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"Delist Them"

The admission of a security to trading on a Stock Exchange has always been accepted as meaning that a market existed or would promptly develop for the security. What's to be done about it if it doesn't work out that way? Heretofore, the answer has been—"Nothing."

But the NASD has decided to see if there isn't a better answer. As a result of a study made by a Committee appointed by the Board of Governors, NASD has begun pointing a finger at a batch of issues traded "unlisted" on the New York Curb. The finger points at about one-third of the stocks "admitted to unlisted trading privileges" and at a sprinkling of bonds similarly traded.

As to these 117 issues of stocks and 42 issues of bonds, NASD is calling upon the New York Curb to take steps to delist them. Simultaneously, the Association is placing before the SEC the facts and figures contained in the study mentioned. The SEC is being reminded that back in January, 1936 it said: "Admitting a security to trading privileges on an Exchange amounts to a representation by the Exchange that an appropriate and adequate market for that security exists on that Exchange . . . If that representation is incorrect, the quotations which the Exchange disseminates are misleading . . . no exchange should be permitted to admit . . . a security when the admission . . . means a misrepresentation to the public that an appropriate and adequate market for that security exists upon that exchange."

When, in the course of a year, there is no trading at all in 11 stocks is there a "market" for them? And in respect to some 100 more where trading averaged as little as 100 shares a week, is there a "market" or *isn't* there?

Carl Stolle, Chairman of the NASD "Special Committee", says for that Committee: "We hold that these figures in themselves constitute ample evidence of the lack of suitability of exchange trading for these issues. By no stretch of the imagination do we believe that (the) figures can support a representation (that a market exists on the Exchange). The

continuation of unlisted trading privileges for securities in these categories is a misrepresentation."

The SEC has acknowledged that when "unlisted" trading on the Curb was permitted to continue, a "process of attrition" was to bring about a disappearance of issues so traded. That was the idea back in 1934. "We hold," says Mr. Stolle's Committee, "that the very lack of trading in sufficient volume to qualify an issue for full listing is attrition enough and places an affirmative duty on the exchange and the SEC to take action to terminate the (unlisted) trading privileges . . ."

Mr. Stolle calls attention of the SEC to the fact that Section 12 (f) of the Securities Exchange Act provides that the Commission shall terminate or suspend unlisted trading privileges "by reason of inadequate public trading activity."

(Copy of Mr. Stolle's report can be obtained from the Executive office).

That S O P

In mid-August the SEC issued a "Statement of Policy" covering advertising and sales literature of investment companies. Although practically everyone concerned with the subject knew something was in the works, the "S O P" stirred up not a little tempest. The NASD was accused of selling out to the SEC and the SEC was charged with selling out to the NASD. Said one who played a major part in drafting the statement: "It must be a better job than we thought."

What preceded the delivery of the S O P was a subject for Executive Director Wallace H. Fulton's report to the recent meeting of the Board of Governors. Negotiations with the SEC are old stuff to Fulton who's been engaging in these for NASD a matter of about 15 years. But he thought the investment companies' job was noteworthy.

It all began last February when, for one reason and another, it became pretty plain that the investment company group would have to do something about extravagant claims for the merits of their securities or the SEC would slap down pretty hard. The NASD's Investment Companies Committee decided to take

hold through a sub-committee headed by Harry I. Prankard, 2nd. Before they knew it, Mr. Prankard and the other members of his committee (Herbert R. Anderson, Harold W. Cameron, Edward B. Conway, Charles F. Eaton, Jr., Woodford A. Matlock, George S. McEwan, Edward P. Rubin, William F. Shelley, Albert W. Tweedy, Joseph E. Welch) were as familiar with the surroundings at the SEC headquarters in Washington as they were with their own offices. No one kept track of the time the job took but two and three day stretches in Washington became the order of the day. And while at his desk in New York, Mr. Prankard still spent a lot of time on the 'phone with Fulton, his Committee's Secretary, Ray Moulden, NASD's Counsel, and with SEC people. In all, 23 drafts of what became the "Statement of Policy" were drawn up before something acceptable to both sides took definite shape. The Securities and Exchange Commissioners found it hard to believe that the statement finally submitted to them had their own staff's as well as the NASD Committee's approval without a dotted i in dispute. It isn't usual for representatives of the business on the one hand and SEC staff workers on the other to come up to the Commission itself 100% in accord.

The fact that representatives of the Investment Companies and the SEC agreed upon means of solving the problem growing out of abuses that crept into advertising and selling material did not solve the problem. Solution must be through the application of the terms of the "Statement of Policy", all of which is now NASD's responsibility. Since October 1, the "S O P" has been operative—with no more difficulties in application than were to be expected.

"The industry," Mr. Fulton told the Governors, "owes Mr. Prankard and his associates a very large debt of gratitude."

NASD News

Published periodically by the Board of Governors under the supervision of the Member Relations Committee,
HARPER JOY, *Chairman*
Editor, JAMES P. CONWAY

\$5,000 Fine

Abuses in the handling of two accounts of religious institutions have resulted in a member being fined \$5,000, one registered representative of the firm being suspended for six months, another for three months with a fine of \$1,000, and a third for three months with a fine of \$100.

A Business Conduct Committee found the member had violated Rules of the Association in:

1. recommending and effecting transactions for the accounts in quantities and at prices inconsistent with the best interests of the account and primarily for the advantage of the member;

2. using "deceptive devices or contrivances" in the allocation and arrangement of purchases of investment company shares, thereby depriving the customer of the advantages of discount pricing;

3. selling securities at "unfair prices;"

4. failing to allow discount in the amount of \$704 on a block purchase of investment company shares.

Examination of transactions in the accounts disclosed the following for the period from January, 1947 to April, 1950: agency transactions, \$1,687,905; investment company purchases, \$821,705; new offerings, \$492,788; principal purchases \$764,087, a total of \$3,766,486. There were, in addition, agency "sell outs" involving \$1,941,862. Gross profit to the member on all transactions was \$153,510.

After the NASD investigation began, a refund to the accounts totalling \$8,791 was made. Said the Business Conduct Committee:

"When we consider the volume of trading that took place in the period covered by the complaint with resultant remuneration to the member, its failure to be guided by the best interests of the account and failures to provide . . . benefits of bulk purchasing, . . . (also) the overall percentage of mark-up of 5.4% in 'other' transactions, and excessive mark-ups specifically cited . . . we have no difficulty in concluding that the respondent . . . committed violations of the rules . . . There was such a close timing of purchases and such acceleration and activity in the account about the time of most of the investment trust transactions . . . that it is very evident the respondents were well aware when funds would be available probably from liquidations following suggestions by the two registered representatives concerned and the policy followed by the respondent member. If the account had the benefit of discount pricing the respondent member's concessions would have been reduced and the participations of such representatives

would have been lessened. We compute the dealer concession would have amounted to \$5,871 less if the transactions had been arranged (to give benefits of bulk purchases). . . . The account would have benefited in the amount of \$8,723."

Salesmen Cases

It is safe to say that no one who has ever served on NASD business conduct cases got any pleasure out of facts presented nor decisions made because of the nature of the facts. It is a distasteful business not only to have to sit in judgment on the conduct of someone engaged in the business but it is disturbing to learn of abuses which unconscionable individuals indulge in.

At its last meeting the Board of Governors heard reports on actions of salesmen of two members which suggested the need for more exacting control of registered representatives. In both cases, salesmen misappropriated funds of customers, and opened trading accounts in their own names or in the name of a family member. One of the salesmen opened a joint account with customers, borrowed money from them and switched addresses of customers to his own.

The Executive Director advised the Board that registration requirements for registered representatives are not adequate to deal with the ramifications of rules-violations coming to the attention of business conduct committees. One District has recommended, he said, that the NASD Rules of Fair Practice be amended to prevent registered representatives from opening accounts with other members without the knowledge of the employing member.

Where restitution may have been made as the outgrowth of investigations, the Board went on record as believing that such action did not remove the onus of rules-violations nor the duty of filing complaints if the original facts warranted such filing.

Hamstring End?

The Securities Act requirement that has hamstrung the business more than any other single provision is that which prohibits solicitation of orders unless a prospectus is used. The theory that a customer ought to be given all the facts before he agrees to buy a security is a fine one. The only thing wrong with the theory is that it doesn't work in practice.

It has long been apparent that something ought to be done and uncounted

committees of the NASD and the IBA have tried to work out something with the SEC—which has always been open to suggestions and willing also to try. The end of all of these heretofore fruitless tries may be near at hand, although no one will believe it until it actually happens.

The SEC, it develops, is working on a proposed rule to permit underwriters and dealers to use a considerably enlarged tombstone advertisement which could be used to screen customer interest via newspapers and as a mailing piece, both during the waiting period and after effectiveness of registration statement.

To be known as an "identifying statement", the circular to be covered by the rule under consideration would be used to "screen" prospective buyers for new offerings. Orders could not be accepted until the registration statement became effective and a form for requesting a prospectus would have to accompany the "identifying statement."

This proposal was released Tuesday, November 14 for comment. It would be of assistance to the Association Representatives if copies of comments to the SEC are sent to the Executive office.

The Board of Governors has, meanwhile, tentatively adopted a proposal to amend section five and related sections of the Securities Act. This proposal would:

1. Permit oral offers or solicitation of offers to buy both during the waiting period and after the effective date but would prohibit any sale until after the effective date. All oral representations would be subject to section 12 (material misstatements or admissions) and section 17 (fraud) liabilities.
2. Permit written offers or the solicitation of offers to buy in the form of a summary prospectus both during the waiting period and after the effective date. All such written offers would be subject to sections 2 and 17 liabilities and each such written offer would be required to contain a notice of availability of a statutory prospectus upon request (request form to be provided) and without cost.
3. Permit sales to customers after the effective date irrespective of whether they have been given or sent any statutory prospectus (if given or sent a summary prospectus) but no sale would be valid unless the purchaser was provided with a statutory prospectus if one is requested.

This proposal is to be submitted to the SEC and ultimately to Congress in the event consultations with the Commission are unproductive.

Hm!

In November, 1941, a District Business Conduct Committee expelled one Lawrence R. Leeb by from NASD. In June, 1943, the SEC revoked his registration. Three years later, the SEC granted his application for registration as a broker/dealer, provided he conducted his business on an agency basis, other than investment trust shares which are sold via prospectus. Leeb thereafter applied for NASD membership. The Board turned him down. The SEC directed the Association to admit him, over the expressed objection of the Board of Governors. Later the Commission removed restrictions surrounding his reregistration. On July 21, 1950, the SEC instituted proceedings to revoke Leeb's registration and expel him from NASD for alleged violations of Sections 15 (a), 15 (b), 15 (c) (1), 17 (a) and 10 (b) of the Exchange Act and 5 (a) (12) and 17 (a) of the Securities Act.

NASD Was Ready

Donald C. Cook, Vice Chairman of the SEC, addressing the Mutual Fund Sales conference in New York, said:

"And right here I want to make two points clear to you: one, that had the industry, through the NASD, *not* intervened in this situation (supplementary literature used by investment companies) and worked with the Commission on a cooperative basis to find a reasonable and workable solution, the sanctions the Commission was considering invoking would have had a far more drastic, far more restrictive effect than the new standards for the future that have been set up. There should be no doubt about this. Unquestionably, the NASD, on behalf of the industry, by working with us and volunteering to undertake curative action as a measure of self-regulation, has rendered you a real service. It could have been worse, gentlemen, of that I assure you."

Take Your Cut!

Harper Joy, Governor from Spokane and Chairman of NASD's Member and Public Relations Committee, doesn't think the securities business steps up to the plate often enough to take its cut at the public opinion ball. Every chance they get, members of the Association ought to be telling their customers about their business and above all the integrity that is its backbone, District No. 1's Governor contends. To that end the Board of Governors approved a recommendation made by Harper Joy at its last meeting. It was that the Association prepare a booklet designed to serve as a mailing piece to

customers which would tell the significance of membership in the Association. "Such a communication is not of itself going to overwhelm the propaganda tending to undermine our business," Mr. Joy says. "However, we need to tell our story chapter by chapter and be everlastingly at the job. We have an organization that has rendered a public service and continues to do so. We should constantly be advertising its accomplishments and its usefulness."

Correspondence Course

Before very many years it may be the usual thing for the successful man in the investment banking business to say that he owes it all to that correspondence course he took back in 1950. Certainly successful business leaders in other lines have furthered themselves by taking a correspondence course or two. And while it doesn't hurt a securities salesman to have a good golf score, it isn't exactly a liability for him to have a nodding acquaintance with a yield table.

The Investment Bankers Association is making it as painless as possible for people in the securities business to sharpen up their familiarity with the economics of that business. It has sponsored a "Correspondence Course in Investment Banking" at the University of Chicago in cooperation with the latter's School of Business and Home-Study Development.

The objectives of the course can be summarized as follows:

1. To familiarize the student with the manner in which business enterprises obtain their funds for plant, equipment and working capital and to acquaint the student with the characteristic features of the various types of bonds and stocks.
2. To outline investment banking functions, including a consideration of how investment firms are organized to perform these functions;
3. To aid the student in determining and understanding those factors that influence the level of business and to guide him in adapting investment policy to these fluctuations.
4. To broaden the student's understanding of the whole field of finance in order that he may be able to render a more effective service to the investment community and the investment banking business.

Registrations are accepted at any time. Applications can be obtained from NASD, IBA or the University of Chicago Home-Study Department, 1375 E. 60th Street, Chicago 37.

Tuition is \$40.

Finances

NASD will have dug into surplus to the tune of about \$75,000 in the fiscal year ended September 30, 1950, based on estimates of revenues and expenditures presented by Treasurer S. Davidson Heron. His estimates pointed to income of \$415,000 and expenditures of \$490,000. Surplus September 30, as a result, amounted to approximately \$400,000.

For the current fiscal year (Oct. 1, 1950—Sept. 30, 1951), budgets of District Committees and the Executive Office, as approved by the Finance Committee, provide for expenditures of \$484,219. This is about \$6,000 less than actual expenditures of the last fiscal year.

In his report to the Board, Howard E. Buhse, Finance Committee Chairman, said:

"It has been the policy of the Board for the last few years to assess an amount less than the budget in order to reduce the accumulated surplus, which at the end of 1946 had reached some \$600,000 and was believed to be excessive. With the surplus now reduced to about \$400,000—or less than one year's budget—it was decided to assess the full amount of the current year's budget considering that the current year has, in general, been a good one for the business."

O-C Studies

Release of the first of a series of studies of over-the-counter security markets is announced by the Wharton School of Finance and Commerce of the University of Pennsylvania.

The initial study is entitled "Activity in the Over-the-Counter Security Markets."

This study will present for the first time comprehensive estimates of security sales in the United States. Separate tables show the trend of over-the-counter stock sales during the past thirty years, both in absolute amounts and relative to sales on exchanges, and the important components of the market at the present time. The value of sales in the over-the-counter market (new-issue sales) is compared with the value of sales of new issues and the value of sales on exchanges.

A copy of the report is to be sent to each of the several hundred members of NASD which furnished information to the study. Copies of study at 85c each available from:

Securities Research Unit
The Wharton School of Finance & Commerce
University of Pennsylvania
Philadelphia 4, Pa.,
or the Executive Office of the Association in Washington.

Chairman Speaks

Chairman of the Board, John Sullivan of Denver has just completed a tour of far-West and Pacific Coast cities in the course of which he talked to several hundred members of the Association. Accompanied by Executive Director Wallace H. Fulton, Mr. Sullivan met with members in Kansas City, Salt Lake City, Spokane, Seattle, Portland, San Francisco, Los Angeles, Long Beach and Pasadena, San Diego, Phoenix, Boston, New York and Baltimore.

Those who heard Mr. Sullivan found him raising many questions about NASD which they have at times posed. The difference was that Mr. Sullivan had the answers—and compelling ones they were.

On major matters of inquiry, Mr. Sullivan had the following to say:

Regulation. "I don't like a lot of regulation. Like it or not we are and are going to continue to be, in an era in which money and credits and all facets of the investment business are subject to a great deal of regulation.

"If we are going to be regulated, we have two choices: either to regulate ourselves or to be regulated by some Government agency. I am sure that it is the desire of the great majority of people in the industry that insofar as possible, we regulate ourselves."

Finances: "It costs a lot of money to run the NASD. In my firm we pay each year a pretty healthy NASD assessment but I am confident that the NASD saves us money because one of the first rules in the NASD book is that no discount is to be allowed to any individual or any non-member institution. I want to assure you of this: the NASD watches its dollars, yes, and its pennies, very carefully.

"Every dollar is spent as it should be, with full realization that the money is not our money but that we are, in effect, Trustees, who are spending the money of other people. The NASD is no different from your business or mine in that it has not been exempt from the increased costs of doing business. Certainly it takes more money to run the NASD than it did five years ago."

Relative Costs: "A dollars and cents comparison of the three associations in the securities business is interesting. NASD runs its business at a cost of \$167.09 per member; another of the associations runs its business at a cost per member of \$218.90 and the third at a cost of \$277.75. I make no critical comparisons, but when you consider that NASD has nearly 2,800 members, over 29,000 registered representatives, maintains seven offices and carries

on a large amount of legal and technical activities, the figures suggest that all of this is done on an economical basis."

NASD Service: "It is interesting to know that over the ten and one-half years of the Association's life, over 1,100 men have served the Association in various capacities. It is a source of constant edification and wonderment to me to see the number of men who give unstintingly of their time, without any expectation of direct remuneration, to the carrying on of the work of the Association. Let me urge you to consider very carefully and very conscientiously the choice of the men who will succeed to the men now in office both on the District and national level.

"By and large the Association will only be as good as the men who are conducting its affairs and quite obviously the better the type of men whom we get to serve the Association, the better will be the conduct of the affairs of the Association."

Mr. Sullivan is among those who believe that NASD, while primarily a self-regulatory body, should also serve as an aggressive trade organization. He says:

"We are constantly trying to do what we can to help you in your own shop make more money with less burdensome regulation and to prove this point let me just mention a few of the subjects which have come up for consideration or are in process right now:

the general question of competitive bidding

possible modification of regulation

"A"

helps for equity capital

problems arising from private placements

and other concrete proposals for amendments of laws or rules to make them more useful and practical."

Regulation A

The Board of Governors is submitting to the SEC a recommendation that the limit on exempt offerings under so-called Regulation A be raised from \$300,000 to \$500,000 in recognition of the increases in costs that have taken place since this exemption to the Securities Act was adopted. But the Board is advising the Commission that along with the increase certain safeguards should be enforced to prevent abuses which have accompanied offerings of securities in this category.

NASD is applying the "safeguards" insofar as its own members are concerned and it believes that comparable standards should be imposed on issuers and underwriters who do not belong to the Association. Commission attention is directed to the fact that a number of offerings have

been made under Regulation A only to have the issuing company go into bankruptcy within a year or two. Excessive underwriting commissions and expenses were also cited, plus the fact SEC Rules do not expose direct or indirect affiliations between issuers and underwriters employing the exemption. Connections between auditors and issuers, if any, should also be disclosed, NASD believes.

Letters

"You will find enclosed my check for \$56 for my dues from October 1 to next September 30, 1951.

"I very much appreciate the cooperation which the National Association is giving me. In my former affiliation, I did not have the personal contact with the National Association of Securities Dealers which I now have. I particularly appreciate the service which you render in such matters as Blue Cross, and sending me the clearly written statement about how I stand as far as Social Security is concerned.

Again thanking you, I remain,

Very truly yours,

Bentley W. Warren, Jr.,

Warren and Carter

Boston, Mass.

Oct. 13, 1950.

"There is one point about the Mutual Funds which has bothered us for some time and that is the fact that an investor apparently cannot place a good-until-cancelled order with any fund through us. We do not have many of these at this writing, but for example, we have from one of our accounts an unsolicited order, good until cancelled, to buy 1,700 Blanks at 4 or better. We confirm this order, among others, to this customer on the first of every month.

"Why is it that Blank cannot accept this order and do the watching, just the same as we put comparable open orders on the Stock Exchange? It would seem to the writer that the customer's interest is being harmed rather than protected, as being human, we do not always check all these prices carefully during each day, much as we intend to do so and it could easily happen that our customer's wishes in the above might not be fulfilled when, as and if the shares in question ever came near his price."

Very truly yours,

Bishop-Wells Co.,

By: Raymond E. Wells.

Boston, Mass.

October 25, 1950.

Ed. Note: The answer seems to be that the mutual fund underwriters get fainting spells when they think of the staff they'd have to have to keep track of such orders.