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Securities and Exchange Commission,
Washington, D. C.

Gentlemen:

On behalf of the membership of the Bond Club of New Jersey, an organization composed of two hundred members engaged and interested in the Investment Securities business in the State of New Jersey, we, the members of the Board of Governors, submit the following comments and objections to the Suggestions for Regulation of Over the Counter Markets, released on March 16, 1935.

The so-called registration of brokers and dealers is a feature which goes further than anything yet undertaken by the government with relation to regulation of the securities market. A reading of the text shows that it provides for what in reality is licensing instead of registration. This means that the Securities and Exchange Commission will be saddled with the tremendous responsibility of selecting those who will be allowed to engage in the securities selling business. There is no assurance that anything of value will be accomplished thereby, and past experience with legislation of this type indicates definitely that great harm to prospective investors may result.

There are thousands of brokers and dealers in the country and thousands of persons who wish to get into that line of activity. It is comparatively easy, as has been demonstrated time and again, for a dishonest applicant to present himself in such a way that his record cannot be criticized or his fitness seriously questioned. No body of men, particularly with the very limited number of employees assigned to the commission, will be able to review, check, and investigate with any degree of care or efficiency, the mass of applications that will come before them under the proposed regulations, and it is inevitable that registrations or licenses will frequently be given to persons from whom they should be withheld. Having once been passed upon favorably by a governmental agency, the blue sky will be the limit so far as the future activities of a dishonest stock salesman are concerned, because it seems impossible to destroy the impression in the public mind that issuance of what amounts to a license is tantamount to a guaranty by the Commission, that whatever may be offered for sale by the licensee is a safe business proposition.



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There is no reason from any point of view why the government should assume the responsibility of attempting to pass on the future honesty and integrity of those who wish to become brokers or dealers in securities. But, if the government insists on assuming this duty, let it be registration and not licensing. In other words, every person about to engage in the securities selling business should be required to file among other things, a complete history of his previous activities, including answers to such relevant questions as might be pro- pounded by the Commission. The imposition of severe penalties for misrepresenting or failing to disclose material facts in connection with the application would be an essential part of the plan, and all information in the records of the Commission should be readily available to everyone making inquiry at its regional offices. The investing public can easily be educated to get in touch with a regional office whenever solicited to purchase securities by an unknown salesman, and the record there or lack of it will be sufficient to enable him to make up his own mind as to the advisability of continuing negotiations.

The theory of the foregoing is the same as that applied to stock issues under the English Company's Act which requires that every corporation about to offer shares for sale to the public, shall file certain data with the Registrar. It is available to any member of the public, and drastic penalties may be imposed for misrepresentation or suppression of relevant information. The fundamental idea is to give full publicity to material facts and place an affirmative personal liability on those who furnish them. Prospective investors must make their own investigations and not rely on governmental sanction. Responsibility for his investments is up to the individual, and no method has been devised whereby it can be successfully shifted to the State. Persons who want government backing should put their money in government securities.

The most satisfactory way of building up an effective system of statutes on any subject is to first enact simple laws and increase their strength only as experience shows it to be necessary. Congress has followed the opposite course, in the case of securities, and faces the danger of having put on the books a lot of legislation, which, like the late lamented Volstead Act, cannot be effectively enforced. There is no reason why the Securities and Exchange Commission should create a like situation by adopting a set of regulations which cannot be efficiently administered, because they saddle that body with too great a burden of responsibility. The English Companies Act is a comparatively simple statute, but has the reputation of producing results, whereas there has been a constant running fire of criticism directed against other laws, which on paper appear to be very drastic, but because of their complications and intricacies

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have not been made to function satisfactorily. There is no licensing of brokers or dealers in England and full publicity is principally depended upon to insure employment of honest methods in marketing the various issues. The publicity idea should be the basis of any regulations adopted with respect to brokers and dealers. The best feature of such a system is that a minimum amount of work is required from the commission and from reputable securities selling organizations, while the maximum burden is placed just where it belongs, on those who are using or have used improper practices.

Anyone who has had experience with fraud or regulatory legislation, knows that perhaps the most difficult of all tasks in connection therewith, is sifting out the bona fide complaints from those not made in good faith. Many times a disgruntled purchaser of securities will tell a story so convincing that a listener is impelled to believe a cause exists for revoking a registration and only a protracted and difficult investigation will disclose the complete lack of justification for the complaint.

This brings us to a consideration of Rule MA5 Section (b) of the proposed regulations. Of all governmental agencies which have been established for long periods, the equity courts probably possess the most peremptory powers. They evolved however, only after hundreds of years of experience with human affairs, which showed that utmost caution should be exercised in all ex parte proceedings, and that preliminary relief should never be granted except from the pressure of urgent necessity, where the injury to be prevented pending the litigation, would be irreparable. It is well settled that whenever the case is doubtful on either the law or the facts, preliminary relief will not be awarded. There is no power, the exercise of which is more delicate or requires greater caution, deliberation and sound discretion, and which is more dangerous in a doubtful case. The section above referred to ignores these fundamental rules that have been developing as a part of our legal system since the beginning. To prevent a reputable broker or dealer in securities from carrying on his business for any length of time, no matter how short, means ruin so far as the future is concerned, and to make such a prohibition possible without any notice whatsoever to him, merely because the Commission "has reason to believe that any cause exists", for which his registration may be revoked, is an arrogation of power to a governmental agency, which puts it primarily in a position to do irreparable injury rather than prevent it. There should be no such thing as suspension of registrations without notice, and if a suspension is

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directed under any circumstances, adequate machinery should be provided for speedy hearing of an application to set aside such an order.

Very truly yours,

THE BOND CLUB OF NEW JERSEY.

Charles J. Bishop
President.

Approved by the
Board of Governors,
April 10th, 1935.

John P. ...