



Department of Justice

FOR IMMEDIATE RELEASE
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The Department of Justice today filed a civil antitrust suit against the 4,400-member National Association of Securities Dealers (NASD) and 15 other defendants on charges of conspiring to prevent brokers from dealing in mutual fund shares among themselves or from processing sales between customers at competitive brokerage rates.

Also named in the suit were three mutual funds, their principal underwriters, and nine of the largest securities brokerage firms in the country.

Attorney General Richard G. Kleindienst said the eight-count complaint charging violations of Section I of the Sherman Act was filed in U. S. District Court in Washington, D. C.

Assistant Attorney General Thomas E. Kauper, in charge of the Antitrust Division, said the alleged conspiracy has effectively prevented the development of a "secondary market" in mutuals.

Such a secondary market, he said, which could involve brokers handling sales between brokers or between customers, would involve competition in commission rates which does not exist under the present system.

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A mutual fund is an investment company which invests in the securities of other corporations and issues shares which represent an interest in the invested assets.

Mutual fund shares are purchased by a principal underwriter under a distribution contact.

Shares are then resold by the underwriter under sales agreements to numerous broker-dealers who in turn resell the shares to the investing public.

In 1971, sales of mutual fund shares in the United States amounted to more than \$5.1 billion.

Under the present system, Mr. Kauper said, agreements between the funds and their underwriters require that customers who want to buy or sell shares must do so through a dealer, an underwriter or the fund itself. The dealers are similarly limited to dealing -- on their own account or on behalf of a customer -- with the underwriter or the fund.

Mr. Kauper said that commission rates charged to customers who deal directly with a broker are fixed by the sales contracts and may be higher than the rate which would be involved in a secondary market, where competition among brokers might lead to lower commission rates.

NASD, headquartered in Washington, D. C., is a national association of broker-dealers.

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The mutual funds and their principal underwriters named as defendants are:

Fidelity Fund, Inc., a Massachusetts investment company and its affiliated principal underwriter, The Crosby Corporation of Boston, Massachusetts;

Wellington Fund, Inc., a Delaware investment company, and its affiliated principal underwriter, The Wellington Management Company of Philadelphia, Pennsylvania;

Massachusetts Investors Growth Stock Fund, Inc., a Massachusetts investment company; and,

Vance, Sanders & Company, Inc. of Boston, Massachusetts, principal underwriter of Massachusetts Investors Growth Stock Fund.

Broker-dealers named as defendants are:

Merrill Lynch, Pierce Fenner & Smith, New York, New York;

Bache & Company, New York, New York;

Reynolds Securities, New York, New York;

Paine, Webber, Jackson & Curtis, New York, New York;

E. F. Hutton & Company, New York, New York;

Walston & Company, New York, New York;

Dean Witter & Company, San Francisco, California;

F. I. duPont, Glore Forgan, New York, New York; and,

Hornblower & Weeks-Hemphill, Noyes, New York, New York.

Mr. Kauper said the suit charged NASD and its members acted together to prevent the growth of a secondary dealer and brokerage market in mutual fund shares by:

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- establishing and maintaining NASD rules which inhibited the development of such a market;
- inducing principal underwriters to include restrictive provisions in their distribution agreements with securities dealers;
- discouraging interested persons from participating in brokerage markets in fund shares and distributing misleading information concerning the legality of such markets; and,
- suppressing market quotations for secondary dealer markets.

The suit further charged the mutual funds, their underwriters, and the nine broker-dealers with entering into distribution contracts which contain illegal provisions inhibiting the development of secondary dealer and brokerage markets.

As a result of the defendants' activities, the complaint charged, sales of mutual fund shares have been confined to primary distribution channels, and the public has been deprived of the benefits of free and open competition in secondary markets.

In addition, broker-dealers outside a fund's primary distribution system have been deprived of an opportunity to trade in the fund's shares.

The suit asked the court to restrain the NASD from impeding the development of secondary markets in mutual fund shares and to remove the restrictive provisions in existing distribution contracts and prohibit similar provisions in future contracts.

Under the requested relief, the defendants also would be obligated to inform prospective investors of the possibility of dealing in secondary markets.