

Investment Bankers Code Committee

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OFFICE OF MANAGING DIRECTOR
1010 VERMONT AVENUE
WASHINGTON
D. C.

June 12, 1935.

To All Registered Investment Bankers:

At a meeting of the Executive Committee of the Investment Bankers Code Committee held in Washington June 7th, we were instructed to send to all Registered Investment Bankers the following:

Communications received by members of the Code Committee indicate that there has been considerable confusion in the minds of many Investment Bankers concerning the effect of the decision of the United States Supreme Court declaring the National Industrial Recovery Act unconstitutional in certain particulars.

It has been assumed apparently by some that the effect of this decision has been to render also unconstitutional the regulatory provisions of the Securities Exchange Act of 1934 and even the Securities Act of 1933.

Whether or not the legal application of the Court's decision may later appear to affect some sections of the Acts referred to, the Code Committee and Investment Bankers generally must be guided by statutes of the United States as now in effect.

The statutes now in effect with which the Investment Banker is most concerned (for the purposes of this letter) are

(a) The Securities Exchange Act of 1934, which, amongst other things authorizes and directs the Securities and Exchange Commission to establish rules and regulations governing over-the-counter trading in investments throughout the United States.

The Securities and Exchange Commission has had under consideration for some months past the establishment of such rules. A sub-committee of your Code Committee has been in frequent conference in Washington on this subject. It appeared possible in the early stages of the law that the Commission would deem it necessary to put into effect rules and regulations which in the judgment of the Code Committee would have seriously and adversely affected the business of the Investment Banker.

In recent months (as you have been advised) conferences have been held between the Securities and Exchange Commission and your Code Committee looking toward a co-operative plan whereby the present Code provisions (including the over-the-counter rules) would be put into effect as to registered investment bankers and administered by the Regional Code Committees—under the supervision of the Code Committee and the Securities and Exchange Commission.

Such a co-operative plan might well be more effective against dishonest dealings and at the same time give more freedom to the Investment Banker who conducts his business properly.

Direct Government regulation too often means burdensome regulation—including the requirement of frequent reports on the conduct of business from those controlled and directed by government authority.

Such reports are used as an alternative in the absence of facilities and staff sufficient for adequate administration.

A Code embracing 3,000 Investment Bankers covering the whole of the United States, created and administered (under Government supervision) by those familiar with the business, is manifestly more advantageous to the public and the business than regulations created in and administered from Washington.

(b) The Securities Act of 1933 (as amended) of course continues in force and regulates the issuance of new securities and penalizes investment bankers for failure to observe its general provisions.

The Pending New N.R.A. Bill.—Recently there has been introduced into Congress what is intended to be a joint resolution of both houses extending certain portions of the N.R.A. until April 1, 1936. The outcome of this legislation is uncertain at this time, and/or also its particular effect on our situation.

Under these conditions it is evident that the Investment Banking Business is again faced with a very difficult problem, coming at a time when there is real evidence of recovery in the capital issues market.

We are informed that the Investment Bankers Association recently sent a note to its membership requesting all members to continue to observe the provisions of the Code until further action was recommended, and received in reply voluntarily some 200 telegrams and letters approving this action, indicating that in large measure those familiar with the business appreciate the situation now confronting the Investment Bankers of the country.

It is but natural that the Investment Bankers will look to the Code Committee (owing to its past conferences in Washington) to make every effort to meet and solve their problems. If the investment dealers desire them to do so, the Code Committee will continue to carry on and to serve at this crisis.

The members of the Code Committee as well as members of the Regional Code Committees serve of course without pay.

The Executive Committee of your Code Committee has voted:

(1) That the Code is unenforceable after June 16th, and no attempt of course will be made by Regional Committees or the Code Committee to enforce any of its provisions.

(2) The Code Committee believes, however, that it is important to the interests of the investment banking business and the public that there should be no lessening of the observance of the high principles set forth in the Code for the protection of investors and providing standards of business integrity, and that the Code Committee should attempt to find some sound legal basis upon which it can propose to reinstate registration whereby investment bankers may co-operate with the Government in determining and regulating their practices and ethics.

(3) To this end, it is not only desirable, but necessary, that the present Code organization (reduced, of course, in personnel) be continued in order to carry on its negotiations in Washington, to continue the contacts of Regional Committees and to determine whether or not it is possible to work out for submission to registered investment bankers a plan for a voluntary Code or Guild, regulated and administered by the Investment Bankers themselves under supervision of the Securities and Exchange Commission.

Unless the Committee hears from you to the contrary on or before the 20th day of June it will assume that you agree to this program and consent to the use of the surplus funds on hand as of June 16, 1935 (estimated to amount to \$14,000 as of such date), for the purposes stated in this letter.

We repeat, it is understood that the registration agreements of registered investment bankers terminate on June 16, 1935, and thereafter will no longer be in force or effect. You will be kept advised of further developments.

ROLLIN A. WILBUR,
Managing Director.