

books as the S. E. C. sees fit. Judge Healy talked about the desirability and difficulty of legislating uniform accounting methods. I quite agree with him but I don't think the method of working it out is to give the Commission the power to order a company to keep its books in one particular way and no other way.

Accounting is not an exact science although there is a good deal of fuzzy thinking which arrives at that conclusion. You can find differences of opinion between the best accountants and the best-intentioned managements as to how a particular account should be kept. Outside of certain general rules specifying the type of information which should be furnished shareholders, and which can very well be embodied in this act, there is another field on which there is room for difference of opinion and which should be left to the managements to set out in the way they think is proper and fair. Certainly no legislation should force managements to keep their accounts in a way which they may honestly feel to be wrong and not only force them to do this but prohibit them from keeping them in any other way.

As you gentlemen know, some investment companies keep a set of books which are different from the corporate books for very obvious reasons. They may treat securities for tax purposes as first in, first out, or they may treat them on a specific certificate basis. These practices are recognized as entirely proper by the tax authorities. Does this section mean that the whole tax treatment, historic and otherwise, of the company may be upset with possibilities of grave difficulties and expense to the security holders? As I analyze the bill as written, it would permit it.

My suggestion for dealing with this matter of accounts is not to force all the treasurers or comptrollers out of a job by leaving everything but the actual bookkeeping to the Commission but to set down in this act certain general and already well-known standards which all companies must follow. Provide the elastic in the way that Judge Healy has suggested, that in consultation with the companies interested and the best-known and most competent accountants, the Commission work out a method of handling the debatable items of accounting in a way which seems reasonable, but handle this complicated matter outside the law.

This section also deals with accountants and auditors, and on this question Mr. McGrath will speak to you more fully for this group.

Senator HUGHES. If it is outside the law, you could not be required to do it.

Mr. QUINN. If you take the standards which are fairly well known of what items should be shown in reasonable detail, you will cover all except the debatable items where there may be differences of opinion.

I would like now to pass to the question of reports——

Senator WAGNER. Before you pass on to another subject, do you think there ought to be any kind of regulation with reference to the bookkeeping? Do you think there ought to be any fixed statute on the subject?

Mr. QUINN. If the statute contained certain definite standards of reports required of companies, we would not object to that. But when you get down to the specific details of how actual accounts shall be handled, there are honest differences of opinion as to how many of these entries ought to be made. Don't put it so that you would get 2 years in jail if you violated a rule. I think that is going much too

far. I think you will find that if the Commission worked out with the industry and the accountants uniform methods of handling those debatable items, it is not necessary to go into the law. I do not think it is important enough, Senator, because the main, important items you can follow definite standards on. I know Judge Healy will not agree with me, but that is my view.

Senator WAGNER. I was just going to ask you this further question, because I know I speak the sentiment of every member of this committee and, I take it from what has been said, of Judge Healy, that there ought not to be any delegation of discretionary power wherever it can be fixed by law; that is, provided regulation is desirable. Wherever possible it ought to be fixed by law rather than giving anybody particular discretionary power. So that I know that as far as possible this committee will reduce to an absolute minimum any discretionary power that may be delegated, and then of course always under certain fixed standards. But where there is authority to prescribe a rule, should there not be some method of enforcing that rule when there is a violation of it?

Mr. QUINN. Oh, yes. Where there is a rule that applies to a specific section, implementing that section, that naturally becomes part of the act. But where there are rules applying to these debatable methods—

Senator WAGNER. I think you misunderstood me. We are all agreed that where discretionary power is needed the Commission should be authorized to make a rule. There ought to be some provision in the law for the enforcement of that rule.

Mr. QUINN. Yes, sir; we agree with that.

Senator WAGNER. So that there ought to be some penalty prescribed. As I understand your statement, you think that the penalty prescribed is too drastic?

Mr. QUINN. I say that the penalty prescribed goes to matters which are not clear and explicit and which are in many cases dealing with subjects which should not be in this law at all.

Senator WAGNER. That is another thing. We do not understand one another. I agree with you that wherever there is even doubt as to whether there should be rules there ought not to be a delegation of discretionary power. Wherever possible it ought to be fixed in the law. I think everybody agrees to that. But according to your testimony there are some instances where, under proper standards, delegation may be proper; that is, it may be proper to delegate the power to make rules.

Mr. QUINN. If there are necessary standards.

Senator WAGNER. I am assuming that. We have agreed that there is a certain discretionary power that is needed in a particular case, which means that a rule is prescribed. That, then, has the effect of a statute, and there ought to be some penalty provided for a violation of that rule. It may not be as great a penalty as is prescribed here; but you agree that there ought to be some method of enforcing it?

Mr. QUINN. Yes. The other safeguard that I suggested in regard to making those rules and regulations is that prior to their promulgation there should be some consultation.

Senator WAGNER. Yes; that rather appeals to me. You mean, that there ought to be a hearing of some kind?

Mr. QUINN. Not necessarily a hearing.

Senator WAGNER. Of course I want to hear the other side on these matters; but that sounds reasonable to me, that there certainly ought

to be a hearing before a rule is promulgated by the Commission affecting a certain industry.

Mr. QUINN. The S. E. C. has consulted many people.

Mr. HEALY. We have consulted a great many people.

Mr. QUINN. I think it ought to be provided that that be done.

Mr. HEALY. You are not suggesting a hearing; you are suggesting that a consultation be provided for?

Mr. QUINN. Some appropriate official form of consultation.

Senator WAGNER. Is there objection to a hearing?

Mr. HEALY. I do not think the industry likes the hearing idea.

Senator WAGNER. In most of our agencies where there is authority to make rules, there is also a provision for a hearing before the rule is adopted, is there not?

Mr. QUINN. No, sir.

Senator WAGNER. That will come up later on, anyway.

Mr. HEALY. Our practice has been—we have not followed it in every instance, but, generally speaking, we have enacted very few rules of any consequence, without consultation with the people concerned. If I might interrupt, I think it might be wise in that connection to say that I think you ought to have some provision for an emergency case.

Senator HERRING. There has been quite a little evidence from one side and the other as to the opportunity for conferences with the industry in the preparation of this bill, over the past 2 or 3 or 4 years. Has your organization been consulted or offered an opportunity to discuss this measure?

Mr. QUINN. Yes, sir.

Senator HERRING. It has been?

Mr. QUINN. I want to explain, Senator Herring, just what was involved in that consultation. We worked originally with the S. E. C. on the preparation of the questionnaire. I think that consultation consumed about 6 weeks, getting that questionnaire in a form which everybody thought was satisfactory. We worked for a long time getting that questionnaire filled out. I think our answer weighed 52 pounds. Then from time to time we have talked to the staff of the S. E. C. and to Judge Healy in connection with this; and it was our understanding that before this bill was introduced we would have an opportunity to sit down and discuss it in detail. I am not sure that I have the dates right, but about the end of February we came down and Mr. Schenker went over with us the general provisions of a bill. That was not in detail; that was just a general outline. That was on Friday. They asked us if we could come back on Tuesday and talk to the Commission Tuesday afternoon. We went back on Tuesday afternoon and talked to, I think, four out of five members of the Commission. We naturally confined ourselves to some of the important items, because, after all, one afternoon did not give an opportunity to cover them all, and we did not know what the bill said.

Then we were asked if we would not talk to the staff again, which we did on the following Friday and on Saturday morning, and we went back and talked with the Commission on Tuesday. We presented and reiterated—because the chairman had not been present at the first session, and was present at that session—our objections to certain fundamental principles of this bill. We could not talk about the language; we did not have it. We were talking about principles.

When we got through—they were extremely courteous and considerate in the hearing—they said:

Now, gentlemen, thank you very much. We cannot listen to you any more, because we have got to go on with other groups that have to be consulted.

And then the next we knew about the bill was when it was presented. That, I think, is a fair statement.

Senator WAGNER. I do not know what your experience has been, and maybe this is not the place for me to state it: At the end of last session Judge Healy discussed with me, as chairman of the Banking and Currency Committee, the fact that they had concluded their study and were preparing some legislation—which he said would be ready for the next session—but that they intended to take all the intervening time to discuss the matter with the industry in the hope of agreeing upon legislation satisfactory to all sides. Of course there is always a certain question of enforcement that is always difficult to agree upon. But that was away back in the last session. That was a long while ago. I do not think there is any justification for postponing consideration of that question. There may be changes that we would want to make, but I think the matter is before us now.

Am I correct in that statement, Judge Healy, as to the discussion last year?

Mr. HEALY. We had a discussion, and the statement was made concerning the preparation of a bill. I did not say that the study was finished completely.

Senator WAGNER. That is true; you did not.

Mr. HEALY. All through the hearings, as you will see by consulting the record, when various representatives of the industry were examined by Mr. Schenker, they were not only asked about the facts of their particular companies but they were asked to give their ideas on the subject of legislation. The chairman of Mr. Quinn's company filed with us in July 1937 a printed memorandum of recommendations which we discussed with him and we talked over the matter ourselves, and there were a number of other memoranda.

When we got down to the point of recommendation we discussed the recommendations and, furthermore, in addition to the two conferences that we had with Mr. Quinn's group of course we had to spend considerable time in other groups. I made the statement then—and I think Mr. Quinn will agree that this is so—that at that time we could not go into precise language; that when the bill was printed, after it was introduced and before it came to hearings, we would be delighted to sit down with the industry and discuss it paragraph by paragraph.

When the bill was introduced I asked one or two of the newspapermen to state for the newspapers that we would consult with the industry; and Mr. Schenker also communicated with some of them. I do not know which ones.

I really do not see how we could have been more considerate.

Mr. QUINN. Senator, Judge Healy has always been extremely considerate. But I would like to make this point in regard to that criticism of our not talking with them regarding the specific provisions of the bill between the time it was introduced and the time we were to appear here. We had never seen the language of the bill up to the time it was introduced. You have read the bill. You know how difficult it is to understand. We were here trying to get ready to

present our views of the bill at this hearing. Certainly there was no opportunity, except possibly from 2 to 3 every morning, to sit down and discuss the details of this bill with the Commission. We had our hands full.

The other point that I would like to make, Senator, is this: That I do not see what useful purpose a discussion of the language of the bill would have served with the Commission at that time. They had made up their minds what they thought was right. We had already expressed our wholesale objections to certain provisions of the bill. We got nowhere. The bill contains those provisions still.

I think that it is unreasonable of Judge Healy to expect us, in the midst of preparing for a hearing, to go and discuss language to achieve objects with which we did not agree.

Senator WAGNER. You have mastered the bill. I can see that from your memorandum.

Mr. SCHENKER. May I say a word, Mr. Chairman?

Senator WAGNER. Yes.

Mr. SCHENKER. All I would like to say is this. I think the record ought to indicate the scope of my discussion of the provisions of the bill with the industry; and I think the best indication of that would be if Mr. Bunker would produce the memorandum that he prepared when he got back to New York, a copy of which he said he would give to anybody in the industry, as to what the contemplated recommendations are. That would give you some indication of the extent to which and the details of which we discussed the matter with the industry, and, I think, would also give you the extent to which the Commission met the objections of the industry, and to what extent the bill as submitted to the committee conforms to our original ideas before we discussed it with those representing the industry. So that if Mr. Bunker can produce that memorandum, I think it will give some idea of the details of the provisions we discussed and even the language of the bill.

Mr. BUNKER. If I may say so, Senator, I shall be delighted to produce the memorandum of the outline of the bill, which is as complete as it was possible for all of us collectively to make it after having had our conferences.

I think in that connection it is only fair to say that I naturally have not got the document with me, because we have gone to a much more particularized bill. The industry found that its hands were extraordinarily full when it looked at a 104-page bill compared with a 2½-page memorandum. The transition between a general outline of 2½ pages or 3 pages and a 104-page bill is simply enormous. It presented us with hundreds of problems, not anticipating, Senator Wagner, that that difficulty would arise; and on the 1st of January I had seen a great many notices in the press that the S. E. C. was about to bring out this bill. The same rumors existed a year ago. Therefore I wrote to the Commission and said that our little group wished to cooperate, but I did not think it could do so unless we could see all the particularizations of the bill; that it had taken us 6 weeks in order to prepare the questionnaire, and that if it was a matter of 2 or 3 days we could not bring forth anything which would be helpful toward the development of a bill.

I do not know whether it was thought inappropriate or whether the bill was not ready, but, as Mr. Quinn has said, we could not get at the working basis of that bill.

I have enjoyed, and I think Mr. Quinn and all the members of our group have enjoyed, a very close cooperative feeling and respect for the members of the Commission; but as a pure matter of workmanship I cannot say that we were placed in a position to discharge a good workmanlike job.

I would be glad to file that letter, which I wrote early in January, requesting both cooperation and workmanship.

Mr. QUINN. Senator, you were kind enough to say that you thought I had a working knowledge of the bill. I can assure you that that is the result of a fair amount of work during the last 3 weeks.

Senator WAGNER. We all do our best work under pressure, you know.

Mr. QUINN. I would like to pass now to the question of reports required under section 30. At the risk of boring you, I wish to repeat my statement that no one quarrels with the idea of keeping investors fully and periodically informed. I would think that if this section provided that each company must provide its shareholders with quarterly reports in the form that I have previously described perhaps it would have done all that it is necessary to do to insure such information reaching the stockholders of all companies.

Let us examine, however, paragraph (c) of section 30 and see how far this section really goes. It reads:

The Commission shall require by rules, regulations, or order, if and to the extent that the Commission finds such action necessary or appropriate in the public interest or for the protection of public investors, that a registered investment company transmit periodic and special reports or notices to the security holders or specified classes of the security holders of such company, at such time and in such form and detail as the Commission shall prescribe.

The discussion indicated that these reports are limited to accounts and reports filed as part of the registration statement and periodic reports filed under the act, to keep that registration statement up to date.

As I read the act, that limitation doesn't hold. It extends to all other documents filed under this title; and that includes a host of things, including even the minutes of directors' meetings.

Isn't this going pretty far? Doesn't it empower the Commission—I do not say that they will, but I am talking about what the law says—not only to say that a company must send a report to all its shareholders or certain classes upon any subject at any time, but that it must do it in such form and detail as the Commission shall prescribe? Is this not really an unwarrantable interference with management? Does it not permit an unreasonable burden of trouble and expense?

Will not the suggestions I have made really provide the shareholders with all the information they could want or assimilate?

Let us go one step further in the powers given to the Commission. Section 31 (a) says that the company shall make, keep, and preserve for such periods as the Commission may prescribe, such accounts, cost-accounting procedures—and that is evidently a carry-over from the Public Utility Act, because I have never heard of it in an investment company—correspondence, memoranda, papers, books, and other records as the Commission may prescribe. This is not limited to making rules and regulations applicable to all companies but the Commission may order specific companies to keep specific records.

The next section gives the Commission the right to inspect these records from time to time. This is along the lines of the examination

similar to a bank examination which has been suggested here as perhaps an appropriate accompaniment of this legislation.

But paragraph (c) goes way beyond that. Let me read it:

The Commission or any member or representative thereof designated by it shall have power at any time and from time to time to make an examination of all the affairs of any registered investment company.

No restrictions, no subpoenas, no limitation whatever on this arbitrary power to go into investment policy or any other matter they may care to.

I submit to you, gentlemen, that this is a far cry from the reiterated statement of the S. E. C. in these hearings that it is desirable to have a little bit of elastic.

And let me conclude with one other section, section 34: "It shall be unlawful for any persons except as permitted by rule, regulation, or order of the Commission, to destroy, mutilate, or alter any account, cost-accounting procedure, correspondence, memoranda, book, paper, or other record kept pursuant to this title." What does "kept pursuant to this title" mean? This makes sense as applied to corporate records and the corporate books. Can it be made to mean that every investment program must be filed, every bit of potential waste paper embalmed until the Commission gets around to ruling what may be destroyed?

I do not think that there is the need for any such wide delegation of powers as is given to the Commission in these sections. It goes beyond all rhyme or reason. It may help solve the unemployment problem perhaps by giving a volume of work to people who make up and send down an enormous mass of reports and to the people in the Commission who read these reports and then file them.

But all this elaborate delegation of power isn't necessary to provide the fundamental thing that everybody is agreed ought to be provided for in this act, which is that the stockholders be given full and complete information at periodic intervals in accordance with the standards already set by many of the investment companies.

If you will spare me one more moment, I should like, with apologies for my temerity, to end by making certain suggestions.

Approach the problem not on the basis of trying to legislate in this bill to cover every possible or conceivable abuse, every possible contingency, and a host of things which have nothing to do with protecting the investor. Keep the present bill down to the necessary minimum to stop the grave abuses which have been outlined to you gentlemen and which everybody will agree should be stopped.

Where the present bill goes beyond that and where the case is not at all clear, keep the legislation at the present time so as not to freeze into law one answer to a problem on which there is much to be said on both sides. Leave that to a little further experience. Time may prove that it is unnecessary, or time may prove that the suggested cure is wrong.

Make the bill clear, concise, and understandable. Leave in the minimum of the necessary elastic but be sure that in tailoring that elastic you provide that the people who are to be affected by it have some voice in the making of the necessary rules and regulations.

If you will proceed on that basis, which I think you will agree is both businesslike and statesmanlike, you will have the full support of

the responsible elements in the business for the resultant legislation. And if in the necessary wholesale rewriting of this measure you may wish the help of those with practical and technical experience, I can assure you that they will be more than glad to sit down with whom-ever you may designate and cooperate fully in working out legislation along the general lines which your committee thinks is wise.

Thank you.

Senator WAGNER. Are there any further questions?

(No response.)

I think that is all for today. Whom else will you gentlemen have?

Mr. BUNKER. We have four more in this group, a repetition of some of the same, Senator. We have Mr. McGrath of General American Investors, Mr. Bellamy of National Bond and Share, and Mr. Quinn and myself again on certain sections of the bill.

Senator WAGNER. You are coming back?

Mr. BUNKER. Yes; we are going to come back strong, dealing with other subjects. We do not want to comb over the same material again.

Senator WAGNER. Mr. McGrath and Mr. Bellamy will be the first two witnesses, then?

Mr. BUNKER. I think the exact order will be, sir, that I would go on first, and possibly Mr. Quinn, and Mr. Bellamy, or Mr. McGrath.

Senator WAGNER. On what basis are you going to proceed? Are you going to touch a new subject?

Mr. BUNKER. Oh, yes; entirely new.

Senator HERRING. He is going to get recharged over the week end.

Mr. BUNKER. Yes. We are not going to worry over these same ones again, Senator.

Mr. QUINN. Those are the ones I just touched on.

Mr. BUNKER. Those are the ones as to which Mr. Quinn said, "I will leave the subject for fuller treatment," and just left them alone.

Senator WAGNER. We will have no session on Tuesday afternoon. We will sit all day Monday. We will adjourn now until 10:30 next Monday morning.

(Whereupon at, 3:50 p. m., the subcommittee adjourned until Monday, April 15, 1940, at 10:30 a. m.)