# The Evolution of Self- and State-Regulation of the London Stock Exchange, 1688-1878

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## ABSTRACT

Barnard's Act in 1734 to eliminate the pernicious practice of stock-jobbing in the public securities of Great Britain constrained the rules and regulations of the London Stock Exchange, as did judicial decisions made under England's common law. While Barnard's Act had either no or little effect on the growing trade in securities available to the investing public throughout the eighteenth and nineteenth centuries, it did force the middlemen in the market to distinguish among themselves whether they were brokers or jobbers. After they formed a self-regulating company, their practices regarding members forced to default on their agreements after financial crises revealed the implicit conflict between self- and state-regulation of the British stock exchanges. Despite the well-recognized virtues of British common law that allowed the continued growth of securities trading in the London market, which facilitated greatly both British industrialization and imperialism, the formal self-regulation of the London Stock Exchange evolved circumspectly to avoid state-regulation. That it succeeded was due more to its own efforts than to the indifference of the British government. Ultimately, the success of the London Stock Exchange in the nineteenth century vindicated the "watchman" role of the state, but much more responsible was the unique governance structure of the Exchange that divided users from owners.

After every financial crisis, the issue arises whether stock markets should be closely regulated by government or allowed to regulate themselves. Governments are motivated to protect their constituents from professional speculators, especially if they are foreigners; to remove the temptation of gambling from the working classes; or to generate a new source of tax revenue. Professional stock traders argue that they are motivated to fulfill their fiduciary responsibilities to their customer base to maintain their business, while governments benefit from the ready market for their debt and the higher price (lower interest) that results if market activity is relatively free of tax or regulation. Recent experience seems to favor government regulation. Both the New York Stock Exchange and the NASDAQ, determined to maintain their status as self-regulated organizations, have recovered their losses from the dot.com collapse in 2000 under the new regulations of the Securities and Exchange Commission imposed by the Sarbanes-Oxley legislation of 2004. (Healey, 2007) The other prime example of self-regulation, the London Stock Exchange, has recovered much of its global presence in the global securities market that emerged at the end of the twentieth century after government intervened in 1986 to remove the barriers that its members had erected against financial innovations from abroad. (Michie, 1999) Experiments with government regulation versus self-regulation in the transition economies of central and east Europe in the 1990s also seem to favor government regulation. Poland, regulating its stock market by closely following the French example, emerged much stronger from the financial crises of the late 1990s than did the Czech Republic, which left its stock market to develop its own regulations. (Glaeser, Johnson, and Shleifer, 2000) By contrast, the examples of the first self-organized stock exchanges in Amsterdam and London have been taken to show the virtues of self-regulation, as both rose to international prominence in their respective heydays – Amsterdam in the seventeenth century and London over the eighteenth and through

the nineteenth century. (Stringham, 2002; 2003) Examining the London case more closely, however, demonstrates that the particular form of self-regulation of the London Stock Exchange was shaped by the peculiarities of English common law and constrained ultimately by statute and the ever present threat of additional legislation.

From 1734 to 1860, when it was repealed, Barnard's Act was the sole piece of legislation designed to regulate trading British securities. Intended to eliminate the "infamous practice of stockjobbing," the Act outlawed forward dealings in shares of public securities if the seller did not have and maintain physical possession of the shares for the entire time required for completion of the transaction. Nevertheless, traders in British securities settled their accounts with each other every month or more in the remainder of the eighteenth century without requiring the necessary documentation from their counterparties. After establishing the formal London Stock Exchange in 1801, the members settled accounts with each other every two weeks and often extended for another account period in the normal course of business. This meant that members of the Stock Exchange typically engaged in forward, or time, transactions with each other, and many went so far as to deal in options as well. As long as both parties were happy with the terms of the agreement for a forward transaction or an option, Barnard's Act had no effect despite their obvious illegality if one of the parties challenged the other. Indeed, one of the reasons given for the formation of a formal, self-governing securities market in London was that it enabled members to avoid litigation brought by a disappointed counterparty who could legally invoke Barnard's Law if a bargain were struck outside a formal exchange— an exchange that was governed by its own set of rules — or outside a club with a traditional set of procedures established by custom.

**The Course of Self-Regulation**

Such a club, in fact, had been established by a set of habitual traders in British securities at Jonathan's Coffee House, where admission had been open to all upon payment of a daily admission fee. It is recorded that by 1762, a group of brokers formed a club at Jonathan's Coffee House. They limited their number to 150 members who paid an annual subscription to the proprietors of eight guineas. This attempt at exclusion of individual brokers unwilling or unable to pay the eight guineas prompted a law suit by one of the outsiders. It being proved that Jonathan's had been a market "time out of mind" for the buying and selling of government securities, the jury, under the direction of Chief Justice Mansfield, brought in a verdict in the plaintiff's favor with one shilling damages. Three legacies emerged from this episode: 1) the general use of the acronym "TIPS" ("To Insure Prompt Service) in the English language for service charges, 2) the designation of attendants in the Stock Exchange as "waiters" well into the 20th century, and, 3) a change in formal organization of the professional stock brokers.

The essential change was to charge a daily admission fee of 6d. a day, and any person at all who paid that sum to the waiter who stood at the bar received in exchange a token that entitled him to proceed beyond the bar, although it is not clear that he could then do business as a broker. Thomas Mortimer's classic guide to the late eighteenth century stock market, *Every Man His Own Broker,* urged individuals to transact their own deals directly in the market and not pay the expense of commission to the various hustlers lying in wait for the unwary and inexperienced investor. Presumably, his readers could pay the 6d. and transact on their own account at Jonathan's. There was a Committee in charge of the market place, but as there are no official minute books before December 6, 1798, it is not clear what, if any, control they exercised over the members who used Jonathan's regularly. [Satterthwaite ms.]

The open market form of the stock exchange in Sweetings Alley, initiated in 1773, proved to be a failure, open as it was to opportunistic outsiders. At particularly hectic times on Account Days, when the various deals made among the individual brokers were settled up, either by delivery of the stock or a continuation of the deal until the next Account Day, opportunities for fraud were especially rampant. Satterthwaite mentions that deals were commonly settled in notes, not by cheque, so it was the personal honor of the buyer that had to be accepted by the seller, not a claim upon a bank. The form of payment required for final conclusion of a given deal shows up repeatedly in later editions of the formal rules and regulations of the London Stock Exchange, especially as the number and variety of members admitted to its trading floor became too large for personal dealings. One incident occurred between two brokers, Martin and Lyons, when an effeminate-looking youth approached Martin, asking him to sell £16,000 scrip (the subscription receipts for a new issue of government debt). Martin refused to deal, saying he did no business for new clients without an introduction. Lyons, nearby, feigning resentment that the deal was not being offered to him, then made the introduction to Martin. Martin accepted the deal, but quickly determined that the scrip was a forgery. Lyons was arrested and convicted; the youth turned out to be his sister. [Satterthwaite ms.]

It was evidently the desire to prevent repetition of this kind of fraud practiced upon legitimate traders by unknown outsiders that led to the formation of the organization of specialists in stock broking known as the London Stock Exchange. The first minutes of a governing committee of the formal securities market are from a meeting of "…the Committee of the Society for the Protection of Property against fraud in the Stock Exchange" & it was held at the "Stock Exchange Coffee House." The Committee discussed a letter from R. W. Wade (who subsequently became Secretary) but who was at that time a defaulter. Wade asked to be

reinstated as a member, "…so that I may not be prevented in future from making those exertions which are necessary to enable me to fulfill my engagements to the House with the same punctuality as I have hitherto done where it depended only on myself." Wade attributed his current misfortune to "the villainy of Colonel Campbell" the previous year. The Committee responded favorably to Wade, obviously a respected member of long standing among the group, and revised the then standing Rules and Regulation of the House, to deal with this, and all future cases of default by members.

Articles 2 and 3, accordingly, were devised to deal with the case of Wade and all similar cases that might arise in the future. They were destined to remain substantially intact in spirit through the entire history of the London Stock Exchange. They merit reproduction in full, as later editions of the rules obscure somewhat the motivation for the procedures devised to deal with Members who defaulted on the bargains they had struck with other Members of the exchange.

> 2nd That on every future failure a Committee of Inspection be appointed by this Committee out of their number to examine the Defaulters Books & accounts & if it appears that the person failing has acted in every respect as a honest man he shall be received again in the House with that tenderness & humanity every unfortunate man deserves."
> 3rd That if a defaulter refuses to submit his accounts to the Committee of Inspection or if at such inspection of his accounts he shall appear to have been concerned in any improper transaction for himself or others, such person shall be deemed unworthy of the countenance of this House."
> (Satterthwaite ms.)

These were evidently handwritten notes available to Satterthwaite as the first printed Rules and Regulations of the stock exchange were not produced until 1812, and then only under duress from the courts of law. The Managers of the Stock Exchange wrote to the Committee of General Purposes in 1811, complaining that they had been humiliated by being forced to appear at Old Bailey in response to a charge brought against them by a defaulter whose name had been

posted in the House. While the defaulter did not press charges and the Managers were found Not Guilty by order of the presiding magistrate, they suggested that more precise rules should be promulgated "so that none might plead ignorance of the law." The Committee immediately resolved that it had the right to post publicly in the House the name of any defaulter whose creditors found his conduct dishonorable or "marked with any circumstances of impropriety," (Guildhall Ms. 14600/7, April 22, 1811)

The procedures were designed to maintain the flow of business created by the defaulter in an effort to restore not only his balances, but to complete restoration of the losses suffered by his counterparties on the exchange. But to show his good faith toward his colleagues, the defaulter had to open all his account books to the scrutiny of a special committee appointed for the purpose by his colleagues, and this committee, not the defaulter, or an outside commission of bankruptcy, would determine how his remaining assets were to be divided up among his creditors and how his outstanding bargains were to be wound up or carried forward. If he refused, then he was excluded forever from the exchange, and left to the not nearly so tender mercies of England's bankruptcy proceedings. Initially, there were two classes of defaulters' notices to be posted on the floor of the exchange. One stated that the defaulter "…does not deserve the future confidence of the House;" the other stated that the Committee "…recommended him to the indulgent protection of this House." In this way, the proto-Committee for General Purposes established the basis for effective governance of the formal securities market place in London.

When the financial crisis of 1819 created a large number of defaulters among the members of the London Stock Exchange, however, the membership of the exchange had to confront its legal complications of Barnard's Act, which could still be invoked by a principal

who was not a member of the exchange against a member of the exchange. Just such a case, *Baker and others vs. Salomons*, went to trial in 1819. Although Salomons, a long-standing member of the London Stock Exchange, had been cleared of the specific charges against them, it was only because the firm could prove that the monies paid to its members had been paid to cover differences in prices and that they were not premiums on put or call options. The law firm for the stock exchange's Society for Protection of Property against Fraud and Artifice, Crowder & Lavie, warned the Committee therefore:

> "that the greatest danger that can be apprehended by individuals in the Stock Exchange under Sir John Barnard's Act arises from these sort of dealings. In these transactions they are excluded from all chance of defense if the proper proceeding be taken, & the non belief of witnesses upon which fortunately cases on stock transactions are generally decided, will not prevail. In short, we will undertake to say, that in no transaction of a Put & Call is either party safe, & such transactions, as they are most properly prohibited by your by-laws, ought on no account to be engaged in."
>
> (Guildhall Ms. 14600/9, f. 67-75)

In fact, at the time, the by-laws did not prohibit option dealings; they were just not recognized as claims upon a defaulter's estate; and payments made on options by a defaulter had to be restored to his assets for the benefit of the creditors. The warning of the legal counsel, however, persuaded the stock exchange's governing Committee for General Purposes that the by-laws should be altered to prohibit dealing in options. The expenses of the trial against Salomons had been so great that the defendants had been forced to appeal to the Society for Protection of Property against Fraud and Artifice for assistance; and that Society, in turn, finding

the amount needed far beyond its resources, had suggested that the Stock Exchange levy a “tax” on each member to defray the legal expenses. (While charges were leveled against only seven Members of the Stock Exchange, no fewer than 46 Members were served with writs and forced to appear as witnesses.) The Committee declined to take any action in this case, but it did undertake to outlaw future dealings in options.

In the same year, it ruled against Jacob Ricardo, nephew of the now deceased David Ricardo. The Committee decided that Ricardo must turn over the guarantee money he had received from a subsequent defaulter, one F. Clarke, and that the money be distributed for the general use of all of Clarke’s creditors. To make this principle binding, the Committee required that in the future each recommender of a new Member to the Stock Exchange post a guaranty bond of £250; the deposit to be used for the benefit of all creditors, if the new member should become a defaulter at some time in the future. By relying on the monitoring that the recommenders might be expected to exercise over the activities of their candidate, the Committee sought to limit the actions that new Members might undertake in an effort to bring their incomes up to expectations as quickly as possible, Thus, the groundwork was laid for a major confrontation between two groups of members – one group of older, conservative, and typically creditor members and a second group of younger, risk-taking, and often debtor, members.

After raising the concerns about the implications of the Baker vs. Salomons case in early 1820, in November 1821 a memorial signed by 235 members of the Stock Exchange was presented to the Committee. The memorial urged that the Committee move beyond “discountenancing” the use of options and abolish the practice entirely. A riposte to the memorial — a riposte signed by only 88 members headed by Jacob and Benjamin Ricardo —

was presented to the Committee at the same meeting. It made a clear case for the benefit arising from dealing in options.

> We submit that the general business of the Stock Exchange is increased by optional Bargains. Such transactions obviously comprise a limit to the amount of risk, which induces careful people to engage in speculations, who would otherwise feel precluded; hence the immense jobbing which is now consequent upon Options, would in the event of their entire prohibition cease, or only be effected upon comparatively a very contracted scale.
>
> We further submit that the rules of the Stock Exchange as they now exist, afford no protection to optional Bargains. Divested of such protection, they now with all their other risks depend entirely upon the individual honor of the contracting parties, & viewing the community of the Stock Exchange with those feelings of consideration due to persons of honor, Independence & property we cannot but consider that any further restraint upon the bargains in question would more resemble the severity of school discipline, than those wise & liberal Regulations proper for the Stock Exchange.
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> (Guildhall Ms. 14600/9, ff. 181-2.)

At least 11 of the 30 members of the Committee for General Purposes were strongly opposed to the practice of options, and they raised alarms among the membership of the possible damages that discontented clients could create by invoking Barnard's Act. A letter addressed to the Committee on November 28, 1821 came from the partners Lavie & Oliverson:

> In order to confirm what we took the liberty of suggesting in a letter we addressed to your Secretary on the 20th August 1820 on the subject of Puts & Calls we cannot do better than lay before you a short and intelligible extract from Sir John Barnards' Act which accompanies the present communication. It is here seen
>
> 1st That those dealing in Puts & Calls as principals, can never be sure of retaining the Monies or other considerations they may receive.
>
> 2nd The parties are compellable to discover any monies or considerations received, and which may be thereupon recovered on their confessions (which they cannot refuse to make) with double costs.
>
> 3rd The penalty of £500 attaches on both Principals on the mere making of the

Bargain
4th The same penalty attaches on the Broker, if one employed.
5th Either of the three parties concerned, are protected from the penalties by suing for & recovering them from either or both of his co-adjutors.
6th One half of the penalties (say to the amount of the three penalties of £750) is given the common informer.
7th And, what we consider the most likely to affect the gentlemen of the Stock Exchange from the open manner in which we are told these transactions are negotiated is, that any bystander merely witnessing the negotiation, may be able to give sufficient evidence: and if two persons were to come forward who had witnessed the transactions, all the parties engaged would be fixed with the penalties without the smallest chance of getting off. And it is our opinion that even one person deposing to the transaction as having passed in his presence would be more likely to be believed than any Bankrupt or other person who was originally a party to the negotiation.
It is no matter under what disguise the consideration is given and it may be a question whether any entire sum in Stock made subject to the wager, may not be considered as the amount of consideration.
We do not conceive that these transactions at present passing with impunity should encourage their continuance, since the blow may by and by fall very heavy on the parties concerned.
[signed] Lavie & Oliverson, Frederick Place
(Guildhall Ms. 14600/9, f. 185.)

After considering two other Memorials — one against and one in favor of options (there were 283 signatures on the Memorial against and 92 on the Memorial in favor of options) — and reviewing the minutes (the Committee's review of its minutes revealed that in 1802 the Committee had voted unanimously to condemn dealings in options but had not made an explicit rule against options), the Committee of 1821 voted that dealing in options should be abolished. (Guildhall Ms. 14600/9, f. 186.) Further, they voted to include a statement in the letters of application for next year's members that each candidate would pledge "not to deal in Puts and Calls under the penalty of ceasing to be a Member." (Ibid., f. 187.) They confirmed this resolution in the next meeting on December 10. But, in the meeting of December 17, a letter again written by Jacob Ricardo but now with 193 signatures (including those of B., F., R., and S. Ricardo!) was read to the Committee. The letter urged the Committee not to take explicit action

against Members dealing in options. The Committee then decided to conduct hearings, and it called in leading members of each faction to explain their views.

Several of the signers of the pro-option memorial declared that they were against the use of options in principle, but they objected that the Committee in limiting the range of business practices available to members of the exchange, was arrogating so much power to itself. At the same time the leading signers of the anti-option memorial, all former members of the Committee, made much the same arguments – while they were opposed personally to the use of options in the exchange, they were more opposed to the Committee unilaterally taking such extreme steps to curb the practice. One signer commented that he had never expected the Committee to go so far as it had. Finally, on December 31, 1821, the leaders of the anti-option faction on the Committee moved to rescind the resolution of December 10, and they agreed not to press the issue in the future. At the first meeting in January 1822, however, the same Committee members approved resolutions that amended the rules so that anyone dealing in options after February 14, 1822 would be expelled from the House and that all defaulters' accounts would be examined for evidence of dealing in options; and, if such evidence was found, the defaulter would not be readmitted until all his creditors had been fully paid off.

While both resolutions were passed by a majority of the 18 members present at that meeting, the election of the 30 members of the Committee on March 25, 1822 would decide the final outcome. The campaign began in earnest, with the "optionists" as they were disparagingly named by their opponents, turning for help to the Trustees and Managers, the committee of nine that represented the interests of the Proprietors. Clearly, the arguments of the Ricardo clan that the rise in membership that followed the end of war inflation owed a great deal to the use of risk-abating options appealed to the Proprietors. Their income from the revenues raised by members'

subscriptions depended on the number of subscribers in the exchange. As a result, the Trustees and Managers turned to the courts to determine whether or not the Proprietors could overturn the decision of the Committee. The resulting legal opinion however, affirmed that the Deed of Settlement gave the Committee full power to control the admission of members ruled and that the Committee could require that the letter they were proposing was a condition of membership and that the agreement in the letter would be binding on those who signed it. Only by amending the Deed of Settlement could the Proprietors take this power away. The decision was printed up in triumph, probably by members of the Committee; and it was circulated to the membership, with a gloating comment that the opinion rendered by the Managers' own legal counsel "like a killing frost it has nipped their root; and now they fall, alas! Like Lucifer, never to hope again."

An unprecedented 419 ballots were turned in for the election of the thirty members who were to comprise the Committee for General Purposes for the year 1822. The scrutineers – H. Wheeler, James Wetenhall, and William Turquand – ruled, however, that 415 of the ballots were imperfect, as they included the names of two individuals who had not paid their subscriptions and who were not proprietors and, so, were ineligible to be members of the Committee. As a result, only four ballots determined the outcome of the election; and 17 new members were chosen, a group that included the redoubtable Jacob Ricardo. The leader of the "anti-optionists," Mr. A. Baily, resigned as Deputy-Chairman, and two of his supporters, Wakefield and Coopers, also resigned their positions. They were replaced by de Leon and Abraham Montefiore, both signers of the original "anti-optionist" memorial; both received 69 votes. At that point three more members resigned; their resignation requiring yet another by-election. Given those resignations, Mr. Laurence moved that, as the resignations had occurred because the members in question felt the original election was irregular, that the new by-election should be for all 28

positions that had been filled with only four votes. His motion was lost for want of a second! In the election to fill the three vacancies, no fewer than 25 members received votes; the winning candidates received 142, 125, and 94 votes – evidence that the bloc voting for the Committee that had characterized previous elections (and which would resume for most of the exchange's history) had finally been put aside.

In the very first printed set of Rules and Regulations produced for the benefit of the members of the London Stock Exchange, there was a section on "Puts and Calls." (See Appendix A.) But the extent of exchange's rules at the time was only to note that differences arising from expired options with a defaulter would not be admitted as valid claims against the defaulter. Moreover, any payments made on options by the defaulter had to be made good to the creditors. Apparently, this was the extent to which Barnard's Law was effective in limiting dealings among members of the stock exchange. Options were not mentioned again until the battle between "optionists" and "constructionists" broke out in 1820 as described above. After the resolution of that battle in favor of the "optionists", options continued to play a useful role in dealings among members of the exchange thereafter.

The points raised by Jacob Ricardo in his petition to the Committee for General Purposes in 1821 in favor of options, however, had their counterpoints in that allowing younger members to take greater risks also increased the likelihood of periodic failures by them. Limiting the length of options to the settlement periods of every two weeks, however, required their counterparties to make frequent reassessments of the risks they were running. If the terms of the option or of a time bargain were running against the originator, he could pay his creditor to allow a prolongation to the next settlement period. Years later, an analysis of the difference in settlement times between London and Paris, which had monthly settlements, argued that the

Paris rules allowed greater risk taking. Another analysis of the differences in settlement times between London and New York, which required daily settlements, argued that London's longer settlements were responsible for the much larger number of failures on the London Stock Exchange. Both analyses were certainly appropriate, although the smaller size of firms on the Lonodn Stock Exchange than in the New York Stock Exchange was probably more responsible for the greater number of failures in London.

Recurrent financial crises throughout the nineteenth century required the London Stock Exchange to pay explicit attention to the claims on options outstanding when dealing with disposal of a defaulter's estate. For example, a court ruling in 1837 required a change in the rules concerning settlement of claims on a defaulter who was active in both English and foreign stocks. The Committee explained:

> "A recent decision of the court of law having enabled creditors for differences on bargains in Foreign Stocks to prove their claims under a fiat of Bankruptcy, whereas an advantage may be obtained over the creditors for differences on English Stock, under the existing rules and regulations which govern the settlement of Defaulter's Estates it is hereby, 'Resolved to repeal the following rule, 17, under the heading "failure", viz., Creditors on either English or Foreign Stock, or securities, shall participate in the participation of their respective claims, in the general Assets of a Defaulter's Estate' and to enact the following in place thereof, viz. – 'on the failure of any member in the Stock Exchange, his accounts shall be divided into Two Distinct Estates, one consisting of the Differences arising from Bargains in English Stock, and the other on Differences in accounts of Shares and in Foreign Stocks; and the money brought forward by a Defaulter from his own resources shall be divided between such Estates in the proportion of their Balance Claims, and the Security money, if any, shall be applied in like manner'" (Guildhall Ms. 14600/16, June 26, 1837.)

Self-regulation, to be effective, had to make the sanctions that could be imposed by the stock exchange's governing Committee for General Purposes very painful for any member who violated the rules or regulations of the exchange. The effective device created by the London Stock Exchange was to require annual renewals of membership by each subscriber to the exchange. The renewals as well as initial applications were reviewed and approved by the current Committee for General Purposes. After the new set of Members for the coming year was established in March, they would vote for the members of the Committee for General Purposes for the following year. Not surprisingly, the composition of the Committee remained virtually intact from year to year, save when a serious issue arose that divided the membership, such as the options issue discussed above. Nevertheless, the Committee amended its rules regularly in response to court cases involving defaulters among the membership or to withstand possible challenges to the supremacy of the stock exchange as the marketplace for British securities.

**The Course of State Regulation, 1688-1860**

The first regulation of stockbrokers at the outset of the "financial revolution" in England took nearly 10 years to appear after the "Glorious Revolution" or "Dutch usurpation" of 1688.[1] Responding to numerous complaints against the shady practices of stock-jobbers that coincided with the monetary troubles of 1697, the act limited the number of brokers in London to 100, required them to be licensed by the Lord Mayor of London, and forbade them to trade on their own account, while capping their fees at one half of one percent of the value of the securities. This could be seen as an incentive for other traders to forgo commissions in favor of making money from the spread between bid and ask prices for the securities available to the public at the time. To limit opportunism among the unlicensed jobbers, then, the act required that any contract for the transfer of stock be completed with an actual transfer within three business days.

(Banner, p. 40) The act was renewed once before Parliament allowed it to expire in 1708; thereafter the City of London was authorized to continue to license brokers on whatever terms it chose. (The terms chosen limited the number of Jews and foreigners to a maximum of 12 each, which was remarkably high given later practice by the self-regulating London Stock Exchange when it was created in 1801.) The bill also required brokers to post a £500 bond with the Lord Mayor and to keep a detailed account book recording every bargain made with each customer. This apparently, was already common practice, but the bill required the broker to show the book in case of a law suit. In 1711, Parliament reimposed the half percent limit on the fees that brokers could charge, according to Banner. But one copy of the bill published many years later put the limit at 10 percent. By 1720, however, active customers in Exchange Alley expected to pay no more than 1/8 percent, which was in line with Dutch fees for brokerage on the Amsterdam Beurs. These were the only restraints on securities trading until Barnard's Act was enacted in 1734, well after the collapse of the South Sea Bubble in 1720.

Meanwhile, a thriving business in securities trading arose given the increase in marketable government debt, both funded and unfunded, and the free creation of new joint-stock companies able to publicize their prospects in a press unfettered by government or guild. Securities trade centered in Exchange Alley hard by the Royal Exchange where London's wholesale trade was conducted in open view to the public. There, dealings in all the products required to service the needs and desires of London's population required constant contracts at varying lengths and terms of settlement, all of which were enforceable in courts of law, usually relying on common law, which in turn relied on customary law merchant. When contractual disputes arose over delivery of securities, then, the same law courts dealing with issues of mercantile trade dealt with issues of securities trade. Not surprisingly, they tended to apply the

same reasoning for resolving issues over breach of contract in trade goods to resolving issues over breach of contract in "virtual" goods, or securities. (Banner, ch. 3)

David Dalrymple's treatise on time-bargains, published in 1720, argued that time bargains made for the purchase of South Sea stock or subscriptions during the bubble would be void in British courts of equity, on the basis that they were knowingly priced by the sellers well above their true value. His reasoning was based on accepted remedies in English civil law for fraudulent contracts that priced goods well above their true market value. This was especially the case, he argued, for the Third Subscription to South Sea stock. Not only should those time contracts be voided to relieve the buyer of the obligation to pay, but also the seller in the first instance (the Directors of the South Sea Company) should be fined half of the excess value. Dalrymple's obviously self-interested argument merely reflected the practice in English courts of applying precedents from cases arising in disputes over the terms of contracts for the sale of trade goods to cases dealing with sale of securities. In the event, Parliament did pass legislation putting all the subscribers on the same footing, thereby voiding the Third and Fourth Subscription contracts.

The one case found by Banner, Thomson v. Harcourt, 1 Brown 193, 1 Eng. Rep. 508 (H. L. 1722) where Dalrymple's argument was used ended up being rejected by the House of Lords where it was tried. The buyer, Harcourt, refused to pay the agreed price (£920, or near the peak) for South Sea stock to be delivered by Thomson when the price had fallen to one-fourth that level. The House of Lords ordered him to pay the price, but only for the South Sea shares that Thomson actually held at the time of the contract, which were fewer than the agreed amount. Gary Shea, however, in tracing down the outcome of a similar case dispute between Sir George Caswall against the Duke of Portland, who had contracted to buy enormous sums of South Sea

stock at inflated prices, found that the Duke's heir was ultimately successful in staving off the claims of Caswall's son and others, despite being pursued for twenty years after the collapse of the South Sea bubble. (Shea, 2007)

The most famous piece of legislation to emerge from the South Sea episode was the Bubble Act of 1720. Thanks to the diligent research of Ron Harris (1994; 2000), it is clear that the main import of that famous piece of legislation was to maintain the primacy of the South Sea Company's efforts at refinancing the government's debt for the attention of the professional stock brokers and jobbers. Specifically, the act (6 Geo. I. cap. 18) required joint-stock corporations issuing shares to the public to be chartered by Parliament, as well as requiring all previously chartered companies to confine themselves to the business for which they had been granted a charter originally. It failed to keep the South Sea Company from collapsing, but had little other effect on the development of the stock exchange's business. That business, providing liquidity for the bulk of the government's debt, previously tied up in 99 year irredeemable annuities and a welter of shorter term, redeemable annuities created during the wars of William III, especially the War of the Spanish Succession, was significantly enhanced by Walpole's resolution of the situation. He ordered the capital stock of the much enlarged company to be split in half, with shareholders receiving the other half of their claims on the stock of the company in the form of perpetual annuities offering 5% interest for five years, to be reduced then to 4% (and eventually to 3%). Thus, Walpole at a stroke created an enormous stock of homogenous, readily transferable, and fungible financial assets that were widely held by at least 35,000 individuals. (Carlos, Neal, and Wandschneider, 2005) While the remaining stock of the South Sea Company was gradually wound up due to the resistance of the Spanish Empire against allowing it to expand upon its monopoly of the slave trade, both the Bank of England and the

East India Company periodically increased their capital stock. War finance, however, proved to be the source of continued growth of the stock exchange business and the prosperity and number of its professional middlemen. The War of the Austrian Succession (1738-42 for Great Britain) was financed by issuing directly to the public the equivalent of the South Sea Annuities, now made perpetual and carrying a nominal 3 percent annual interest. The transfer books and stock ledgers for these issues were maintained by the Bank of England, which became necessarily a prime location for trading in the funds. Thomas Mortimer's classic primer, *Everyman his own broker,* argued in fact, that the transfer of ownership in any of the various public securities was so transparent that any one could do it on their own, without bothering to contact a self-styled broker.

The most enduring, and ultimately most controversial, piece of legislation to arise in the eighteenth century was Barnard's Act (7 Geo. II, cap. 8). Parliament passed the act originally in 1733 for a period of three years to see what effect it might have, and then made it permanent in 1736 after it appeared that the limited number of securities available had not suffered any adverse effects of the act. Even when the government began issuing its 3 percent annuities to finance the War of the Austrian Succession, no effort was made to repeal or even amend Barnard's Act. The act was intended to eliminate time bargains in public securities altogether, the thought being that this would remove sudden movements in the prices of the various forms of government debt by eliminating the pernicious business of stock-jobbing. Of course, with no more major issues of government debt forthcoming, services of stock-jobbers were not needed. Navy, Victualling, and Exchequer bills, all short term forms of government debt, were not considered to by "public securities" according to Sir John Barnard when he defended the bill from the opposing speech of none other than Sir George Caswall, disgraced stock-jobber and

participant in the South Sea scheme years earlier. Caswall tried to kill the bill by raising the specter that Navy victuallers and suppliers would not be able to raise cash for supplying the Navy's needs without possessing the government's promises to pay, which they needed to pledge as collateral to their banker (or "monied man" as Caswall phrased it). Barnard squelched this argument by saying these short term notes were not covered by the bill. His main argument in favor of the bill, namely that stock-jobbers were essentially con artists whose efforts were a diversion from more useful pursuits, carried the day with the majority of the House of Commons. According to Barnard, stock-jobbers would try to raise the price of a stock by creating false rumors in its favor if they had a "time bargain" to buy at a fixed price in the future; and then spread ill-tidings about it if their time bargain was to sell at a fixed price. He cited the recent rise and then plummet in the price of East India stock to support his argument. By contrast, he noted, the price of South Sea annuities, ignored by stock-jobbers, remained stable and higher than the price of shares in the company itself. (Budgell, pp. 266-272.)

The effect of Barnard's Act when the necessities of war finance arose a few years later with the War of the Austrian Succession was two-fold. On one account, it gave a great deal of business to Dutch brokers, who only did business on time, and for quarterly accounts – February, May, August, and November. Isaac de Pinto (1771) asserted that Britain's success in raising war finance for the War of the Spanish Succession, the War of the Austrian Succession, and the Seven Years War was due to the ability of stock jobbers in London to sell their commitments to brokers in Amsterdam. The separation of broker and jobber functions, by this account, put brokers in London and jobbers in Amsterdam. On a second account, the act simply forced the group of London jobbers, whether they had business connections in Amsterdam or not, to deal only with each other, knowing that it was in neither party's advantage to report the other to the

authorities. The reward for reporting a violation of the Act to the authorities was only £500 and had to be split with the government.

The overlooked part of Barnard's Act was to give legal sanction to the right of buying-in or selling out in case of breach of contract. If a buyer's counterparty seller did not appear at the appointed time and place to deliver the agreed stock, the buyer had the right to buy the stock from anyone else. If the price proved higher than the original agreement, he then had a legal claim on the original seller for the difference in price. Similarly, a seller whose buyer did not show up at the agreed time and place could sell the stock he had on hand to whomever was present. If the price he obtained was lower than the contract price, he then had a legal claim on the original buyer for the difference in price. Many years later, this provision for buying-in and selling-out was in the original rules and regulations of the London Stock Exchange throughout the nineteenth century. Barnard's Act, however, merely gave force of law to what was already agreed practice among stock-jobbers. Lord Londonderry in 1720, having agreed in March to sell South Sea stock to the stock jobbing partnership of Merttins and Martin in October, found that they were among the many dealers who had declared bankruptcy with the sudden fall in price of South Sea stock. He went to Exchange Alley, cried out that he had so many shares of South Sea to sell, and took the best offer at the time. Later, his lawyers informed him that his claim for the difference in price had been allowed by the commissioners in charge of disposing the assets of the bankrupt firm.

The only developments in buying-in and selling-out rules within the London Stock Exchange over the remainder of the nineteenth century dealt with spacing out the times when disappointed members could exercise their rights. Eventually, their claims had to be directed through an appointed secretary of the Settling Room. Further, unsettled claims in mining shares

and American securities had to be dealt with on separate days from the rest of the traded securities, given the overwhelming volume of business in these categories by the end of the nineteenth century. By contrast, the rules for dealing with defaults became increasingly elaborate over the nineteenth century. First one, then two, appointed members of the exchange were given the responsibility of Official Assignees, charged with collecting the funds due to each defaulting firm or member and then dispersing appropriately those funds to the list of creditors. By the twentieth century, creditors who were not members of the exchange were allowed to participate in the funds dispersed by the Official Assignees, but their claims were allowed only if the creditors who were members of the exchange permitted. (See Appendix B.)

**Conclusion**

The illusion that the London Stock Exchange was entirely a self-policing club independent of state regulation arises, no doubt, from the desuetude of the long-standing regulations passed early in the history of English securities trading. The limit on stock brokers to be licensed by the City of London effectively lapsed by 1708, the Bubble Act was repealed in 1826, and Barnard's Act finally repealed in 1860. Under close scrutiny by the Royal Commission of 1878, the exchange managed to convince the members of the commission, and therefore Members of Parliament, that it had effectively met the government's demands for protection of unwary investors. The key to understanding the success of the self-regulation of the exchange in terms satisfactory to the British authorities, however, lies not so much in the enlightened view of the members of the club about their duties to their customers as it does in the unusual governance structure of the exchange. Dividing the authority over admission of members between the Committee for General Purposes, elected annually by the admitted members of the exchange, and the Trustees and Managers, appointed by the Proprietors who held

shares of the capital stock of the exchange, worked very well. Even the Royal Commission in 1878 was split on whether it should become a joint-stock company owned by the Members, like the New York Stock Exchange, or continue with its divided governance structure. In the event, it took two world wars and externally imposed capital controls to force the London Stock Exchange to unify its governance structure in 1946. It then took the Big Bang legislation of 1986 to undo the stultifying effect of the new governance structure, determined to maintain the restrictions on financial innovations that preserved comfortable niches for the multitude of small, undercapitalized firms within the exchange. The divided governance structure, combined with the fear of an alternative exchange if membership dues were increased by the Proprietors, meant that competition among the members, whether as brokers or jobbers, was constantly maintained through an increase in membership whenever financial conditions warranted. Competition, admittedly more internal than external as in the case of New York, maintained the fiduciary responsibility of self-regulation in the London Stock Exchange as state regulation withered away until the outbreak of World War I.

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## Appendix A: The Rules and Regulations of the London Stock Exchange with respect to defaulters, 1812.

Source: London Stock Exchange, *London Stock Exchange, Rules and Regulations adopted by the Committee for General Purposes of the Stock Exchange, to which is prefixed, the Report of the Sub-Committee upon that subject*. London:Stephen Couchman, 1812. [Guildhall Library, Closed Access, Store 223.]

### *Failures*

1. On every failure the managing creditor shall furnish, as speedily as possible, to the Committee for General Purposes (on application of either the Chairman, Deputy-Chairman, or Secretary) a *list of the creditors* and their respective claims, together with the sums due in the Stock-Exchange to such defaulter, and from whom, as far as the same can be obtained; in order that the same may be copied in a book to be kept for that purpose, and an entry made from time to time, of every dividend paid to the creditors: which book shall remain in the custody of the said Committee.
2. Whenever any member shall avow himself *privately* to his creditors, as incompetent to perform his engagements in full, such creditors shall declare or cause the same to be *declared publicly* in the Stock-Exchange, without distinction of parties; and shall not on any account compromise privately with such defaulter. And in case the Committee should obtain a knowledge of *any private failure*, the names of the creditors so concealing the same, together with the name of the defaulter, shall be affixed in a conspicuous part of the Stock-Exchange. **[p. 35]**
3. If the *creditor of a defaulter be dead,* the dividend due to him shall be paid to his legal representative: but, if the creditor be himself a defaulter, and shall not have paid in full, the dividend due to him shall be paid over to *his* creditors to be divided among them.
4. Every member, who shall have *received any difference* on an account *prior to the regular day* for settling the same, shall (in case the party of whom he has received it, be a defaulter) refund the same for the benefit of the creditors at large. And every member, who shall have paid any difference under the circumstances above stated, shall again pay the same to the creditors; so that, in each case, the parties may stand in the same situation, with respect to the creditors at large, as if no such prior settlement had taken place.
5. No creditor of a defaulter shall pay himself, or any other creditor, *in a larger proportion* than that to which the whole body of creditors are entitled. And, if a creditor shall, by any means, have received a larger proportion than that to which the whole body of creditors are entitled, he shall refund such a portion of it as shall reduce his dividend to an equality with the others.
6. No balance, or difference upon *former transactions* owing by a member, who may become a defaulter, shall be deducted from any balance **[p. 36]** or difference due to such defaulter at the time of his failure.
7. No member shall *carry on the business* of a defaulter (whether jobber or broker) for the benefit of such defaulter.
8. No member shall *transact business* with any defaulter before his readmission to the Stock-Exchange.
9. Every defaulter, applying for readmission, shall at the time of such application *deliver* to the Committee for General Purposes, *his books of accounts* and a statement of the sums owing to him and owed by him in the Stock-Exchange. And no proceeding in the Committee relative to the readmission of such defaulter shall take place, until such accounts shall have been so delivered.
10. Every defaulter, applying for readmission, shall have *his name affixed* in a conspicuous part of the Stock-Exchange, at least eight days previous to his application being considered by the Committee.

11. Every defaulter, applying for readmission, must be *recommended by his creditors* to the consideration of the Committee. **[p. 37]**
*(in handwriting on facing page)*
*12th April 1813*
*The Rules 10 & 1 were repealed, and the following Rules adopted.*
*10th. Every defaulter applying for re-admission must be recommended, not only by his Creditors, but also by two members of this House who are not his Creditors.*
*11th Every defaulter applying for re-admission shall have his name together with the names not only of his Creditors recommending him, but also of the other members who have joined in the recommendation affixed in a conspicuous part of the Stock-Exchange, at least eight days previous to his application being considered by the Committee.*
*12th September 1814*
*Form of the Letter of Recommendation which must be signed by the majority in number and value of the Creditors of every defaulter, and publicly affixed in the Stock Exchange.*
*"To the Secretary of the CGP.*
*Sir,*
*We the undersigned Creditors of Mr. [blank] request you to inform the Committee, that his conduct has been satisfactory to us [p. opposite p. 37] and that we are of opinion that he has behaved with so much integrity and honor as to entitle him to the future confidence of the Stock Exchange: We therefore beg leave to recommend him as a fit and proper person to be re-admitted a member of this House.*
*We are &c.*
*Resolved, That upon every application for the readmission of a defaulter, a Sub-Committee consisting of not more than 3 Members, be appointed to investigate the conduct and accounts of such defaulter, and report the same to this Committee.*
*That the attention of such Sub-Committee be directed, First towards ascertaining the amount of the greatest Balance of Stock at any time remaining unsettled by such defaulter during the progress of his account, as well as the Balance of Stock unsettled at the time of his failure, and whether the sums bought or sold were on his own account or on account of Principals: specifying the amount of each respectively. Secondly towards ascertaining the total amount of money or other property brought forward toward the liquidation of his debt, distinguishing the money arising from sums collected in this House, the money paid by principals, and the money or other property brought forward by himself.*
*Thirdly, towards ascertaining the conduct of such defaulter preceding and subsequent to his failure, and in general, towards the investigation of any other facts, which may deem essential to be enquired (sic) into.*
*Fourthly, That it shall be duty of every defaulter applying for re-admission, to furnish such Sub-Committee with every information which they may deem requisite to accomplish the object of their inquiry.*
*Fifthly, That no proceeding in the Committee relative to the readmission of such defaulter shall take place until such report shall have been made.*

12. Whenever the creditors of any defaulter shall represent to the Committee for General Purposes, or whenever it shall otherwise appear to the said Committee, that the conduct of such defaulter has been dishonourable, or marked with any circumstances of impropriety, the said Committee have the right to cause the name of such defaulter to be affixed on the *Black Board* in the Stock Exchange. **[p. 38]**

## Appendix B. The Rules and Regulations of the London Stock Exchange with respect to defaulters, 1873

Source: London Stock Exchange, *Rules and Regulations for the conduct of business on the Stock Exchange,* London: Stationers' Hall, 1873. Published under authority by Mihill Slaughter, Secretary of the Share and Loan Department. [British Library, 8229.aaa.35]

**Failuresf**

1. A Member unable to fulfill his engagements, shall be publicly declared a Defaulter by direction of the Chairman, Deputy Chairman, or any two Members of the Committee.
2. A Member declared a Defaulter in the Stock Exchange, a Member who may become a Bankrupt, or be proved to be insolvent, although he may not be at the same time a Defaulter in the Stock Exchange, ceases to be a Member.
3. When a Member shall give private intimation to his creditors of his inability to fulfill his engagements, the creditors shall not make any compromise with such Defaulter, but shall immediately communicate with the Chairman, Deputy Chairman, or two Members of the Committee, in order that the Member in default may be immediately declared; and in case the Committee shall obtain knowledge of any private failure, the name of the Defaulter shall be publicly declared.
4. A Member conniving at a private failure, by accepting less than the full amount of his debt, shall be liable to refund any money or securities received **[p. 68]** from such Defaulter, provided he shall be declared within two years from the time of such compromise, the property so refunded being applied to liquidate the claims of the subsequent creditors. Any arrangement for settlement of claims, in lieu of bona fide money payment on the day when such claims become due, shall be considered as a compromise, subject to the provisions of this rule.
5. A Member who shall have received a difference on an account, prior to the regular day for settling the same, or who shall have received a consideration for any prospective advantage, whether by a direct payment of money, or by the purchase of sale of stock at a price either above or below the market price at the time the bargain was contracted, or by any other means, prior to the day for settling the transaction for which the consideration was received, shall (in case of the failure of the Member from whom he received such difference or consideration) refund the same for the general benefit of the creditors; and any Member who shall have, under the circumstances above stated, paid or given such difference or consideration, shall again pay the same to the creditors; so that, in each case, all persons may stand in the same situation with respect to the creditors, as if no such prior settlement or other arrangement had taken place. **[p. 69]**
6. A creditor receiving, under any circumstances, a larger proportion of differences on a Defaulter's estate than that to which each of the creditors is entitled, shall refund such portion as shall reduce his dividend to an equality with the others.
7. Creditors for differences shall have a prior claim on all differences received by, or due to, a defaulter's estate.
8. Members not receiving due payment for securities delivered on the day of default, are entitled, so far as regards the value thereof, at the average price on the day of delivery, to be paid pro rata, and preferentially, out of assets resulting in any manner from such securities, or derived form the Defaulter's own resources; and, should these prove insufficient, they shall, as to the balance of such claims, participate with other creditors in any surety-money of the Defaulter.
9. In the case of loans of money made upon securities valued at less than the market-price, the lender shall realize his securities within Three clear days, (unless the creditors consent to a longer delay,) or take them at a price to be fixed by the Official Assignees, with appeal to any Two Members of the

Committee. Should the security be insufficient, the difference may be proved against the Defaulter's estate. **[p. 70]**

10. No loan without security shall be admitted as a claim on the differences of a Defaulter's estate; nor shall any such loan, when no longer duration than two business days, be admitted as a claim on any other of his assets; and should any unsecured creditor receive payment of his loan from a Member on the day of his default, such payment being made out of assets not belonging to the Defaulter previously to that day, he shall refund the amount so received for the benefit of the Defaulter's estate.

11. Differences allowed to remain unpaid for more than Two business days beyond the day on which they become due, cannot be proved against a Defaulter's estate, or set off against any difference due to a Defaulter at the time of his failure. Differences overdue and paid previous to the day of default are not to be refunded.

12. The Committee will not recognise any claim on a Defaulter's account that does not arise from a Stock Exchange transaction.

13. No Defaulter shall be re-admitted, who shall not, if required, give up the name of any principal indebted to him, or who, within Fourteen days from the date of his failure, shall not have delivered to the Official Assignees, or to his creditors, his original books and accounts, and a statement of the sums owing to, **[p. 71]** and by him, in the Stock Exchange, at the time of his failure.

14. A Member, having compounded with his creditors, and being subsequently declared a Defaulter, shall not be eligible for re-admission for Six months, and should he be declared in consequence of his having so compounded, his sureties shall not be called upon to pay their security money.

15. A Defaulter shall not be eligible for re-admission, who shall not have paid from his own resources, independently of his security-money, at least one-third of the balance of any loss that may occur on his transactions, whether on his own account or that of principals; or who, in the event of his debts being less that the amount which his sureties may be called upon to pay, shall not have refunded to the sureties one-third of the amount paid by them.

16. A Member who passes or retains a ticket for shares or stock, whereby loss is incurred or increased, and who shall be declared a Defaulter in that Account, shall not be eligible for re-admission for at least One year from the date of such default, provided it be proved to the satisfaction of the Committee that he knew himself to be insolvent at the time of passing or retaining the ticket. **[p. 72]**

17. No Member shall carry on business for a Defaulter for his benefit, without the consent of the creditors. nor deal with a Defaulter on his own account before his re-admission to the Stock Exchange.

18. No Member shall transact business for a principal who, to his knowledge is in default to another Member, unless such person shall have made a satisfactory arrangement with his creditors.

19. Non-Members shall be allowed an equal participation of assets, subject to the same conditions as Members, provided their claims be admitted by the creditors, or, in case of dispute, by the Committee; and a person whose claim is so admitted, may be represented at the meeting of creditors by any Member whom he may select.

20. No Member, being a creditor upon a Defaulter's estate, shall sell, assign, or pledge his claim on such estate, to a Non-Member, without the concurrence of the Committee; and such assignment shall be immediately communicated to the Official Assignees.

21. If a creditor of a Defaulter be dead, the dividend due to him shall be paid to his legal representative; **[p. 73]** but if the creditor himself be a Defaulter, the dividend due to him shall be paid to his creditors.

22. Upon any application for the re-admission of a Defaulter, a Sub-Committee, of not more than three Members, to be chosen in alphabetical rotation, shall investigate his conduct and accounts; and no

further proceedings shall be taken by the Committee with regard to his re-admission, until the Report of such Sub-Committee shall have been submitted, together with a balance sheet of the Defaulter's estate, signed by himself.

The attention of the Sub-Committee shall be directed,

1st, To ascertain the amount of the greatest balance of shares or stock open at any time during the Account, the current balance at his bankers, as well as the balance of shares or stock open at the time of failure; and whether the transactions were on his own account, or on account of principals, specifying the amount or each respectively.

2nd, To ascertain the total amount of money paid by him; specifying the sums collected in the Stock Exchange; and those received form principals; and the money or other property brought forward by himself. **[p. 74]**

3rd, To ascertain the conduct of the Defaulter preceding and subsequent to his failure; and to enquire of the Official Assignees whether any matter, prejudicial or otherwise to the Defaulter's application, has transpired at any meeting of creditors, or has officially come to their knowledge elsewhere.

4th, To ascertain whether the Defaulter has violated Rule 157.

23. The re-admission of Defaulters shall be in two distinct classes:

    The *First* Class to be for cases of failure arising from the default of principals, or from other circumstances, where no bad faith, nor breach of the Regulations of the House has been practiced; where the operations have been in reasonable proportion to the Defaulter's means or resources; and where his general conduct has been irreproachable.

    The *Second* Class, for cases marked by indiscretion, and by the absence of reasonable caution.

    The *Third* Class, for cases where the Defaulter is ineligible under either of the former Classes; but whom, nevertheless, the Committee may not feel warranted in excluding from the Stock Exchange. **[p. 75]** The decisions of the Committee on the re-admission of a Defaulter shall remain posted in the Stock Exchange for Thirty days.

24. Every Defaulter, bankrupt or insolvent, (applying for re-admission) shall furnish the Sub-Committee with every information they may require. **[p. 76]**

**Official Assignees**

25. Two or more Members shall be appointed annually by the Committee, to act as Official Assignees, whose duty it shall be to obtain from a Defaulter his original books of account, and a statement of the sums owing to and by him, to attend Meetings of creditors, to summon the Defaulter before such Meetings; to enter into a strict examination of every account; to investigate any bargains suspected to have been effected at unfair prices; and to mange the estate in conformity with the direction of the majority of the creditors present.

26. In every case of failure, the creditors shall appoint two of their body to whom the Official Assignees shall refer in all matters relating to the failure. The Assignees shall collect and pay the assets to the credit of their joint account at a Bankers, and shall divide the same as soon as possible.

27. In every case of failure, the Official Assignee shall publicly fix the prices current in the Market immediately before the declaration, at which prices all **[p. 77]** persons having accounts open with the Defaulter shall close their transactions by buying of or selling to him such stocks, shares, or other securities as he may have contracted to take or deliver, the differences arising from the Defaulter's transactions being paid to or claimed from the Official Assignees. In the event of a dispute as to the prices named, they shall be fixed by Two Members of the Committee.

28. The Official Assignees shall not claim differences on a Defaulter's estate, until they become due.

29. The Official Assignees shall not admit any payment to, or claim upon, a defaulter's estate for differences arising out of transactions which are specially stated in the laws of the Committee as not sanctioned, or not recognized

30. Once in every month, the Official Assignees shall lay before the Committee an account of the balances in their hands belonging to Defaulters' estates, and the Committee shall order such balances as they think fit to be paid over to the account of the Trustees of The Fund for Decayed Members.

    A statement of all sums so paid over, and of the amount remaining in the hands of the Trustees of The Fund for Decayed Members on the 31st of December in every year, shall be furnished by the Official Assignees, **[p. 78]** and deposited in the Committee Room, for the inspection of the Members of The Stock Exchange.

    On the first of March, in each year, the Official Assignees shall lay before the Committee a statement of all dividends paid during the last year on each defaulter's estate.

    Every Defaulter's estate shall be registered in a book, to be kept by the Official Assignees.

31. The scale of remuneration to the Official Assignees shall be as follows:–

    On the first £1,000 collected, 4 per cent.
    From £1,000 to £5,000 collected, 1 per cent.
    Above £5,000 ½ per cent.

    But they shall not be entitled to commission on the redistribution of sums received from another Defaulter's estate, nor upon any funds or other property arising out of stock delivered to a Defaulter, but not duly paid for by him.

**Appendix C. Barnard's Act (7 Geo. 2, cap. 8)**

All contracts which shall be entered into, upon which any premium shall be given for liberty to deliver or receive, accept, or refuse any publick stock, or securities, and all wagers, puts, and refusals, relating to the present or future price of stock or securities, shall be void, and all premiums upon such contracts or wagers shall be restored to the person who shall pay them, who within six months from the making of such contract, &c. may sue for the same with double costs: And it shall be sufficient for the Plaintiff to alledge that the Defendant is indebted to him, or has received to his Use, the Money or Premium so paid, whereby the Action accrued, according to the Form of the Statute, without setting forth the special Matter; and a bill in Equity may be preferred for discovering any Contract or Wager, and the Premium given, which the Defendant shall be obliged to answer upon Oath, &&c.

Every Person who shall make any Contract, upon which any Premium shall be given for Liberty to put upon , deliver, accept, or refuse any Stocks or Securities, or any Contract in the Nature of Puts and Refusals, or shall lay any Wager, &c. as aforesaid, (except such Persons who bona fide sue, and with Effect prosecute for Recovery of the Premium paid by them; and that shall voluntarily before any Suit commenced, repay or tender such Premium which they shall have received; and except those Persons as shall discover such Transactions in any Court of Equity) shall forfeit 500 *l.* And all Persons negotiating, or writing such Contract, incur the like Penalty and Forfeiture; which Penalties may be recover'd by Action of Debt, or Information, in any of his Majesty's Courts of Record at Westminster.

No Money or other Consideration shall be voluntarily given, or received for compounding any Difference for the not delivering, or receiving any Publick Stock, or Securities; but all such Contracts shall be specifically executed; and all Persons who shall compound any Difference, shall forfeit 100 L. And no Person who shall sell stock to be deliver'd and paid for at a certain Day, if it be refused or neglected to be paid for, shall be obliged to transfer the same; but it shall be lawful for such Person to sell such Stock to any other, and to receive or recover from the Person who contracted for the same, the Damage which shall be sustained: And any Person, that shall buy Stock, to be accepted and paid for on a future Day, ;and which shall be refused or neglected to be transferred, may buy the same Quantity of such Stock of any other Person at the current Market Price, and recover and receive from the first Seller, the Damage sustained.

All contracts made for the buying or transferring of stock, whereof the persons, in whose behalf the contract shall be made to transfer the same, shall not at eh time of making such contract be actually possessed of that stock in their own right, or in the name of trustees, shall be void; and every person in whose behalf, and with his consent any contract shall be so made to sell stock, of which such person is not actually possessed, shall forfeit the sum of L. 500, one moiety to the crown, and the other t0o him who shall sue for the same; and any broker or agent who shall negotiate such contract, and shall know that the person in whose behalf the contract shall be made is not possessed of the stock, shall forfeit L. 100, to be divided betwixt the crown and the prosecutor.

Every broker or person who shall act as a broker in the buying or selling of stocks, shall keep a broker's book, in which he shall enter all contracts that he shall make, on the day of the making such contracts, with the names of the principal parties, as well buyers as sellers, and such broker who shall not keep such book, or shall willfully omit to enter any contract, for every such offence shall forfeit L. 50, to be divided betwixt the crown and the prosecutor.

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[1] 8 & 9 W. III c. 32 (1697).