICE COMMITTEE REPORT

Complete text as approved by Governors

The Governors unanimously approved a report submitted by Harold C. Patterson, chairman of the Committee, which follows:

The Uniform Practice Committee has been considering a request from Josephthal & Company and Goldman, Sachs & Company to the effect that N.A.S.D. adopt a rule requiring all trading in "when issued" and "when distributed" securities by members to be under a contract expressly stating that each such contract is made subject to the rules of the N.A.S.D. They have submitted legends which they intend to include in all contracts with members and with non-member customers. They are as follows:

Contracts with Members

"Payable and deliverable when, as and if issued, and subject to the Certificate of Incorporation, By-Laws, Rules of Fair Practice and Uniform Practice Code of the National Association of Securities Dealers, Inc., and all Rulings by the said Association or any Committee thereof, in all respects; including, but not limited to, the right of either party to call for deposits; the rights and authority of the party not in default, upon failure of the other party to comply with such call or upon failure of the other party to complete the contract in accordance with its terms, to close the contract; and any question concerning the performance or cancellation of this contract."

Contracts with Non-Member Customers

"Any question concerning the performance or cancellation of this contract shall be subject to the Certificate of Incorporation, By-Laws, Rules of Fair Practice and Uniform Practice Code of the National Association of Securities Dealers, Inc. and all rulings by the said Association or any Committee thereof."

This request was made because of the decision handed down by Judge Steuer of the Supreme Court in New York on November 23, 1948, as the result of a suit instituted by a member of the public against two members of our Association. In the suit the plaintiff pleaded for an order which would require the defendant to deliver $10,000 Chicago, Milwaukee, St. Paul and Pacific Railroad Co. 4½% bonds due 2019 in settlement of "when-issued" contracts calling for 10 bonds of the same company due 2014. The Uniform Practice Committee had announced in 1944 that such when issued contracts could not be completed. In his opinion the Judge stated that the suit proposed two questions, one of which asked whether the ruling of the N.A.S.D. was binding on a customer and, if not, was the contract capable of performance. He answered the first question as follows:

"A person who instructs a broker to carry out a certain transaction which would necessarily, or even ordinarily, involve its being carried out on a certain exchange, is bound by the rules of that exchange (Ford v. Snook, 205 App. Div., 194, aff'd 240 N. Y., 624). But we do not have that situation here. The N.A.S.D. was not an exchange. Plaintiff was not even aware of its existence, and it is not so widely known that she could be held chargeable with such knowledge. There is nothing to show that she contemplated or even ought, in the usual course, to have suspected that her order would entail compliance with the rules of any such body. As being chargeable with such knowledge is the basis of binding a customer to the rules of an exchange, the absolute lack of it prevents any such consequence.

"But it is claimed that this result was reached by agreement of the parties. The confirmation slip sent the plaintiff by Josephthal contained the legend: 'Transactions in unlisted securities are subject to the usages and customs among dealers in such securities.' It may be safely concluded from the circumstances that this legend was sufficiently brought to the attention of the plaintiff to constitute a term of her agreement with her broker. The 'usage and custom' claimed by the defendants is that all transactions were subject to the regulation of the N.A.S.D. This is neither a usage nor a custom. It is the result of an agreement among certain of those brokers, entered into for their own protection and that of the public. No practice which is the result of a course of dealing or conduct is subject to be enforced by the rules of a supervisory body. As a matter of fact the legend could not have meant exactly what defendants contend because when the legend was composed and for some time thereafter the N.A.S.D. had promulgated no rules at all. It follows that plaintiff is not bound by the ruling of the N.A.S.D. and if the bonds bought have been issued, she is entitled to them or damages for their non-delivery."

As to the second question the Court found, however, that the member was not required to deliver the bonds which were demanded because they were not those mentioned in the contract.

The Committee feels that there is much merit to the suggestion of the members and perhaps this would be the proper time to amend the Uniform Practice Code requiring that certain specific information be included in all "when issued" contracts made by members. The situation on when as and if issued contracts was completely explored by the Uniform Practice Committee in 1945, the result of which was a memorandum which is now included in the N.A.S.D. Manual. This memorandum emphasizes the need for members to be fully informed on this subject and urges that members study the principles and procedures of "when issued" contracts. Included in this memorandum are sample "when issued" contracts for use by the members covering transactions between members and between members and non-member broker/dealers and between the members and their customers. There is no compulsion to use these legends or forms as the Committee did not feel at the time the memorandum was prepared that it had the authority to require any specific language to be used by members in their contracts.

At this time the Committee would like to have an expression of opinion from the Board on the principle of requiring members to include certain provisions in contracts with members and non-member broker/dealers and customers or requiring the use of a specific legend in such contracts, which would have the effect of subjecting these contracts to the provisions of the Uniform Practice Code and rulings of the Committee. If the Board agrees with this suggestion it is the intention of the Committee to present to the Board either by mail or at the next meeting specific proposals in answer to this problem.

NASD and the Housing Bonds

Association joins in opposing before Congress proposal for Banks to deal in local Housing Authority bonds; two members act as spokesmen.

The National Association of Securities Dealers, Inc., took an active part in opposing the proposal that banks be authorized to deal in bonds of local housing authorities, although the bill was later favorably reported by the House and Senate committees, with the amendment providing for this participation undisturbed.

Five investment dealers spoke in opposition to bank participation in housing authority financing before the House Banking and Currency Committee. Two of these—William Alden of O'Neal, Alden & Co., Louisville and Samuel K. Cunningham of S. K. Cunningham & Co., Inc., Pittsburgh—were spokesmen for the Association. Others who appeared were Thomas Graham, Bankers Bond Co., Inc., Louisville, Robert T. Veit, Shields & Co., New York and George H. Stubbs, Jr. of Stubbs, Smith & Lombardo, Inc., Birmingham.

Mr. Alden's statement to the House committee, which states the case presented against bank participation, follows in full:

"My name is William Alden. I am a member of the investment firm of O'Neal, Alden & Co. of Louisville, Kentucky, and I am representing the National Association of Securities Dealers.

"Section 502 of H. R. 4009 is an amendment to the National Banking Act which would permit commercial banks to underwrite and deal in the bonds of local Housing Authorities.

"On March 21, 1949 the Executive Committee of the National Association of Securities Dealers expressed its opposition to the above mentioned amendment and recommended that the Board of Governors authorize active opposition on the part of the Association before the appropriate Committees of Congress. On March 26th the Board of Governors approved and adopted the recommendation of the Executive Committee.

"We are opposed to this amendment and know that it is highly controversial. It should not be included in a housing bill. If this amendment is to be considered it should be presented as separate legislation, amending Section 5136 of the Revised Statutes. Congressional policy since 1933 has been to enforce the segregation of commercial banking from underwriting functions. This amendment has twice been removed from a housing bill by the Senate Banking and Currency Committee and once by the Senate on the ground that it "modifies the original provisions of the Banking Act which attempted to take National banks out of the general business of underwriting securities".

"One of the principal reasons for the segregation of investment and commercial banking was to put an end to the possibility of banks acting in the dual capacity of bond dealer and investor for trust funds. It is our understanding that the statement which the Banks filed with this Committee states that while they might be prevented from selling housing bonds to their trust funds while engaged in distribution, the bonds could be sold to trust funds after the syndicate operation is terminated. The practical effect of such a course would be to put the trust in the position of paying more than the issue price if the flotation were successful or of supporting the market for unsuccessful financing.

"The ability of the investment bankers to underwrite and distribute the proposed financing has been questioned. There are 2698 underwriting and distributing dealers registered with the N.A.S.D. This group employs thousands of salesmen and distributes securities throughout the entire country. These investment dealers underwrote and distributed in 1948 some 9 billion of corporate and long term State and Municipal bonds (6½ billion corporate and 2½ billion State and Municipal). During this period we estimate the State and Municipal long term underwriting of the commercial banks to have been about ½ billion. Only a few of the commercial banks of the country engage in underwriting and they have very few salesmen. In addition, their participation in an underwriting would bar purchases for their own trust accounts during the life of the syndicate, and these accounts have been the largest buyers of Housing Authority bonds. For their own account (for portfolio) their interest would be in short maturities while the major portion of the Housing issues will be long term. They are not essential to the program. Investment dealers can effectively underwrite and distribute the securities contemplated under this Bill."

Mr. Graham told the Committee that this amendment represented the "opening wedge for five powerful Wall Street banks and twenty others including the Bank of America to get back into the securities business.". He declared that the banks have enough business and are making enough profit "without continually trying to move into other peoples' fields." He said that if the banks get into the housing financing the small dealers, for whom he spoke, might just as well fold up, adding "we'll get very little of the housing notes and then the banks will get into the general bond business and hog it all."

Mr. Veit said that banks act in a triple capacity because they buy bonds for their own account, buy for their trust accounts and then lend to dealers to carry the bonds they buy, and they should be content to confine their activities to pure banking. Mr. Cunningham characterized this proposed amendment as a "step backward in progressive federal legislation" and said that the abuses of the '20's were due to the fact that the banks more and more went into the securities distribution business, and the subsequent crash resulted in Congress requiring that the banks retire from that field. "To authorize them now to deal in housing bonds would be a step toward their again returning to all those abuses."

INVESTMENT TRUST MEMBERS

Clement D. Evans, chairman of the National Association of Securities Dealers, Inc. has appointed two additional members to the Investment Trust Underwriters Committee, in order to broaden its representation of the industry.

The new committee members are Walter L. Morgan, president, Wellington Fund, Philadelphia and Herbert R. Anderson, executive vice president, Distributors Group, Inc., New York. Other members of the committee, previously announced, are:

Edward B. Conway, chairman, F. Eberstadt & Co., Inc., New York
Harold W. Cameron, Pacific Northwest Company, Seattle, Wash.
Chas. F. Eaton, Jr., Eaton & Howard, Inc., Boston, Mass.
Woodford A. Matlock, Broad Street Sales Corp., New York
George S. McEwan, Paul H. Davis & Co., Chicago
Harry I. Prankard, Lord, Abbett & Co., New York
Henry T. Vance, Vance, Sanders & Company, Boston.

Court Decision

Ruling made on appeal from Securities and Exchange Commission revocation of registration.

The United States Court of Appeals for the District of Columbia in a decision dated May 9, 1949, No. 9853 involving an appeal from a decision of the Securities and Exchange Commission made statements in its opinion which are of interest to all members of the Association.

This appeal was from a decision of the SEC revoking the registration as a broker-dealer of Arleen W. Hughes, doing business as E. W. Hughes and Company.

It appears that Mrs. Hughes was registered both as a broker-dealer and as an investment adviser. The firm entered into a form of agreement with about 175 clients in connection with investment advisory services. This agreement provided in part that the firm would deal as principal in every transaction except as otherwise agreed and set forth a schedule of rates and charges to be paid by the client to the firm.

The Commission in its order dated February 18, 1949 had found that Hughes & Company was acting as a fiduciary and as such it was under a duty to make disclosure of any adverse interest to clients, that no such full disclosure was made, and that in the absence of such full disclosure its clients could not be said to have given their "informed consent" to the firm taking a position adverse to their interests. Hughes and Company filled the clients' orders for the purchase of securities either by supplying the securities from inventory or by purchasing the securities for the firm's account and then subsequently selling as principal to the client.

In its decision the Court made statements of interest to brokers and dealers who may also be registered as investment advisers as follows:

"The acts of petitioner which constitute violations of the antifraud sections of statutes and of regulations thereunder are acts of omission in that petitioner failed to fully disclose the nature and extent of her adverse interest. The Commission found that petitioner failed to disclose to her clients (1) the best price at which the securities could be purchased for the clients in the open market in the exercise of due diligence and (2) the cost to petitioner of the securities sold by her to her clients. In no less than three places in the * * * quoted statutes and regulations we find that, 'any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading,' is expressly made unlawful. These quoted words as they appear in the statute can only mean that Congress forbid not only the telling of purposeful falsity but also the telling of half-truths and the failure to tell the 'whole truth.' These statutory words were obviously designed to protect the investing public as a whole whether the individual investors be suspicious or unsuspecting. The best price currently obtainable in the open market and the cost to registrant are both material facts within the meaning of the above-quoted language and they are both factors without which informed consent to a fiduciary's acting in a dual and conflicting role is impossible.

"Petitioner strongly urges that she has fully and completely fulfilled any disclosure requirement by the insertion in the Memorandum of Agreement (entered into with each of her clients since 1943) of the clause that the 'Company, when acting as investment adviser, shall act as Principal in every such transaction, except as otherwise agreed,' and that, in any event, petitioner has always stood ready to provide any further information which her clients desired. The clause inserted in the Memorandum of Agreement does not even approach the minimum disclosure requirements. In the first place, it is certainly doubtful whether petitioner's clients either knew of or understood the legal effect of this technical language inserted in fine print in the printed document which each client signed when he or she first became a client of petitioner. Secondly, even assuming, as urged by *amici*, that *all* of petitioner's clients are persons of more than average experience and intelligence with regard to the conceded intricacies of securities transactions, an assumption which is at best dubious in view of the present record, their full knowledge that petitioner either sold them securities she then owned or bought securities in her own name and then resold them to the clients cannot be considered sufficient knowledge to enable the clients to give their informed consent. * * * It is not enough that one who acts as an admitted fiduciary proclaim that he or she stands ever ready to divulge material facts to the ones whose interests she is being paid to protect. Some knowledge is prerequisite to intelligent questioning. This is particularly true in the securities field. Readiness and willingness to disclose are not equivalent to disclosure."

Prompt Reports

Members asked to notify of any irregularities or suspected fraud.

Members are urged to report to the Executive Office for investigation any irregularities in dealings with other members. In the light of two recent instances it is believed that losses may be avoided if the Association headquarters is notified immediately of any suspected fraud or delay in payments that come to the knowledge of NASD members in their dealings with other members.

Two instances in support of this viewpoint were reported to the Board of Governors at the Hot Springs meeting in May.

In the first instance, an examination was conducted, following reports received from other members, of certain inproprieties on the part of a member. The examination disclosed conversion of customers' securities and funds obtained through false and misleading statements. Such operations apparently commenced about March, 1948, and embraced the issuance of checks without sufficient funds on deposit, and the financial inability to accept drafts drawn on this member by other dealers.

Subsequent developments disclosed that at least four members were aware, early in the year, of the situation but the Association was not informed of the matter until October. NASD findings were promptly reported to the SEC resulting in revocation of the broker's registration in April, 1949.

In the second instance, another member, in ordering the transfer of certain investment trust shares into customers' names issued bad checks to three different distributors. The member has since disappeared, but it appears that this continuing fraud had been known to some members for sometime before the Association was advised.

Prompt reporting for investigation will save other members similar losses.

Philadelphia Case

Lower court rules dividends, interest, capital gains not subject to city income tax. NASD participates.

A proposed City of Philadelphia tax on income from securities, which the NASD joined in opposing, has received an adverse ruling in the lower court.

The proposed tax was believed to have serious consequences, and if sustained, might have an adverse effect upon the securities business in Philadelphia.

The City had imposed an income tax on income received from securities. The City solicitor had ruled that customers with more than a few transactions in securities were in the securities business, and therefore subject to income tax on the transactions. In September, last, the Board of Governors authorized the retention of counsel to join in opposing the proposed tax. NASD joined with the Investment Bankers Association and the Philadelphia Stock Exchange in the presentation of a brief and appearance in court as *amicus curiae*, in a test case involving one Thomas Murray who had had only fifteen transactions over a period of a year.

Early in May the Philadelphia court ruled that dividends and interest as well as capital gains on the sale of securities are not subject to the Philadelphia City income tax. Whether the city will appeal had not been made known at press time.

20 GOVERNORS PRESENT

There were twenty members of the Board of Governors present for the spring meeting held at The Homestead, Hot Springs, Va. These were:

T. Jerrold Bryce, Clark, Dodge & Co., New York; Howard E. Buhse, Hornblower & Weeks, Chicago; Philip L. Carret, Gammack & Co., New York; Warren H. Crowell, Crowell, Weeden & Co., Los Angeles; Russell I. Cunningham, Cunningham & Co., Cleveland; Clement A. Evans, Clement A. Evans & Company, Inc., Atlanta;

Waldo Hemphill, Waldo Hemphill & Co., Seattle; Wilbur G. Hoye, Chas. W. Scranton & Co., New Haven; Francis Kernan, White, Weld & Co., New York; James J. Lee, Lee Higgin-

(Continued on page 12, column 2)

WHARTON SCHOOL LAUNCHES OVER-THE-COUNTER MARKETS STUDY

Results to be Based on Comprehensive Field Data

(Continued from page 2, column 3)

trusts? in industrial issues? in utilities? in bank and insurance shares?

8. What is the extent of positioning? its relation to volume of trading?

9. What is the composition of inventory holdings? How is this related to the capital of firms?

10. To what extent do houses differ in the purchase and sale of securities on an agency basis vs. on a principal basis?

11. What proportion of the business is inter-dealer trading? What proportion with financial institutions? with others?

12. What is the magnitude of different market segments as measured by the number of customers?

13. To what extent do price spreads and gross profit margins measure differences in: (a) character of issues? (b) size and distribution of issues? (c) location of issuers? (d) trading interest? (e) size and type of house specializing in selected issues? (f) promotional work involved? (g) other factors?

14. What are the features of the over-the-counter securities market necessary to define its essential field of operation?

15. To what extent do present laws and regulations of the securities markets provide a satisfactory framework for the pricing and merchandising of securities?

16. What important changes are taking place in the fundamental character of the over-the-counter securities market?

Independent Judgment Sought

These questions are not easily answered; and whoever attempts to answer them will encounter a measure of adverse criticism. There is, however, a great advantage in having the work done by an institution which has no particular point of view to develop. The findings will be objective and accepted on their merits.

As such, the results will certainly be valuable in stating the position which the industry occupies in our present-day financial and industrial life. They will be valuable in legislative hearings, in educational programs, in advertising and in sales promotion.

While the results will be published and available to everyone, it goes without saying that the information supplied to the Securities Research Unit will be handled in strict confidence and the tabulations released will in no way disclose the identity or permit identification of any individual firm.

Cooperation Needed

The Securities Research Unit is putting the finishing touches on a group of questions which it plans to send out this summer to all types of firms. These questions have been pre-tested and are all capable of direct quantitative answers.

It should be stated, however, that they cannot be answered "off the cuff". If they could the results of this entire project would end at a mixed opinion level and would have us no farther along than we are now.

The information sought will need to be carefully tabulated day-by-day over a period of time and the results set forth in forms supplied. We anticipate that many firms will find the results of their own tabulation of value to them. We are confident that all our members will be willing to contribute the necessary time to supply the information needed.

Among those to whom this project has already been explained an enthusiastic response has been received. The research staff (address: Securities Research Unit, Wharton School, University of Pennsylvania, Philadelphia 4, Pa.) will be glad to receive comment or inquiry if you care to write them. This is our chance. Let's get back of this project with full cooperation.

BY-LAWS AMENDMENTS

(Continued from page 5, column 3)

tomatically cancelled in the event the member is subject to an order of suspension or expulsion from an exchange without further proceedings by the Association. Such cancellation would not be a bar to re-admission to membership when the order expires and is not a disciplinary matter.

This provision is necessary to carry out the provisions of Section 2 of Article I of the By-Laws.)

Regulation T

Adjustments in provisions result from representations by Executive Office. Reserve Board cautions observance.

As a result of representations by the NASD the Federal Reserve Board has announced important adjustments in Regulation T regarding the 7-day period within which either payment from customers must be made to a broker-dealer or the trade cancelled, in the absence of an extension by an appropriate committee.

At the same time the Reserve Board cautioned the industry, and requested the NASD Executive Office to so advise members, that the change was not made for the benefit of customers or as a means of delaying payment for securities. The Board emphasized that prompt payment still is required under the cash account provisions. The primary purpose was to obviate the need for extensions and to improve relations between the broker-dealer and his customers.

Under the Board's order, issued April 20, 1949, Section 4, (c) (7) of Regulation T was amended to provide that the seven-day period referred to means seven full business days, not calendar days. This action should prove particularly helpful to brokers and dealers distant from financial centers, as it will serve to offset mail delays or the intervention of long weekends or holidays. The provision with respect to justifiable extension is still in effect, also.

The NASD Executive Office has repeatedly urged such change in Regulation T and in support of its position presented, a few months ago, additional statistics based upon an examination of extensions granted by District Committees during the preceding twelve months. Concurrently the Board was given an analysis of the critical comments offered in response to the original suggestion by NASD.

The Board also considered the NASD request for an increased minimum exemption and raised the amount not subject to Regulation T, from a $50 balance in any transaction to $100. The Association is endeavoring to develop additional statistics in the next year with a view to demonstrating to the Board that an even larger exemption is justified.

Amendment on Rights

Effective May 16, 1949, the Board of Governors of the Federal Reserve System adopted two amendments, one to Regulation T and one to Regulation U, both of which relate to the matter of extensions of credit to borrowers in connection with the purchase of registered securities through the exercise of a short term right to acquire such a securities.

In broad terms the purport of the change in the rules is as follows:

1) A broker may extend credit to a customer up to 75% of the market value on the purchase of a registered security acquired through the exercise of short term rights or warrants.

The amendment to Regulation U makes comparable provision insofar as banks are concerned in comparable circumstances.

2) The amendment to Regulation T provides that in the event a borrower does not decrease the amount borrowed to 50%, within nine months, then such a broker/dealer may not make an additional loan to the same customer under these provisions until such additional payment is made.

Neither amendment has any bearing on a security not registered under the 1934 Act. Insofar as securities not registered under the Securities Exchange Act are concerned, a bank may under Regulation U, as always, extend such credit as is consistent with its policies and good banking practices. A broker may not under any circumstances extend credit on an unregistered security for the purpose of purchasing, carrying or trading in securities.

The amendments to Regulation T and U are not restricted to the exercise of rights by the original holder, but would effect such acquisition whether the rights are exercised by the original holder or by *transferees* of such holder. These provisions are broader than present Rule X-11D1-1 of the SEC. However, the SEC is presently considering the question whether to broaden the exemption from Section 11(d) of the Securities Exchange Act.

The text of the Rules follows:

Amendment No. 9 to Regulation T

Effective May 16, 1949, Regulation T is hereby amended by striking out section 6 (1) of said regulation and by adding the following subsection at the end of section 4 of said regulation:

"(h) *Special subscriptions account.*—In a special subscriptions account a creditor may effect and finance the acquisition of a registered security for a customer through the exercise of a right to acquire such security which is evidenced by a warrant or certificate issued to stockholders and expiring within 90 days of issuance, and such special subscriptions account shall be subject to the same conditions to which it would be subject if it were a general account except that—

"(1) Each such acquisition shall be treated separately in the account, and prior to initiating the transaction the creditor shall obtain a deposit of cash in the account such that the cash deposited plus the maximum loan value of the securities so acquired equals or exceeds the subscription price, giving effect to a maximum loan value for the securities so acquired of 75 per cent of their current market value as determined by any reasonable method;

"(2) The creditor shall not permit any withdrawal of cash or securities from the account so long as there is a debit balance in the account, except that when the debit connected with a given acquisition of securities in the account has become equal to or less than the maximum loan value of such securities as prescribed for general accounts, such securities may be transferred to the general account together with any remaining portion of such debit; and

"(3) No security may be acquired in the account at any time when the account contains any security which has been held therein more than nine months without becoming eligible for transfer to the general account.

"In order to facilitate the exercise of a right in accordance with the provisions of this section, a creditor may permit the right to be transferred from a general account to the special subscriptions account without regard to any other requirement of this regulation."

Amendment No. 10 to Regulation U

Effective May 16, 1949, Regulation U is hereby amended by changing

section 3 (p) of said regulation to read as follows:

"(p) A loan need not comply with the other requirements of this regulation if it is to enable the borrower to acquire a stock by exercising a right to acquire such stock which is evidenced by a warrant or certificate issued to stockholders and expiring within 90 days of issuance, provided that (1) each such acquisition under this subsection shall be treated separately, and the loan when made shall not exceed 75 per cent of the current market value of the stock so acquired as determined by any reasonable method, (2) while the borrower has any loan outstanding at the bank under this subsection no withdrawal or substitution of stock used to make such loan shall be permissible, except that when the loan has become equal to or less than the maximum loan value of the stock as prescribed for section 1 in the supplement to this regulation the stock and indebtedness may thereafter be treated as subject to section 1 instead of this subsection, and (3) no loan shall be made under this subsection at any time when the borrower has any such loan at the bank which has been outstanding more than 9 months without becoming eligible to be treated as subject to section 1. In order to facilitate the exercise of a right under this subsection, a bank may permit the right to be withdrawn from a loan subject to section 1 without regard to any other requirement of this regulation."

E. R. BLACK ELECTED PRESIDENT

(Continued from page 1, column 1)

the International Bank for Reconstruction and Development, effective "no later than July 1," succeeding John J. McCloy who has been appointed United States Commissioner in Germany, and Chief of the Mission.

Mr. Black addressed the Governors of the NASD at meetings in January, 1949 and May, 1948, in relation to the Bank's proposed legislation.

He was Executive Director for the United States, a position to which he was appointed in March, 1947, and will continue to hold when he assumes the twin posts of President and Chairman of the Board. Mr. Black has stated that the position is a permanent one, and that he accepted on that understanding.

ROBERT K. McCONNAUGHEY RESIGNS

Robert K. McConnaughey has resigned as a member of the Securities and Exchange Commission to enter the private practice of law, as a partner in a long-established and highly regarded Washington firm. The name of the firm has been changed to Shea, Greenman, Gardner and McConnaughey. Offices are in the Hibbs Building, 725 Fifteenth St., N. W., Washington, D. C.

"Bob" McConnaughey, as he was known to many persons in the securities business was regarded as an invaluable member of the Commission, a student of the securities acts and their philosophy, an idealist, yet having a practical approach through his knowledge of and work with the securities industry. He attended many meetings of the governors of the NASD and of the IBA, and was ever ready to discuss the practical workings of the Acts, either with individuals or with groups. He was always available for office conferences with members of the Executive Staff or officers of the NASD. His viewpoints were wholly objective, and he approached all discussions with understanding and a desire to meet and adjust any problems.

"Bob" McConnaughey was a strong and helpful member of the SEC and his many friends in the securities business wish him every success in his return to the private practice of law.

20 GOVERNORS PRESENT

(Continued from page 10)

son Corporation, New York; Frederick H. MacDonald, Burke & MacDonald, Kansas City, John D. McCutcheon, John D. McCutcheon and Co., Inc. St. Louis.

G. M. Phillips, Caldwell Phillips Co. St. Paul; Charles H. Pinkerton, Baker, Watts & Co. Baltimore; Sampson Rogers, Jr., McMaster Hutchinson & Co., Chicago; Jesse A. Sanders, Jr., Sanders & Newsom, Dallas; Max J. Stringer, Watling, Lerchen & Co., Detroit; John O. Stubbs, Whiting, Weeks & Stubbs, Boston; John J. Sullivan, Bosworth, Sullivan & Company, Denver; Eaton Taylor, Dean Witter & Co., San Francisco.

Carret Report in October

Philip L. Carret, chairman of the Special Committee on Over-the-Counter Market stated that it is anticipated that he will have a full report available for the October meeting of the Board. The committee, he said, is engaged in gathering data and material in connection with the various studies being made. It is also consulting various leaders in the over-the-counter market for opinions.

EXECUTIVE DIRECTOR'S REPORT

(Continued from page 4, column 3)

Committee, has advised me that nine fellowships have been awarded to date, with one more to be provided by a school in the South on recommendation of our Chairman, Clement A. Evans. The universities represented for this year are; Syracuse, Texas, Washington University at St. Louis, Chicago, Colorado, UCLA, California, Vermont and Pennsylvania.

The teachers will be guided during their stay in the financial district by Dean Collins and his assistant, Doctor Sheppard, at New York University, where they will have desk space and library resources. The Joint Committee is in the process of working out the details of the program, whereby each teacher will have an opportunity to see the day-to-day operation of several different types of security firms in the Street—an investment banking firm, a large wire house, an odd-lot house, a municipal firm, a trading firm, and so forth, and to see the various departments of the New York Stock Exchange and New York Curb Exchange.

I feel that our contribution to this effort will have a long range benefit to the industry as a whole since it is becoming increasingly obvious that instructors in business administration and economics must come in closer contact with the actual practices in their respective fields.

MARK-UP POLICY CLARIFIED

(Continued from page 1, column 3)

Governors of October 25, 1943, November 9, 1943, and June 6, 1944.

The Securities and Exchange Commission held a public hearing in the matter and on Nov. 25, 1944 issued a decision on the so-called 5% policy, in which it upheld the action of the Association in adopting the interpretation of Section 1 of Article III of the Rules, on which the policy was established, which has since been followed.