What should these limitations be? In the discussions that have preceded, one of the members of this committee has stated that he could see no particular objection to the issuance of senior securities to the extent of, say, one-third of total assets. He indicated that he did not favor a complicated system of capitalization, but remarked that some people desired to take greater risk in their investments than others. With that principle we entirely agree.

Based upon our experience, we believe that the limitation of the issuance of senior securities should be somewhat higher than one-third—say, 40 percent to 50 percent—which is still well below the amount an individual can borrow from a bank or stock-exchange firm under present Federal Reserve regulations.

I think there may be some confusion with respect to the borrowing ability of the individual, under the present Federal Reserve regulations. The individual is permitted to borrow 60 percent, not 40 percent. He is required to put up 40 percent margin and, therefore, can borrow 60 percent. In other words, he can buy $10,000 worth of securities with $4,000 worth of capital of his own.

Summarizing our position, we believe that, first, the issuance of senior securities, limited to one class, should continue to be permitted; second, in the creation of a well-protected senior security, we are providing an attractive medium of investment for the conservative investor. Many of the most conservative and sophisticated investors in this country own the senior securities of my company.

Third, so far as the common-share holder is concerned, he should not be prevented by law from the purchase of a more volatile security, particularly when full disclosure is already required in the Securities Act; fourth, a provision covering such a capital set-up is a relatively simple matter to draw and to embody in a bill of this nature; fifth, the prohibition of this type of security runs counter to the history of our economic growth, and is undemocratic in concept.

Before concluding my statement, I should like to impose upon the time of the committee long enough to illustrate the practical effect upon the business of Lord, Abbett & Co., if the bill as drawn should be enacted into law. This may serve to illustrate the reason for the industry's determined opposition to the bill, despite the fact that I believe the Securities and Exchange Commission is entirely sincere in its opinion that the bill as drawn is not only reasonable but moderate in its treatment.

The principal business of Lord, Abbett & Co. is the distribution of investment trust securities, mainly the debentures and common shares of affiliated fund. The bill as drawn prohibits us from the future sale of the debentures.

To all practical purposes, it also prohibits the further sale of common shares of the company; because section 19, paragraph (*b*), provides that no dividends on the common shares of a company with senior capital shall be paid unless the senior securities of such company have an asset coverage of 300 percent. We do not have such coverage; at the present time it is approximately 240 percent and, therefore, we cannot pay dividends; and investors, naturally enough, will not buy investment trust shares upon which no dividend can be paid.

Well, we are therefore effectively prevented from developing Affiliated Fund beyond its present size. Our alternative, then, if we

wish to stay in business, is to start a new company; but immediately we run afoul of paragraph (*b*) of section 11, which prohibits us from acting as investment advisor or principal underwriter of a new company if we already are serving in that capacity for another company, unless the Securities and Exchange Commission in its sole discretion should see fit, under paragraph (*d*) of section 11, to exempt us from the provisions of subsection (*b*).

The theory, gentlemen, of the Securities and Exchange Commission is apparently that, already having this company, we should be restricted from building it larger or from creating a new company unless we can secure the Commission's specific approval.

I submit that this is contrary to the basic philosophy of progress in this country. It is the kind of reasoning that tends to stifle enterprise and to smother the initiative and productivity of our people.

Thank you for your attention.

Senator HERRING. I am just wondering—and I am not suggesting it—whether you could take up your senior securities and issue common in their place, and continue on. Couldn't you?

Mr. LORD. Yes, Senator Herring; I suppose we could call the debentures, and thus have in Affiliated Fund a regular mutual company; because Affiliated Fund is a regular mutual company with the exception that it has the capitalization difference in the issuance of the debentures.

Nevertheless, Senator, that is our business: We believe in Affiliated Fund and its present capitalization.

As I said here, we do not believe that a law should be enacted to prevent people from buying that kind of debentures.

Senator HERRING. I am not saying that I favor it, either; but I am just wondering if that could not be done.

Mr. LORD. Yes, it could be done.

Senator HERRING. So you would not have to go out of business, if the bill passed?

Mr. LORD. Yes, sir.

If I may say so, there is another angle to that matter. First of all, we have in this business, as you may well imagine from listening to the testimony that has been presented here in the past week, some real competition. The State Street Co. and the Massachusetts Investment Trust and all the rest of them are good mutual companies, all of which have been in existence longer than we have. Some of their records are better than ours; and I should think that as a practical matter it would be difficult for us to continue to sell Affiliated Fund in straight competition as a mutual fund. That is a practical business consideration.

Senator HERRING. Yes, sir.

Mr. LORD. Futhermore, as Mr. Myers indicated, there is the possibility and probability that many investors having bought the shares of a leverage company, so-called, have the advantage of the senior securities and the disadvantage that now that the leverage is removed, they are no longer interested in the company and, therefore, under the self-liquidating provisions of the company, would liquidate their shares.

Senator HUGHES (presiding). Thank you, Mr. Lord.

Mr. LORD. Thank you, sir.

Senator HUGHES (presiding). Mr. Dewey, please.

STATEMENT OF BRADLEY DEWEY, PRESIDENT, DEWEY AND ALMY CHEMICAL CO., CAMBRIDGE, MASS.

Mr. DEWEY. Mr. Chairman and Senators, my name is Bradley Dewey. I am president of Dewey and Almy Chemical Co., at Cambridge, Mass., with factories in Oakland, Calif., and Chicago, Ill. I am here as a private citizen, to express my hope that there will be a modification of section 10 (e) (1), having to do with interlocking directors, and to give you my own personal slants on the possible detrimental effect of the size restriction that is one of the other sections, as it may apply to the financing of growing industries.

First, let me speak a few words regarding the effect of interlocking directorates. My own company is a very small one, based on applied research. We run a research laboratory employing some 50 men. It is hard enough to manage all of the diverse angles of the technical end, the engineering, and the selling, without trying to learn also to be a financier.

Because of that, we attribute a great deal of our success—and I think I can say we have been successful, and our securities are now selling for some four times the dollars invested—and believe it is due to the help and advice of two men. I think you have heard from one of them, and you may hear from the other. Merrill Griswold, of Boston, is one of them; and the other is Kelley Anderson. Both of them are on our executive committee.

When we originally organized our business, we went to Mr. Griswold, as an individual. He was then in a position to advise us, to make personal investment in a highly speculative venture at that time. He has been our most loyal, staunchest, and most friendly director and adviser throughout good times and bad times—and we had plenty of bad times in 1931.

In 1931, when times were not so good, we had to go to a new investment trust then forming from old remnants. They were willing to take senior securities and to back us further—they had confidence in us—providing they were in a position to watch and see what we did—a quite proper provision.

Mr. Anderson came on our board at that time, and I have learned to rely on his judgment, and I find him one of our most valued directors. I think I can truthfully tell you that our company would not be what it is today without the advice, help, and direction of those two men.

In order that you may not think that I am here as their paid minion, let me say that it so happens that they do not control, either individually or through their investment trusts or other affiliates enough voting stock to make one iota of difference to my job. It so happens that, as representatives of investment trusts, their investment trust elected originally, in the case when it was consolidated, to take senior securities and nonvoting securities.

The effect of this particular section, as it is now written, because of the fact that neither one of them holds 5 percent of our voting securities, would be to deprive a growing company of the services of two of its most loyal and valuable directors.

You may say that you cannot make an omelet without scrambling eggs. I hope you won't. I think it is unnecessary to take as severe a position as that; and I think that we should be careful, today, not to write legislation that, in order to police someone from doing an improper act, sacrifices the growing businesses of the country.

So much for that personal plea.

Now let us take up the effect of this same thing and the effect of the size provision, as a young chemical engineer in business sees it: Today, we all admit that no investment trust should, unless it is perhaps organized on an entirely different basis than the present ones, go into new speculative promotions; but there is an intermediate stage in the development of new enterprise, when it has graduated from the highly speculative promotional phase, where it must look to individuals for its capital, and yet is not ready to go out to the members of the public who do not know it and who would demand representations that a conservative manufacturer does not like to make. It has developed earning power, but it has not a seasoned historical background.

Now if you say that the investment trust must limit its size, that means that it can no longer take small positions in such business and yet have those positions of sufficient size to do any real good in a developing picture.

I am not maintaining that they should put a lot of their funds there; but I am saying that if our economy is to grow, they should seriously consider small positions in such businesses.

I think that the average investor wants to have a small position in such businesses, and he does not know how to investigate and obtain adequate protection, himself. He cannot afford to; and if he is not protected by the investigating power of the big blocks of capital, he is likely to get mixed up with a lot of fly-by-night things; and then you do not accomplish what you are looking for. In other words, I—as an investor—want the investigating power of the bigger blocks protecting me.

Now what is going to happen if you deprive those fellows of the right to sit on your board of directors and watch that investment? Either they must take voting securities and have more than 5 percent of their funds there—which is a dangerous provision, for some—or they cannot watch those situations, and they cannot help the direction of them.

They are needed in the direction of them; they are valuable men, in many cases. Most of them want to take things like nonvoting, convertible preferreds or something of that type; and you are placing a lot of restrictions on the available mechanisms of capitalization of small industries, as I see it, when you make this prohibition against allowing those men, because they are officers of an investment trust, to sit on the boards of directors of growing manufacturing businesses. I fear that if you go too far with that, you will drive the individual inventor to the large corporations, with their masses of available capital, their big research and engineering staffs that are all geared up to take over his invention and to go ahead.

I fear that, as a result, if you are fearing the power that goes with accumulations of capital, you may be taking a step that will increase that power, and not decrease it.

It is just a question of whether or not that power may be exercised better in an investment trust with diversified holdings, with many interests, with the power of getting out of the bad investment, or by the large manufacturing—so-called in some political parlance—octopus that will be given the opportunity to take over more and more of the smaller inventors and inventions.

I thank you.

Senator HUGHES (presiding). Thank you, Mr. Dewey.

STATEMENT OF HARVEY H. BUNDY, CHAIRMAN OF THE TRUSTEES BOSTON PERSONAL PROPERTY TRUST, BOSTON, MASS.

Senator HUGHES (presiding). Mr. Bundy, of the Boston Personal Property Trust.

We are glad to hear you, Mr. Bundy.

Mr. BUNDY. Mr. Chairman and Senators, my name is Harvey H. Bundy. I am chairman of the trustees of the Boston Personal Property Trust, a "closed-end" trust, which I believe to be the oldest investment trust in the United States. It has been in business for 47 years. It was organized in 1893.

I am going to be brief; I do not wish to take the time of the committee in going over a lot of ground which has already been covered by other witnesses. However, I wish to discuss briefly the special situation of the Boston Personal Property Trust, to touch very lightly on its history, and to show you how the proposed investment trust legislation would affect my particular company.

The Boston Personal Property Trust is what we call in Massachusetts a "strict" trust. During the years, there have grown up in Massachusetts two kinds of trusts, one known as "strict" trusts and the other having characteristics similar to those of a partnership or a corporation. It may be worth while to explain what I believe to be the origin of the socalled strict trust with transferable shares. I believe that it began in Massachusetts originally in the real-estate field and started in this direction because of the obvious convenience of handling real estate in the case of the death of the owner leaving a number of heirs. It has always been inconvenient to own real estate in undivided shares and therefore it was found to be an advantage for the decedent to provide that the title to the real estate should be held by trustees for the benefit of the heirs. In many cases these heirs would desire to sell their beneficial interests; and to meet this situation the trust form was elaborated, and the shares were made transferable and were represented by certificates. Also there were some limitations in Massachusetts to having corporations hold real estate; and that was one of the other reasons.

From the holding of an individual piece of property through the trust medium, it was a natural development for trusts to hold a number of pieces of property; and from its origin in the handling of estates, it was a simple step for individuals who felt inclined to buy one or more pieces of real estate to join in such purchase by themselves creating a trust with transferable shares, and putting the title and the management in the hands of trustees in whose ability and character they had confidence. Sometimes these real-estate trusts owned a large number of buildings, and, from that, they went on to holding more than one group of property.

For example, they might hold a department store downtown and might also hold another piece of property on the outskirts of the business district. In that way, they would spread their risk; and people did do that in Boston.

A substantial part of the real estate of Boston is held by such real-estate trusts, whether originating through wills or through trusts created by voluntary deed of trust. These Massachusetts trusts were also used extensively by Boston investors in acquiring real estate in western cities.

As soon as the trust shares were made transferable, there came into being the two types of trusts, one in which the investors preferred to retain the control of the management of the property by holding annual elections of trustees or by at least retaining the power to remove a trustee, and the other in which the trustees were not subject to control or removal by the shareholders but selected their own successors. One of those groups we call the strict trust, and the other group had the characteristics of a partnership.

In other words, some people said, "We prefer to have John Jones and Bill Smith run our property and have them be our trustees, and not have control over them."

Others said, "We prefer to continue to have control over our trustees and to elect those who will succeed them."

I want to mention the reason for the continuation of the strict trust. You can easily see how it happened in the case of a big family. Suppose you had one conservative son and two rather wild sons. It is perfectly obvious that the conservative son might want to choose Mr. Tom Smith, whom he knew to be a responsible person, and have him continue to operate the trust, without having the two wild sons—whom he did not trust—put in somebody whom he did not like. The same situation existed in the case of a group of gentlemen who got together. Some of them decided, in keeping this strict trust form, that if they were going to be minority holders of the trust, they much preferred to have Mr. Charles Francis Adams, we shall say, and two or three other men whom they thought to be of that ability and character, to choose the successors, rather than to have some fellow be able to buy 51 percent and then put it in the hands of someone whom that purchaser might choose.

Let me point out further reasons for the continuance of this second type of trust. Let us assume that John Jones, a conservative investor, is confident that Smith and Brown are able managers of property and men of the highest character. It is quite understandable that Jones may prefer to invest in a property to be held by Smith and Brown as trustees and to entrust to Smith and Brown the selection of their successor trustees, whereas Jones may be very reluctant to invest his money in a trust where a majority of the trust shares can be acquired by persons of a speculative or unreliable character who might change the policy of the trust and throw out Smith and Brown and put in as trustees persons of inferior ability and judgment. I am not arguing that there is not a real place for the corporate or partnership form of property management, where a majority of the shareholders choose the directors or determine policy. That is the last thing I would do; in fact, most property is held that way. I am merely arguing that there is also a real place in this world for the type of trust which some people prefer—namely, one in which a minority shareholder chooses

to buy the assurance of management by definite, named individuals and the further assurance that these definite, named individuals, on whose character and ability he relies, will be the persons responsible for selecting their successors in the event of death or resignation.

The Boston Personal Property Trust was organized in 1893 by a group of men who had built up a reputation for character and ability in handling other people's property and who felt that there might well be a desire on the part of Boston investors to put their money into a trust similar in structure to the familiar real-estate trust, but one which did not hold real estate as such, but invested in personal property, namely, a general list of stocks and other securities. Their judgment was vindicated and substantial funds were invested. Among these men were John Quincy Adams and President Lowell, of Harvard. They brought forward this movement for investment, Mr. Chairman, at the time of the panic, as a matter of fact; and money was gradually put in. It was not all put in during 1893; it was put in during the succeeding years, until now it has been built up to a value of about 4½ million dollars.

We are a small trust, as they now go. This trust was started long before these enormous trusts were commenced, and there was never any attempt made to expand it. We have not sold stock for years. We do not buy or own stock. We are a closed type of trust.

Let me point out at this time that the duties of a trustee under our law lay a very serious burden and responsibility upon any person undertaking the office, and there are very specific legal limitations on a trustee's action. For example, he may not personally buy from or sell to his trust. He must act with the utmost good faith toward his beneficiaries. I believe that the trustees of the Boston Personal Property Trust for a period of 47 years have undertaken their duties with care and seriousness, and they have built up a reputation for competently managing the property.

I am leaving with the committee a copy of our last annual report, which on the last page shows the time when money was invested leading up to a total value of about $4,500,000 now held by the trust. This report shows the history of our trust year by year, and states the figures for capital, surplus capital, surplus income, total, rate of dividends, and appraisal figures as of November 30 of each year.

I do not think it is a record of great brilliance; I do not claim we are world-beaters. I do not claim that we know when stocks are going up or down; but if you will examine our record, I think you will find it shows a rather creditable performance. I know—or I think I know—that it has been satisfactory to our shareholders. Our mail is not filled with complaints from our shareholders. When you consider that the Boston Personal Property Trust, which was organized during the panic of 1893, has gone through most serious local New England crises in railroads, textiles, and real estate securities—and the real estate crises were still more severe, and we have to some extent invested in the shares of real-estate trusts; likewise, we have been through the railroad difficulties, where the Boston Personal Property Trust usually had a lot of New Haven securities—and when you realize that we have also experienced several national panics, and that in spite of these troubles the trust has shown a satisfactory income yield to its shareholders and a creditable record with respect to the value of its assets, I think you will feel that this

comparatively small trust is not one of those wicked cases so much emphasized by the S. E. C.

In short, if you look at our record, I think you will see it is creditable. I say no more for it than that.

Senator HUGHES. Do you want to offer that report for the record?

Mr. BUNDY. I will offer the last page of our last annual report for the record. If the Senators would like to have extra copies, I have them here.

(The comparative statement of capital, surplus and dividends, of the Boston Personal Property Trust, above referred to, is as follows:)

Comparative statement of capital, surplus, and dividends of Boston Personal Property Trust

Date	Capital (par, $100)	Surplus capital (liquidated)	Surplus income	Total	Dividends (rate)	Appraisal figures Nov. 30 of each year
					Percent	
Dec. 31, 1893	$104,000	$116.65	[a] $111.00	$104,005.65	4	
Dec. 31, 1894	162,000	1,354.03	193.07	163,547.10	4½	
Dec. 31, 1895	241,000	13,181.06	1,221.57	255,402.63	4½	
Dec. 31, 1896	315,000	19,162.11	2,889.77	337,051.88	4¾	
Dec. 31, 1897	419,000	36,620.32	3,352.85	458,973.17	4¾	
Dec. 31, 1898	564,000	84,832.26	5,225.15	654,057.41	5	
Dec. 31, 1899	722,000	179,783.99	7,741.21	909,525.20	5¼	
Dec. 31, 1900	747,000	211,257.16	17,893.02	976,150.18	5¼	
Dec. 31, 1901	842,000	316,773.02	26,366.11	1,185,139.13	5½	
Dec. 31, 1902 [b]	1,326,000	65,666.75	34,598.49	1,426,265.24	54½	$113.10
Dec. 31, 1903	1,333,000	94,419.41	38,199.70	1,465,619.11	4½	103.96
Dec. 31, 1904	1,376,000	129,302.89	42,160.59	1,547,463.48	4½	116.38
Dec. 31, 1905	1,482,000	196,627.44	54,238.67	1,732,866.11	4¾	123.50
Dec. 31, 1906	1,569,000	267,469.34	60,832.36	1,897,301.70	5	124.47
Dec. 31, 1907	1,611,000	273,769.45	64,154.15	1,948,923.60	5½	101.00
Dec. 31, 1908	1,921,000	291,957.82	64,797.90	2,277,755.72	5½	117.20
Dec. 31, 1909	2,059,000	421,788.53	65,034.50	2,545,823.03	5½	128.10
Dec. 31, 1910	2,086,000	488,641.44	48,595.63	2,623,237.07	5⅛	124.92
Dec. 31, 1911	2,094,100	478,106.58	51,680.84	2,623,887.42	5	124.70
Dec. 31, 1912	2,100,200	481,643.25	59,079.04	2,640,922.29	5	126.54
Dec. 31, 1913	2,102,100	479,368.77	76,672.49	2,658,141.26	5	114.49
Dec. 31, 1914	2,102,100	384,359.89	79,005.22	2,565,465.11	5	108.78
Dec. 31, 1915	2,103,500	370,870.13	83,792.03	2,558,162.16	5	114.75
Dec. 31, 1916	2,103,600	302,058.25	106,616.71	2,512,274.96	5	120.33
Dec. 31, 1917	2,103,600	331,811.37	126,914.67	2,562,326.04	5	102.95
Dec. 31, 1918	2,103,600	306,665.14	154,893.67	2,565,098.81	5	108.82
Dec. 31, 1919	2,103,600	318,923.14	178,750.01	2,601,273.15	5¼	112.18
Dec. 31, 1920	2,103,600	332,365.37	202,997.72	2,638,963.09	5⅝	107.79
Dec. 31, 1921	2,103,600	328,620.74	221,158.61	2,653,379.35	6	115.00
Dec. 31, 1922	2,103,600	290,216.24	236,985.52	2,630,806.76	7	132.62
Dec. 31, 1923	2,103,600	285,518.45	253,015.28	2,642,133.73	7	135.05
Dec. 31, 1924	2,103,600	293,492.55	275,160.63	2,672,253.18	7	153.67
Dec. 31, 1925	2,103,600	331,014.68	296,349.11	2,730,963.79	7	177.26
Dec. 31, 1926	2,103,600	274,398.55	314,499.17	2,692,497.72	7	192.14
Dec. 31, 1927	2,108,600	341,408.01	337,411.27	2,787,419.28	8	238.74
Dec. 31, 1928	2,108,600	438,388.32	349,210.08	2,896,198.40	9	286.63

Date	Shares without par value	Capital and surplus	Dividend rate on shares without par value	Appraisal figures Nov. 30 of each year
Dec. 31, 1929	260,860	$4,991,836.21	$0.90	$29.37
Dec. 31, 1930	260,860	5,010,708.73	1.00	24.81
Dec. 31, 1931	260,860	5,031,819.61	1.00	15.21
Dec. 31, 1932	260,860	4,887,300.09	.85	11.13
Dec. 31, 1933	260,860	4,486,488.71	.64	12.58
Dec. 31, 1934	260,860	4,221,928.27	.64	13.52
Dec. 31, 1935	260,860	4,213,670.66	.64	17.12
Dec. 31, 1936	260,860	4,193,909.43	[4] .88	20.02
Dec. 31, 1937	260,860	4,219,825.63	[2] .83	[3] 14.22
Dec. 31, 1938	260,860	4,242,022.70	.64	[3] 16.36
Dec. 31, 1939	260,860	4,251,276.92	[4] .68	[3] 17.08

[a] Deficit.
[b] 50 percent in stock.
[1] Regular, $0.64; extra, $0.24.
[2] Regular, $0.64; extra, $0.19.
[3] Dec. 31.
[4] Regular, $0.64; extra, $0.04.

Mr. BUNDY. With your permission, Mr. Chairman, I am going to talk about one matter that is indicated on that page of the statement, which is more or less of a résumé of our history, and I am going to mention one other characteristic. First, we have the characteristic of our trust indenture, which does not require stockholders' meetings or votes. In other words, our group of trustees is self-perpetuating, as a body; and when one trustee resigns, the other trustees elect his successor.

Another provision of our trust instrument which I wish to mention reads as follows:

Each trustee shall be responsible only for his own wilful and corrupt breach of trust, and not for any honest error of judgment, and not one for another. No trustee shall be required to give a bond.

This clause I mention because it may sound to you as if it were a very wicked clause, because it might exempt a trustee from liability for negligence; and I want to explain to you the benefits of that clause to the investor, and to explain just why that clause is in not only this trust but, I would say, in a majority of the Massachusetts probate trusts and a substantial number of other Massachusetts trusts.

When citizens of responsibility become trustees not only for their own families but for the public in general, and where the holder of beneficial interest can sell to any person, it has become evident to them that they are taking on very serious risks of being subject to suits by shareholders, in respect to losses suffered by the trust.

Those of us in Boston operate under a very liberal law with regard to trustees, and it is our practice and the practice of trustees in Massachusetts to invest a substantial part of a large trust fund in common stocks. The rule of the Massachusetts trustee is that he must invest in securities in which a reasonably prudent businessman would invest; and that is all. When you get equity investments, I defy anybody to say whether they are going up or down; and as a practicing lawyer I have had some experience in the courts, and I do know that after a stock has gone down, it is very easy to make a plausible case against a trustee, to say that he ought to have known the stock was going down. You see these wonderful lines that start way up and go way down; and then you say, in the courtroom, "Ah, but at that point you ought to have known that it was going down, Mr. Trustee."

That is a dangerous form of lawsuit—not that it cannot be defended; they are successfully defended.

It is the practice of trustees in Massachusetts to invest a substantial part of a large trust fund in common stocks. We believe that experience has shown, first, that a large trust should have a number of equity investments, having a substantial element of risk, and that no human being can tell whether such an investment is going up or going down in value; second, that after an investment has gone down, in the light of hindsight it is the simplest thing in the world to allege and make a plausible argument against a trustee and to claim that he should have anticipated what actually happened, and that he was negligent in permitting it to happen. Of course, decline in value has not been limited to equity securities. Really the same difficulties are met by trustees in States where they can invest only in securities legal for savings banks—guaranteed mortgage bonds, and other