



OFFICE OF THE  
GENERAL COUNSEL

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON 25, D. C.

March 6, 1962

Honorable J. Edward Lumbard, Chief Judge  
Honorable Charles E. Clark  
Honorable Sterry R. Waterman  
Honorable Leonard P. Moore  
Honorable Henry J. Friendly  
Honorable J. Joseph Smith  
Honorable Irving R. Kaufman  
Honorable Paul R. Hays  
Honorable Thurgood Marshall  
Judges, United States Court of Appeals  
for the Second Circuit  
Foley Square  
New York 7, New York

Re: Securities and Exchange Commission v. Capital Gains  
Research Bureau, Inc. and Harry P. Schwarzmann  
(C. A. 2, No. 26942)


Sirs:

At the rehearing in banc of the above case on February 22, 1962, Judge Friendly inquired whether the legislative history of the Investment Advisers Act of 1940 indicated why Section 206 of that Act was enacted without a provision similar to paragraph (2) of Section 17(a) of the Securities Act of 1933. The latter section makes it unlawful for any person in the offer or sale of any securities through jurisdictional media "(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading." When I advised Judge Friendly that I was unaware of anything in the legislative history in this regard he requested that we supply to the Court a copy of the draft of the Investment Advisers Act of 1940 that had been prepared and submitted by the Securities and Exchange Commission to Congress and any accompanying memorandum. This letter is in response to that request.

My delay in replying to the Court has resulted from our inability to locate materials of the sort requested. The Investment Advisers Act of 1940, like the Investment Company Act of 1940, resulted from an extensive study by this Commission pursuant to Section 30 of the Public Utility Holding Company Act of 1935, which study was summarized in the Commission's multi-volume Report on Investment Trusts and Investment Companies. A supplemental volume entitled Investment Counsel, Investment Management, Investment Supervisory, and Investment Advisory Services, which was submitted to Congress by a letter of transmittal dated August 17, 1939, appears to be the only report which includes within its scope investment advisers other than those employed by investment companies. This report, from which we quoted at page 10 of our main brief, contains no direct answer to the question raised by Judge Friendly. I assume that copies thereof are available to the Court, but if this should not be the case we can supply several copies, although the report is now out of print.

There are various voluminous files relating to the Commission's Investment Trust Study which are stored in a federal records center. These are largely uncatalogued and we have been able to examine only a small portion thereof, none of which was helpful. We have discussed the matter with former members of the Commission's staff who worked on the Investment Trust Study, with members of the staff of the Senate Committee on Banking and Currency, and members of the staff of the United States Archives. From what we have learned it appears that no provision comparable to Section 17(a)(2) of the Securities Act was in any draft of the Investment Advisers Act considered by the appropriate Congressional committees.

Respectfully submitted,

  
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