

INVESTMENT TRUSTS AND INVESTMENT COMPANIES

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE
COMMITTEE ON BANKING AND CURRENCY
UNITED STATES SENATE
SEVENTY-SIXTH CONGRESS
THIRD SESSION

ON

S. 3580

A BILL TO PROVIDE FOR THE REGISTRATION AND
REGULATION OF INVESTMENT COMPANIES AND
INVESTMENT ADVISERS, AND FOR
OTHER PURPOSES

PART 4

MAY 31 AND JUNE 4, 1940

Printed for the use of the Committee on Banking and Currency



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INVESTMENT TRUSTS AND INVESTMENT COMPANIES

FRIDAY, MAY 31, 1940

UNITED STATES SENATE,
SUBCOMMITTEE ON SECURITIES AND EXCHANGE OF THE
BANKING AND CURRENCY COMMITTEE,
Washington, D. C.

The subcommittee met, pursuant to call, on Friday, May 31, 1940, at 10:30 a. m., in room 301, Senate Office Building, Senator Robert F. Wagner presiding.

Present: Senators Wagner (chairman of the subcommittee), Hughes, Herring, and Downey.

Senator WAGNER. The subcommittee will come to order. Mr. Schenker, are you going to be the first witness?

Mr. SCHENKER. Judge Healy will be, sir.

Senator WAGNER. Before we begin, I should like to read this telegram which I have just received. It is dated May 31, 1940, and is as follows [reading]:

Senator ROBERT F. WAGNER,
Senate Office Building:

Air flight to Washington canceled last moment. Very sorry not to be with you. Undersigned heartily endorse revised bill, S. 3580.

PAUL C. CABOT,
State Street Investment Corporation.
TUDOR GARDINER, INC., INVESTORS,
M. E. TRAYLOR,
Massachusetts Distributors.

You may proceed, Judge Healy.

STATEMENT OF ROBERT E. HEALY, COMMISSIONER, SECURITIES AND EXCHANGE COMMISSION, WASHINGTON, D. C.

Mr. HEALY. Picking up where we left off, my memory is that the hearings concluded the last Friday in April, and we had gone through nearly 4 weeks of hearings. Among the beneficial results were crystallizing of our own ideas, a better directing of our own thinking, and there was a sharpening of our own wits, as often comes out of debates of that character.

We had been impressed by several suggestions that were made during the course of the hearings by the committee, and then, finally, when Mr. Bunker spoke and stated that he thought a regulatory bill should be passed, he did not make the mistake which I submit some other industries have made in times past, of being merely critical and not offering anything constructive. He offered some constructive suggestions. I do not mean that we agreed with

everything that he said, but it was perfectly apparent that the suggestions were constructive, that they were honest, made in good faith, and were not merely "phonies."

Based on that, and after discussing it with my associates at the Commission and, as I understood it, with the approval of this subcommittee and the chairman, the members of the staff of the Commission have been in almost constant contact with the members of this industry, the gentlemen who appeared before the subcommittee, and their counsel, and with some other groups that did not appear.

The result is that we are now in position where we can say to the subcommittee that the industry, as represented by those gentlemen, and the Securities and Exchange Commission, are in agreement as to the recommendations which should be made to this subcommittee. The agreements were embodied in a memorandum, and an effort has been made to translate them into actual language. Of course, that is not always easy. There has been a redraft of the bill. There may have to be another one. But as the bill is now written it has the endorsement of the Securities and Exchange Commission, and it has the endorsement of the industry.

In order that there may be no misunderstanding, I would like to say a special word about title II, relating to investment counselors. We have talked with several representatives of investment counselors—

Senator WAGNER. That is on what page?

Mr. HEALY. Page 124, Mr. Chairman.

We have talked with a number of representatives of the Association of Investment Counselors. I am not able to say that we have come to a complete agreement with them. However, we have agreed with some of them. There are about two points outstanding that some of them object to. I should like to postpone any discussion of those two points because we may be able to come to an understanding on them.

I think it should further be said that we have had some discussion also with representatives of the companies selling face-amount certificates. They got into the matter rather late, and we have not had quite the same time with them that we have had with some of the others; and there, again, we are not able to tell the committee that as to the face-amount companies we are in complete agreement. We are able to say, however, that the points of disagreement have been reduced to not to exceed three, or possibly two.

Senator WAGNER. You are still in conference?

Mr. HEALY. Yes. It is my sincere conviction that within 48 hours we will come to an understanding with them.

Now, coming back to the really most important thing in the bill, that is, legislation as it relates to the open-end and closed-end management investment companies, we are in agreement. I do not mean to say by that that neither they nor we might not be at liberty to suggest a little change in phraseology where perhaps we have not succeeded in saying precisely what we mean to; but subject to that one caveat, we are in complete agreement.

I wish also to express to the subcommittee our feeling—and, of course, what weight you give to it is your matter—our feeling of great anxiety and a sincere conviction that the bill, if possible, ought

to be passed at this session. We believe that it will be a good thing for the industry. I think it is a good thing for the country to have an instance where a governmental body and a large industry can come before a congressional committee and say that they are in agreement as to their recommendations. I think it would be a contribution to recovery, and, strange as it may seem, I think that in the present scene of world conflict, instead of that being a reason why the bill should not be passed now, on the contrary, I think it is a reason why it should be passed. I think the investment trust, if properly handled—and I believe it will be—and if properly regulated—and I believe it will be—can, through contribution of capital, make a very definite contribution to national defense.

I believe that the bill is a good bill. I think it will work in the public interest.

Of course there has been some give and take here and there on it. We have convinced them of some things and they have convinced us of some things; but that does not mean that we do not support every provision in the bill as it is now written. We do not, of course, come to the subcommittee with the implication that these recommendations have to be accepted; but I do think that we have given consideration to every subject that any member of the subcommittee raised.

One other thing. I want to introduce to the subcommittee a gentleman who has worked with Mr. Schenker for all of these weeks as counsel for many of these investment companies. He has devoted nearly all of his time for the last month and a half to these conferences and attempted rewritings of the bill. He is a member of the firm of Sullivan & Cromwell—Mr. Alfred Jaretzki, Jr.

**STATEMENT OF ALFRED JARETZKI, JR., MEMBER OF THE FIRM
OF SULLIVAN & CROMWELL, NEW YORK, N. Y.**

Senator WAGNER. I think, Mr. Jaretzki, if it is agreeable to everybody, you might tell us to what extent you represent the industry.

Mr. JARETZKI. That is precisely what I want to do, Senator Wagner, and that is about all I want to say. I want to explain whom we represent and what we have done.

On behalf of the people whom we represent I want to endorse thoroughly everything that Judge Healy has said. Mr. Motley, who is sitting on my left, and I, have acted as counsel these last weeks for groups of the closed-end and open-end companies—Mr. Motley representing the open-end companies and I representing the closed-end companies.

Toward the close of the hearings the leaders of the groups who were down here and appeared before you got together and, in collaboration, worked out the memorandum which Mr. Bunker presented, which was the idea of this group of the industry as to what regulation should consist of.

After the hearings closed, as Judge Healy has said, with the approval of this subcommittee we carried on discussions with Judge Healy and Mr. Schenker to see if we could iron out the differences which existed between our proposals and theirs; and I want to say that, personally, and as far as my group is concerned, we have never

dealt with a fairer group of people than we did when we were dealing with Judge Healy and Mr. Schenker. On that basis it was very easy to narrow down the points of difference. I think we persuaded them of some points and they persuaded us of others.

Naturally there was a certain amount of give and take. It resulted in our reaching an agreement as to what we could jointly recommend to this committee in principle, which was embodied in a memorandum dated May 13.

These negotiations were carried on by a relatively small group, largely the group that appears here, and these gentlemen who sent you the telegram stating that they were unable to come down.

Before we presented these recommendations to your chairman we wanted to check with the industry to see if we could get the agreement of the leading factors in the industry to these proposals. We went back to New York and sent out this memorandum to all the leading investment trusts, to everybody who had appeared here, and to a great number of others, and held a meeting in New York, in my office, to discuss that memorandum. The principles of that memorandum were accepted by 56 investment companies, constituting by far the leading members of the industry.

We then proceeded, as Judge Healy has said, to try to translate these principles into a bill, and we learned, as we had suspected, that it is one thing to criticize a bill that somebody else has written, and it is quite another thing to try to write a bill yourself. But, working day and night with the Securities and Exchange Commission's staff, we were able to put into language the bill that was presented to you.

We had planned to have this week end to check back with the group who had endorsed the principles, but owing to the necessities of the time schedule, and in order to be prepared to come to this meeting, we had suddenly to send copies of this bill out Tuesday night and advise our friends that we would give them Thursday, Decoration Day, to tell us if they had any objections. That was pretty short notice. At first there were considerable objections to the time schedule, but when we explained the necessities of the situation everyone cooperated to the utmost, and we have received approvals from by far the great majority of people we were speaking for. We have had no objections from anybody. There have been some people whom we have not heard from, particularly from investment companies on the coast, who agreed in principle with the original memorandum and who indicated that they expected to agree with this, but they have not had time to be heard from.

We had a discussion last night on the telephone with an investment company in Chicago. I am just pointing out that it is a difficult thing to secure such a large group of approvals at short notice. But I think I can say to you that we have the approval of substantially the leaders of the industry and of practically everybody who appeared before you.

In particular I want to mention Mr. F. Wilder Bellamy, of Dominick & Dominick, who appeared before this committee and who telephoned me this morning to say that he was extremely sorry that he could not come down and appear at this meeting, but that the press of business in New York made it impossible, but he has heartily endorsed the bill.