

N A S D

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MARK-UP POLICY UPHELD BY SEC

Most Members Comply
With 5% Measure

The NASD's 5% mark-up policy is "as pertinent and as meaningful" today as when first adopted. Moreover, the vast majority of Association members are complying with the policy as a guide to fair prices for securities sold over-the-counter.

These are essential points of an important recent decision by the Securities and Exchange Commission which upheld the Association's Board of Governors in its expulsion of Midland Securities, Inc. from NASD membership. The New York City firm had appealed to the SEC from the Association's action, which in part was based on excessive mark-ups on low-priced securities.

Midland had argued, among other contentions, that the 5% policy was outdated, vague, inapplicable and unworkable for low-priced securities.

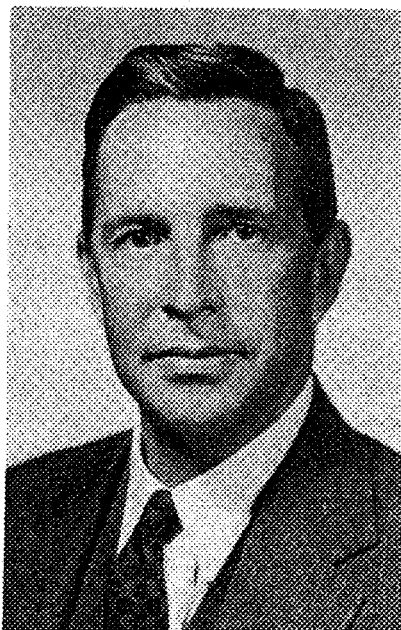
SEC said it could find no merit in these contentions, noted that the Association was precluded by statute from imposing any fixed schedule of prices, and said the 5% policy does not lack definiteness. Moreover, the decision went on, the formula used by the NASD in computing the amount of the member's mark-up in this case was "neither incorrect nor inconsistent, but was determined by the nature of the market price existing on the days of the sales."

"It is well established," the Commission said, "that, in the absence of countervailing evidence, the

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CLAFLIN NAMED CHAIRMAN FOR 1961

Cody, Jones, Noyes and Fulton Also Nominated



Bill Claflin, native Bostonian, lives in suburban Belmont, where he went to Belmont Hill School before entering Harvard College and graduating in 1941. He married Nancy Allis of Milwaukee the following year and has five children. He spent four years in the Army; 2nd Lt. to Major. Son of a Harvard trustee, he is treasurer of Belmont Hill School, director of Boston & Providence RR Corp., New Brunswick Oilfields, Ltd., Soledad Sugar Company and Tucker Anthony Management Corp. He is also active in the Boys' Club of Boston, Massachusetts Eye and Ear Infirmary and a trustee of the Suffolk Franklin Savings Bank. He will be the 23rd chairman of the NASD Board of Governors.

Pictures of other officers appear on
Pages 2 and 3.

William H. Claflin, III, of Boston, New England managing partner of Tucker, Anthony & R. L. Day, has been nominated as chairman of the Association's Board of Governors for 1961. He succeeds Glenn E. Anderson, of Raleigh, N. C., president of Carolina Securities Corporation.

Nominees for other offices:

Vice Chairmen

Robert L. Cody, president of North American Securities Company, San Francisco, and Graham Jones, partner of Cooley & Company, Hartford.

Treasurer

Blancke Noyes, partner of Hemp-hill, Noyes & Co., New York.

Executive Director

Wallace H. Fulton, of Washington, D. C.

Bill Claflin shares with Hal Dewar of San Antonio the distinction of youngest Board Chairman, both taking office at age 40. Dewar was Chairman in 1942. Claflin is a former chairman of District Committee No. 13, and became a Board member in 1959.

Bob Cody, first official of an investment company underwriter to serve on the Board, is past chairman of the Investment Companies Committee and now serves as its vice chairman. He presently is chairman of the National Business Conduct Committee and a member of the Board of Governors of the National Association of Investment Companies.

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Mark-Up Policy

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prices paid concurrently by a dealer are the best evidence of market price." Further, the SEC rejected Midland's claim that its expenses of sale were high and services to customers unusual. Ten per cent commissions to salesmen, said the SEC, do not justify 10 percent mark-ups just to recoup such commissions.

"The fact that a member is entitled to a profit is merely one of the circumstances to be considered," the SEC held, "in determining whether a price is fair, and excessive expenses cannot justify an excessive mark-up."

POLICY GUIDE

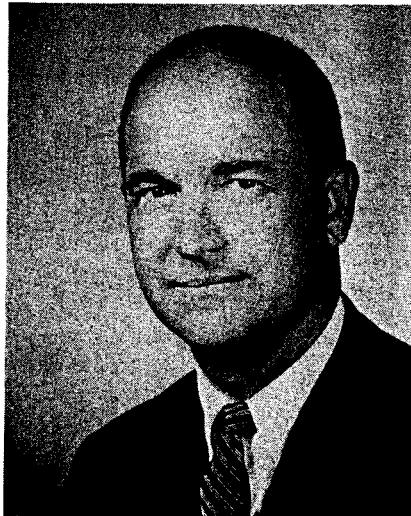
The Board of Governors has adopted a new and condensed memorandum covering the 5% mark-up policy, effective as of December 15. This culminates an extensive study of the policy by a special committee of the Board which reviewed the current mark-up practices of a large majority of members, as well as all SEC decisions in which the 5% policy was involved.

All substantive points in the policy have been affirmed by the Board. Principal purpose of the new statement is to reduce the text in the Manual dealing with the 5% policy from 16 pages to 6 pages so that the essential points will be clearly evident and thereby provide a better guide for the membership. The Securities Exchange Act of 1934 prohibits the Association from imposing any schedule of prices, commissions, allowances, discounts or other charges.

NEW BOOK

Just published by Ziff-Davis (New York) is a new, de luxe book entitled "Wall Street: A Pictorial History." The author, Leonard Louis Levinson, spent five years researching the history, workings and future of the securities market, as well as the growth of New York City. The book contains 400 pages, 600 pictures and 150,000 words of text and is offered by the publisher at \$15.00.

VICE-CHAIRMAN



Bob Cody, native Californian, lives in Menlo Park, close by the campus of Stanford University, from which he holds BA and MBA degrees. Married in 1938 to Bettie Talbot Peirson, same year he started with North American Securities Company as analyst; they have two children. He has been an officer of his company since 1944, and president of the Commonwealth group of investment companies in San Francisco since 1959.

VICE-CHAIRMAN



Graham Jones was born in Hartford, went to Kent School and Princeton (1929, AB); married Helen Adelaide Stewart in 1930; they have two grown children; live in Avon, Conn. Graham was Lt. Comdr. USNR, and served in the Pacific and Atlantic theatres of operation. He is a director of Phoenix Insurance Co. and Connecticut Fire Insurance Co., and trustee of State Savings Bank of Hartford.

REGISTER FIRST

Certain members of the Association have adopted the practice of permitting sales trainees to sell securities during the early months of their employment before they have been registered with the Association. This practice is clearly in violation of the Association's By-Laws and cause for disciplinary action.

The rules of the Association relating to registration are in no way affected by certain stock exchange rules which permit trainees to sell investment company shares before they are eligible to take the exchange examination for full registration.

Members are advised to check the registration status of all of their trainees so that any situation in vio-

lation of the By-Laws may be corrected immediately.

Clafin Named

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Graham Jones is presently serving on the Board's Executive and Legislation Committees. He is a former member of the District No. 12 Committee.

"B" Noyes, also a former District 12 committeeman, is now serving on the Board's Finance Committee and is chairman of the Legislation Committee. He is also a governor of the Association of Stock Exchange Firms.

Wallace Fulton has been renominated Executive Director, the office he has held since formation of Association in 1939.

TREASURER



Blancke Noyes was born in Montclair, N. J., graduated from The Lawrenceville School, holds a BA from Cornell and an MBA from Harvard's School of Business Administration. Served as Lt., (jg), USNR from 1943 to 1946. He married Margaret Thayer Talbott in 1953, has two children, and lives in Darien, Conn. He is director of Dixilyn Drilling Corporation, Northern Ontario Natural Gas Company, Limited, and Calvan Consolidated Oil & Gas Company, Limited.

EXECUTIVE DIRECTOR



Wallace Fulton needs no introduction to most NASD members. He has been the chief executive officer since the Association began. As Executive Director he has the task of carrying out the various policy determinations of the Board of Governors, as well as co-ordinating the activities of the 13 District offices and the examiner force. San Francisco is his home city, but Fulton has been a Washington resident for more than 20 years.

WITHDRAWAL PLANS

Dealers and underwriters and registered representatives are warned that no statistical or performance data on the operation, actual or hypothetical, of withdrawal plans involving investment company shares may be used or distributed. Such use or distribution will be considered a violation of the SEC's Statement of Policy governing investment company sales literature.

The Investment Companies Committee at a recent meeting issued this further warning because it has continued to find that dealers and wholesalers in certain areas are using such bootleg information.

Members are also reminded that no general or institutional advertising on this subject is permitted under the SEC's Statement of Policy.

Discussions are continuing with the SEC on methods of presenting withdrawal plan performance that may be permitted within the framework of the SOP, but it is emphasized that this is a matter of some complexity and members should not look for any early completion of these negotiations.

DIVIDEND GAP

The Board of Governors urges members to cooperate fully in the Treasury Department's educational program to inform taxpayers that all dividends and interest must be reported on tax returns. Samplings of tax returns for 1959 indicate that the educational program initiated last year is effectively reducing the gap between dividends and interest paid and dividends and interest reported on tax returns.

Several efforts were made during the past session of Congress to enact legislation requiring the withholding of the tax on dividends and interest. One proposal defeated in the Senate Finance Committee would have provided for withholding on dividends alone and not interest.

While no withholding legislation was passed during the last session, it is possible that new efforts will be made when the Congress convenes in January.

A withholding bill would create a number of problems for all dividend payers, including investment companies, and for broker/dealers holding securities for customers which are registered in "street name."

All signs indicate that continued efforts in the educational program will effectively eliminate the gap or reduce it to the point where withholding legislation will not be necessary.

All members have received a notice indicating specifically how they can participate in the educational program.

N. J. LAW

New Jersey's new uniform securities act takes effect January 1, requiring all those offering securities for sale to register with the new Bureau of Securities and otherwise substantially strengthening the state's securities laws.

Enactment of the new regulatory controls in their present form was supported by all segments of the securities business after many months of negotiation between the state legislators and representatives of the business. Substantial credit for successfully unifying the position of the business and effectively presenting its opposition to original legislative proposals that would seriously have hampered legitimate securities operations is due John J. Kelly, assistant secretary of District Committee No. 12, New York.

EDITORIALS

NO MAGIC IN FULL-TIME

We continue to hear the sophistry that there is some magic ingredient in the fact of full-time employment that makes for greater competency and better investor protection. This simply is not true. There are problems created by part-time employment, but they can be cured by proper supervision. We had our say on this matter in these pages last March; it is timely to repeat it:

"The National Association of Securities Dealers is fully aware of the problems created by part-time salesmen in the securities business.

"The Association's Board of Governors has special committees studying part-time salesmen and part-time dealers and their problems, and these studies do not justify any blanket condemnation of the part-timer as a class of securities salesmen of less than average merit, intelligence

or honesty. There are, of course, fringe operators in all phases of the business, and full-time employment is no guaranty that high ethical standards will always be observed.

"Increasing numbers of teachers, lawyers and other professional persons with high ethical standards have turned to the sale of securities in the over-the-counter market as a means of increasing their earnings. Any general bar to part-time em-

ployment in the securities business would deprive these individuals of a means of supplementing their earnings.

"There is no assurance that the public interest is better protected through the full-time employee.

"Poor or improper selling practices by ill-trained or unscrupulous persons will exist in some measure in the securities business, regardless of exchange or NASD membership. It is the constant task of both listed and unlisted markets to govern themselves so that any fringe operators and their registered representatives are promptly and effectively punished."

MORAL OBLIGATIONS

Registered representatives, whether working part-time or full-time, have definite moral and legal obligations that should always be fully understood. Following is a discussion on the point from a forthcoming Association publication:

"In addition to understanding the ethical standards and rules of the Association, Securities and Exchange Commission and Federal Reserve Board, the registered representative must realize his moral obligations, and his responsibilities under law, to his customer and to his employer.

"In all dealings with customers, the registered representative is placed in a position of trust. He is bound morally, ethically and legally to serve the best interests of his customer. Many of his obligations are specifically covered in the Association's Rules of Fair Practice.

"However, a registered representative is also one who acts on behalf of his employer. In other words, he is an agent of his employer (his principal). This principal-agent relationship is also based upon good faith under law, with each having responsibilities to the other.

"An employee may not act adversely to the interests of his employer by acquiring a private interest of his own in opposition to the

interests of his employer, nor can he have, either directly or indirectly, an interest in the subject matter of the agency without the consent of his principal. The object of these rules is to secure faithfulness on the part of the agent to his principal. For example, a registered representative could not sell his own property to his employer without disclosing that it was his own property. A sale of this kind would be voidable by the employer regardless of whether the transaction was fair or not. Neither could a registered representative sell his own property to his customer without informing his employer. In this instance, an employer would have recourse against his registered representative.

"Further, an agent must never act for a third person whose interests are contrary to those of his principal.

"The total effect of the law of agency, as it applies to the registered representative, requires that he serve his employer as instructed with all his skill, judgment and dis-

cretion and that he keep his employer informed of all facts coming to his knowledge which affect his employer's business, rights and interests.

"The law also covers a principal's responsibilities to his agent. A principal is obligated to compensate and indemnify his agent for services rendered in his behalf according to his instructions. He is liable to his agent for his own conduct as well as to third parties for the conduct of his agent as long as his agent is acting within the scope of his duties.

"In summary, the law requires the relationship between principal and agent, or employer and employee, to be one of mutual trust and confidence.

"Beyond the legal obligations which exist between employer and employee are their moral and ethical obligations to each other. Fulfillment of these obligations is sound business sense because a reputation for honesty, integrity and fairness is one of the most valued assets which can be acquired in the securities business by a firm and a registered representative."