

investment-trust idea when properly administered." Of the 31 leading trusts of the time studied by the Economist, 7 were able to make headway against the completely adverse current of conditions. In the hope and belief that we shall profit by the example of the older trusts and escape the worst of their difficulties, I shall now try to point out what in my opinion are some of the present dangers. Before doing so, however, I should like to emphasize the fact that the honesty and ability of the management are paramount and that good practices can be completely vitiated by dishonest and unsound investments.

II

Of the investment trusts of which I am speaking I propose to recognize two broad classes. First, those whose primary idea is the borrowing of money at a rate lower than that at which they can lend or invest it, and which in their investment program follow a very wide diversification. Second, those that do not follow such wide diversification and that buy with the idea of appreciation, or that have attempted to buy securities which are cheap and will go up over a period of years. In England these two classes are generally differentiated as "trust companies" and "finance companies." In this country we have tended to group them all under the general category of investment trusts. Both types have advantages and disadvantages that appeal variously to different investors. The broadly diversified trust has relatively small holdings in a great many issues. It attempts to secure a cross section of the various securities of the United States or of the world. Its particular advantages are that it permits small investors to participate in the ownership of a widely diversified group of securities, thereby obtaining such benefits as go with wide diversification. By its very nature, however, it is attempting to secure a representative average; it cannot, therefore, hope to turn in more than an average performance. Now the primary object of buying into an investment trust should be the desire to have expert and constant management which can do better than the average. As we have seen, however, a very broadly diversified portfolio means average results, and therefore the purchaser of the securities of such a trust cannot expect the full benefits of managerial ability. Of course, in fairness it should be said that poor management cannot do as much harm following wide diversification as otherwise.

There is a restriction in the by-laws of one investment trust which provides that as soon as the trust has \$5,000,000 it shall have at least 400 different issues. In contrast to this, the trust indenture of the Investment Managers Co. of New York provides that it shall not have more than 30 issues. The first company has by its policy of diversification attempted to obtain security. The Investment Managers Co. by its opposite policy has, however, obtained greater security. No one can get an issue into the portfolio of the Investment Managers Co. without proving to the directors that it is not only good, but better than one of the existing issues for which it is to be substituted.

In the other company almost any security will get by. The pet issue of each director and officer can find its way in. Director A passes director B's security, although he may not be very enthusiastic about it, so that director B will not blackball his issue. Another disadvantage to the highly diversified portfolio is either the inability of the management to follow closely so many issues or the expense of so doing. One of the worst of some of the present abuses is the ignorance and lack of attention of some investment managers. An investment-trust manager should know far more about the companies in which his money is invested than the average investor. This, I am afraid, is not always the case, and obviously it is far more expensive to follow closely and thoroughly a list of securities spread all over the face of the globe than a list restricted to a limited group of the best investments. I think it fair to say that the average highly diversified trust does not closely follow its list, but relies on its policy of diversification to save it, and, therefore, cannot produce more than an average showing.

In pointing out the difference between these two types of trust, I have already touched on one of the cardinal abuses—inattention. Of course, this evil may apply to the trust with a more limited and selected portfolio. I should also like to point out that it may apply to those trusts run by the big banks and brokerage houses. They may be honest and they may be able, but before their securities are bought one wants to be sure that they will continually apply and reapply that ability to the running of the trust into which one may be buying.

I think the worst cases of lack of attention come where the managerial control rests in rather numerous hands. Concentration of control with extensive powers is a feature of the utmost importance, avoiding the delay and lack of positive action that usually result when many individuals holding diverse opinions attempt to translate their ideas into action.

Some months ago I was asked by an investment house if I would consider running an investment trust that they had sold to the public some time before. During the course of the discussion I asked if I might see the portfolio. In examining this, I noted a very large block of the shares of a company which, as a banking house, they had recently acquired and sold to the public. I asked the gentleman with whom I was talking whether, if I were to advise them on their portfolio, and if I could convince the directors that the shares of another company in the same industry were a preferable investment, they would make the exchange. He replied, "No, not necessarily. This trust is part of our general machine, and if the selling of these shares adversely affected— & Co. we would not make the sale." And yet the securities of this trust were sold to the public, whose money was being used not for the best interests of the men and women who had supplied the funds, but for the best interests of — & Co. This case brings up two common abuses to which the investment trust is now being put. First, that of being run for ulterior motives and not primarily for the best interests of the shareholders; second, that of being used as a depository for securities that might otherwise be unmarketable. There are, of course, certain trusts that have been formed with avowedly ulterior purposes. Such procedure is obviously beyond reproach. It is only when a trust says it is formed to accomplish one thing and then attempts to do another that it becomes an abuse.

The practice by which a house of issue sells a part of its own underwriting to its own trust, although not necessarily unethical and unsound, is extremely dangerous. Those trusts run by banks and brokers are particularly subject to this temptation. In my opinion such companies should have a provision or a firmly established policy that they will in no way deal with themselves as principals; that if they wish to acquire part of an issue in which they as a house may be interested they will have to acquire it from some entirely outside source.

III

Some months ago, in testifying before a committee of the New York Stock Exchange, I was asked to state briefly what were, in my opinion, the present abuses in the investment-trust movement. My reply was: (1) dishonesty; (2) inattention and inability; (3) greed.

It is of the last of these that I now wish to speak. You may be asked to subscribe to a trust that is both honestly and ably run, and yet find it inadvisable to do simply because there is nothing in it for you. All the profits go to the promoters and managers.

There are an infinite number of ways whereby this unduly large slice of the spoils is kept by the insiders. They may own all or a very large percentage of the equity stock; they may have warrants and options; or, more rarely, they may be able to take out the money in the form of expenses or managerial fees of one sort or another. There certainly is no ethical objection to promoters and managers getting away with all they can in the way of profits. Free competition is bound to keep this down to a reasonable figure. The objection comes when the amount so to be taken out is not clearly set forth. The most common method of accomplishing this result on the part of promoters is an exceedingly complicated capital structure. There are many investment-trust prospectuses in which it takes literally hours to figure out just how profits are to be divided. To those not trained in finance the task becomes impossible, and the promoters have accomplished their purpose. Certainly a clear statement of how the money is supplied and the profits divided, together with a simple, straightforward capital structure, is highly desirable.

Another danger, usually the result of greed, takes the form of a very large funded or floating debt or an excessive issue of preferred stocks. Very often the managers and promoters receive their compensation and profit in the form of common stock for which they have paid little or nothing. There is nothing to criticize in this procedure if it is clearly and simply stated so that all can easily understand. As is pointed out in such cases, the management receives nothing until it has earned and paid some fixed percentage on the senior securities. In other words, the compensation is dependent upon the success of the enterprise. But the difficulty is that the management or promoters have put up only a very small percentage of the total funds. If the enterprise is a complete failure, they have little or nothing to lose. It is natural, therefore, that they should take the attitude of "Let's either win big or win nothing." This they accomplish by a very heavy pyramiding process. I do not believe that there are many people who with only \$100 equity would, as a general practice, proceed to borrow and buy anywhere from \$800 to \$1,000 worth of securities, and yet this is exactly what many investment trusts are doing today.

There is another difficulty to which pyramiding leads. With very heavy fixed charges and preferred dividends to meet, the management is under the constant necessity of producing a large dollar income the first and every succeeding year of operation with which to meet the relatively large fixed charges. This pressing necessity to produce immediate and constant income forces the investment of a large proportion of the funds in securities of a less desirable type.

A danger that I have already spoken of I should like to touch on again. There are a great many trust indentures, bylaws, and more or less formal policies that provide a variety of restrictions, the basic purpose of which seems to be to prevent, in the case of dishonest or incapable management, a complete dissipation of the funds.

Such a motive is praiseworthy, but all the restrictions in the world will not mitigate the evils of poor management, and about all they can do is to restrict the efforts of good management. Is it not probable that excess restrictions which we may place on the investment-trust manager during a period of rising prices may be entirely wrong for a changed period of declining prices? I believe that no principles and restrictions should be developed so rigidly that they may not be changed at any time in order to conform with the best judgment of the management.

There are a great many other dangers confronting the investment trusts, but there is only one other I wish to mention here, and that is the excessive market price to which, in my opinion, the shares of certain trusts have been bid. To say what is a fair price for such securities I find extremely difficult—indeed, I do not know. I do think, however, that there are a few principles which may aid us in this determination.

Where the assets of an investment trust are not grossly overvalued, I should say that its various securities are at least worth the net liquidating value, or what would be realized in actual liquidation. The difficulty comes in saying how much more than the liquidating value the securities may be worth. I can think of only two factors that might bring this out. The first is the factor of management, and the second is the ability of the trust to borrow money at low rates of interest. If, for example, the X Trust can borrow \$5,000,000 at 5 percent for 20 years, that ability undoubtedly has a present market worth. Similarly, the ability of the management to make money in excess of the current rate of return over a period of years also has a present value. When, however, I find the shares of a very large trust selling in the market for nearly three times their liquidating value, particularly when that liquidating value is figured from a grossly inflated portfolio value; when there is not possible value to be added through funds borrowed at a low rate; and when, on top of it all, the management has in my opinion demonstrated inability and possibly dishonesty, I am inclined to think the shares somewhat high.

IV

What can be done about these abuses? I should say that the remedies are publicity and education. Every industry has its abuses and dangers, and many industries present far more alarming hazards than the investment trust. Before touching on these remedies I should like very briefly to say a word about what purports to be remedial legislation. There has been much discussion of this topic, and many States have already gone far in setting laws on their statute books. Just as in the case of charter restrictions, about all these laws can do is to hamper able management and fail to protect the public against inability and dishonesty. No law can replace the necessity for investors to think intelligently and to investigate a situation before investing their money. We have had many examples of the evils of overregulation in other fields, and it would indeed be unfortunate to hamper by laws that cannot accomplish their purpose so valuable an instrument of finance as the investment trust. All that legislation should do is to require a degree of publicity that will enable any investor to form a sound opinion. It should not require publicity that would interfere with the honest and successful operation of the trusts.

For the publicity that not only should be required, but is good policy for the trust, I should suggest the following provisions. First, a clear statement should be made showing exactly where the control lies and who constitutes the active management. Second, it should be shown exactly how and in what proportion profits and losses are divided, particularly the existence of options, warrants, calls, and the like. Third, the investment policy of the managers should be made plain by figures giving the percentages invested in the various classes and types of securities.

There has been much discussion of the advisability of requiring that complete portfolio holdings be revealed. Arguments in favor of revealing them include the following points:

1. The trust cannot be called and ceases to be a blind pool.
2. Dishonest or mistaken investment policies are more quickly revealed.
3. Public confidence is increased; the trust is ashamed of nothing and has nothing to hide.
4. The security holders of the trust can better appraise the trust investment policies and attune the rest of their investment procedure accordingly.

Among the disadvantages of portfolio publication are these:

1. The results of the costly investment research paid for by the security holders of the trust are revealed to all, and an outsider by following the list can get the same benefits free of charge.
2. Where a trust is either selling or buying a security with a limited market, that market can be seriously interfered with to the detriment of the trust.
3. Investors may be misled. An investment that is good for a trust may not be good for an individual, particularly when the individual does not know and cannot follow the risks and hazards involved.
4. Publication of a list can seriously hamper the managers in their investment research.

Generally speaking, I should say that for trusts pursuing a very wide diversification the publication of their lists is advisable; whereas for that type which tends more to concentration and the selection of a few outstanding issues it is inadvisable. The best English practices have tended away from the publication of holdings.

Every trust should publish complete balance sheets and income accounts. The balance sheets, of course, should reveal all liabilities, contingent or otherwise; securities should be carried at cost, but their present market value should be clearly revealed. Such a policy permits anyone to determine exactly the liquidating value which is essential in a determination of the value of the various securities. The income account should be detailed and reveal exactly from where the income was derived. It is essential that interest and dividends received should be clearly separated from profits from sales. Similarly, the expense account should be broken down, showing how much is paid in salaries and other overhead expenses. The compensation of management should be segregated.

If the investment trusts of the country pursue this policy of complete information, bad practices, simply by revelation, will be eliminated.

V

In pointing out some of the present abuses of the investment-trust movement, I have indicated by inference rather than directly what can be considered sound and constructive practice. It only remains briefly to suggest what can and has been accomplished in this field when these dangers and abuses are avoided. Without enlarging on the various possible benefits accruing to investors in this movement, I should merely like again to say that far and away the most important contribution that the investment trust can make is to supply honest, constant, expert, and unbiased management, and that if it pursues too extensive diversification it indicates that it will not or cannot supply that management. For investors to pay a heavy loading charge, in the form of management charges and sales commissions, to the managers and promoters of a "fixed trust," who by its very charter are restricted from using any judgment whatsoever, is in my opinion ridiculous and unjustifiable.

I am often asked what will happen to the investment trusts during a period of declining security prices. In my opinion it is during that period that the real value of the investment-trust movement can be demonstrated. The investment-trust manager should be a financial expert similar in his profession to the doctor of medicine. When we most need a medical doctor is when we are sick. Equally it should be, and I believe is, true that when the investing public most needs expert assistance is during a period of falling security prices. Almost anyone can make money during a period of rising prices, but it will take real skill to curtail losses when things are moving in the opposite direction. I should not go so far as to say that the well-run trusts will not lose money during a period of deflation; but certainly they should, and I believe will, lose less money than the average investor. With conservative capitalization, sound policies, and able management, the investment trusts will make more money than the average investor in good times and lose less in poor times. Such a performance not only justifies but ensures their existence and growth.

Mr. CABOT. I thought at that time and I still think that this industry needs a regulatory law, and I believe that the vast majority of the members of the industry concur in this belief; but I do not think that the present bill is the soundest approach to the problem.

We are in a fortunate position with respect to the specific provisions of the bill which is before you, in that except in one instance we are not affected by it, insofar as I can judge. I do not mean to imply by this, of course, that we will not be affected by any or all of the innumerable rules, regulations, and orders that the bill in its present form authorizes the S. E. C. to issue. Nevertheless, I have felt that I ought to call to your attention some of the general objections I have to this bill, regardless of the fact that they might not affect my company.

They are, first, that under the provisions of section 10, subsection (e), it is proposed to make it illegal for anyone to serve as an officer or director of an investment company who, perchance, might be an officer or a director of one of the companies whose securities are held in the portfolio. Under section 30 subsection (e), any officer or director is required to make a complete report each quarter as to any purchases or sales he personally may have made in portfolio items in which transactions have occurred. I object to these provisions. Both will tend to make it extremely difficult to secure and retain the services of directors who are by training and situation competent to aid, advise, and administer the affairs of investment companies. I can see no sense in a law which states that because we happen to have 1 percent of our assets in shares of the General Electric Co., Mr. Blank, a director of that company, cannot serve as a director of our company.

Senator TAFT. Does the proposed law require that if that gentleman buys and sells shares of General Electric, for instance, he shall report that?

Mr. CABOT. Yes, sir—if the trust has any transaction in that same stock, either buying or selling in that same period.

Senator TAFT. Very well.

Mr. CABOT. Is that correct?

Mr. SCHENKER. As I understand it, Mr. Cabot, what the bill provides is that an officer or director who effects any transactions in the security in which the investment trust has effected transactions, still has to report those transactions to his own board of directors; whereas, if he effects transactions in securities in which the investment trust is not making transactions, then he does not have to report them.

Mr. CABOT. That is my understanding, too; but also there is a provision in another part of the bill that the S. E. C. can demand any document from any of these people and then can make public any of these documents. So, assumedly, they have it in mind.

Mr. SCHENKER. You seem to have it in mind.

In other words, if we had it in mind, I think you can proceed on the assumption, Mr. Cabot, that we would recommend to the committee that they would not only make it available to the board of directors but also to the general public.

Mr. CABOT. Well, possibly you gentlemen do not have it in mind today, but your successors might get it in mind. [Laughter.]

Many directors will seriously object to the "snooping" provided for in the second provision and, in order to avoid subjecting themselves to this procedure, will prefer not to serve as directors of an investment

trust. The result will be that investment trusts will be forced to elect outside directors—and the bill requires that these shall be in the majority—from among those individuals who have no business affiliations, connections, or property of their own; and the boards will be filled with artists, architects, musicians, doctors, and the like.

Senator TAFT. And perhaps some lawyers? [Laughter.]

Mr. CABOT. I did not mention lawyers.

I think that the shareholders will be hurt rather than helped by such a provision.

Senator WAGNER. I should like to get your view, as well as that of the other witnesses, with respect to whether there should be some independent directors.

Mr. CABOT. Are you asking me about that, Senator?

Senator WAGNER. Yes.

Mr. CABOT. I am inclined to think that there should be; and I shall take up that matter later, with your permission, Senator.

Senator WAGNER. Oh, you are going to take that up later?

Mr. CABOT. Yes.

Senator WAGNER. All right; then I shall not ask you to discuss that at this particular point.

Mr. CABOT. Our second objection is that we believe this bill, under sections 18 and 19—if it becomes a law—forces the breaking of many legitimate contracts that have been entered into in good faith by the contracting parties. Let us take an example: An investment trust was formed some year ago with a capital of \$10,000,000, \$5,000,000 contributed by preferred stock and \$5,000,000 contributed by common stock. Let us assume that at that time the preferred-stock holders had been given prior rights to dividends and, in the event that dividends are not earned or paid, the right to vote in the affairs of the corporation; but so long as their dividends are paid and earned and so long as there is complete asset value behind each of their shares of stock, they have been specifically exempted from voting. Now let us assume that because of existing conditions the market value of the \$10,000,000 fund has shrunk to \$7,500,000: It is obvious that the preferred stock is still fully covered by assets, and let us assume that its dividends have been continuously earned and paid. Let us further assume—and this condition is typical of the present situation—that this preferred stock, which was originally issued and sold at \$100 a share, is now selling on the market for only \$80 a share. Under the provisions of this bill, if it is passed, the preferred-stock holders could first go to the Commission and obtain the right to vote in the affairs of the corporation, thereby breaking the original contracts entered into in good faith. This might give them two-thirds of the voting control, as against one-third in the common stock.

With this two-thirds vote, they could call a meeting and by their vote could force the liquidation of the company. Their primary motive for doing this would be to get the market value of their preferred stock up from \$80 to \$100, or what they would get in liquidation. However, such action would be grossly unfair to the common-stock holders, who would be frozen out by such procedure and would be unable to recoup the loss which would be forced upon them by such action, and this despite the fact that they had lived up to the letter and the spirit of the contract with the preferred-stock holders. We cannot believe that it is sound to put into the hands of the Commission

absolute power to break any previously existing contract that was entered into in good faith.

Third, section 5, subsection (b) (1) (c) prohibits a diversified investment company from having a portfolio turn-over in excess of 150 percent. The Commission seems to think that a relatively rapid turn-over of portfolio securities is either in some way wicked or, at best, highly speculative. I believe that portfolio activity per se is neither necessarily wicked nor speculative and that, at times, it is essential for the protection of security-holders.

For example, if an investment company, whose total assets aggregated \$10,000,000, started the year 1933 with 6 millions of those assets invested in cash and Government securities and 4 millions in the most stable common stocks, and if it decided that due to the sudden change for the better in the basic economic situation it was advisable to swap the 4 millions of stable common stocks into 4 millions of stocks that would benefit more greatly through a business recovery, then under the definitions of this bill such a transaction would exceed the portfolio turn-over limitation. We submit that this is ridiculous and if this restriction is permitted to stand, it would very seriously jeopardize the best interests of security holders.

Senator TAFT. What is that 150 percent? Would not that mean that you could change them all over once and then 50 percent more?

Mr. CABOT. As I understand the bill, or as the bill reads, it says 150 percent of the value of securities, exclusive of cash and Government bonds; so that in the example that I have given you, 40 percent of the securities would constitute the only securities that would be measured under this rule; so that the transaction I have described would represent a turn-over of 200 percent, as at present defined.

Senator TAFT. Why 200 percent?

Mr. CABOT. Well, buying once and selling once.

Senator TAFT. Oh, each one counts?

Mr. CABOT. Each one counts.

Senator TAFT. That is in the definition section somewhere?

Mr. CABOT. Yes, sir. I think I can find that for you.

Senator TAFT. That is all right; I can find it.

Mr. CABOT. Page 93, line 23, it begins.

Senator DOWNEY. May I intervene at this point, to ask the witness a question?

Is there any provision made that the turn-over can be greater, by application to the S. E. C.?

Mr. CABOT. I think there is such authority, but I am not sure.

Mr. SCHENKER. On that aspect, Senator, the bill puts no limitation on the portfolio turn-over, if you do not want the title of a diversified investment company; so that if you want to turn over your portfolio seven or eight times a year, this bill does not prevent it; the only thing it says is that you shall not call yourself a diversified investment company.

Now, with respect to a diversified investment company, in our original presentation we were not unmindful of the difficulties of these situations; because we specifically indicated them as part of our affirmative presentation; and we manifested at no point difficulty with that situation.

What we intended to do, Senator, was to draw a distinction between the type of company like Mr. Cabot's which is not—as he says—

touched by this bill except as to possible future rules that the Commission may propound under the specific provisions, and the type of company like Mr. Bellamy's company, that had a portfolio turn-over of 7.44 last year.

We say that an individual who wants to go into Mr. Cabot's type of company should know that that is the type of company.

Now, Senator, you can visualize, can you not, that he may start out like Mr. Cabot's company and then suddenly become a company of the type of Mr. Bellamy's company, where he is no longer in a company that takes long-term investments, but is in a trading company?

Senator TAFT. Let me ask this, please: What is the effect, then, of what he represents his securities to be when he sells them? Is there any difference between the treatment of a diversified investment company and a securities trading company?

Mr. CABOT. May I answer that, Senator?

Senator TAFT. Well, first let us see what Mr. Schenker has to say about that, please.

Mr. SCHENKER. There is no difference in treatment, except you remember Judge Healy indicated that, as far as he was personally concerned, if a person was operating as a trading corporation, possibly he should be permitted to short-sell, and we have no restrictions on short-selling whatever, except a size limitation.

Senator TAFT. A size limitation?

Mr. SCHENKER. Yes.

Senator TAFT. There is another section which gives the Commission practical power to classify companies in any way they choose, is there?

Mr. SCHENKER. No; subject to certain specific provisions in the bill, Senator.

May I just make this observation, please: The fact of the matter is that these mutual open-end companies which get the tax preference, recognize the distinction between a company which turns over its portfolio very rapidly, which is nothing but a speculative investment trust, and the type of trust conducted by Mr. Paul Cabot, which is an investment trust; because section 48 (e), which gives the tax preference, specifically says that you lose your tax preference if more than 30 percent of your income comes from the sale of securities which you have held for less than 6 months.

That was the formula they devised to make sure that a trading corporation does not get the tax preference; because the fundamental approach of section 48 (e) is that if you have a mutual company and it has a limitation on the amount of borrowings and debt outstanding—and it really applies to one-class stock trusts—a one-class stock trust which does not have a rapid portfolio turn-over but which has these diversification limitations was treated specially with respect to taxation.

Now, Senator, as I understood it in my numerous talks with the members of the industry, they had difficulty with the Treasury's formula; because in order to get within that 30-percent provision, what would they do? They would have deliberately to sell securities in which they could take a loss, to offset the amounts they made on other securities; and it just was not good investment judgment.

What they were doing was that they were compelled to sell securities, to take a loss, even though their investment judgment might have been that it would be best to hold that security, just to come within the 30-percent provision.

We took the approach that we would not put that compulsion on them but, rather, for what we considered a more realistic approach, it did not make any difference whether you made money or lost money, whether you are a trading company or an investment company: The test should be, how fast do you turn over your portfolio?

Nobody is more conscious than we are of the difficulty of drawing the line; and yet we tried to take particular pains to indicate that.

I am not unmindful that the penalty is severe; and I indicated that if any other formula were submitted, why, that is the answer; but we feel, and I suppose Mr. Cabot would assume, that a stockholder ought to know the difference, he ought to know whether he is in an investment company or in a trading company.

I do not think he disagrees with our fundamental approach.

Senator TAFT. Mr. Cabot, what is your view on that same question?

Mr. CABOT. Yes. I cannot go along entirely with Mr. Schenker.

In the first place, the provisions on portfolio turnover in the Treasury regulations today are not hamperous to the industry in any way at all. Mr. Schenker is correct in saying that at times they might force a turn-over, to avoid the very provisions that are put in the bill.

However, Mr. Schenker neglected to mention that the provisions of this bill are that if we were to exceed our portfolio turn-over, then it is illegal, unless we have first obtained stockholder consent.

Now, Senator, picture the spring of 1933, when we went off the gold basis: We were conducting our affairs, running 60 percent in cash and Government securities and 40 percent in stocks; and we believed it became necessary and essential, overnight, to get practically fully invested. This law might make that illegal.

Senator WAGNER. How?

Mr. CABOT. Because if we exceeded our portfolio turn-over, by such a transaction—and that is the reason I have used this example here—without having first obtained stockholder intent, it would be illegal.

Senator DOWNEY. Mr. Chairman, may I come back to my question?

Senator WAGNER. Of course.

Senator DOWNEY. Mr. Cabot, in such a case as that, is there a remedy allowed, by which you could ask a waiver of the rule by the S. E. C.?

That was the question I asked.

Mr. HEALY. May I try to answer it, Senator?

There is a provision in here against changing any fundamental policy; and then the Commission is given permission to define the fundamental policy, giving weight to the elements pointed out in the bill.

It seems to me that a company finding itself in the situation that Mr. Cabot described, would not be held to change its fundamental policy—that is, the thing that you do in an emergency—it does not seem to me.

It seems to me that you give an extremely strict construction to that.