

THE FIRST OF BOSTON CORPORATION  
New York Office  
Memorandum

To: MANAGERS OF ALL OFFICES

Subject: June 26, 1934.

We requested Sullivan & Cromwell to supply us with an opinion as to why banks with Bond Departments could not participate in the forthcoming Edison Electric Illuminating Company issue even if they are registered. In order to have a uniform answer throughout the Corporation, we are sending you herewith a copy of their opinion.

"We understand that various commercial banks who are members of the Federal Reserve System and who are now forbidden by the terms and provisions of the Glass-Steagall Banking Act of 1933 to participate in the underwriting of securities except securities of the character and to the extent therein provided and who have registered or have applied for registration as investment bankers pursuant to Article X of the Amendment to the Code of Fair Competition for Investment Bankers, approved on March 23, 1934, have requested that you include them as members of the Selling Group which you propose to form in connection with the marketing of the above issue of notes after the effective date of the registration statement with respect thereto filed under the Federal Securities Act of 1933.

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"As you know, Section 7 (a) of Article IX of the Amendment to the Code of Fair Competition for Investment Bankers, approved on March 23, 1934, provides:

'No registered investment banker shall, in any transaction with any investment banker not registered under Article X hereof, allow or grant to such non-registered investment banker any allowance, commission or discount usually and customarily to be allowed to another dealer; nor shall any registered investment banker join with any investment banker not registered under Article X hereof in any syndicate or group contemplating distribution to the public of any issue of securities; nor shall any registered investment banker sell any security to or buy any security from any investment banker not registered under Article X hereof, except at the same price at which at the time of such transaction such registered investment banker would buy or sell such security, as the case may be, from or to a person who is a member of the public not engaged in the investment banking business.'

"In our opinion the spirit and intent of the Code is that you cannot participate in the same group with or allow any concession to any one who is not at that time authorized by law to underwrite or deal in the type of security involved. Therefore, since commercial banks who are members of the Federal Reserve System are no longer permitted to underwrite securities of the character of The Edison Electric Illuminating Company of Boston Three-Year Coupon Notes, in our opinion it would constitute a

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violation of the Investment Bankers Code, as amended, for you to permit any one to participate in the Selling Group who is not authorized or permitted to underwrite and deal in this type of security and who is not also registered or who has not applied for registration under the Investment Bankers Code, as amended. Therefore, in our opinion, any commercial banks of the character mentioned above must be treated 'as a person who is a member of the public not engaged in the investment banking business' for the purpose of issues of the type here involved.

Sullivan & Cromwell"

R. Parker Kuhn  
Vice President

## CODE OF FAIR COMPETITION FOR INVESTMENT BANKERS

### Memorandum to Members of Stock Exchanges

Some misunderstanding has existed on the part of some members of stock exchanges as to whether or not they are subject to any extent to the Investment Bankers Code. The difficulty probably arises from the fact that the term "investment banker" would seem to designate an individual or organization dealing in securities principally for his or its own account, i.e., dealing as a principal. The facts are that the investment banking business, as defined in the Code, is much broader and includes the purchasing and selling of securities upon the order and for the account of others, to the extent that such business is not transacted on regularly organized exchanges by a member of such exchange or by anyone having the privileges of such an exchange.

From this it will be seen that floor brokers, whose business in securities is entirely confined to the execution of orders on the floor of an exchange, are not subject to the Investment Bankers Code. Other members of exchanges, however, who have transactions in securities off of an exchange, either as an agent or as a principal, are subject to the Investment Bankers Code as to all such business.

Under the Fair Practice Amendments to the Investment Bankers Code, approved by the President of the United States on March 23, 1934, an extremely valuable privilege is extended in Article X of the Amendments for the registration of investment bankers. The privilege of becoming a registered investment banker is restricted to investment bankers as defined in the Code, and if a member of a stock exchange has any transactions in securities off of an exchange he is eligible for registration. Unless registered he is denied certain important privileges as indicated in Sec. 7 (a), Art. IX of the approved Amendments, as follows:

"No registered investment banker shall, in any transaction with any investment banker not registered under Article X hereof, allow or grant to such non-registered investment banker any allowance, commission, or discount usually and customarily to be allowed to another dealer; nor shall any registered investment banker join with any investment banker not registered under Article X hereof in any syndicate or group contemplating distribution to the public of any issue of securities; nor shall any registered investment banker sell any security to or buy any security from any investment banker not registered under Article X hereof, except at the same price at which at the time of such transactions such registered investment banker would buy or sell such security, as the case may be, from or to a person who is a member of the public not engaged in the investment banking business."

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The terms "investment banking business" and "employer" are defined in the Code of Fair Competition for Investment Bankers, as follows:

Article I - Definitions

(1) The term "investment banking business" as used herein shall mean the business of underwriting or distributing issues of bonds, stocks, or other securities, or of purchasing such securities and offering the same for sale as a dealer therein, or of purchasing and selling such securities upon the order and for the account of others; provided, however, that the term "investment banking business" shall not include transactions on regularly organized exchanges, but such term shall include all business relating to such transactions to the extent that such business is not conducted by a member of such exchange or by any person or organization having the privilege of any such exchange for itself or any of its partners or executive officers.

(2) The term "employer" as used herein shall include every natural person, co-partnership, corporation, association, or other entity that is engaged in doing any investment banking business. If the major part of the business of any employer consists of any business other than investment banking business which other business is governed by any other code or codes, such employer shall not be bound as to his investment banking business by the wage and hour provisions of this Code, but shall be governed as to his investment banking business by the wage and hour provisions of such other code or codes; but all other provisions of this Code shall apply to such employer as to his investment banking business.

Investment Bankers Code Committee

Rollin A. Wilbur,  
Managing Director.

May 1, 1934.