

MEMORANDUM

Re SELF-REGULATION and the MALONEY BILL

Self-Regulation

It is fair to say that the investment banking industry has been thinking about and discussing self-regulation for at least the last twenty-five years. Certainly, ever since the formation of the Investment Bankers Association, the concerted intelligence of the industry has been addressed to various implications of this problem.

At the outset the approach was through the process of education, standardization of practices, and the gradual evolution of ethical standards of business conduct. There was no attempt then made by the industry directly to regulate or police the fringe. This phase of the problem was rather left to state authorities; and the industry, through its various associations, cooperated with the several states in attempting to make state laws and their enforcement practical and effective.

That which immediately preceded and followed 1929, however, gave the whole problem of regulating both the issuance and trading of securities a new importance; and even prior to the passage of the National Industrial Recovery Act there was widespread discussion, both within and without the industry, of the need for more pervasive regulation. The question then arose as to whether the job could best be done by the industry itself, under governmental supervision, or whether it should be taken over directly by the Federal Government.

Prior to the passage of the NIRA, the principal obstacle to effective self-regulation by any industry was the anti-trust laws, since almost any regulation necessarily involved questionable restraints upon trade, etc. The NIRA, of course, gave industries organizing thereunder an exemption from the provisions

of these laws, and thus afforded the investment banking industry the opportunity for which many leaders of the business had been hoping for a long period of time. Accordingly, under the able and forward-looking leadership of the late Robert E. Christie, the Investment Bankers Association took the lead in the preparation and sponsorship of what later became the Investment Bankers Code.

It is now generally admitted in Washington and elsewhere that the Investment Bankers Code was certainly one of the best, if not the best, and most effective codes of the lot. Under it the industry had some eighteen months' experience at regulating itself, subject of course to almost plenary supervisory powers in the National Recovery Administration; and although the Code and its enforcement were far from perfect, a great deal was accomplished in the way of enunciation, standardization and enforcement of fair business practices and toward professionalizing the business. Indeed, the Code worked so well that some time before it was invalidated, negotiations were voluntarily instituted by the Code Committee looking toward the transfer of its supervision from the National Recovery Administration to the Securities and Exchange Commission; but this, of course, had not been accomplished by the time the NIRA was invalidated by the Supreme Court.

Immediately after the Schecter opinion was handed down, there was great confusion as to what the Administration was going to do by way of reviving codes, and as to what individual industries should do in the interim. During this period the Code Committee cooperated wholeheartedly with the National Recovery Administration and also with the S.E.C. It was generally recognized that the progress which had been made in the direction of self-regulation should be preserved if possible. Mr. Joseph P. Kennedy, then Chairman of the Securities and Exchange Commission, and later Mr. Landis upon his becoming Chairman, strongly urged that the Code organization be preserved on a voluntary, contractual basis, and counsel was put to work to determine whether or not the Code and its administration as it then stood could safely be carried on by a voluntary organization

without recognition or sanction by law. After considerable study it was counsel's opinion that such an organization or its members, if challenged, could probably justify what they were seeking to do as not in violation of the anti-trust laws at the end of long and expensive litigation; but that in view of possible litigation and the expense thereof, it would not be wise for responsible individual houses to enter such an agreement under then existing law.

Messrs. Kennedy and Landis nevertheless urged that the organization be kept together, if possible, to preserve the progress and experience which had been attained, to cooperate with the Commission in the solution of the many problems with which both the Commission and the industry were then concerned, and in the hope that enabling legislation might be obtained at some future time.

The Code Committee thereupon, on July 31, 1935, circularized all registered investment bankers as to whether or not they wished the Code organization to be continued on a temporary basis and for the purposes referred to above. Over 90% of those who replied voted in the affirmative, and agreed to support the organization financially. The old Investment Bankers Code Committee and Regional organization accordingly became the Investment Bankers Conference Committee.

The Conference Committee at this point appointed a special committee to draft a permanent plan of organization for submission to the industry and the Securities and Exchange Commission, this committee being composed of Messrs. George Whitney, Francis A. Bonner and Frank Weeden. The committee first met with Chairman Landis and other representatives of the Commission and talked out the whole problem of self-regulation. The net result of that meeting was that Landis asked the committee to draw up what he termed an "idealistic" plan to achieve self-regulation for the business "without regard to existing law or political expediency," his thought being that when such a concrete plan was drawn it could then better be made to fit the law or the law to fit it.

The committee accordingly proceeded with the preparation of such a plan. The one finally devised incorporated substantially the set-up under the Code,

providing that members of the association should allow only other members to participate in syndicates and that only members should be given dealer discounts, etc. This plan obviously contemplated enabling legislation to remove the danger of strike suits under the anti-trust laws. The committee made it quite clear to the Commission that it was perfectly willing to have any disciplinary action taken by it appealable to the Commission and/or the courts.

This plan was presented to the Commission, the political situation at the time was thoroughly canvassed, and it was determined that such enabling legislation was not politically possible at that time. The Commission, however, still felt strongly that a permanent organization, representative of any dealer who wished to join and conduct his business in accordance with just and equitable principles of trade, could serve the industry, the public and the Commission a very useful purpose; that it could do a lot, without powers of enforcement, in the way of standardizing practices, enunciating principles and rules of fair practice, arbitrating and settling complaints, and cooperating with the Commission in the promulgation of its rules and regulations. The Commission also indicated that if such an organization were formed and proved successful, its relationship to the Commission might later be clarified as a matter of law. The committee thereupon withdrew and extracted from the plan submitted to the Commission the restrictive dealing provisions, and the plan as changed was submitted to all registered brokers and dealers by inviting them to become members of the Investment Bankers Conference, Inc. Some 1196 immediately applied for membership in the association, the Investment Bankers Conference, Inc. was formally organized, and soon had a membership of 1671.

Since the formal organization of the Conference, various members of the Governing Committee and others have discussed the question of self-regulation and enabling legislation with the Commission; but no concrete proposals were made by either the Commission or the Conference until Mr. Douglas became Chairman.

In the latter part of October, 1937, the Washington office of the

Conference was informed confidentially by Mr. Sherlock Davis, of the Commission's staff, that the Commission had taken up the question of more effective regulation of over-the-counter markets, that it had decided that this job could best be done by the industry itself, subject to S.E.C. supervision, and that certain members of the staff of the Commission had been instructed to prepare legislation to achieve that objective.

The Commission in turn was informed that a special committee of the Conference had been appointed at the last meeting of the Governing Committee to work at this very problem; and that that committee would be glad to submit its recommendations as to appropriate legislation if the Commission so desired. We were told, however, that the Commission desired first to get its own thoughts down on paper, and that it would then welcome suggestions thereon from the committee.

#### The Maloney Bill

November 4, 1937

The first draft of the bill, now known as the Maloney Bill, was prepared by the Commission under date of November 4, 1937. The staff of the Commission assigned to this work expressed the wish to discuss this draft solely with counsel for the Conference to talk out the anti-trust aspects of the matter.

November 11, 1937

A meeting accordingly was held on November 11, 1937, between Messrs. Hostetler, Fulton and Hanson of the Conference and Messrs. Davis, Katz and Freeman of the S.E.C., at which meeting the only matters discussed were those having to do with the anti-trust aspects of the problem and the philosophy of self-regulation as incorporated in the Code. This meeting was wholly informal and confidential, it being understood that no one was committed to anything as a result thereof.

November 12, 1937

The next draft prepared by the Commission was that of November 12, 1937.

November 16, 1937

The draft of November 12 was also the subject of informal, confidential discussion, similar to that held on the draft of November 4. Those present at the meeting of November 16 were Messrs. Griswold, Hostetler, Fulton and Hanson of the Conference, and Messrs. Davis, Katz and Freeman of the Commission.

December 16, 1937

The next draft of the Bill was that of December 16, which was submitted confidentially to the Conference, the Investment Bankers Association, the New York Security Dealers Association, the Maine Investment Dealers Association, the California Security Dealers Association, the New England Security Dealers Association, and the Chicago Unlisted Traders Association.

December 20, 1937

A conference was held in Washington at which all of the above-mentioned associations were represented, and a discussion was had of the draft of December 16 with the full Commission and the members of its staff. The Conference was represented by the special committee on self-regulation, composed of Messrs. Griswold, Bonner, Crane and Stevenson, and by Messrs. Hostetler, Fulton and Hanson. Others present were: Francis Frothingham, and Arthur G. Davis, representing the Investment Bankers Association; Edward E. Chase and Virgil C. McGorrill, representing the Maine Investment Dealers Association; Waldo S. Kendall, representing the New England Security Dealers Association; Frank Dunne, President of the New York Security Dealers Association; William A. Fuller, representing the Chicago Unlisted Traders Association. Mr. Fulton was authorized to represent the California Security Dealers Association. At this meeting Mr. Hostetler presented the views of the special committee of the Conference on the draft then under consideration, which views largely had to do with the desirable philosophy and technique of self-regulation, and were consequently addressed to four or five major changes to be made in that draft. This meeting also was confidential, and it was understood by everyone present that no one was to be committed to anything said, since

there had obviously not been sufficient time thoroughly to study the bill or to sound out its acceptability to the various organizations represented, or the industry generally. The meeting adjourned with the understanding that the suggestions made would be taken under consideration by the Commission, and that a new draft of the bill would be submitted for further discussion. Both Mr. Frothingham and Mr. Griswold urged that this draft be made available before the meetings of the Board of Governors of the I.B.A. and the Governing Committee of the Conference in the latter part of January.

December 22 or 23, 1937

Mr. Griswold was invited to Washington to have luncheon with Mr. Douglas, and at that luncheon meeting Mr. Douglas told Mr. Griswold that he had heard that there were quite a number of copies of the draft of December 16 floating around New York, and that he was greatly concerned lest the bill get into the newspapers before it was introduced in Congress. He explained to Mr. Griswold that he was anxious to have the Senator selected to sponsor the bill really follow it through as his own bill, and that if the bill did get into the papers before its introduction, it would be very difficult to find proper sponsorship. Mr. Douglas thought it very desirable, therefore, that the bill be introduced at the first possible moment, so that it could be widely circulated and discussed among people in the industry in all parts of the country. He asked Mr. Griswold if he would be willing to go with him to the Senator to be selected to sponsor the bill and say as an individual that he thought the bill was in such form as to be worthy of study by the industry. Mr. Griswold explained to Mr. Douglas that he might be willing to do this if he were not Chairman of the Conference, but that being Chairman, he feared it would be impossible for him to give the bill this much of a blessing without impliedly giving it the blessing of the Conference. He said that he clearly would not be willing to comply with the Chairman's request until he had the assurance of counsel and at least the special committee that the bill was in such form as to justify introduction for purposes of study, comment, criticism. At this meeting Mr. Douglas presented a revised draft of the bill for submission to counsel and the

special committee, which contained material changes over the draft of December 16. Immediately after this meeting Mr. Griswold got in touch with counsel and the members of the special committee, sent them a copy of the draft of December 22-23, and told them of Chairman Douglas' request.

January 4, 1938

Mr. Hostetler came to Washington, met with Mr. Douglas, and explained to him that he could not take the responsibility, nor could he advise Mr. Griswold to take the responsibility, for sanctioning the introduction of the bill without first consulting as many members of the Governing Committee of the Conference as could be gotten together upon reasonable notice.

January 6, 1938

Mr. Hostetler's meeting with Mr. Douglas led to the meeting in New York of Thursday, January 6, to which all readily available members of the Governing Committee were invited, as well as all available Governors of the I.B.A., and all members of District Committee No. 13 of the Conference. At that meeting Mr. Griswold and Mr. Hostetler gave the background of the bill to date. Mr. Hostetler discussed in some detail its provisions and implications, and after full discussion Mr. Griswold asked for the sense of the meeting as to whether or not he should comply with Mr. Douglas' request. It was the sense of the meeting that, in the interest of the ultimate success of the bill, it would be much wiser if introduction were delayed until the industry had time to study it and suggest any changes thought to be desirable; and since the meetings of the governing bodies of both the I.B.C. and the I.B.A. were to be held between January 21 and January 24, it was felt that the bill should certainly not be introduced before that time. It was further the sense of the meeting that Messrs. Griswold, Frothingham and Hostetler should go to Washington to explain to Mr. Douglas the sense of the meeting.

January 7, 1938

On Friday, January 7, Mr. Douglas made an address before the Bond Club of Hartford, in which he disclosed the Commission's hope for such legislation, and

that the industry would cooperatively take on the job of regulating the over-the-counter markets thereunder.

) January 11, 1938

Messrs. Griswold, Crane, Hostetler, Fulton and Hanson of the Conference and Mr. Frothingham of the I.B.A. met with the full Commission on Tuesday, January 11, told the Commission of the sense of the New York meeting, and requested the Chairman not to introduce the bill until after the meetings of the Board of Governors of the I.B.A. and the Governing Committee of the Conference, to be held January 21 and 24. At this meeting Mr. Douglas said that he could quite appreciate the point of view of those attending the New York meeting, but that he was also greatly concerned about proper sponsorship of the bill. He said, therefore, that he would like to put the whole matter before Senator Maloney, who had been selected to sponsor the bill, and if the Senator felt it would be wise to wait, such a course of action would be satisfactory to the Commission. Otherwise, Senator Maloney could take such action on its introduction as he saw fit. As a result of this suggestion, both Mr. Frothingham and Mr. Griswold agreed to meet with Mr. Douglas and Senator Maloney on Thursday morning, January 13, to lay the whole matter before the Senator.

January 13, 1938

On Thursday, January 13, Mr. Frothingham was unable to get to Washington, but he was represented by Mr. John Starkweather, Chairman of the Special Committee of the I.B.A. on the Maloney Bill; and Messrs. Starkweather, Griswold, Crane, Fulton and Hanson met with Senator Maloney, Commissioner Douglas, and Messrs. Davis and Katz at the Senator's office. Mr. Douglas explained the situation to the Senator from the viewpoint of the Commission, and the representatives of the I.B.A. and the I.B.C. told the Senator the opinions of those present at the New York meeting.

The Senator said that he appreciated hearing from both the Commission and the representatives of the I.B.A. and the I.B.C., but that since he was to sponsor the bill, he was very anxious to have it introduced before it was

publicized. He said further, however, that he wanted some time to consider the whole matter, and that he would then act as his best judgment dictated.

January 18, 1938

The Bill, S. 3255, was introduced in the Senate by Senator Maloney and referred to the Committee on Banking and Currency. On the same day a mimeographed copy of the bill as introduced and a covering letter were sent to all members of the Conference, the letter requesting that it be given careful consideration, and that comments be sent in thereon prior to the Governing Committee meeting.

January 24, 1938

At the meeting of the Governing Committee and Advisory Council the bill was discussed in detail. After a brief statement by Chairman Griswold as to its immediate background, Mr. Hostetler went over the bill, section by section, and explained its meaning. Each section was thoroughly discussed and a memorandum was prepared of all comments, criticisms, or suggestions made at the meeting. At the conclusion of the discussion, a canvass of the sense of the meeting was made and the following resolution was adopted:

RESOLVED, That it is the sense of the meeting that the general principles of self-regulation for the furtherance of fair trade practices under reasonable governmental supervision are in the interest of the great body of public investors and the investment banking business.

FURTHER RESOLVED, That in response to the suggestions of Senator Maloney it is our purpose to suggest certain amendments to the proposed bill which we believe will facilitate the formation of such national associations and aid in the effectiveness of their administration.

FURTHER RESOLVED, That a special committee be appointed further to study the bill in the light of today's discussion and to offer the fullest cooperation to Senator Maloney and the S.E.C. in the further consideration of the bill.

At this meeting a special committee on the Maloney Bill was appointed consisting of Messrs. Francis A. Bonner, Ralph T. Crane, Nevil Ford, B. Howell Griswold, Jr., Joseph T. Johnson, A. W. Snyder, George S. Stevenson and Frank Weeden;

and they were instructed to report to the Commission and Senator Maloney the sense of that meeting and to offer both the Commission and Senator Maloney their fullest cooperation in working out a satisfactory bill.

January 26, 1938

In accordance with the instructions of the Governing Committee, the special committee on the bill and Messrs. Hostetler, Fulton and Hanson met with Senator Maloney, Commissioner Mathews, and Messrs. Katz and Davis at 2:00 P. M. This was subsequent to the morning meeting between the special committee of the I.B.A. and the same persons representing the Commission and Senator Maloney. At this meeting, the committee reported the sense of the Governing Committee meeting, and Mr. Hostetler presented to the Senator and representatives of the Commission the various suggestions and criticisms which had been raised at the New York meeting.

January 28, 1938

Messrs. Fulton and Hanson were requested by Messrs. Katz and Davis to come to the Commission in the afternoon, and at that time were informed of the various changes which the Commission had made in the bill as the result of the meetings on January 26, including the striking of paragraphs 5 to 13, inclusive, of Section (k)(2) of the first Committee Print and their inclusion in a new Section 2 of the bill. Section 2 was to be an amendment to present Section 15(c) of the Exchange Act. They were also informed that the Commission planned to advise both Mr. Frothingham and Mr. Griswold by letter of the proposed changes.

February 1, 1938

Hearings on the Maloney Bill before the Banking and Currency Committee were begun. Commissioner Mathews appeared as the first witness, gave a general background of the bill, and then made a detailed analysis thereof. At this session of the hearings a revised Committee Print of the bill, dated February 1, was presented, which incorporated many of the changes suggested up to that time, including the new Section 2. That afternoon the Conference was asked to put on its witnesses the next day.

February 2, 1938

The special committee of the Conference and Mr. Hostetler testified before the Senate Committee on Banking and Currency on the Maloney Bill. Mr. Hostetler was the first witness. He first discussed Section 1 of the bill, and after suggesting changes, he expressed his opinion that Section 1 was workable and that appropriate organizations could be set up thereunder. As to Section 2, however, he strongly urged that it be stricken in its entirety. Messrs. Griswold, Snyder, Crane, Ford and Weeden then appeared as additional witnesses and their testimony on the bill was substantially in accord with that of Mr. Hostetler. Mr. Frank Dunne, President of the New York Security Dealers Association, and Mr. Virgil C. McGorrill of the Maine Investment Dealers Association also testified on the bill. Mr. Dunne approved the bill substantially as it then was, and Mr. McGorrill testified substantially in accord with the special committee of the Conference. As a result of all this testimony, the hearing terminated in more or less of a round-table discussion, the Senate Committee finally suggesting that the special committee of the Conference meet with the Commission to see if agreement could not be reached on an acceptable Section 2, this to be on the assumption that the Senate Committee should feel something similar to Section 2 should be enacted into law at the present session of Congress. Accordingly, the special committee and Messrs. Hostetler, Fulton and Hanson met with the full Commission in the afternoon and at that meeting a thorough discussion was had of Section 2, the Conference representatives explaining their objections to the various provisions of Section 2, and the Commission explaining its reasons for wanting such provisions.

February 3, 1938

The Washington office of the Conference was informed that as a result of the hearings before the Senate Committee and the meeting with the Commission of February 2, a Commission meeting had been held, and that Messrs. Katz and Davis had been authorized to present the following inquiry: Would the special committee of the Conference approve the whole bill, or at least approve Section 1 and say it

had no further objections to Section 2, if the Commission agreed:

- (1) To make paragraph (3) of Section 2 a part of paragraph (7) of subsection (b) of Section 1;
- (2) To strike paragraph (4) of Section 2;
- (3) To strike paragraph (8) of Section 2; and
- (4) To strike the first part of paragraph (9) of Section 2?

The Washington office agreed to submit the inquiry to the special committee and to report back its reaction thereto, and that day telephoned the proposal to each member of the special committee.

February 5, 1938

It was the feeling of the special committee that under the instructions which it had received at the Governing Committee meeting, it lacked authority to answer unqualifiedly the S.E.C.'s inquiry of February 3, so a letter was prepared and sent to all members of the Governing Committee and Advisory Council setting forth the terms of the inquiry, and asking the following authority:

"We would now like authority from you to appear before the Senate Committee on Tuesday, February 8, and express our approval of Section 1, assuming the Senate Committee will accept the suggested changes; and to advise the Senate Committee that we make no further objection to Section 2 if the changes suggested are made. It is, of course, understood that your Committee may, after further study and discussion, advise that additional changes are necessary, and we would like your authority to continue our efforts to have a workable bill."

February 7, 1938

Messrs. Francis E. Frothingham, John K. Starkweather, Perry E. Hall, and others met with the Commission from 8:00 to 11:00 P. M. to discuss the changes which they recommended and proposed to make before the Senate Committee the next day.

February 8, 1938

A majority of the members of the Governing Committee and the Advisory Council, either by telephone or by wire, gave the special committee the authority requested in the letter of February 5, and accordingly, after a number of witnesses had appeared before the Senate Committee on behalf of the I.B.A. (Messrs. Frothingham, Starkweather, Witter, Hall, Minot, Connely, and Josephs), Mr. Griswold testified and made the following statement:

SENATOR MALONEY. Mr. Griswold, how many members are there in your conference?

MR. GRISWOLD. Some seventeen hundred, Senator.

SENATOR MALONEY. I assume that a great many of your members are also members of the Investment Bankers Association.

MR. GRISWOLD. Yes. There is a duplication of membership, undoubtedly; a substantial duplication.

There are only a few words that I want to add to the statement that I made the other day, and that is that I am quite in sympathy with the idea that this is a tough job under any conditions. It will take time to work out. I believe, however, our own practical experience over the last 3 years justifies a belief on the part of those on the conference committee that it can be worked out. The job of administration will be an extremely difficult one. We need not emphasize that.

I want to say that so far as the testimony of the various witnesses today is concerned, it seems to me that some points have been made due to the fact that the man who was making the point did not know what changes had already been made in the bill. They were sound objections, but the bill has been already amended to meet them. Since the president of the Investment Bankers Association wrote to his board of governors and others stating the provisions of the proposed bill, many of those provisions have been changed, so that the answers he received, if I am informed correctly, may well have rested on the basis of provisions in the bill which had already been altered.

The second point that I want to make is this. While I came in too late to have the pleasure of hearing Mr. Frothingham, I want to say that after carefully listening to Mr. Starkweather - although I qualify that by saying that I may have misunderstood him - I feel that the minds of his committee and our committee are moving along almost identical lines. There is a little difference in emphasis on one particular point and differences in suggesting methods for altering other provisions, but I want to say that when we sit down and get together and carefully consider all items of the bill, you will find that the differences of opinion are not so great.

THE CHAIRMAN. I was going to suggest, Senator Maloney, that we keep Mr. Griswold for tomorrow morning, because I think I want to ask him some questions, and some of us want to get to the floor of the Senate. Also, I have two bills here that I would like to have the committee consider before we go.

SENATOR MALONEY. He has only a very brief statement to make, Mr. Chairman, and it will not take more than 2 minutes. I think he will be willing to come back tomorrow, however.

MR. GRISWOLD. Oh, yes; certainly.

THE CHAIRMAN. I know the position that he holds in the investment field, and I would like to ask him some questions. You will come back tomorrow, Mr. Griswold?

MR. GRISWOLD. Yes; I will. I will just complete my brief statement and make no comments at this time.

You will recall that those of us who testified here on Wednesday of last week generally endorsed section 1 of this bill, with certain qualifications, and expressed our opinions that an effective organization or organizations of over-the-counter brokers and dealers could be set up thereunder to carry out the purposes of this bill, and the objectives which Senator Maloney, the S.E.C., and many of those engaged in the investment banking and securities business have had in mind for many years.

We were all of the opinion, however, for a variety of reasons, that section 2 should be either omitted entirely from this bill or substantially clarified and changed.

You will recall also that, as a result of the general discussion which developed on section 2, we were ultimately asked to meet with Senator Maloney and representatives of the Commission to see if section 2 could not be so altered as to be acceptable, and this to be based on the assumption that your committee might feel that some provision similar to section 2 should be enacted into law at the present session of Congress.

Since Wednesday of last week we have accordingly had a number of such meetings at which he have presented fully our difficulties with and objections to the language of section 2 as it now stands, and have in turn had explained to us the ends sought to be obtained by Senator Maloney and the Commission under this section.

Since that time, we have also taken up the whole matter, either by telephone or through correspondence, with our governing committee and advisory council, and as a result of these discussions, I have been authorized by the majority of the Governing Committee and Advisory Council of the Investment Bankers Conference, Inc., to appear and testify here today that they approve section 1 of this bill, subject to certain minor changes and to what is said hereafter as to section 2, and they pledge their best efforts toward the establishment of an effective organization or organizations thereunder, to carry out its purposes. Since section 2, however, seems to be regarded by some as inseparable and involves some extension of the powers of the Commission to impose direct regulations on the business, I have not been authorized to express a favorable opinion of it as it now stands; but if your committee sees fit to make the following changes, we would think that the principal objections have been removed.

1. We recommend that subsection (3) of section 2 (beginning line 10, p. 17) be stricken from section 2 and included after the word "trade" in line 17, page 5.

2. We recommend that subsection (4) of section 2 (beginning line 15, p. 17) be stricken in its entirety.

3. We recommend that subsection (8) of section 2 (beginning line 23, p. 17) be stricken in its entirety.

4. We recommend that subsection (9) of section 2 be removed from the bill.

I have only one further observation to make. In the course of our discussions with members of our governing committee and advisory council, a number of technical questions have arisen, the solution of which may necessitate further minor changes in the bill as it is now drawn. It does not seem to us, however, that any useful purpose would be served by any present reference here to these matters, but I should like to have it understood that I do not want what I have heretofore said to be construed as foreclosing our right to make further recommendations to the committee if further study of these technical matters seems to necessitate further minor changes in the bill.

So far as I can see, we run parallel with Mr. Starkweather except as to 5, 6, and 7; and as to these subsections we have had at least the advantage of having had a discussion with the S.E.C. as to the meanings of those particular sections. I think it would be helpful if Mr. Starkweather would get in touch with the S.E.C. and discuss matters further with the Commission.

February 9, 1938

At this session of the hearings, Committee Print No. 2 was presented and this print of the bill contained the changes in Section 1 and Section 2 which met all the requests of the Conference with the exception of complete deletion of paragraph (9) of Section 2 of the first Committee Print. At this session the municipal dealers appeared in opposition to the bill. Those appearing were Charles E. Weigold, David M. Wood, C. W. McNear and Francis H. Lindley.

February 10, 1938

The Committee released Corrected Committee Print No. 2, containing certain corrections and changes in Committee Print No. 2, dated February 9. Copies of this print were sent to all members of the Governing Committee and Advisory Council.

On February 10, Mr. Hermann F. Clarke of Boston telephoned Mr. Griswold to the effect that certain security dealers in New England were not satisfied with the bill as set forth in Committee Print No. 2 and that they were not satisfied with the position which the Conference had taken in respect to the bill, and informed Mr. Griswold that an organization, known as the Security Dealers in New England, had been formed, the purpose of which was to obtain further modifications of the bill.

February 14, 1938

Messrs. Lothrop Withington, Waldo Kondall and H. Stanford McLeod, representing the Security Dealers in New England, met with the Commission in the morning to discuss changes in the bill which were thought to be necessary. They then met with Messrs. Fulton and Hanson to discuss the bill and its background, and later in the afternoon again met with Messrs. Katz and Davis.

February 17, 1938

The Washington office of the Conference was informed by Messrs. Katz and Davis of the additional changes which the Commission was willing to make as the result of its conferences with Mr. Withington and the Boston group, and were asked to ascertain whether the special committee would approve the whole bill with such changes. At this meeting the Washington office was also informed that unless the I.B.A. and I.B.C. or some group representing the industry, asked for the passage of the bill, the S.E.C. would be inclined to ask Senator Maloney to withdraw the bill, and it was implied that this would not be done without newspaper publicity, unfavorable to the industry.

February 18, 1938

) A meeting was held between Messrs. Griswold, Crane, Ford, Fulton and Hanson in Mr. Ford's office in New York to determine what, if any, further expression the Conference should make with respect to the bill. It had been expected that Mr. Frothingham's final letter to the Commission would be available for discussion at this meeting, but it was not received and so no action was taken by the special committee of the Conference. The meeting adjourned on the understanding that nothing would be done until Mr. Frothingham's letter was available.

February 19, 1938

A meeting between Messrs. Crane, Fulton and Hanson was held in New York, at which time the initial draft of Mr. Frothingham's final letter to the Commission was examined, and Mr. Crane commented thereon to Mr. Arthur Dean. In view of the whole situation as of that time, it was decided that no action should be taken by the special committee until Monday.

February 21, 1938

Messrs. Lothrop Withington, Waldo Kendall and Harcourt Amory of Boston were in Washington and held a meeting with Messrs. Katz and Davis in the afternoon. Messrs. Frothingham, Starkweather and Dean arrived Monday afternoon and they, with Messrs. Withington, Kendall and Amory, met with the Commission at 5:30 in the afternoon at which time Mr. Frothingham read a letter and memorandum asking for further changes in the bill.

February 22, 1938

On Tuesday, February 22, the Securities and Exchange Commission met to discuss further changes in the bill and the whole problem as to whether or not it should be withdrawn.

February 23, 1938

An all-morning executive session of the Senate Committee was held at which meeting certain changes were agreed to, but final action of the committee was deferred until Tuesday, March 1. The Washington office of the Conference

was informed of the changes agreed to and immediately telephoned them to members of our special committee, also to Mr. Withington and representatives of the I.B.A. committee.

February 24, 1938

As a result of the executive session of the Senate Committee of February 23, Committee Print No. 3 was issued by the Senate Committee containing all the changes which it was willing to make as of that date. This print was sent to all members of the Governing Committee and District Committees.

February 25, 1938

The Washington office was informed by representatives of the Commission that certain additional changes had been agreed to and that, if the industry wanted any bill, it was now necessary to have sent to the Senate Committee wires urging that the bill as changed be favorably acted upon by the Committee. After telephoning to various sections of the country and explaining the changes, various members of the special committee agreed to send in wires urging a favorable report on the bill as changed.

On February 25 a companion bill, corresponding to Committee Print No. 3 of S. 3255 was introduced in the House by Representative Lea, this being H.R. 9634.

March 1, 1938

On March 1, with the full approval of the special committee, the following wire was sent to Senators Wagner, Maloney and Townsend:

"I UNDERSTAND S. 3255 WITH CERTAIN PROPOSED AMENDMENTS TO THE DRAFT OF FEBRUARY 24 WILL COME BEFORE THE SENATE BANKING AND CURRENCY COMMITTEE THIS MORNING FOR ACTION. MAY I URGE STRONGLY ON BEHALF OF THE SPECIAL COMMITTEE OF THE INVESTMENT BANKERS CONFERENCE, INC. THAT THE BILL BE REPORTED FAVORABLY.

B. Howell Griswold, Jr., Chrm.,  
Investment Bankers Conference, Inc."

and the following wire was sent by Mr. Frothingham and Mr. Starkweather to Senators Wagner and Maloney:

"ON BEHALF OF THE SPECIAL COMMITTEE OF THE INVESTMENT BANKERS ASSOCIATION WE ARE VERY GLAD TO ENDORSE SENATE BILL 3255 ASSUMING THAT THE CHANGES ARE MADE IN THE DRAFT DATED FEBRUARY 24, 1938, WHICH WE WERE ADVISED YESTERDAY SENATOR MALONEY IS NOW PREPARED TO RECOMMEND. WE UNDERSTAND THAT THERE MAY BE SOME OPPOSITION BY DEALERS TO THE OMISSION OF COMPLETE CLEARANCE FROM CIVIL LIABILITIES FOR VIOLATION OF ITEMS 3, 4 AND 5 OF SECTION 2 SUBSECTION C ON PAGE 18 OF THE BILL AND WE ARE HOPEFUL YOUR COMMITTEE CAN MEET THESE VIEWS."

After the executive session of the Senate Committee, we were informed that the bill would be reported favorably on Thursday, March 1, and that the changes agreed to would be made with an additional section exempting municipal dealers from Section 1 and Section 2 except Subsections (1) and (2) of Section 2.

March 7, 1938

The General Committee Representing the Security Dealers in New England met on March 7 and adopted the following resolution:

"This Committee is not willing to advocate the passage of the Maloney Bill in the form reported out of the Senate Committee on Banking and Currency. The Committee will endeavor to secure the support of the New England dealers if the following changes are made:

- "(1) The insertion of the word 'wilfully' in Sec. 15A(1)(2)A.
- "(2) The omission of the words 'except insofar as the Commission, having determined that such action is necessary or appropriate for the protection of investors, shall have expressly provided in such rule or regulation that the provisions of this subsection shall apply in the case of any violation thereof,' appearing in Sec. 3.

and it was further voted that the Committee continue its endeavors to secure these changes.

"It was also voted to send a copy of the letter of our counsel, a copy of the Bill and this vote to all security dealers in New England except Connecticut."

This resolution, together with a copy of Mr. Withington's letter of March 7, and a copy of the bill, was sent to all New England dealers under date of March 9, with a covering letter signed by Hermann F. Clarke, Chairman.

March 8, 1938

The bill was favorably reported out by the Senate Committee on Banking and Currency, containing changes agreed upon as of that date.

March 10, 1938

A special meeting of the Board of Governors of the I.B.A. was held in Chicago for a discussion of the Maloney Bill as reported by the Senate Committee and at the conclusion of that meeting the following majority and minority resolutions were adopted:

"Resolved that the action of the special committee appointed Jan. 22, 1938, in endorsing Senate bill S. 3255, introduced by Senator Maloney and as reported to the Senate by the committee on banking and currency is hereby approved.

"Resolved, That the president of the association be instructed to advise the appropriate committees of the Congress and the Securities and Exchange Commission that in the opinion of the board of governors the following amendments would be most helpful in obtaining the support of the industry and in forming national associations:

(1) "The insertion of the word 'willfully' before the word 'violated' in line 25 on page 16.

(2) "Change in the wording of item 1 of section 2 subsection C, line 9, page 18, to conform to the present wording of section 15-C of the Securities and Exchange Act of 1934 to read as follows: 'To prevent transactions by means of manipulative, deceptive or other fraudulent devices or contrivances. The commission shall for the purpose of this subsection, by rules and regulations define such devices or contrivances as are manipulative, deceptive or otherwise fraudulent.'

(3) "The elimination of the part of section 3 of the bill beginning with line 25, page 18, and ending with the word 'thereof' on line 4, page 19."

March 31, 1938

The Bill passed the Senate, with the unanimous consent of that body.

April 11, 1938

Hearings were held before the Subcommittee of the Committee on Interstate and Foreign Commerce of the House of Representatives. Commissioner George C. Mathews appeared first on behalf of the Commission, and was followed by Messrs. Francis E. Frothingham, John K. Starkweather and James J. Minot, Jr.,

who testified on behalf of the I.B.A.; Messrs. Lothrop Withington, Harcourt Amory, Ralph Hornblower, and Waldo S. Kendall, on behalf of the General Committee Representing the Security Dealers in New England; Messrs. Myron G. Darby and David Wood, who appeared on behalf of the municipal dealers; and Milton Katz, Esq., who concluded the testimony for the Commission.

May 6, 1938

The Bill was favorably reported out by the House Committee on Interstate and Foreign Commerce.

May 14-18, 1938

At the spring meeting of the Board of Governors of the I.B.A. at White Sulphur, the Maloney Bill was the subject of an extended discussion, and as a result thereof the following resolution was adopted:

"Resolved: That, in the opinion of the Board of Governors of the Investment Bankers Association of America, the failure to make the amendments to the Maloney Bill recommended at the meeting of March 10, 1938, will have the effect, if the bill becomes law, of further seriously curtailing the activities of the capital markets for new as well as for presently outstanding issues, and of hindering the flow of capital into industry; and,

"That the Board of Governors again most strongly urges the Congress to amend the proposed bill, as previously recommended by this Association, by making the following changes in the draft dated May 6, 1938, which is now before the House of Representatives:

(1) "The insertion of the word 'willfully' before the word 'violated' in Section 1(1)(2)(A) in line 7 on page 15. This section now provides that members of an association formed under the Maloney Bill may be suspended or expelled by the Securities and Exchange Commission for any violation of the Securities Exchange Act of 1934. The proposed change would provide this penalty only for willful violations, and would make this section similar to the section of this same draft which has to do with violations of the Securities Act of 1933.

(2) "The change in the wording of Section 2(c)(2) on page 17, line 18, to conform to the present wording of Section 15(c) of the Securities Exchange Act of 1934 to read as follows: 'engages in any manipulative, deceptive, or other fraudulent device or contrivance, or makes any fictitious quotation. The Commission shall for the purposes of this paragraph define such devices or contrivances as are manipulative, deceptive, or otherwise fraudulent, and such quotations as are fictitious.' This change will make necessary proof of fraud or fraudulent intent in connection with such violations before penalties may be imposed.

(In the event the above change (2) is made, the following change (3), recommended at the Chicago meeting, might be omitted.)

(3) "The elimination of all of that part of Section 3 of the bill beginning after the word 'title' in line 4 on page 19, and the change of line 4 on page 19 to read 'paragraphs (2) and (3) of subsection (c) of Section 15 of this title.' This section now provides the penalty of rescission for violations of the above referred to Section 2(c)(2) and the effect of these changes will be to eliminate this penalty."

(In case recommendation (2) above should not be adopted, it becomes most important that recommendation (3) be adopted, as otherwise dealers may be unjustly liable for rescission because of innocent violations of the manipulative provision of Section 2(c)(2).)

In the period between March 31 and June 15, Messrs. Griswold, Fulton and Hanson had numerous meetings with members of the Commission and its staff, at which times they informally urged the acceptance by the Commission of the additional changes proposed by the New England Group and by the I.B.A.

June 15, 1938

The Bill passed the House with certain amendments to the Senate Bill.

June 16, 1938

The Bill as amended by the House was passed by the Senate.

June 17, 1938.

FMSA

Box 2562570