

STOCK EXCHANGE PRACTICES

THURSDAY, FEBRUARY 15, 1934

UNITED STATES SENATE,
COMMITTEE ON BANKING AND CURRENCY,
Washington, D.C.

The committee met at 10:30 a.m., pursuant to adjournment on yesterday, in room 301 of the Senate Office Building, Senator Duncan U. Fletcher presiding.

Present: Senators Fletcher (chairman), Bulkley, Costigan, Adams, Goldsborough, Townsend, and Couzens.

Present also: Ferdinand Pecora, counsel to the committee; Julius Silver and David Saperstein, associate counsel to the committee; and Frank J. Meehan, chief statistician to the committee.

The CHAIRMAN. The committee will come to order, please. Who will you have first, Mr. Pecora?

Mr. PECORA. Mr. Brown will resume the stand.

TESTIMONY OF RUSSELL R. BROWN, CHAIRMAN OF THE BOARD, AMERICAN ALCOHOL CORPORATION, NEW YORK CITY— Resumed

Mr. PECORA. Mr. Brown, there was introduced in evidence toward the conclusion of the hearing yesterday a copy of an option that you gave to one Thomas E. Bragg, covering 25,000 shares of the capital common stock of the American Commercial Alcohol Corporation at \$18 a share.

Mr. BROWN. Yes, sir.

Mr. PECORA. That option is dated May 2, 1933, as you know.

Mr. BROWN. Yes, sir.

Mr. PECORA. Let me ask you if anyone was associated with you in the giving of this option.

Mr. BROWN. Mr. Kies, Mr. Publicker, and Mr. Grimm.

Mr. PECORA. The same three gentlemen who were—

Mr. BROWN (interposing). Who have heretofore participated; yes, sir.

Mr. PECORA (continuing). Associated with you in the giving of the other options prior to May 2, 1933, is that right?

Mr. BROWN. That is correct.

Mr. PECORA. In what proportions were they interested in this option?

Mr. BROWN. Well, that was never discussed, I believe. They agreed to join in the whole situation for the purpose of relieving the corporation's financial position. There was never any agreement as to the proportion which each one would assume.

Mr. PECORA. I do not quite understand how, when you say that the option was given to relieve the corporation's financial condition, that would come about. What do you mean by that?

Mr. BROWN. Why—

Mr. PECORA (interposing). The reason I ask you that question is, that this option is not given by the corporation.

Mr. BROWN. No, sir.

Mr. PECORA. But is given in form at least by you?

Mr. BROWN. Yes, sir.

Mr. PECORA. But in fact was given by you in behalf of yourself, Mr. Kies, Mr. Grimm, and Mr. Publicker, is that it?

Mr. BROWN. That is correct.

Mr. PECORA. Well, then, why did you say that this option was given for the purpose of relieving the corporation's financial condition?

Mr. BROWN. Because this option here, as evidenced by the minutes of the board of directors of the meetings of April 27, 1933, and May 2, 1933, and subsequent board minutes, is in line with the statement I submitted to you on yesterday in connection with the entire transaction.

Mr. PECORA. Will you please tell us in your own way just what you are referring to? Here we have an option given by you individually to Mr. Bragg covering 25,000 shares of the common stock of your corporation at \$18 a share.

Mr. BROWN. Yes, sir.

Mr. PECORA. The corporation isn't a party to the option.

Mr. BROWN. That is correct, sir.

Mr. PECORA. The corporation, according to the terms of the option, had no interest in it.

Mr. BROWN. That is correct, sir, but—

Senator TOWNSEND (interposing). What was the date of the option, Mr. Pecora?

Mr. PECORA. It is dated May 2, 1933.

Senator TOWNSEND. All right.

Mr. PECORA. Mr. Brown, why was it necessary for the corporation's board of directors to adopt any resolutions at its meetings of April 27 and May 2, 1933, with respect to this option?

Mr. BROWN. There was submitted to the board of directors at a meeting on April 27, 1933, a verbal statement by me to the board, indicating the financial situation of the company at that particular time, and the board members were advised that methods were being studied to bring into the corporation additional funds. As a result of communications by the banks, as was indicated in my statement of yesterday, such moneys as were owned to the banks, it was indicated in no uncertain terms, they wanted paid. And it was purely in order to work out some method by which funds could be brought into the corporation that this method, which was finally adopted, was finally worked out.

Senator TOWNSEND. Have you a copy of the financial statement of your corporation of that date?

Mr. BROWN. Here is one on March 31, which is the nearest statement that I have here. It indicates clearly the situation, which I perhaps better explain. In this business, that is, as the business

existed at that time, it was necessary to purchase very substantial quantities of raw material, of molasses, in advance of its consumption, purchased out of the country, and commitments were made 6 months and sometimes a year in advance, so that the company was always sure of a supply of its raw material, molasses.

Mr. PECORA. Well, now—

Senator TOWNSEND (interposing). What was your indebtedness at that time?

Mr. BROWN. The indebtedness of the company at that time was \$836,500. But trade acceptances of the company at that time were \$539,612.97, or a total of \$1,376,112.97, in notes and acceptances payable. Accounts payable of the corporation were \$191,539.69, making a total of current liabilities of the corporation \$1,567,652.66, as compared to a total assets position of \$2,866,761. That current assets position included raw materials and supplies in the amount of \$979,210.17, and advance payments on raw materials purchased of \$238,907.06. I think it is safe to assume that that in general covers the molasses picture, because in the operation of our main plant in Pekin, Ill., we usually have followed the policy of paying cash for grain, buying and paying cash as the grain was required. That molasses inventory was inventoried on December 31, 1932, at cost or the market, whichever was lower at the time. That price, if I remember correctly, was approximately 4 cents a gallon. Those adjustments or inventory write-downs are made at the end of the year. The inventory, as I remember it on December 31, 1932, was carried at a price of approximately 4 cents per gallon for 0.50 sugar landed in our tanks in this country. The sugar content of molasses varies. It runs sometimes as high as 0.70 sugars, and was for the purpose of our inventories calculated and carried on the price of 4 cents, which I have indicated to you is the base of 0.50 sugar.

Senator TOWNSEND. You had no bonded debt?

Mr. BROWN. There was no bonded debt at the time.

Senator TOWNSEND. And that was the total of your indebtedness?

Mr. BROWN. Yes. But at that time all that total of \$1,218,000 meant that there was approximately 20 million gallons of molasses involved. It might have been somewhat more, as indicated by the advance payments on raw material purchased, which did not represent the total at that time, March 31, 1933. In the latter part of February there was a very sudden and decided shrinkage in the price of molasses. Transactions were had at, I should say, about 2½ cents a gallon landed in the States. It is true that the situation today is completely reversed. The company has very substantial inventories of molasses at prices considerably below the price at which it is being currently quoted. But in going over this entire situation I was interrogated by one of the banks, and I pointed out to them that inasmuch as the company, or that the commitments of the company were known, and there were no other commitments coming along, and in the normal course of business during the year the inventories would be liquidated and the company would be in position to reduce its liabilities as the material was sold; and that I think started in—well, those discussions were some time in March. Then in April the situation became somewhat worse, because in my discussions with the bankers I pointed out that according to past

practices for a great many years in the alcohol industry, substantial quantities of antifreeze alcohol were sold during the months of May and June, and that by going along until May or June it would be possible, as we had found in all previous years, to move substantial quantities of alcohol, probably a million or a million and a half gallons, to the large consumers, and we would then also receive additional cash in addition to the ordinary income of the business.

Then just at that time I learned that the larger companies in the industry suddenly announced that they did not feel that the alcohol companies, that the merchandising policies in the past had been proper, and we felt it would be possible to develop a better merchandising policy, and for that reason I indicated, or they indicated that their policy would be to dispose of their alcohol on a certain basis. The result of that was that a substantial movement in the alcohol industry would not take place until November or December, when there was cold weather, and it was apparent that the company would not have the ordinary receipts from the sale of its merchandise, as it had theretofore had, which made the situation even more desperate than was apparent when the discussions first started.

It then became necessary for us to make a complete study of the situation, to bring funds into the company. I think Mr. Kies, chairman of the executive committee, made a study of the whole situation, made inquiries among friends of his, and of bankers, to see whether or not at that time it would be possible to work out anything by which an offering by underwriters to stockholders could be secured, and by that means funds could be brought into the company. It was deemed that—

Mr. PECORA (interposing). When did the directors or any of the officers of the company first begin to give thought to the development of that situation?

Mr. BROWN. I should say that that came in in March.

Mr. PECORA. In March of 1933?

Mr. BROWN. I think that is so, because I remember that we had a discussion of the whole situation after I came back from a visit to one of the banks.

Mr. PECORA. Well, in March of 1933 the situation already had developed and was visible on the horizon which made it necessary for the company to obtain additional working capital, not only for its business operations, but in order to meet bank loans that were maturing, is that right?

Mr. BROWN. Yes, sir.

Mr. PECORA. When were those bank loans maturing?

Mr. BROWN. Currently.

Mr. PECORA. What was the aggregate of those maturing in the spring of 1933?

Mr. BROWN. They were all maturing at about the same date, because as I have just stated the thing had to be settled, and we were—

Mr. PECORA (interposing). What was the total of those loans, was my question.

Mr. BROWN. It was \$1,376,112.

Mr. PECORA. Maturing when?

Mr. BROWN. Maturing right along in that time.

Mr. PECORA. How many loans represented this aggregate of \$1,376,112?

Mr. BROWN. I should say five different banks. I will say further to you, Mr. Pecora, that the bank we had the largest amount of money from agreed to go along with the company also.

Senator TOWNSEND. Was raw material pledged as collateral for those loans?

Mr. BROWN. Just a certain quantity at New Orleans, which was pledged with the Whitney National Bank at New Orleans. And as the price of molasses decreased they just wanted more molasses put up all the time.

Mr. PECORA. Now, Mr. Brown, do I understand you to say to this committee that the option given to Bragg on May 2, 1933, is in some way directly related to the necessity which became apparent to the officers of the company in March of 1933, that it would have to raise additional working capital?

Mr. BROWN. That is correct, sir.

Mr. PECORA. All right, for that. Now, in view of the fact that this option is not given by the corporation, and does not provide for the corporation receiving any part of the purchase price which the optionee would be required to pay for the 25,000 shares optioned to him at \$18 per share, how did this option serve to provide your company with that increased or additional working capital?

Mr. BROWN. As I have indicated to you, considerable thought was given to the whole problem, to the necessities of the occasion. We viewed the duties of the executives of the corporation as being there, of their duty within all legal means possible to protect the interests of the corporation and the interests of the stockholders. And so, after making a very complete survey of all the possibilities, and realizing at the time that it was absolutely impossible, as the most of us know, to raise additional funds at that time, the study of the whole situation was continued; and we at that time had under consideration, it having been brought to our attention in January, the possibility of securing an interest in an organization which had developed a process for the manufacture of an agricultural spray, which, it was represented, would use very substantial quantities of alcohol. And a study was made of the whole situation by the executive officers of the company, including Mr. Buck of San Francisco, one of the directors, who made a visit to the particular plant to study the whole situation. At the time that this other situation developed it was realized it was absolutely impossible to raise cash in order to carry out this transaction, I mean in the usual way, and—

Mr. PECORA (interposing). What transaction are you now referring to?

Mr. BROWN. For the acquisition of this item I have been talking to you about, this agricultural spray.

Mr. PECORA. Do you mean the acquisition of a company that manufactured some agricultural spray?

Mr. BROWN. Yes, sir; and which was using very considerable quantities of alcohol in the process.

Mr. PECORA. Are you telling us that this option given to Bragg is related in some way to the desire of the American Commercial Alcohol Corporation in the spring of 1933—

Mr. BROWN (interposing). As I have said—

Mr. PECORA (continuing). Pardon me a minute and let me finish my question—to acquire some other interest that manufactured an agricultural spray?

Mr. BROWN. As I continue my story I will give you all of the details of that.

Mr. PECORA. First, if you can answer this one question: You have already made it quite clear to the committee that the reason for the giving of this option to Bragg on May 2, 1933, was to enable your company, the American Commercial Alcohol Corporation, to obtain additional working capital. Now, is that correct?

Mr. BROWN. That is correct.

Mr. PECORA. Now, how in the world was your corporation to get additional working capital through the sale by you individually and three of your fellow officers and directors in the corporation, of 25,000 shares of the capital stock of the company that belonged, not to the corporation, but to you and your three associates? That is what I want to know.

Mr. BROWN. Well, if you will permit me to continue the story I think it will be made perfectly clear to you. We realized that—

Mr. PECORA (interposing). Well, the story I want to bring out if I can is that—

Mr. BROWN (interposing). And I am giving that to you.

Mr. PECORA (continuing). I want to bring out as directly as possible this point: How the money which Bragg was to pay for those 25,000 shares, covered by this option at \$18 a share, and which amounts to \$450,000—

Mr. BROWN (interposing). Yes, sir.

Mr. PECORA (continuing). Was to be paid to the corporation in view of the fact that the corporation was not a party to this option.

Mr. BROWN. I will indicate that to you very definitely and clearly if I can go on with my story.

Mr. PECORA. Oh, well.

Mr. BROWN. It is possible for us under the Maryland charter to issue the stock of the corporation for a profit. At the discussion before the board on April 27, 1933, I indicated to the board that I believed a method had been developed by which this transaction could be accomplished and the finances of the consolidated organization very materially improved. That was, namely, this: There were two propositions under consideration. One was through the Maister Laboratories Co, and the other was Noxon, Inc. The securities of these two companies could be acquired by the issuance of additional common stock of our corporation. I pointed out to the board in a general way that due to the financial necessities of the corporation I was perfectly willing to work out a transaction by which the results desired could be accomplished, feeling that—

Mr. PECORA (interposing). Why couldn't the results have been accomplished by the issuance and sale of those additional shares of capital stock—

Mr. BROWN (interposing). As I have indicated to you—

Mr. PECORA (continuing). To the existing stockholders of the corporation of record—

Mr. BROWN (interposing). As I have indicated to you—

Mr. PECORA (continuing). And in that way an additional amount of working capital would have been brought directly into the treasury of the corporation.

Mr. BROWN. Well, that could not have been accomplished in that way, because it would not have been possible, and it was not possible, as was determined as the result of study, for the company to acquire an underwriting for such stock as it might issue, assuring to the company receipt of the funds from the sale of the stock into the treasury of the company.

Mr. PECORA. All right. Go ahead. I am listening.

Mr. BROWN. Well, that is it.

The CHAIRMAN. How would the proceeds of the sale of this stock get into the treasury of the company?

Mr. BROWN. I will indicate that to you, Senator Fletcher, in this way: It was, as I indicated in my statement on yesterday, a fact that this transaction took place for the entire benefit of the corporation, and at a financial sacrifice to me. And the results of the efforts which were put forth by the management at that time, and handling the transaction as it was handled, improved the financial condition of the company. That is reflected in the condition of the company today, in which the business is very substantial, and it would not have been possible if funds had not been put into the company at that time. The results were accomplished in this way—

Mr. PECORA (interposing). Well, don't tell us about the results as yet, but tell us—

Mr. BROWN (interposing). I am telling you—

Mr. PECORA (continuing). Why this option agreement with Bragg was resorted to on May 2, 1933—

Mr. BROWN (interposing). All right.

Mr. PECORA (continuing). In order to enable your corporation to obtain additional working capital in the sum of \$450,000. Now—

Mr. BROWN (interposing). The plan was—

Mr. PECORA (continuing). If the corporation had made this option or agreement with Bragg to sell to him at the rate of \$18 per share, 25,000 shares of the corporation, it would not be necessary to ask you all these questions, Mr. Brown.

Mr. BROWN. I understand that.

Mr. PECORA. But the corporation did not give the option.

Mr. BROWN. I understand that.

Mr. PECORA. You and three of your fellow officers and directors gave Bragg the option.

Mr. BROWN. That is correct.

Mr. PECORA. Out of your personal holdings the stock was to come.

Mr. BROWN. Yes, sir.

Mr. PECORA. And I am still trying to find out why—

Mr. BROWN (interposing). All right.

Mr. PECORA (continuing). The corporation was expected to obtain \$450,000 of additional working capital through a sale by you and three of your fellow officers and directors, to Thomas E. Bragg, for that sum of \$18 per share, 25,000 shares of your personal holdings in the company.

Mr. BROWN. I discussed the situation, and I evolved this plan that I indicated to you in my statement of yesterday.

Mr. PECORA. Well, I am still trying to find out—

Mr. BROWN (interposing). And I am giving it to you right now.

Mr. PECORA. All right. Go ahead.

Mr. BROWN. I evolved this plan by which Mr. Phagan and Mr. Capdevielle, who were friends of mine, and in whom I had confidence, and who had confidence in me, Mr. Phagan having originally brought the Noxon, Inc., transaction to us—I say, I evolved this plan to enter into an agreement. Mr. Phagan was to organize Maister Laboratories Co. under the laws of the State of Maryland, and he put in his note to that company, in exchange for the stock of the Maister Laboratories Co., for \$180,000. That note was endorsed by his wife, and we believed that the note was good.

Mr. PECORA. You say you believed that a note of Phagan's, endorsed by his wife, was good?

Mr. BROWN. Yes, sir.

Mr. PECORA. What basis did you have for that belief?

Mr. BROWN. The statement I have given you, of having known him for a period of years, and—

Mr. PECORA (interposing). What did you know about his and his wife's financial responsibility?

Mr. BROWN. I did not know definitely. I had to assume that it was good.

Mr. PECORA. Oh! You had to assume that it was good.

Mr. BROWN. Yes, sir.

Mr. PECORA. On what did you base that assumption, merely guessing at it from having known him for a number of years?

Mr. BROWN. From the statement he made to me.

Mr. PECORA. What statement did he make to you that indicated he was good for that amount?

Mr. BROWN. That he was good for that amount, he and his wife.

Mr. PECORA. And you had known him for a number of years?

Mr. BROWN. Yes, sir.

Mr. PECORA. And you invited his cooperation in this plan, you say?

Mr. BROWN. Yes, sir.

Mr. PECORA. Why did you go to Phagan to invite his cooperation in a plan which you say you evolved, and which plan involved his giving a note for approximately \$180,000?

Mr. BROWN. Because Mr. Phagan was a man in whom I had confidence.

Mr. PECORA. What was Mr. Phagan's business?

Mr. BROWN. Certified public accountant.

Mr. PECORA. Did he ever do any work for you?

Mr. BROWN. From time to time; yes, sir.

Mr. PECORA. Did you ever have a financial statement from him?

Mr. BROWN. No, sir.

Mr. PECORA. Did you know anything at all about his income?

Mr. BROWN. No, sir.

Mr. PECORA. Did you know anything at all about his property worth?

Mr. BROWN. No.

Mr. PECORA. And merely because you had known him for a number of years, and he had done some work for you as a certified public accountant, you found he was good for \$180,000; is that it?

Mr. BROWN. That is correct.

Mr. PECORA. Is that the kind of business judgment which you generally display in passing upon such important matters?

Mr. BROWN. Well, no; that is not correct. No; I do not display that kind of business judgment generally.

Mr. PECORA. This was an exceptional case, then?

Mr. BROWN. Yes, sir; this was exceptional.

Mr. PECORA. It was a departure from the usual judgment that you display?

Mr. BROWN. Yes; it was a departure. As I indicated to you on yesterday, it was done in this abnormal way, due entirely to the conditions which existed at that time.

Mr. PECORA. Well, now that you have made that admission, tell us what the plan was. Give us the details of the plan that you say you evolved, and under which it was possible for the American Commercial Alcohol Corporation to receive into its treasury \$450,000 by virtue of this option given by you to Bragg, or given by you and three of your associate officers in your individual capacities.

Mr. BROWN. Mr. Phagan, under my direction, organized Maister Laboratories Corporation, with 10,000 shares of capital stock, and having a value, in my opinion, even with the contracts which were put into the corporation covering this process owned by Dr. Maister, substantially in excess of any note that Phagan gave.

Mr. Pecora. Mr. Committee Reporter, will you please repeat to me that last answer given by the witness?

(Thereupon the committee reporter read the answer. as follows:)

Mr. BROWN. Mr. Phagan, under my direction, organized Maister Laboratories Corporation, with 10,000 shares of capital stock, and having a value, in my opinion, even with the contracts which were put into the corporation covering this process owned by Dr. Maister, substantially in excess of any note that Phagan gave.

Mr. PECORA. Mr. Brown, do you mean by that answer that when you spoke to Phagan, and when you discussed with him the plan you had evolved for the incorporation of Maister Laboratories Corporation, that that Maister Laboratories Corporation, a newly born corporation, at the very outset possessed assets worth at least \$180,000?

Mr. BROWN. I believe it possessed assets substantially in excess of that sum.

Mr. PECORA. What did those assets consist of?

Mr. BROWN. The assets consisted of a contract with Dr. Maister and—

Mr. PECORA (interposing). A contract made by whom with Dr. Maister?

Mr. BROWN. Made by the corporation.

Mr. PECORA. Do you mean made by your corporation?

Mr. BROWN. No; made by Maister Laboratories, Inc.

Mr. PECORA. In other words, this corporation that you had arranged to create entered into a contract with Dr. Maister that gave to the corporation assets worth at the outset at least \$180,000; is that it?

Mr. BROWN. In my opinion; yes, sir.

Mr. PECORA. What were those assets?

Mr. BROWN. They consisted of certain secret processes for the manufacture of vitamin products which are sold today in very substantial quantities at substantial profits to pharmaceutical houses.

Mr. PECORA. Did Dr. Maister turn over those secret processes?

Mr. BROWN. Yes, sir.

Mr. PECORA. Who was Dr. Maister?

Mr. BROWN. He was a fermentologist from Germany, who came to the American Commercial Alcohol Corporation as a fermentologist.

Mr. PECORA. He was an employee of your corporation, was he, at this time?

Mr. BROWN. He was in charge of this work. Our only understanding with Dr. Maister at the time of his employment, and we had no rights over this process and knew nothing about the process, was that he was purely a fermentologist in charge of our fermentological operations at the different plants.

Mr. PECORA. Was the Maister Corporation caused to be organized or created by you?

Mr. BROWN. Yes, sir.

Mr. PECORA. On what date?

Mr. BROWN. Instructions were issued for the organization of it about the 1st of May, I should say.

Mr. PECORA. Dr. Maister had been in the employ of the American Commercial Alcohol Corporation for how long prior to the giving of this option to Bragg on May 2, 1933?

Mr. BROWN. Perhaps a period of 6 months.

Mr. PECORA. And he was a salaried employee?

Mr. BROWN. He was purely a salaried employee in charge of the fermentation of molasses at the distilleries.

Mr. PECORA. What compensation did he receive from the American Commercial Alcohol Co. for his services as a chemist at that time?

Mr. BROWN. Approximately \$5,000 per annum.

Mr. PECORA. \$5,000 per annum?

Mr. BROWN. Yes.

Mr. PECORA. And this man, \$5,000 employee of your company, had evolved secret formulas and processes—

Mr. BROWN. Yes, sir.

Mr. PECORA. For the manufacture of certain products?

Mr. BROWN. Yes, sir.

Mr. PECORA. Chemical products?

Mr. BROWN. Yes, sir. Let me explain to you—

Mr. PECORA (interposing). And he was going to turn over those secret processes to the company called "the Maister Corporation"?

Mr. BROWN. Maister Laboratories, Inc.

Mr. PECORA. Maister Laboratories, Inc., which you caused to be organized?

Mr. BROWN. That is correct, sir.

Mr. PECORA. In return for what?

Mr. BROWN. I have forgotten just what the details of the contract were.

Mr. PECORA. What, substantially, was the consideration that Dr. Maister—

Mr. BROWN (interposing). He received—

Mr. PECORA. Wait a minute; let me finish my question. Substantially what was the consideration that Dr. Maister was to receive from Maister Laboratories, Inc., for these highly valuable secret processes and formulas?

Mr. BROWN. I think a royalty on the production.

Mr. PECORA. A royalty on the production?

Mr. BROWN. I believe so.

Mr. PECORA. How much has he received under that arrangement?

Mr. BROWN. He has not received anything as yet.

Mr. PECORA. Has not received anything?

Mr. BROWN. No, sir.

Mr. PECORA. What is the matter? These valuable processes have not established any commercial value yet?

Mr. BROWN. No; that is not correct, Mr. Pecora. Immediately upon the organization of this corporation—

Mr. PECORA (interposing). You mean the Maister Laboratories?

Mr. BROWN. The Maister Laboratories—we took on additional employees at our Philadelphia plant, where Dr. Maister was located. We went on, made additional tests at the University of Wisconsin. We bought certain equipment at Philadelphia, and many hundreds of rats over there, which is the testing period. We did work at the Philadelphia plant.

It was then determined that the product which he would turn would be better produced at the Pekin, Ill., plant. Due to the atmospheric conditions out there, better type of water supply, and the use of grain rather than molasses as the base for the manufacture of these vitamin products, it was decided to make the change.

Dr. Maister was transferred, after these tests had been conducted at the Philadelphia plant, to the Pekin plant for work out there, and at that time it became necessary because of prohibition repeal to effect certain changes. The plan was laid out at that time to use one of the old buildings for Dr. Maister's operation, because it requires a down flow of material, and we wanted to save money rather than build a new building. We were having to spend some amount of money on the distillery at Pekin to make it what it is today, and in doing that we have eliminated from the operation the building which is called the mill building, and in that Dr. Maister's installation is to be made.

Mr. PECORA. All of this is part of your explanation, Mr. Brown, as to how the American Commercial Alcohol Corporation was to receive \$450,000 which it needed for additional working capital in May 1933 under this option given by you and your three fellow officers to Bragg?

Mr. BROWN. That is correct, sir. I will go on and tell you how the funds came into the corporation. A meeting was had on April 22 and another meeting on May 2, at both of which meetings the members of the board agreed to support me in my efforts to financially rehabilitate the corporation, and the Maister thing was organized. Pagan's note of \$180,000 was put into the company. He was also—

Mr. PECORA (interposing). What is that?

Mr. BROWN. Mr. Pagan's note for \$180,000.

Mr. PECORA. Oh, his note for \$180,000 endorsed by his wife was put into the company?

Mr. BROWN. That is correct; yes, sir. And the Maister contract went into the organization also. He then was possessed of 10,000 shares of Maister stock.

Senator TOWNSEND. Out of a total of how many?

Mr. BROWN. That is the total issue of stock.

Senator TOWNSEND. He owned it all?

Mr. BROWN. Yes. He was putting in this contract with Maister and the \$180,000 not, into the corporation.

Mr. PECORA. Phagan?

Mr. BROWN. Phagan. Phagan then acquired the 10,000 shares of the Maister stock, and he immediately proceeded to organize that corporation, and I think the contract was made on the 6th day of May and the corporation organization, I think, was on the 8th of May.

Senator TOWNSEND. Who were the owners of the stock?

Mr. BROWN. Mr. Phagan was the owner of the stock.

Then he offered a proposition to the company which was accepted by the board of directors to receive 10,000 shares of American Commercial Alcohol stock in exchange for the 10,000 shares of Maister stock, Maister thereby becoming a wholly-owned subsidiary of the American Commercial Alcohol Corporation. That stock of Phagan's was liquidated under this option at \$18 a share. The cash was received into his account and we liquidated his note.

Mr. PECORA. Wait a minute; just a moment. You say the stock of Phagan was liquidated under this option to Bragg?

Mr. BROWN. Yes.

Mr. PECORA. How?

Mr. BROWN. Delivered to Bragg; either delivered directly to Bragg or delivered to me in return for the option which I had previously given.

Mr. PECORA. Will you go ahead then and continue your explanation of how the American Commercial Alcohol Co. was to get \$450,000 under this option agreement with Mr. Bragg?

Mr. BROWN. Yes, sir. Then at the same time steps were immediately taken in connection with the Noxon, Inc., Capdevielle—

Mr. PECORA. When was the Noxon, Inc., organized?

Mr. BROWN. It was started immediately and I think the organization was completed some time in June.

Mr. PECORA. Of 1933?

Mr. BROWN. Yes.

Mr. PECORA. That is a month after the giving of this option to Bragg?

Mr. BROWN. That is correct, sir; yes.

Mr. PECORA. Who caused it to be organized?

Mr. BROWN. I did.

Mr. PECORA. In behalf of the American Commercial Alcohol Corporation?

Mr. BROWN. That is correct, sir; for the benefit of the American Commercial Alcohol Corporation.

Mr. PECORA. For the benefit of whom?

Mr. BROWN. American Commercial Alcohol Corporation Capdevielle organized that organization.

Mr. PECORA. What is that?

Mr. BROWN. Capdevielle organized that corporation.

Mr. PECORA. Capdevielle?

Mr. BROWN. Yes, sir; under my instructions.

Mr. PECORA. A man named Capdevielle?

Mr. BROWN. Yes, sir.

Mr. PECORA. He organized it for you?

Mr. BROWN. That is correct; yes, sir.

Mr. PECORA. What is his business?

Mr. BROWN. A molasses broker.

Mr. PECORA. But he merely acted as your instrumentality in that enterprise, did he?

Mr. BROWN. Yes, sir; he acted under my instructions.

Mr. PECORA. In other words, a dummy?

Mr. BROWN. He acted under my instructions.

Mr. PECORA. He was a dummy for you?

Mr. BROWN. I don't think he is a dummy.

Mr. PECORA. I don't mean a dummy intellectually, but in the transaction he filled the role of a dummy?

Mr. BROWN. He was an intermediary; yes, sir.

Mr. PECORA. Is that right?

Mr. BROWN. Yes, sir; he was an intermediary.

Mr. PECORA. Just as Phagan had done in connection with the incorporation of Maister Laboratories; is that right?

Mr. BROWN. That is correct, sir.

Mr. PECORA. Yes. Now go ahead and give us the details of Noxon, Inc. What was its business?

Mr. BROWN. Noxon, Inc., acquired certain assets from a concern called Noxon Chemical Products, Inc., of New Jersey, which had this agricultural spray which had been very carefully considered by the directors earlier in the year.

Mr. PECORA. By which directors?

Mr. BROWN. Directors of American Commercial. And the same procedure was followed in that.

Senator TOWNSEND. Did they have a plant?

Mr. BROWN. They had an operation over in Jersey City.

Mr. PECORA. That is the Noxon Chemical Co.?

Mr. BROWN. The Noxon Chemical Products, Inc.

Mr. PECORA. That was an existing, going corporation?

Mr. BROWN. That is correct, sir.

Mr. PECORA. But the corporation that you caused to be organized was known as "Noxon, Inc."?

Mr. BROWN. Noxon, Inc.; and that corporation acquired certain assets of Noxon Chemical Products, Inc., which was a going concern manufacturing nickel polish, insecticides, and this agricultural spray, which we deemed to be of great value.

Mr. PECORA. What did Noxon, Inc., pay for those assets of Noxon Chemical Co.?

Mr. BROWN. I have forgotten just what the details are in that. I should be happy to give them to you.

Mr. PECORA. Approximately what consideration did Noxon, Inc., pay for those assets of Noxon Chemical Co.?

Mr. BROWN. I just don't remember the details of it, but I will outline what procedure was followed, and I will get to that—

Mr. PECORA. Now, just a moment before you get to that. Where did Noxon, Inc., get any money with which to pay for those assets?

Mr. BROWN. Capdevielle's note for \$270,000.

Mr. PECORA. Capdevielle's note?

Mr. BROWN. For \$270,000.

Mr. PECORA. For \$270,000. That is the note of this molasses broker who acted as the dummy in this transaction?

Mr. BROWN. Yes, sir.

Mr. PECORA. And was that endorsed by his wife, perchance?

Mr. BROWN. He is not married that I know of.

Mr. PECORA. Was Capdevielle good for that note?

Mr. BROWN. I believe that he could have made good on the note.

Mr. PECORA. You believe that he could have made good?

Mr. BROWN. Yes.

Mr. PECORA. Did you know anything about his property worth?

Mr. BROWN. No. He said that if this transaction—I asked him about the note to determine whether there was any real value in it, and he said that if we did not want the company he was so sold on the proposition he would take it himself. So I assumed that he was worth \$270,000, or had associates that would be able to support it.

Mr. PECORA. But was he, to your knowledge, worth the amount of that note?

Mr. BROWN. No, sir.

Mr. PECORA. He was not?

Mr. BROWN. I don't know.

Mr. PECORA. You don't know?

Mr. BROWN. I don't know.

Mr. PECORA. And yet you undertook to get him to act as your dummy in the transaction whereby a new corporation called Noxon, Inc., was formed, and that corporation, having this note of \$270,000 made by Capdevielle—

Mr. BROWN. That is correct.

Mr. PECORA. Issued its capital stock to the American Commercial Alcohol Corporation in return for its capital stock?

Mr. BROWN. That same procedure was followed. In that case 15,000 shares of American Commercial Alcohol Corporation common stock were issued and exchanged for the capital issue of Noxon, Inc., in which—

Mr. PECORA (interposing). Now, wait a minute. When the American Commercial Alcohol Corporation issued 15,000 shares of its common capital stock for the capital stock of Noxon, Inc., what assets did Noxon, Inc., have?

Mr. BROWN. Noxon, Inc., as I remember it, acquired physical properties from Noxon Chemical Products.

Mr. PECORA. For what consideration?

Mr. BROWN. I have forgotten just what that was.

Mr. PECORA. Was that \$80,000?

Mr. BROWN. \$80,000; that is correct; yes.

Mr. PECORA. It had assets which it had paid \$80,000 for; is that right?

Mr. BROWN. That is correct; yes, sir.

Mr. PECORA. And those are the physical assets it obtained at that time from the Noxon Chemical Co.?

Mr. BROWN. Noxon Chemical Products; yes, sir.

Mr. PECORA. What other assets did Noxon, Inc., have besides these \$80,000 worth of physical assets?

Mr. BROWN. It had the rights under this agricultural spray process, in which substantial quantities of alcohol presumably would be consumed.

Mr. PECORA. How did it acquire those rights? Were they rights covered by letters patent?

Mr. BROWN. No.

Mr. PECORA. What were they?

Mr. BROWN. Secret processes.

Mr. PECORA. Another Maister secret process, was it?

Mr. BROWN. Well, I wouldn't say it was a secret process to that extent, because—

Mr. PECORA. Whose secret process was it?

Mr. BROWN. It was agreed upon—

Mr. PECORA. Where did it get it from?

Mr. BROWN. Belonged to the principal owners of Noxon Chemical Products, as I remember it.

Mr. PECORA. Wasn't that the process that passed with the \$80,000 worth of assets?

Mr. BROWN. Oh, no. Not that I member; no. Capdevielle had his note in it, Mr. Pecora.

Mr. PECORA. What is that?

Mr. BROWN. Capdevielle's note was in there for \$270,000.

Mr. PECORA. How much would you have given for that note?

Mr. BROWN. I didn't have anything to give then.

Mr. PECORA. How much would you, on the knowledge that you had of Capdevielle's personal property worth?

Mr. BROWN. Well, I know Mr. Capdevielle. I know him as an honorable man.

Mr. PECORA. An honorable man may not be able to meet an obligation represented by a note?

Mr. BROWN. I think he has friends of wealth who probably would have assisted him if necessary to liquidate the note.

Mr. PECORA. Is that the value you attached to the note, namely, that Capdevielle was an honorable man and had friends who might assist him to pay it?

Mr. BROWN. I attached a value of \$270,000 to the note.

Mr. PECORA. What is that?

Mr. BROWN. I attached a value of \$270,000 to the note.

Mr. PECORA. Based upon what?

Mr. BROWN. Based upon my experience with Capdevielle.

Mr. PECORA. What experience had you had with him that gave you any insight at all as to his property worth?

Mr. BROWN. The business experience that I had had with him over a period of a few years, and knowing a great many of his friends who are people of wealth.

The CHAIRMAN. Where did this \$80,000 come from that went into the Noxon Co.?

Mr. BROWN. The procedure, Senator, that was followed in this Noxon case was that Capdevielle's note was in for \$270,000, and there were certain other arrangements with Noxon, Inc., and as a result of that Capdevielle acquired certain securities of Noxon, Inc., which he

in turn made a deal with us which had been orally and verbally accepted in the early part of May 1933 for 15,000 shares of the company's stock, which was delivered under this option at \$18 a share and he received the cash; then, having liquidated American Commercial Alcohol stock, proceeded to liquidate his note for \$270,000.

That then brought under the control of the American Commercial Alcohol Corporation the \$180,000 in the Maister organization, \$270,000 in the Noxon organization, and there is your total of \$450,000, funds which were used to improve the financial situation of the consolidated organization.

Mr. PECORA. Is that your explanation?

Mr. BROWN. That is correct; yes, sir.

Mr. PECORA. Well, it is a little bit hard to follow I am going to see if I can put the pieces of the jig-saw puzzle together, in order to get the form of the picture. As I understand it, sometime in the early part of 1933 it became quite apparent to you and your fellow directors of the American Commercial Alcohol Corporation that the corporation would have to raise in the spring of 1933 \$450,000 of additional working capital in order to meet bank loans that were maturing?

Mr. BROWN. And payment of which had been insisted upon.

Mr. PECORA. And payment of which the banks had insisted upon?

Mr. BROWN. That is correct.

Mr. PECORA. That is correct up to that point. Now, at that time you and your three fellow officers and directors who had joined in the giving of the various options which have been put in evidence here were the owners of approximately a hundred thousand shares?

Mr. BROWN. No; that is not correct. They owned and their friends over the country owned a total of 100,000 shares at that time.

Mr. PECORA. I understood yesterday afternoon that you testified that substantially you and your three fellow directors, namely, Kies, Grimm, and Pubheker—

Mr. BROWN. Yes, sir.

Mr. PECORA. Owned among the 4 of you approximately 100,000 shares of the capital stock.

Mr. BROWN. That statement as you read it to me said "owned by control." That is the way I so understood. I don't mean control in the strict sense of the word, but I meant friends throughout the country own it; also Mr. Buckaman in San Francisco, who, with his family, owns something over 7,000 shares. I think that was correct, Mr. Pecora. That was as I understood it.

Mr. PECORA. At that time the total outstanding common stock of the American Commercial Alcohol was approximately 196,000 shares?

Mr. BROWN. Approximately; yes, sir.

Mr. PECORA. The company had a Maryland charter which provided that any issue of additional common stock would first have to be offered to the existing stockholders of record, is that right?

Mr. BROWN. That is not correct; no. As I indicated to you yesterday—

Mr. PECORA (interposing). That is, unless the stock were issued for the purpose of acquiring other properties.

Mr. BROWN. Yes. Stock can be issued in exchange for property.

Mr. PECORA. For some reason or other you and your fellow officers and directors of American Commercial Alcohol concluded that it would be better to raise this additional working capital by issuance of additional capital stock, which was not, however, to be offered and sold to the existing stockholders of record?

Mr. BROWN. I indicate to you again that it was issued for property in compliance with the Maryland law.

Mr. PECORA. And it was done in that way because you and your fellow officers and directors decided to do it that way?

Mr. BROWN. That is not correct. As I indicated to you—

Mr. PECORA (interposing). What was there to prevent the corporation from issuing this 25,000 additional shares and offering them directly to its stockholders of record?

Mr. BROWN. Because, as I have said to you before, we all realized the impossibility of securing any underwriting under any such situation as prevailed in March, April, May, and June of 1933, and feeling that it is encumbent upon the officers of the corporation and the directors of the corporation to protect the rights of the stockholders, and particularly here is a company with a \$8,000,000 investment in it, we feel, or felt at the time and still feel, that every possible means at our disposal within the law should be followed in order to preserve the investment of everyone in that company.

Mr. PECORA. Why didn't you issue the 25—

Mr. BROWN (interposing). Because it was impossible to—

Mr. PECORA (interposing). Won't you please let me finish my question? Please don't anticipate what I am going to ask you. You might be able to do it in most instances, but once in a while you might not.

Why didn't the officers and directors of American Commercial Alcohol adopt the very simple expedient, if it needed \$450,000 of additional working capital, of issuing 25,000 shares additional of capital stock and offering it and selling it directly to its stockholders?

Mr. BROWN. In the first place, it was not a simple expedient, because the financial situation at that time rendered it absolutely impossible of success, because there was no underwriting which could be secured for it.

Mr. PECORA. Did you try to get an underwriting for it?

Mr. BROWN. At the first favorable opportunity.

Mr. PECORA. When?

Mr. BROWN. In June, I think it was.

Mr. PECORA. And did you succeed?

Mr. BROWN. But the situation was radically different at that time.

Mr. PECORA. Did you succeed?

Mr. BROWN. The situation was radically different.

Mr. PECORA. Did you succeed?

Mr. BROWN. We did; yes, sir.

Mr. PECORA. You did?

Mr. BROWN. Yes, sir.

Mr. PECORA. Did you try in March or April or May to get such an underwriting?

Mr. BROWN. I indicated to you that at that time Mr. Kies, the chairman of the executive committee, who has had financial experi-

ence, made a survey of the situation and determined the impossibility of it.

Mr. PECORA. Was any effort made to get an underwriting?

Mr. BROWN. He so reported to me; yes.

Mr. PECORA. He reported to you?

Mr. BROWN. Yes.

Mr. PECORA. What effort did he report he had made?

Mr. BROWN. He said he had made a study of the whole situation with his banking friends and had inquired as to the possibility of raising any funds through the issue of additional stock at that time.

Mr. PECORA. Do you know a single banking friend that he put the proposition up to specifically?

Mr. BROWN. That I do not know; no, sir.

Mr. PECORA. All right. Now, on May 8 the corporation called "Maister Laboratories, Inc." was organized at your instance through the use of this man Phagan as a dummy?

Mr. BROWN. Yes, sir.

Mr. PECORA. The Maister Corporation was organized with an authorized capital stock issue of 10,000 shares?

Mr. BROWN. That is correct; yes, sir.

Mr. PECORA. What par value, if any?

Mr. BROWN. I think \$20 par value.

Mr. PECORA. The Maister Laboratories issued all of its 10,000 shares upon organization to the dummy, Phagan?

Mr. BROWN. Correct.

Mr. PECORA. And Phagan paid for that stock the sum of \$180,000, but did not pay for it in cash; he paid for it by his note endorsed by his wife?

Mr. BROWN. That is correct, sir.

Mr. PECORA. And you had no knowledge at that time of Phagan being financially responsible for any such amount as \$180,000?

Mr. BROWN. I accepted his statement.

Mr. PECORA. What statement did he make to you on that?

Mr. BROWN. That he could liquidate that note.

Mr. PECORA. Despite your knowledge of him for a number of years past, you merely accepted his statement?

Mr. BROWN. That is correct, sir.

Mr. PECORA. You had had no business experience of any kind with him that caused to believe that he was worth any such sum or that his wife was worth any such sum; is that right?

Mr. BROWN. That is correct.

Mr. PECORA. And you have already said that the business judgment displayed by you in that particular part of the transaction was not of the kind that you ordinarily would display in determining the credit of an individual?

Mr. BROWN. That is correct, sir.

Mr. PECORA. All that Maister Laboratories, Inc., then had was not \$180,000 in cash but Phagan's note for that sum?

Mr. BROWN. At the time of its incorporation; yes, sir.

Mr. PECORA. At the time of its incorporation. Did it acquire any other assets at the time that the American Commercial Alcohol Corporation gave 10,000 shares of its capital stock to Phagan in ex-

change for the 10,000 shares of the Maister Laboratories capital stock which Phagan got for his note?

Mr. BROWN. No. It had the contract which I have spoken to you about before, with Dr. Maister.

Mr. PECORA. It had a contract with a chemist, a \$5,000-a-year chemist in the employ of the American Commercial Alcohol Corporation?

Mr. BROWN. That may be correct, \$5,000 a year, Mr. Pecora, but there is one thing that I want to point out to you, that this man is probably one of the outstanding fermentologists of the country, a man who was a doctor and engineer and was offered his professorship in Germany, but because of the situation in Germany he came over to this country and was willing to accept compensation of \$5,000 per annum simply to supervise our fermentology operations. He is an outstanding figure.

Mr. PECORA. Is he still a chemist in the employ of the American Commercial Alcohol Corporation?

Mr. BROWN. Yes, sir; he is.

Mr. PECORA. At what salary?

Mr. BROWN. Sixty-five hundred.

Mr. PECORA. This paragon is getting 65 hundred?

Mr. BROWN. As soon as these operations in Maister get going along I am sure that there are royalties on the processes that will amount to very substantial amounts.

Mr. PECORA. These royalties, however, are still in the future; he has not yet received a cent under the contract which he made back in May 1933?

Mr. BROWN. That is correct; yes, sir.

Mr. PECORA. What do you think was the fair reasonable value of the 10,000 shares of American Commercial Alcohol Corporation which it gave to Phagan for the capital stock of the Maister Laboratories, Inc.?

Mr. BROWN. At that time \$200,000 at least. I frankly feel that the Maister investment, with our knowledge of the situation today, is worth substantially in excess of that.

Mr. PECORA. Have you got a balance sheet of the Maister Laboratories, Inc.?

Mr. BROWN. No; I have the auditor of the company here now.

Mr. PECORA. Has this Dr. Maister, this eminent chemist and engineer and what not, served the Maister Laboratories, Inc., in any capacity since that incorporation was created in May 1933?

Mr. BROWN. Yes, sir.

Mr. PECORA. For what compensation?

Mr. BROWN. No compensation.

Mr. PECORA. He is virtually devoting all his time to the interests of the American Commercial Alcohol Corporation for sixty-five hundred a year?

Mr. BROWN. That is not correct.

Mr. PECORA. Well, correct me.

Mr. BROWN. I will correct you in this way, that he has devoted a great deal of his time with the feeding of a lot of white rats on these tests.

Mr. PECORA. Well, that is valuable.

Mr. BROWN. It is.

The CHAIRMAN. I understand now there is no outstanding stock of the Maister Corporation?

Mr. BROWN. All of the stock which is outstanding, Senator, the 10,000 shares, are owned in its entirety by the American Commercial Alcohol Corporation.

The CHAIRMAN. That is the property of the American Commercial Alcohol Corporation that it got in exchange for its 10,000 shares?

Mr. BROWN. That is correct.

The CHAIRMAN. That went to Phagan?

Mr. BROWN. That went to Mr. Phagan, who was acting, as I said, under my instructions.

The CHAIRMAN. And he disposed of that, I suppose?

Mr. BROWN. He disposed of that. I think part of it was returned to me and to Mr. Grimm against deliveries which we had previously made under the option. I think some of it was delivered directly to Bragg.

The CHAIRMAN. So that now there is no real outstanding stock of that Maister Corporation?

Mr. BROWN. No.

The CHAIRMAN. That has all been taken out?

Mr. BROWN. No; the organization of the company is wholly owned by the American Commercial Alcohol Co.

Senator ADAMS. Mr. Brown, there was a sort of an abrupt termination of this white-rat story. I have to confess a little curiosity, but is that work done purely from the standpoint of pests or for scientific purposes?

Mr. BROWN. Scientific purposes.

Senator ADAMS. In what way?

Mr. BROWN. Those processes involve the manufacture of certain vitamin products for which there is a very substantial demand in the country at the present time, which are sold at substantial figures and from which we would realize substantial profits.

In making these tests they take these white rats, breed them, and then feed them, and they have a great multitude of these animals using, for instance, the Maister product and other products in comparison. Then, they set up curves, which all of these pharmaceutical houses require before they buy the product, showing the varying qualities of the different vitamin products which are now produced; and in addition to tests conducted by Dr. Maister, we also had an examination made at the University of Wisconsin. There is currently a market for the products which we contemplate manufacturing under the Maister processes.

Senator KEAN. I would like to ask some questions there. Which vitamins are you trying to separate?

Mr. BROWN. These vitamins that are present in this particular product are vitamin B-1-F and B-2-G. That does not mean anything to me, but those are the ones.

Senator KEAN. And you are trying to separate those and get them concentrated in food products?

Mr. BROWN. Yes. This is also another fermentation operation, and in the manufacture of it the material comes down through cen-

trifugals and the liquid is thrown off, the water is thrown off in the centrifugals, and there is retained in the centrifugals a paste, and the paste is then put in ovens and dried or something.

Mr. PECORA. All those new vitamins have not yet been manufactured?

Mr. BROWN. They have been manufactured on a very small scale, though.

Mr. PECORA. On a small scale?

Mr. BROWN. Yes.

Mr. PECORA. They have not yet become commercially valuable, have they?

Mr. BROWN. As I told you, the work was done at the Philadelphia plant.

Mr. PECORA. No, no; but have they become commercially valuable?

Mr. BROWN. There is currently a demand for vitamin products of this nature in a substantial quantity.

Mr. PECORA. Has the Maister Laboratories Co. manufactured any vitamin products yet?

Mr. BROWN. Yes. I could have brought you a sample of it.

Mr. PECORA. I do not need it. Have the vitamin products so far manufactured by the Maister Laboratories as result of its elaborate experimentation on white rats, and so forth, been commercially profitable?

Mr. BROWN. They have not been put out on a commercial scale yet.

Mr. PECORA. They have not?

Mr. BROWN. No.

Mr. PECORA. That is what I have been trying to find out. Now, after Maister Laboratories was incorporated who became its executive officers?

Mr. BROWN. I have forgotten—I think I am the chairman of it.

Mr. PECORA. Chairman of the board?

Mr. BROWN. I think so.

Mr. PECORA. Who are the other executives?

Mr. BROWN. I cannot give you the details. I think Mr. Grimm was president, Dr. Maister vice president, or Dr. Maister president.

Mr. PECORA. They were persons connected with the American Commercial Alcohol Corporation?

Mr. BROWN. That is correct; yes.

Mr. PECORA. So far I think we understand that part of the process whereby, under the plan evolved by you, the American Commercial Alcohol Corporation was to obtain \$450,000 of additional working capital through the dummy, Phagan, selected by you, of the Maister Laboratories, Inc., and the issuance of all of its capital stock to Phagan in return for his promissory note of \$180,000?

Mr. BROWN. That is correct.

Mr. PECORA. And then the making of an arrangement between Phagan, as the owner of all of the capital stock of Maister Laboratories, and the American Commercial Alcohol Corporation to exchange those 10,000 shares of capital stock of Maister Laboratories for 10,000 shares of the capital common stock of the American Commercial Alcohol Corporation?

Mr. BROWN. That is correct, sir.

Mr. PECORA. Those 10,000 shares that your corporation issued to Phagan formed part of the additional issue of capital stock?

Mr. BROWN. That is correct.

Mr. PECORA. Now, the second step had to do with Noxon, Inc.?

Mr. BROWN. Yes, sir.

Mr. PECORA. When was Noxon incorporated or created?

Mr. BROWN. It was created—both companies were—either on the 1st of May or the 2d of May.

Mr. PECORA. I think you are a little bit mistaken.

Mr. BROWN. You mean the incorporation of it?

Mr. PECORA. The incorporation of Noxon, Inc.

Mr. BROWN. The incorporation of Maister—

Mr. PECORA. Not Maister.

Mr. BROWN. On the 8th of May.

Mr. PECORA. Yes; Maister was incorporated on May 8, 1932.

Mr. BROWN. Noxon was on June 19, 1933.

Mr. PECORA. The dummy that you used for the purpose of creating Noxon, Inc., was this broker named Capdevielle?

Mr. BROWN. Yes, sir.

Mr. PECORA. And the original set-up of Noxon, Inc., was as follows: It issued 2,700 shares of preferred stock and also issued to him a block of its common stock?

Mr. BROWN. I think there were 6,000 shares of common.

Mr. PECORA. The capital stock of Noxon, Inc., was 2,700 shares of preferred stock and 6,000 shares of common stock?

Mr. BROWN. That is correct.

Mr. PECORA. Noxon, Inc., made an arrangement with the Noxon Chemical Products Co. to purchase from it for \$80,000 certain property and assets; is that right?

Mr. BROWN. Yes; and I think, in addition, there was an arrangement by which certain exclusive licenses were received by Noxon, Inc.

Mr. PECORA. Those were not licenses protected by any letters patent, were they?

Mr. BROWN. No.

Mr. PECORA. After having acquired for \$80,000 these physical assets of the Noxon Chemical Products Co., Noxon, Inc., issued its entire 2,700 shares of preferred stock and some 3,900 shares of its common stock to the dummy, Capdevielle, for \$270,000?

Mr. BROWN. That is correct.

Mr. PECORA. Which Capdevielle paid by his promissory note?

Mr. BROWN. That is correct, sir.

Mr. PECORA. Then Capdevielle made an arrangement with the American Commercial Alcohol Corporation to transfer to it the 2,700 shares of preferred stock and the 3,900 shares of common stock of Noxon, Inc., which he had acquired for his note?

Mr. BROWN. Yes.

Mr. PECORA. And received in return for those shares 15,000 shares of the capital common stock of American Commercial Alcohol Corporation; is that right?

Mr. BROWN. That is correct; yes, sir.

Mr. PECORA. And it was necessary also for the American Commercial Alcohol Corporation to issue 15,000 additional shares?

Mr. BROWN. That is correct.

Mr. PECORA. In order to carry out its part of that transaction?

Mr. BROWN. That is correct, sir.

Mr. PECORA. That plus the 10,000 shares it had had issued to Phagan in exchange for the capital stock of Maister Laboratories, Inc., made up 25,000 shares of additional capital stock which the American Commercial Alcohol Corporation had to issue?

Mr. BROWN. That is correct, sir.

Mr. PECORA. In the spring of 1933?

Mr. BROWN. Yes.

Mr. PECORA. Now, that put the American Commercial Corporation in possession of all of the capital stock of Maister Laboratories, Inc., and all of the preferred stock of Noxon, Inc., plus 3,900 shares of the common stock of the latter corporation?

Mr. BROWN. That is correct.

Mr. PECORA. These 25,000 shares of capital stock of American Commercial Alcohol Corporation at that time had a market value of about \$20 a share, did they not?

Mr. BROWN. Yes.

Mr. PECORA. Or in the neighborhood of half a million dollars?

Mr. BROWN. Yes.

Mr. PECORA. It issued those shares and got in return these shares of capital stock of those two companies, Maister Laboratories, and Noxon, Inc.?

Mr. BROWN. Yes.

Mr. PECORA. And the principal assets of those two companies were the promissory notes, respectively, of the dummy, Phagan, for \$180,000, and the dummy, Capdevielle, for \$270,000; is that right?

Mr. BROWN. Yes; plus.

Mr. PECORA. Plus what?

Mr. BROWN. Plus contracts which those companies had.

Mr. PECORA. Contracts with whom?

Mr. BROWN. With Dr. Maister in the Maister Laboratories.

Mr. PECORA. Those are contracts from which nothing has yet been realized?

Mr. BROWN. Due entirely to the situation that—

Mr. PECORA. Whatever it is due to, the fact is that under those contracts which have been in force now for—well, since last May—nothing has as yet been realized by the two companies that hold those valuable contracts. Is that right?

Mr. BROWN. That is right.

Mr. PECORA. How did you intend by that process to put into the treasury of the American Commercial Alcohol Corporation \$450,000 in cash?

Mr. BROWN. There then came in the control.

Mr. PECORA. Which you said you needed for the purpose of paying bank loans.

Mr. PECORA. Maister came in 100 percent controlled and owned; Noxon came in 65 percent controlled. Immediately funds were borrowed from both of those corporations by the American Commercial Alcohol Corporation and payments were immediately made.

Mr. PECORA. Funds were borrowed from both of them, you say?

Mr. BROWN. Yes.

Mr. PECORA. By American Commercial Alcohol Corporation?

Mr. BROWN. Yes.

Mr. PECORA. Both of those corporations merely had promissory notes.

Mr. BROWN. As I indicated to you during my replies, these shares of stock which were received by Capdevielle and by Phagan were immediately put out by them at \$18 a share. They were then in possession of funds with which they liquidated their notes.

Mr. PECORA. To whom did they put out capital stock of the American Commercial Alcohol Corporation?

Mr. BROWN. They either put it directly to Bragg or listed it for Mr. Grimm and me.

Mr. PECORA. Which did they do?

Mr. BROWN. Half and half, I should say.

Mr. PECORA. In other words, they made deliveries under this option to Bragg, the option which you gave to Bragg on May 2, 1933?

Mr. BROWN. That is correct; yes.

Mr. PECORA. What interest did they have in this Bragg option that you and your three fellow officers gave?

Mr. BROWN. They had no interest in the option. As I have indicated before, they were people that indicated their confidence and people who accepted my instruction, and they were doing this, as we were, for the benefit of the corporation.

Mr. PECORA. But they had no beneficial interest in any of these transactions, did they?

Mr. BROWN. They had a beneficial interest in the transaction in the syndicate which was developed out of this option. Phagan had a \$5,000 interest and Capdevielle had a \$1,000 interest.

Mr. PECORA. All that Phagan and Capdevielle did throughout these transactions they did in furtherance of your instructions?

Mr. BROWN. That is correct, sir.

Mr. PECORA. They had no beneficial interest in the transaction by which they got 25,000 shares of the capital stock of the American Commercial Alcohol Corporation in the proportion of 10,000 shares to Phagan, and 15,000 shares to Capdevielle?

Mr. BROWN. Outside of what I have indicated to you.

Mr. PECORA. So that these men, in view of the fact that all they were doing in the matter was being done in furtherance of said instructions, had no compunction about giving their promissory notes because they knew they never would be called upon to pay them?

Mr. BROWN. I don't think that is quite correct; but whatever they did, they did in furtherance of my instructions.

Mr. PECORA. Was it intended that they should pay those notes out of their own resources, out of their own independent resources?

Mr. BROWN. It was intended that those notes should be paid, as was evidenced by the fact that they were paid.

Mr. PECORA. And they were paid through the sale of the 25,000 shares to Bragg under this option?

Mr. BROWN. That is correct.

Mr. PECORA. And they had no interest in this option to Bragg?

Mr. BROWN. They were not signatories to it.

Mr. PECORA. And they had no interest in it?

Mr. BROWN. Outside of what I have said.

Mr. PECORA. That was an interest which they acquired subsequently in some syndicate?

Mr. BROWN. Yes.

Mr. PECORA. The real purpose of all of that was to enable the American Commercial Alcohol Corporation to issue and sell 25,000 additional shares for \$450,000, was it not?

Mr. BROWN. That is correct.

Mr. PECORA. Was it not necessary, or did not the American Commercial Alcohol Corporation, subsequent to the completion of these transactions that involved the use of Phagan and Capdevielle as dummies, make application to the New York Stock Exchange to list those 25,000 additional shares?

Mr. BROWN. Yes, sir.

Mr. PECORA. Was the New York Stock Exchange told, in the listing application that was filed with it in behalf of the American Commercial Alcohol Corporation, that these 25,000 shares were being issued to be sold for \$450,000 cash for the purpose of providing the company with additional working capital of that amount?

Mr. BROWN. I do not know what was indicated to the stock exchange, but whatever was indicated was disclosed in the listing application accompanied by counsel's opinion that the issues were valid.

Mr. PECORA. What was indicated to the New York Stock Exchange in the listing application as the reason for or the purpose of issuing these 25,000 additional shares?

Mr. BROWN. I do not remember, because this is the first time I have looked at the listing application. I did not prepare it. It was prepared by the secretary of the corporation.

Mr. PECORA. The secretary of the corporation was Cecil Page?

Mr. BROWN. Yes, sir.

Mr. PECORA. He was the secretary, also, of Maister Laboratories, Inc., and Noxon, Inc.?

Mr. BROWN. That is correct.

Mr. PECORA. And who were the executive officers of Noxon, Inc., immediately upon its incorporation; who became its executive officers?

Mr. BROWN. That I cannot answer.

Mr. PECORA. Were they not you and your fellow directors, some of your fellow directors?

Mr. BROWN. Some of them might have served as officers temporarily. I think I am chairman of the board at the present time.

Mr. PECORA. I show you what purports to be a printed copy of the application filed with the New York Stock Exchange by and in behalf of the American Commercial Alcohol Corporation to list these additional 25,000 shares and certain other shares. Will you look at it and state whether it is a true and correct copy of listing application filed in behalf of that corporation with the New York Stock Exchange for leave to list fifty-one thousand-and-odd additional shares of the capital common stock of the American Commercial Alcohol Corporation?

Mr. BROWN. Yes, sir.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted.

(Printed copy of listing application filed with the New York Stock Exchange by American Commercial Alcohol Corporation for per-

mission to list fifty-one thousand-and-odd shares of capital common stock of American Commercial Alcohol Corporation was received in evidence, marked "Committee Exhibit No. 11, Feb. 15, 1934.")

Mr. PECORA. This application is to list 51,293 additional shares of the common stock of American Commercial Alcohol Corporation and—

The CHAIRMAN. Was the American Alcohol stock listed on the New York Stock Exchange?

Mr. BROWN. At that time; yes, sir.

Mr. PECORA. It is dated June 2, 1933. In the 51,293 additional shares, to list which this application was made, were included the 10,000 shares given to Phagan in connection with the transaction that you have so elaborately described; is that right?

Mr. BROWN. Yes.

Mr. PECORA. And to whom were the other 41,293 shares covered by this application issued?

Mr. BROWN. I think that 40,949 shares were issued to stockholders at \$20 per share.

Mr. PECORA. That is, to the existing stockholders of record of your corporation?

Mr. BROWN. That is correct; and the balance, I believe, has to do with certain warrants that attach to the bond issue that the company had when it was originally organized.

Mr. PECORA. That is only a matter of about 200 shares?

Mr. BROWN. A few shares.

Mr. PECORA. This application was granted, was it not?

Mr. BROWN. Yes, sir.

Mr. PECORA. Subsequently, did your corporation; that is to say, the American Commercial Alcohol Corporation, make application to the New York Stock Exchange to list 15,000 additional shares of its capital common stock?

Mr. BROWN. Yes, sir.

Mr. PECORA. I show you what purports to be a printed copy of that application. Will you look at it and tell me if it is a true and correct copy of the listing application so made on behalf of your corporation?

Mr. BROWN. Yes, sir.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted.

(Printed copy of listing application dated June 27, 1933, filed with the New York Stock Exchange for permission to list 15,000 additional shares of the capital common stock of the American Commercial Alcohol Corporation, was received in evidence and marked "Committee Exhibit No. 12, Feb. 15, 1934.")

Mr. PECORA. This application was granted, was it not?

Mr. BROWN. Yes.

Mr. PECORA. The application is received in evidence as exhibit 12 and is dated June 27, 1933. The first application is marked in evidence as "Exhibit No. 11", which, as I have already remarked, is dated June 2, 1933, and states the following to be the authority for and the purpose of the issue of these additional shares amounting to 51,293 of the capital common stock [reading]:

At a meeting held May 31, 1933, the board of directors authorized the issuance of 10,000 shares of the common stock of the Company of the par value of \$20 per share in exchange for 10,000 shares of the common stock of Maister Laboratories, Incorporated, of the par value of \$20 per share, which will then be the only issued and outstanding stock of the latter Corporation. Maister Laboratories, Incorporated, a Maryland corporation, is the owner of valuable processes acquired from Dr Hanns Maister for the manufacture of vitamin yeast and other products. The directors of American Commercial Alcohol Corporation at their said meeting valued this stock at more than \$300,000.

Reading further from exhibit no. 11, being the listing application of June 2, 1933, under the caption of "Authority for and Purpose of Issue", the application says as follows [reading]:

At said meeting the Board also authorized the offering to common-stock holders of the Company of the right to subscribe for additional shares of the authorized but unissued common stock of the Company at the price of \$20 for each share subscribed for, in the proportion of one additional share for each five shares held by common-stock holders of record at the close of business on June 14, 1933, all subscriptions upon such offerings accompanied by payment in full in New York funds to be made at the office of the City Bank Farmers Trust Company, 22 William Street, New York City, New York, on or before 3 p m, July 5, 1933. Said offering will be based on the 194,748 shares of common stock outstanding, the 10,000 shares authorized for issuance in exchange for common stock of Maister Laboratories, Incorporated, and any additional shares which may be issued on or prior to June 14, 1933, pursuant to the exercise of stock purchase warrants outstanding in connection with the original bond issue of the company.

The proceeds of the issue and sale of the said additional common stock offered to stockholders are to be used for the purpose of paying off bank loans and providing funds for working capital.

Now, from the listing application marked in evidence as "Exhibit No. 12", which is dated June 27, 1933, and which refers to an additional listing of 15,000 shares of common stock, I read as follows from the application under the caption "Authority for and Purpose of Issue" [reading]:

At a meeting held June 15, 1933, the board of directors authorized the issuance of 15,000 shares of the common stock of the company of the par value of \$20 per share, in exchange for 2,700 shares of the six percent cumulative preferred stock of the par value of \$100 a share, and 3,900 shares of the common no par stock of Noxon, Inc, a Maryland corporation. The total authorized capitalization of Noxon, Inc, is 3,000 shares of six percent cumulative preferred stock of the par value of \$100 per share and 6,000 shares of common stock without par value. The 2,700 shares of preferred stock is all the issued and outstanding preferred stock of the latter corporation. All of the 6,000 shares of common stock have been issued, 3,900 shares to the company as stated above, and 2,100 shares to other interests.

Noxon, Inc., was organized on June 19, 1933, and has acquired certain valuable formulæ, processes, etc., for the manufacture of a certain cleaner polish, floor waxes and a household insecticide, heretofore manufactured and sold for many years under the trade name of "Noxon", and also certain machinery, equipment, materials and other assets required for the manufacture of said products on an adequate commercial scale. Noxon, Inc, has furthermore contracted with the company to purchase all of its requirements for the manufacture of its products, which consist of alcohol, solvents, etc, so far as they are manufactured or handled by the Company, at prevailing market prices, for a period of ten years. The Company has also acquired as a part of above transactions, exclusive rights to certain formulæ and processes for the manufacture of new agricultural and horticultural plant sprays, which the company believes can be manufactured and sold on a profitable basis. These sprays consist of about 85 percent of alcohol.

By the way, in connection with the valuable secret processes and formulas, and so forth, which Noxon, Inc., you say acquired from

the Noxon Chemical Products Co., were there any that were owned by a man named Nottebaum?

Mr. BROWN. Yes; he was the controlling factor in the Noxon Chemical Products, Inc.

Mr. PECORA. So then the Noxon Co. did not own these secret processes; they were owned by some individual or groups of individuals—

Mr. BROWN. I have forgotten just what the details of the thing were. I think some rights came in to these processes, exclusive rights, as I remember. I have forgotten all the details of the contract.

Mr. PECORA. I show you what purports to be a copy of a letter addressed to the Committee on Stock List of the New York Stock Exchange under date of July 1, 1933, referring to the application dated June 27, 1933, to list the 15,000 additional shares, marked in evidence as "Exhibit No. 12." Will you look at it and tell me if you recognize it to be a true and correct copy of a letter sent to the Stock Exchange Committee on Stock List by Mr. Guy I. Colby, vice president and treasurer of the American Commercial Alcohol Corporation in behalf of that corporation?

Mr. BROWN (after examining paper). Yes.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted.

(Copy of letter, dated July 1, 1933, Colby to Committee on Stock List, New York Stock Exchange, was received in evidence, marked, "Committee's Exhibit No. 13," February 15, 1934, and the same was subsequently read into the record by Mr. Pecora.)

Mr. PECORA. This letter, marked "Committee Exhibit No. 13", is on the letterhead of the American Commercial Alcohol Corporation, July 1, 1933, and reads as follows [reading]:

The COMMITTEE ON STOCK LIST,

New York Stock Exchange, 11 Wall Street, New York, N Y.

GENTLEMEN: Confirming certain oral statements made to your Mr. Hasselback with reference to our application dated June 27th, 1933, for the listing of 15,000 additional shares of our Common Stock of the par value of \$20 each, the formulæ of processes, etc, for the manufacture of the cleaner polish, floor waxes, and household insecticides are the property of one Ralph Nottebaum, Sr., of Short Hills, New Jersey.

License to manufacture these products has heretofore been held by Noxon Chemical Products Co, Inc, a New Jersey Corporation formed by said Nottebaum, and for a period of approximately 14 years these products have been manufactured and sold by such Corporation

There are not available, however, certified financial statements of such Corporation; and in fact American Commercial Alcohol Corporation has had no dealings with the New Jersey Corporation and has made no investigation of its affairs or history except such investigation as was necessary to verify the statements made by Mr Nottebaum relative to the volume of the products sold and the markets in which the sale of these products has been made. Necessarily in connection with our investigation tests of selling prices and cost of the products have been made to satisfy us of the gross margin of profit existing at the present time

Our negotiations have been entirely with Mr. Nottebaum and insofar as the New Jersey Corporation is concerned our only care has been to see to it that such Corporation is dissolved and any rights or privileges theretofore granted by Nottebaum to it for the manufacture and sale of said products are effectually canceled

Counsel for Mr Nottebaum has advised us that practically 100% stock ownership of said New Jersey Corporation vests in Mr. Nottebaum and that appropri-

ate proceedings will forthwith be instituted for the dissolution of said Corporation.

If any further information is desired by the Committee we will be glad to have appear before the Committee in person one of our Officers to supply, if possible, any information the Committee may desire

Very truly yours,

AMERICAN COMMERCIAL ALCOHOL CORPORATION,
By GUY I. COLBY, *Vice Pres & Treas.*

I notice, Mr. Brown, that the board of directors of the American Commercial Alcohol Corporation did not give its formal approval to these various transactions under which 25,000 additional shares of the common capital stock of that corporation were issued to Phagan and Capdevielle, until late in May 1933. That is the fact, is it not?

Mr. BROWN. It gave its formal approval simply to approve a verbal commitment that had been made by me either on the 1st or the 2d of May 1933.

Mr. PECORA. It was an absolutely necessary formal approval, was it not, to enable the corporation to go ahead and issue those 25,000 additional shares?

Mr. BROWN. There are certain legal mechanics that have to be complied with.

Mr. PECORA. And it did not become legally effective until sometime late in May 1933. Do you know what that date was?

Mr. BROWN. I have forgotten the date.

Mr. PECORA. It was May 31, 1933, was it not?

Mr. BROWN. You mean the minutes of the board there?

Mr. PECORA. Yes.

Mr. BROWN. May 29, is it not?

Mr. PECORA. May 31, according to the application made to the Stock Exchange.

Mr. BROWN. It was May 31.

Mr. PECORA. May 31, 1933.

Mr. BROWN. Yes.

Mr. PECORA. But this option to Bragg was made on May 2, 1933.

Mr. BROWN. That is correct, after the board meeting of May 2, 1933.

Mr. PECORA. Now, at the time, on May 31, 1933, that the board of directors, by formal resolution, approved these transactions—

Mr. BROWN. Which had previously been agreed to; yes.

Mr. PECORA. The board of directors also authorized the issue of some 41,000 additional shares to be offered and sold directly to the existing stockholders of record of the American Commercial Alcohol Corporation, did it not?

Mr. BROWN. Yes, sir.

Mr. PECORA. And those shares were all duly subscribed for by the existing stockholders of record at \$20 a share?

Mr. BROWN. That is correct, sir.

Mr. PECORA. And that proves, does it not, that if the corporation had chosen to offer these other 25,000 shares to its stockholders of record it could have sold them for cash to the stockholders of record for \$20 a share?

Mr. BROWN. It does not. The situation—

Mr. PECORA. Does it prove the contrary?

Mr. BROWN. The answer is just this, that the situation changed, and changed very materially, within a period of 30 days.

Mr. PECORA. What 30-day period was that?

Mr. BROWN. The latter part of April until the end of May. The situation then became apparent that it was possible to issue stock to stockholders, and the management immediately took advantage of it so as to put the company in an even stronger financial position.

Mr. PECORA. The situation changed before May 31, did it not?

Mr. BROWN. At or about that times, yes.

Mr. PECORA. Up to that time, all that you had done in the furtherance of your plan to enable the corporation to issue 25,000 shares of its capital stock without first offering them to the stockholders of record was done through two dummies, Phagan and Capdevielle, who were carrying out your instructions.

Mr. BROWN. That is correct, sir.

Mr. PECORA. In view of the fact that that situation developed before May 31, 1933, why did not the board of directors give its existing stockholders of record the benefit of the right to subscribe to the 25,000 additional shares at \$20 a share.

Mr. BROWN. Verbal commitments had already been made on it, in accordance with the contracts which were finally worked out, and which you have had here.

Mr. PECORA. Those verbal commitments were made by your dummies.

Mr. BROWN. Those verbal commitments were made by me, personally.

Mr. PECORA. By your dummies and by you, personally.

Mr. BROWN. That is correct.

Mr. PECORA. You were chairman of the board of the American Commercial Alcohol Corporation, were you not?

Mr. BROWN. That is correct.

Mr. PECORA. And owed to the stockholders of that corporation the duty of fair dealing to them.

Mr. BROWN. I owed the stockholders of that corporation fair dealing, and further than that, as I have indicated to you, the paramount interest that the executives and officers and directors of that company had was the protection of the stockholders' interests and the corporation's interest.

Mr. PECORA. Could not that paramount interest have been best served by offering to the stockholders—

Mr. BROWN. At the time—

Mr. PECORA. Please let me finish my question. Could not that paramount interest have been best served by offering to the stockholders these 25,000 shares?

Mr. BROWN. Not on the 2d of May; no, sir.

Mr. PECORA. I am talking about May 31, sir.

Mr. BROWN. I understand that.

Mr. PECORA. Which was the date when your board of directors gave its necessary legal approval to the entire scheme you had evolved?

Mr. BROWN. Gave its necessary legal approval to a verbal commitment which had been made by me on behalf of the corporation, in my best judgment.

Mr. PECORA. What was that verbal commitment that you had made in behalf of the corporation?

Mr. BROWN. To Capdevielle and Phagan.

Mr. PECORA. But you said they were simply your dummies in the entire transaction, and that they had no beneficial interest in the negotiations.

Mr. BROWN. They accepted my instructions. That is correct.

Mr. PECORA. Do you regard that as a verbal commitment?

Mr. BROWN. I certainly do.

Mr. PECORA. What commitment had you made to Capdevielle and Phagan? You have told us repeatedly that they were simply your dummies, acting in the furtherance of your instructions, selected by you as instruments or agents to enable you to carry out some plan you had evolved?

Mr. BROWN. I had made the commitment to them to give 10,000 shares of the company's capital stock in exchange for 10,000 shares of Maister, and also 15,000 shares of the company's capital stock in exchange for 2,700 shares of the preferred stock of Noxon, Inc., and 3,900 shares of the common stock.

Mr. PECORA. You were dealing with yourself, because you were dealing with your dummies in the making of that commitment.

Mr. BROWN. Not necessarily.

Mr. PECORA. Did Phagan and Capdevielle have any independent interest in the matter?

Mr. BROWN. No.

Mr. PECORA. Now, as a matter of fact, when these applications were filed by your corporation with the New York Stock Exchange to list these additional shares, the applications, as you notice, were dated, respectively, on June 2 and on June 27, 1933. You knew that you had evolved this whole scheme for the purpose of putting \$450,000 cash into the treasury of the company through the issuance of 25,000 additional shares.

Mr. BROWN. That is right.

Mr. PECORA. Which were not offered to the stockholders.

Mr. BROWN. That is correct.

Mr. PECORA. Why was not that statement or information given to the New York Stock Exchange in these applications?

Mr. BROWN. That I do not know. I had nothing to do with the preparation of those.

Mr. PECORA. Who had to do with the preparation and filing of these listing applications?

Mr. BROWN. They were prepared by the secretary of the company.

Mr. PECORA. Mr. Page?

Mr. BROWN. Mr. Page; yes, sir.

Mr. PECORA. Do you know what the market value was on May 31, 1933, of the capital common stock of the American Commercial Alcohol Corporation?

Mr. BROWN. No, sir.

Mr. PECORA. For your information, let me tell you that according to the quotations of that stock on the New York Stock Exchange on that day, May 31, 1933, they ranged from a low of 30 $\frac{1}{8}$ to a high of 33 $\frac{1}{2}$.

Mr. BROWN. What week is that?

Mr. PECORA. Not any week; on May 31, 1933, the date that your board of directors adopted the resolution approving this scheme or

plan that you had evolved for the issuance of 25,000 shares which were eventually turned over to Bragg under this option agreement.

Mr. BROWN. And the funds for which came into the organization, Mr. Pecora.

Mr. PECORA. At what price did they come into the organization?

Mr. BROWN. At \$18 a share.

Mr. PECORA. At \$18 a share, although on the date when your board of directors approved of it the market was from \$30 to \$33 a share.

Mr. BROWN. The value on the date that the contracts were agreed to and the arrangements made, on the 1st or 2d of May, was approximately \$18 a share.

Mr. PECORA. And, according to the quotations of the stock on the New York Stock Exchange on May 2, the value was between \$20 and \$21 a share.

Mr. BROWN. Yes, sir.

Mr. PECORA. But the fact of the matter is that the corporation, through this process that you evolved, sold for \$18 a share to Bragg, 25,000 shares at a time, when the stock was worth in the market at least 50 percent more than that.

Mr. BROWN. The commitment was made on the 2d of May.

Mr. PECORA. Who got the benefit of that profit?

Mr. BROWN. I do not quite understand your question.

Mr. PECORA. I will reduce it to very simple terms. Bragg got 25,000 shares at \$18 a share.

Mr. BROWN. That is correct.

Mr. PECORA. The 25,000 shares, however, were not authorized to be issued by the directors of your corporation until May 31, 1933.

Mr. BROWN. That is correct. They were not issued until——

Mr. PECORA. And they were not issued until subsequent to that time.

Mr. BROWN. They were not issued until the legal requirements had been complied with.

Mr. PECORA. That was May 31, 1933. At that time the market value of the stock was between \$30 and \$33 a share; is that right?

Mr. BROWN. I assume so.

Mr. PECORA. That is the profit I refer to. Who got the benefit of it?

Mr. BROWN. I do not know.

Mr. PECORA. Did you get any of it?

Mr. BROWN. I can answer your question in this way——

Mr. PECORA. I want you to.

Mr. BROWN. At the time this whole situation arose, and a proposition had to be evolved to——

Mr. PECORA. No; can you not answer the question? Did you get any of that profit?

Mr. BROWN. I will answer the question in this way——

Mr. PECORA. Is it necessary to make a speech about this whole plan again in order to answer that simple question?

Mr. BROWN. It is not necessary to go through the whole plan, but I will explain the transaction with Bragg, which answers your question.

Mr. PECORA. First answer the question. Did you or did you not participate in that profit?

Mr. BROWN. I participated in a syndicate which underwrote the issue of additional stock to stockholders. I participated in a pool. I realized a profit of approximately \$20,000. I sacrificed more than that.

Mr. PECORA. We will put your sacrifices in another category and we will come to them any time you want to elaborate on them before the committee. At the present time I am asking you if you participated in the profit that accrued as a result of this plan which you evolved?

Mr. BROWN. That is correct.

Mr. PECORA. What other officers and directors of the American Commercial Alcohol Corporation also participated in that ensuing profit?

Mr. BROWN. Mr. Chadbourne, Mr. Grimm, Mr. Kies, and Mr. Publicker.

The CHAIRMAN. You refer to a syndicate and also to a pool. Who composed the syndicate to which you referred?

Mr. BROWN. Senator, after the verbal commitment had been made to Phagan and Capdevielle to put the company in strong financial shape the market situation changed materially, and further discussions were had, because apparently, as we assumed it to be, the fever had hit the public for buying repeal stocks, and the officials took immediate advantage of the situation and promptly offered the stock to the stockholders, arrangements having been made with Mr. Bragg for an underwriting.

The CHAIRMAN. I simply asked the question, Who composed the syndicate?

Mr. BROWN. The gentlemen that I have just mentioned and some others.

The CHAIRMAN. Then who composed the pool?

Mr. BROWN. The same people.

The CHAIRMAN. How many shares of stock were handled by this pool?

Mr. BROWN. I think 65,000 shares was the total handled by the pool and syndicate.

Mr. PECORA. Who managed that pool?

Mr. BROWN. Mr. Bragg.

Mr. PECORA. Mr. Bragg is this gentleman to whom you referred yesterday as a market operator?

Mr. BROWN. Yes, sir.

Mr. PECORA. He is not a member of any exchange?

Mr. BROWN. No, sir.

Mr. PECORA. And you had known him for some time?

Mr. BROWN. Maybe a year or two. I have forgotten how long.

Mr. PECORA. Do you know what brokers were used in the execution of the orders in behalf of that pool?

Mr. BROWN. No; I assume W. E. Hutton & Co.

Mr. PECORA. That is not Mr. Cutten's firm?

Mr. BROWN. No; that is E. F. Hutton. This is W. E. Hutton & Co.

Mr. PECORA. Do you know what particular broker or brokers actually executed the orders for the pool?

Mr. BROWN. No, sir.

Mr. PECORA. None of them?

Mr. BROWN. I do not know who they were; no.

Mr. PECORA. You never did know, did you?

Mr. BROWN. No.

Mr. PECORA. Are you sure of that?

Mr. BROWN. Yes; I am telling you perfectly frankly. I do not know.

Mr. PECORA. If this plan that you claim the authorship of and which you have described here this morning, had not been evolved, those 25,000 shares would have been issued to the stockholders of the company and they would have made the profit resulting therefrom, would they not?

Mr. BROWN. The only answer I can make to you on that is that if my foresight was as good as my hindsight, the situation might have been different.

Mr. PECORA. But that is the fact, is it not, that they would have made the profit which, instead, went to a small group of officers and directors of the company?

Mr. BROWN. I made no money on the transaction.

Mr. PECORA. Mr. Bragg and such other persons as were associated with you in this pool and this syndicate?

Mr. BROWN. I lost money as a result of this whole transaction.

Mr. PECORA. If that plan had not been evolved and if the 25,000 shares we have been discussing here had been offered and sold to the existing stockholders of record at \$20 a share at a time when they were worth in the market between \$30 and \$33 a share, those stockholders would have obtained the profits instead of you and the other officers and directors of the company who were banded together in this syndicate and in this pool, isn't that so?

Mr. BROWN. We would have acted differently on May 31 than we did on May 2.

Mr. PECORA. What was there to prevent the directors of your company, on May 31, when they knew that the stockholders would subscribe for these additional shares, or felt certain that the stockholders would subscribe for these additional shares, from making such a provision?

Mr. BROWN. I do not believe I follow your question.

Mr. PECORA. What prevented the board of directors of the American Commercial Alcohol Corporation when, on May 31, 1933, it gave its formal and legal approval to the plan that you had evolved, from discarding that plan and offering those 25,000 additional shares to its stockholders of record?

Mr. BROWN. Because of the verbal commitment which had been made by me.

Mr. PECORA. What you call a verbal commitment, made to your dummies?

Mr. BROWN. That is correct.

Mr. PECORA. Who lent themselves to your plan?

Mr. BROWN. Yes.

The CHAIRMAN. When was this pool operation terminated, do you remember?

Mr. BROWN. I do not remember, Senator; no, sir.

The CHAIRMAN. Do you remember what the stock was worth at that time?

Mr. BROWN. That I have forgotten, too.

Mr. PECORA. I am going into the pool, Mr. Chairman. I will be able to do that after recess.

You spoke of a syndicate. What was that syndicate organized for?

Mr. BROWN. About the latter part of April, I had a discussion with Mr. Bragg—

Mr. PECORA. April 1933?

Mr. BROWN. April 1933—and asked him what, in his opinion, could be done with American Commercial Alcohol stock. At the time of my discussion with him no question was raised about the banks or anything like that. He told me at that time—

Mr. PECORA. One moment. I thought you said that back in March 1933 the banks had served notice on you that they wanted their loans paid.

Mr. BROWN. Nothing was said to him, I said.

Mr. PECORA. Oh.

Mr. BROWN. He at that time stated that he believed it would be possible for him to do something in the market, because he felt that repeal was coming along, and he said that he believed he would be able to handle about 25,000 shares of stock, and I told him that I would discuss the question and see what could be worked out. An option was given to him on May 2, 1933, and he was not at that time willing to make it an underwriting, but he felt that because of his opinion that repeal was most certain to come, that he would be able to dispose of the securities. The option was given to him at that time. As the market improved a further discussion was had with him as to the possibilities of securing an underwriting agreement to issue additional stock to the stockholders, and at that time he indicated that he would make such an arrangement for a fee of \$2 per share, which afterwards was reduced to a fee of \$1 per share, upon the officers and directors whom I have previously mentioned participating in the group. We also said at the time that the entire operation under the option, the underwriting, and so forth, would be banded together and required various participants to put up a total of \$100,000, of which I contributed \$10,000; Mr. Grimm, \$10,000; Mr. Phagan, \$5,000; Mr. Kies, \$10,000; Mr. Chadbourne, \$5,000; Mr. Capdevielle, \$1,000; my brother, H. S. Brown, \$2,000; M. M. Ewing, my secretary, \$1,000; W. J. Butler, \$1,000; Philip Publicker, \$5,000. The other participants, as I understand it, were Mr. Carl C. Conway, Mr. L. C. Young, Mr. John Bowen, and Mr. Thomas Bragg, each of whom were presumably bound for \$12,500 each.

The CHAIRMAN. We will resume this after recess. At this time I want to put into the record certain telegrams and letters which have come to me with reference to the bill itself. I will ask that they be inserted in the record without reading.

The first is a telegram from Arthur M. Wickwire.

Next is a letter from William A. Gordon, of Philadelphia.

Next is a letter from Dahlbender Co., of New York.

Next is a letter from George D. Hirst, of New York.

The next is a letter from I. R. Edmands, of Brookline, Mass.

The next is a letter from R. B. Covington, of Jacksonville, Fla. Most of the letters and telegrams coming to me are in praise of the bill. Some make objections, and most of the objections appear to apply to the provision for margins, which we will go into in more detail later. Just at this moment I am asking to have these inserted in the record.

(Communications in re S. 2693 will be found at the conclusion of today's proceedings.)

The CHAIRMAN. We will adjourn now until half past two.

(Whereupon, at 1:05 p.m., Thursday, Feb. 15, 1934, a recess was taken until 2:30 p.m. of the same day.)

AFTER RECESS

The committee resumed at 2:30 p.m., on the expiration of the recess.

The CHAIRMAN. The committee will please come to order. Mr. Brown will resume the stand.

TESTIMONY OF RUSSELL R. BROWN—Resumed

Mr. PECORA. Mr. Brown, in the course of your testimony yesterday and today you referred to a certain meeting of the board of directors of the American Commercial Alcohol Corporation held on April 27, 1933.

Mr. BROWN. Yes, sir.

Mr. PECORA. At which you said you presented your plan with regard to the issuance of 25,000 additional shares of the capital stock of the corporation for the purpose of raising additional working capital for the corporation.

Mr. BROWN. I do not think I testified that I presented the plan. I did not so intend, if I did.

Mr. PECORA. Then, for what purpose did you refer to the meeting of the board of directors held on April 27, 1933?

Mr. BROWN. I believe at that meeting I outlined to the board the necessity for immediate action because of the financial condition in which the company then was.

Mr. PECORA. That is, the necessity for immediate action toward raising additional working capital?

Mr. BROWN. That is correct.

Mr. PECORA. I show you this book, which purports to be the minute book of the board of directors and stockholders of the American Commercial Alcohol Corporation, and ask you if you can identify it as being the original minute book of that corporation?

Mr. BROWN (after looking at the book). Yes; I should say so.

Mr. PECORA. Mr. Chairman, I offer the book in evidence, and merely ask that it be marked for identification, and not be spread on the committee's record.

The CHAIRMAN. Let it be marked for identification.

(The original minute book of the board of directors and stockholders of the American Commercial Alcohol Corporation was marked "Committee Exhibit No. 14 for identification, February 15, 1934", and only the excerpts read from the book by Mr. Pecora are to be made a matter of record.)

Mr. PECORA. Now, Mr. Brown, this minute book has been marked "Committee Exhibit No. 14 for identification." I want to read therefrom certain extracts, from the minutes of the meeting of the board of directors held on April 27, 1933, as follows:

The organization meeting of the board of directors of the American Commercial Alcohol Corporation was held at the offices of the corporation, No. 406 Lexington Avenue, New York City, N.Y., on April 27, 1933, at 3:45 p.m., this being the time and place of the regular monthly meeting of the board as heretofore ordered by the board.

Present: Messrs. Atkins, Brown, Chadbourne, Colby, Foster, Kessler, Kies, Paine, Pond, Publisher, and Runk, being a majority and a quorum of the Board.

Mr. Brown was unanimously chosen chairman of the Board, and Mr. Page, secretary of the Corporation, acted as secretary.

Then I will skip some of the proceedings and go down to the following:

The chairman presented to the Board the question of the advisability of selling additional shares of the Company's common stock to provide further working capital.

After a discussion of the matter, Mr. Page was directed to investigate the various legal questions and procedure involved, and to confer with Judge Foster and Mr. Paine, and to report their recommendations to a subsequent meeting of the Board.

The general affairs of the company were then discussed, and there being no further business the meeting adjourned.

And these minutes are signed by Cecil Page, secretary. Now, Mr. Brown, is that the action that you referred to heretofore as having been taken by the board of directors with respect to the necessity for raising additional working capital?

Mr. BROWN. I think that may be it; yes, sir.

Mr. PECORA. Well, I fail to find any references in the minutes of this meeting to any such element, other than that which I have read. Do you think there are any other references in the minutes to that subject?

Mr. BROWN. No.

Mr. PECORA. What was your answer?

Mr. BROWN. No.

Mr. PECORA. Now, I note that Mr. Page, the secretary, was directed to investigate the various legal questions involved in the plan, or involved in the question of selling additional shares of the company's common stock to provide working capital. And Mr. Page was directed to confer with Judge Foster and Mr. Paine and to report their recommendations to a subsequent meeting of the board.

Mr. BROWN. Yes, sir.

Mr. PECORA. Judge Foster was an attorney, wasn't he?

Mr. BROWN. Judge Foster is a director of the company.

Mr. PECORA. But he is an attorney as well, isn't he?

Mr. BROWN. I do not think he is a practicing attorney.

Mr. PECORA. But he is a lawyer, and has been admitted to the bar?

Mr. BROWN. That is correct.

Mr. PECORA. And for some years, a decade or two ago, he was the judge of one of the criminal courts in New York, wasn't he?

Mr. BROWN. Yes, sir.

Mr. PECORA. That is Judge Warren W. Foster, isn't it?

Mr. BROWN. Yes, sir.

Mr. PECORA. Was Mr. Paine also an attorney?

Mr. BROWN. I believe so; yes, sir.

Mr. PECORA. Was Mr. Page also an attorney?

Mr. BROWN. Yes, sir.

Mr. PECORA. Now, did these three gentlemen make any report or recommendations at any subsequent meeting of the board on the subject of raising additional working capital for the company?

Mr. BROWN. I think after that meeting was over a discussion was had with those gentlemen on this whole problem, and I outlined to that group the plan which I had in mind, and believe at that time it was approved by the committee.

Mr. PECORA. Well, the plan which you then outlined to these three gentlemen was the one that you have described here and which involved the creation of Maister Laboratories, Inc., was it?

Mr. BROWN. That is correct.

Mr. PECORA. And Noxon, Inc.?

Mr. BROWN. That is correct.

Mr. PECORA. And the making of the agreements and the execution of the transactions that you have testified to here?

Mr. BROWN. That is correct.

Mr. PECORA. You had that plan all in mind on April 27, 1933, did you?

Mr. BROWN. Yes, sir.

Mr. PECORA. And you outlined it in detail to those three members of the board, all of whom were lawyers; is that right?

Mr. BROWN. Yes, sir.

Mr. PECORA. Did they give you any opinion, or did they express any judgment, upon the plan on April 27, 1933, after you had outlined the plan to them?

Mr. BROWN. I think they did, yes.

Mr. PECORA. Did they approve of it?

Mr. BROWN. I believe they did.

Mr. PECORA. As a legal proposition they approved of it, did they?

Mr. BROWN. I believe they did.

Mr. PECORA. Now, was there any formal report made by those three directors, or by any one of them, to the board of directors?

Mr. BROWN. As to that I don't know, or don't remember.

Mr. PECORA. In regard to the legal questions involved in the execution of your plan, I mean.

Mr. BROWN. As to that I don't remember.

Mr. PECORA. Now, you also referred in your testimony heretofore to a meeting of the board of directors of the American Commercial Alcohol Corporation held on May 2, 1933.

Mr. BROWN. That is correct.

Mr. PECORA. In reference to this plan.

Mr. BROWN. Yes, sir.

Mr. PECORA. Now, I will read to you what appears in the minutes of the meeting of the board of directors held on May 2, 1933, from the minute book of the company which has been marked "Committee Exhibit No. 14 for identification." It is as follows:

A special meeting of the Board of Directors of the American Commercial Alcohol Corporation was held at the offices of the Corporation, No 405 Lexington Avenue, New York City, N Y, on Tuesday, May 2, 1933, at 3:30 p.m.

Present: Messrs. Atkins, Brown, Chadbourne, Colby, Foster, Grimm, Kessler, Kies, Paine, Page, Pubbecker, and Runk, being a majority and a quorum of the Board

Mr. Hersey Eggerton, of the firm of Larkin, Rathbone & Perry, counsel to the Corporation, was also present

Mr. Brown, the chairman, presided, and Mr. Page acted as secretary of the meeting.

The chairman stated to the Board that he believed there was an opportunity to acquire certain new processes, some of which might be obtainable for the manufacture of a dry yeast, having a very high and superior quality of vitamin content, presenting large advantages over existing products, such as non-deterioration and long life, for which it appeared there was a large and profitable market.

It was believed, he said, that the process could be developed and the product marketed at a very reasonable cost of operation, and made to yield profits annually of at least \$50,000, and that the process was worth at least \$250,000.

He further said that it might be acquired by issuing the stock of this company in exchange for the stock of a new company and the latter's agreement to purchase its supplies and needs from this company, and the giving to this company of a note in an appropriate amount, and possibly with a satisfactory guarantee.

He further expressed the idea that the plan would involve the issuance of the stock of this company in an amount to meet the value as found by this board of the property to be received in exchange, including all the shares of the yeast company, its contract for its supplies, and its note, and its other assets.

He asked the board to consider the advisability of issuing not to exceed 25,000 shares of the common stock for this purpose.

He further said that if the stock were issued as proposed it would materially strengthen and improve the company's asset position, which would be a decided advantage during the distressing business and banking conditions now prevailing.

The chairman further said that there appeared to be a trend in the alcohol trade and industry toward doing the whole or the major part of this business on a consignment basis, whereby the income from sales would be realized seasonally, or in December of each year, against which there must be cash available, and explained that this company might be affected by the general banking restrictions in procuring the long-time credit extension necessary to care for these consignment needs.

The chairman further said that these matters had been considered with counsel, and he thereupon left the matter with the board, asking for an expression of opinion.

After lengthy discussion it was, on motion, duly made and seconded, and unanimously passed, duly resolved:

That the board finds the proposition generally acceptable, subject however to the approval of counsel, and authorizes and directs the proper officers to promptly negotiate with respect thereto, and in connection with counsel to prepare proposals in definite form, including as to the yeast process a report showing its merits, the market, and its possibilities, and its apparent value; and also a report on the values of the other properties offered, all in further consideration of this board, so as to enable them to make a determination of the value of all the properties for which the common stock may be authorized to be issued.

There being no further business to come before the meeting, it was, on motion duly made and seconded, unanimously passed for it to adjourn to reconvene at the same place on Thursday, May 4, 1933.

And these minutes are signed by Cecil Page as secretary. Now, Mr. Brown, it appears that that was the only business transacted at this special meeting of the board of directors held on May 2, 1933.

Mr. BROWN. That is correct.

Mr. PECORA. Now, in presenting the proposition to the board that is referred to in the minutes of the meeting of May 2 which I have just read to you, it was the proposition that you originally outlined in your discussion with the board at the meeting of April 27, 1933: was it?

Mr. BROWN. That is correct.

Mr. PECORA. And which you elaborated in detail in your discussion with Messrs. Foster, Page, and Paine after the meeting of the board of directors on April 27, was it?

Mr. BROWN. That is correct.

Mr. PECORA. And that proposition was to raise additional working capital for the company?

Mr. BROWN. That is correct.

Mr. PECORA. In order to enable it to meet its banking loans.

Mr. BROWN. Yes, sir.

Mr. PECORA. Which were maturing.

Mr. BROWN. Yes, sir.

Mr. PECORA. Now, had you meanwhile—that is, between April 27 and May 2, 1933—discussed the details of your plan with counsel to the corporation, namely, Messrs. Larkin, Rathbone & Perry, or any member or associate of that law firm?

Mr. BROWN. Yes, sir.

Mr. PECORA. With whom?

Mr. BROWN. With Mr. Eggenton.

Mr. PECORA. With Mr. Hersey Eggenton?

Mr. BROWN. Yes, sir.

Mr. PECORA. Was he specially requested to be present at this meeting, I mean this special meeting, of the board of directors held on May 2?

Mr. BROWN. Yes.

Mr. PECORA. Now, as a matter of fact, in this meeting of May 2 you stated to the board that it was your belief this process for the manufacture of dry yeast, having a high and superior quality of vitamin content, was worth at least \$250,000?

Mr. BROWN. That is correct.

Mr. PECORA. And that was before the process had been patented.

Mr. BROWN. Yes; and it has not yet been patented.

Mr. PECORA. Do you say it has not yet been patented?

Mr. BROWN. It has not been patented as yet.

Mr. PECORA. It has not yet been patented?

Mr. BROWN. No, sir; and is not to be patented.

Mr. PECORA. And it was before anything had been done to exploit the process?

Mr. BROWN. Yes, sir; that is correct.

Mr. PECORA. That was before even the organization of the company that was to acquire this process?

Mr. BROWN. Well, it was after a study of the yeast process.

Mr. PECORA. No; that is not the point of my question. When on May 2, 1933, you went before your board at a special meeting and told them of this process, that it was worth, in your opinion, at least \$250,000, you gave that opinion at a time when the process had not yet been commercially exploited; at a time when the process had not been patented; at a time when the corporation which was to own the process had not yet even come into existence, is that it?

Mr. BROWN. That is correct. But at the same time, Mr. Pecora, a product of that kind, to which this is superior, is sold in substantial quantities in the country at the present time.

Mr. PECORA. That is the same product that you referred to in your testimony heretofore as being the creature of the brain of Dr. Maister, is that right?

Mr. BROWN. That is correct.

Mr. PECORA. And that is the same thing that has not yet been commercially exploited?

Mr. BROWN. That is correct.

The CHAIRMAN. Did that product require the use of alcohol?

Mr. BROWN. No.

The CHAIRMAN. What relation has yeast to alcohol?

Mr. BROWN. That comes in as a fermentation process, and the yeast cultures through fermentation are developed, and, finally, after a period of time, you get your yeast.

Mr. PECORA. By the way, Mr. Brown, is Maister Laboratories Corporation functioning today?

Mr. BROWN. Do you say Maister Laboratories Corporation?

Mr. PECORA. Yes.

Mr. BROWN. Yes, sir; I think so.

Mr. PECORA. Do you know whether it is or not?

Mr. BROWN. I assume it is.

Mr. PECORA. Is it turning out any manufactured product?

Mr. BROWN. Oh, not yet; no, sir.

Mr. PECORA. You say not yet?

Mr. BROWN. No, sir.

Mr. PECORA. And yet you were expecting on May 2, 1933, that this process for the manufacture of this special dry yeast would yield annual profits of at least \$50,000?

Mr. BROWN. That is correct.

Mr. PECORA. Why has so much time been allowed to go by without reaping or attempting to reap any part of this handsome profit?

Mr. BROWN. As I explained to you this morning, it was necessary, in spite of the time involved, in order to save money to the organization, that rather than put up a new building we tried it at Philadelphia, and after we developed that Philadelphia was not the proper location for the plant, we then moved Dr. Maister to the Pekin plant; and at that time, after he was moved, we started construction on an addition to the Pekin plant. We are abandoning an integral part of the plant that is there, called the mill building, and into that building is to go the Maister process.

Mr. PECORA. And for that reason your company has not yet begun to develop this process that you said promised a profit of at least \$50,000 a year, and that you solemnly told your board of directors on May 2, 1933, it was your belief would be received from it.

Mr. BROWN. That is correct.

Mr. PECORA. By the way, Mr. Brown, at this meeting of either April 27 or May 2, 1933, did you inform the board of directors of this option agreement given to Mr. Bragg?

Mr. BROWN. No. At the board meeting I did not. But, informally, after the board meeting I told the various members that I believed this deal could be worked out, that discussions had been had with Bragg, and that he felt the proposition could be handled.

Mr. PECORA. Why was that told to the directors informally after the meeting and not told to them formally at the meeting and a minute made of the discussion?

Mr. BROWN. Well, I suppose at that time we did not assume, as long as I was giving the option and they had informally agreed to

support me in that option, that it was necessary, and that it did not go into the corporate procedure. That is, they informally agreed to support me in that option.

Mr. PECORA. They agreed to support you informally, but not at the meeting.

Mr. BROWN. Well, they informally agreed to support me in that option.

Mr. PECORA. I notice that according to this minute book at the next meeting of the board of directors, which was scheduled for May 4, 1933, a meeting was not actually held because there was no quorum present, the only director present being Mr. Page.

Mr. BROWN. That is correct.

Mr. PECORA. Now, according to this minute book, the next meeting of the board of directors was held on May 25, 1933.

Mr. BROWN. That is correct.

Mr. PECORA. And I notice reference in the minutes of that meeting to this plan of yours, which I will read to you from the minute book:

A special meeting of the board of directors of the American Commercial Alcohol Corporation was held at the offices of the corporation, no. 405 Lexington Avenue, New York City, N.Y., on Thursday, May 25, 1933, at 3:45 p.m.

Present Messrs Atkins, Brown, Chadbourne, Colby, Foster, Grimm, Kies, Paine, Page, Pond, Publiker, and Runk, being a majority and a quorum of the board. And Mr. Hersey Eggenton, of the firm of Larkin, Rathbone & Perry, who was present as special counsel for the corporation.

The chairman, Mr. Brown, presided, and Mr. Page acted as secretary of the meeting.

Then I will skip what immediately follows—well, I see there is here a list of the salaries of the elective officers of the corporation for the current year as approved by the executive committee, which was then presented and read to the meeting, and the same was approved and payments authorized in accordance therewith. What were those salaries?

Mr. BROWN. It was \$22,500 for Mr. Grimm, and \$21,000 for me. I don't remember the rest of them.

Mr. PECORA. Then I notice the following in the minutes of the special meeting held on May 25, 1933 [reading]:

The chairman reported progress in the negotiations with Mr. Ralph Nottebaum for the acquisition of an interest in his plant spray, and the principal points of the contract that was being drawn

The chairman referred to the plan that had been considered by the board and the executive committee for the acquisition of the stock of a corporation that would be formed and which would take over certain processes, and so forth, of Dr. Hans Maister, including his yeast product, in exchange for the common stock of the company to be issued for that purpose; and also the proposal that it might be advisable for the company to offer additional stock to its stockholders in order to improve the company's asset position.

He said that the corporation referred to had been organized as Maister Laboratories, Inc., under the laws of Maryland.

Mr. Kies thereupon stated that he felt the board should approve the steps taken by Mr. Brown.

A lengthy discussion ensued, and the directors all expressed approval of what had been done.

There being no further business it was unanimously voted to adjourn to reconvene at the same time and place on Wednesday, May 31, 1933

These minutes are signed by Cecil Page, secretary.

Now, Mr. Brown, from that statement that you made to the committee at this meeting on May 25, 1933, it would appear that no agreement had yet been made.

Mr. BROWN. Agreement with whom?

Mr. PECORA. I say, it would appear that no agreement had yet been made.

Mr. BROWN. The directors, as I stated——

Mr. PECORA (interposing). Wait a minute, and let me get an answer to that question.

Mr. BROWN. I am sorry.

Mr. PECORA. No agreement had yet been made to take over these processes of Dr. Maister, but the matter was simply referred to by you here as [reading]:

The plan that had been considered by the board and the executive committee for the acquisition of the stock of a corporation that would be formed and which would take over certain processes of Dr. Hans Maister, including his yeast product, in exchange for the common stock of the company to be issued for that purpose.

Mr. BROWN. On the 2d of May, after the board meeting, I spoke to the members of the board informally and told them of the situation with Mr. Bragg, and received their full approval, and told them that I would now verbally contract with both Capdevielle and Phagan——

Mr. PECORA (interposing). When did you tell this to the board?

Mr. BROWN. I told this to the board informally after I had received their approval of——

Mr. PECORA (interposing). When, I asked you.

Mr. BROWN. On the 2d of May, after the board meeting.

Mr. PECORA. Didn't you say heretofore that you had not told the board of directors anything about your option agreement with Mr. Bragg?

Mr. BROWN. I assumed that you were speaking about the formal meeting of the board when I answered you in that way.

Mr. PECORA. Did I ask you if you had told them about it formally? Didn't I ask you, on the other hand, if you had ever told the directors about the execution of this option agreement with Bragg, and you said "No"?

Mr. BROWN. Well, no; I don't think I answered you "No" there. I think I told you at the time that I told the members informally of the option agreement with Bragg. I think I answered you that way just a moment ago.

Mr. PECORA. Just a moment ago you did, but when I asked you on yesterday, and again this morning, my recollection is that you said you had not told the directors anything about this option agreement that you, in behalf of yourself and your three associate officers and directors, had made with Bragg.

Mr. BROWN. I think the secretary's minutes here [pointing across the table to the committee reporter] will show that I told you I told the board members about it informally.

Mr. PECORA. Our recollections differ on that, and we will let the record speak for itself.

Mr. BROWN. All right.

Mr. PECORA. The next meeting of the board of the American Commercial Alcohol Corporation appears to have been held, according to this minute book of the company, on May 31, 1933. And still according to the minute book there were present at that meeting: Messrs. Atkins, Brown, Chadbourne, Colby, Foster, Grimm, Kessler, Kies, Page, Bond, Publicker, and Runk. Also Mr. Eggenton, counsel for the corporation. You presided and Mr. Page acted as secretary. The minutes then go on to recite, as follows:

The chairman then presented to the meeting the form of agreement made May 6, 1933, between Mr. K. B. Phagan and this corporation, providing, among other things, for the sale to this corporation of 10,000 shares of the capital stock of Maister Laboratories, Inc., in exchange for 10,000 shares of the common stock of this corporation, and requested that said contract, as made and executed on May 6, 1933, be ratified and approved, and that agreement confirmatory of that contract be authorized.

Said agreement was ordered marked "Exhibit A" and attached to the minutes of the meeting.

And then it appeared that a resolution was adopted by the board by the unanimous vote of all present, authorizing the corporation to enter into that proposed agreement with Mr. Phagan. The resolutions are rather lengthy and I won't take the time to read them. It then appears, according to the minutes, as follows:

The chairman then presented to the meeting the matter of providing additional cash for the corporate purposes by issuing and selling additional shares of common stock of the corporation, of the par value of \$20 per share, and offering to the common-stock holders the right to subscribe for such additional shares, and presented to the meeting the forms of full share and fractional share warrants representing the rights of the common-stock holders to subscribe as aforesaid, and also the form of scrip certificate for fractional interests in the common stock of the corporation.

Copies of said subscription warrants and certificates for fractional interests are attached to these minutes.

After full discussion, and on motion, duly seconded, the following resolutions were then adopted by the affirmative vote of all of the directors present at the meeting aforesaid:

Resolved, that in order to provide additional cash for the proper corporate purposes of this company, this company issue and sell 40,949 shares of its common stock of the par value of \$20 a share, at a price of \$20 a share.

Further resolved, that this company offer to common-stock holders of record at the close of business June 14, 1933, the right to subscribe prorata for such additional shares, at the price of \$20 per share, at the rate of 1 share of such additional stock for each 5 shares held on such date.

And then follows other formal matter embodied in the resolutions, intended to carry out the plan of issuing those 40,949 shares and of offering them to the existing stockholders at \$20 per share, with the right to stockholders to subscribe for 1 share of the additional stock for each 5 shares they then held.

Mr. BROWN. That is correct.

Mr. PECORA. And that resolution was unanimously adopted?

Mr. BROWN. That is correct.

Mr. PECORA. Now, Mr. Brown, in view of the fact that the resolution to acquire from Mr. Phagan 10,000 shares of the capital stock of Maister Laboratories, Inc., which he had acquired by giving his promissory note therefor to Maister Laboratories, Inc., in return for 10,000 shares of the capital stock of the American Commercial Alcohol Corporation, and in view of the fact that that was not authorized until this very meeting of May 31, why wasn't provision made to offer those 10,000 shares also to your stockholders of record?

Mr. BROWN. Because, as I indicated to you before, first, that the informal approval of the members of the board was given, and after that was given I had made the commitment to Phagan and Capdevielle, and also made the commitment, which was purely a part of the plan, for 25,000 shares to Bragg; and because neither Mr. Grimm, nor Mr. Publicker, nor Mr. Kies, nor I wanted to lose any of that stock, nor expected to be put in the position where we would have to deliver that stock at the time—all these things, as I indicated to you, meant that there were certain legal mechanics, apparently, that are to be complied with, and after the informal discussion with the members of the board, and knowing the attitude of the board, and receiving their assurances of approval, I went ahead and made these arrangements, all of which were a part of the plan.

Mr. PECORA. But, Mr. Brown, are you overlooking the fact that this commitment that you are speaking of was not a commitment by the corporation, but your individual commitment?

Mr. BROWN. That is correct.

Mr. PECORA. And the corporation was in no way bound to deprive its stockholders of the right to subscribe for these 25,000 additional shares at \$20 a share merely because you individually had made an individual commitment to somebody else, was it?

Mr. BROWN. I made the individual commitment with the full approval of the board, as I told you in this discussion.

Mr. PECORA. Well, now, you cannot find a single thing in any minutes of a meeting of your board that proves that as a fact, can you?

Mr. BROWN. No; that is correct, except the testimony of the board members.

Mr. PECORA. Now, I want to suspend the examination of the witness for the purpose of examining Mr. Altschul.

TESTIMONY OF FRANK ALTSCHUL, NEW YORK CITY, CHAIRMAN OF THE COMMITTEE ON STOCK LIST, NEW YORK STOCK EXCHANGE

The CHAIRMAN. Mr. Altschul, will you come forward and be sworn? You do solemnly swear that you will tell the truth, the whole truth, and nothing but the truth regarding the matters now under investigation by this committee, so help you God?

Mr. ALTSCHUL. I do.

The CHAIRMAN. State your name and place of residence and occupation.

Mr. ALTSCHUL. Frank Altschul, 550 Park Avenue, New York City; banker.

The CHAIRMAN. What banking institution are you connected with, Mr. Altschul?

Mr. ALTSCHUL. Lazard Freres.

The CHAIRMAN. You are a member of the New York Stock Exchange?

Mr. ALTSCHUL. Yes, sir.

The CHAIRMAN. How long have you been a member?

Mr. ALTSCHUL. I think since about 1924, sir.

The CHAIRMAN. Are you connected with any of its committees?

Mr. ALTSCHUL. Yes, sir; I am a member of the governing committee; chairman of the committee on stock list. As chairman of the committee on stock list I am a member of the conference committee; also a member of the committee on wages.

Mr. PECORA. Mr. Altschul, how long have you been a member of the New York Stock Exchange?

Mr. ALTSCHUL. Since 1924 or 1925.

Mr. PECORA. And how long have you been a member of the board of governors of that exchange?

Mr. ALTSCHUL. Since October 21, 1925.

Mr. PECORA. And how long have you been a member of the stock list committee of that exchange?

Mr. ALTSCHUL. Since November 2, 1925.

Mr. PECORA. And are you chairman of the latter committee?

Mr. ALTSCHUL. Yes, sir.

Mr. PECORA. And have been since 1925?

Mr. ALTSCHUL. Since May 14, 1930.

Mr. PECORA. Have you been in attendance before this committee at the session which commenced this morning?

Mr. ALTSCHUL. Yes, sir.

Mr. PECORA. Have you heard substantially all of the testimony given by the preceding witness, Mr. Russell R. Brown?

Mr. ALTSCHUL. I think I have heard a large part of it, sir.

Mr. PECORA. Have you heard enough of it to indicate to you in your opinion that you became familiar through the medium of this testimony with the general plan and purpose under which and for which the American Commercial Alcohol Corporation made an additional issue of 25,000 shares of its capital common stock in May or June of 1933?

Mr. ALTSCHUL. I learned that from what I heard of the testimony before this committee.

Mr. PECORA. I show you Committee's Exhibit No. 11 of this date in evidence here and which is a printed copy of the application made to the New York Stock Exchange by and on behalf of the American Commercial Alcohol Corporation for leave to list 51,298 additional shares of its capital common stock. Will you look at it and tell me if you recognize that application as a copy of the one filed with the Stock List Committee of the New York Stock Exchange?

Mr. ALTSCHUL (after examining paper). I do, sir.

Mr. PECORA. Do you recall the proceedings that were had and the action that was taken by the Stock List Committee of the New York Stock Exchange upon that application?

Mr. ALTSCHUL. My recollection is that this application—that in the first instance the Committee on Stock List received from the executive secretary of the committee a report covering this application; that then later in the usual manner they received the application on a Friday afternoon, having an opportunity to go over it before the committee on Monday morning.

The usual procedure was followed in this case: The members went over the application. They saw the different things that were set forth in the application and were prepared to act on it at the meeting on Monday.

In the case of an application of this sort, which is for an additional listing of stock, the questions that are asked by the committee of the executive secretary, who has all of the documents in charge, are to determine whether all of the papers have been placed on file, whether the opinion of counsel is in order, whether the documents that have been filed with us substantiate the printed material that is in the listing application.

Having found nothing in the application that disturbed us in any way, the application was thereupon acted on.

Mr. PECORA. You have through the medium of the testimony given by Mr. Brown today and that you have heard, learned, or acquired knowledge of many facts which you did not heretofore possess with regard to this application, have you not?

Mr. ALTSCHUL. Yes, sir.

Mr. PECORA. Now, if that information and that knowledge of those facts that you gained through hearing Mr. Brown's testimony here today had been before your committee, had been in the possession of your committee or had been acquired by your committee prior to its acting upon the application, do you think your committee would have granted the application?

Mr. ALTSCHUL. If the information, as we understand the information that has been developed here today, sir, had been before us, it would have appeared that this stock was being issued for the purpose of supplying the company with working capital, not for the purpose of acquiring properties. Under those circumstances the question of the preemptive right of stockholders would have been immediately before us, and the application would have probably been turned down on that ground, if upon no other.

Mr. PECORA. Now I show you committee's exhibit no. 12 in evidence here, which purports to be a photostat copy of another application made to the New York Stock Exchange for an additional listing of 15,000 shares of the common stock of the American Commercial Alcohol Corporation, which is dated June 27, 1923. Will you look at it and tell me if you recall the filing of that application or one similar in form to it with your committee in June 1933?

Mr. ALTSCHUL. I could not say that I recall that specifically, sir; but I am sure that this application is an application that was filed in the usual way and was acted upon in the manner that I have indicated to you about the last.

Mr. PECORA. And that application also was granted, was it not, by your committee and subsequently by the exchange, acting upon the report of your committee?

Mr. ALTSCHUL. Yes, sir.

Mr. PECORA. If you had heard or if you had known that facts that you have learned today with regard to the issuance of the 15,000 shares referred to in that application that has last been shown to you, do you think your committee would have favorably acted upon the application?

Mr. ALTSCHUL. We would have raised the same question, sir, and taken the same action.

Mr. PECORA. What was the procedure followed by the stock listing committee of the New York Stock Exchange with regard applications to list additional shares of capital stock of a corporation whose shares had previously been listed?

Mr. ALTSCHUL. The usual procedure in a case of this sort—and that was the procedure followed in these two instances—was to study the application, to read the purposes of the issue as set forth there, to satisfy ourselves as far as we can that that represents a legitimate corporate purpose, to consider the legal opinion which supports the application, and then in case there is nothing that has come to our attention that puts us on notice of anything that we should inquire further into to grant the application.

Mr. PECORA. Was any independent investigation made by or in behalf of the stock list committee in order to determine whether or not the representations and the matters set forth in those two applications were in accordance with the actual facts?

Mr. ALTSCHUL. The opinion of counsel, which I think you have in the records we left with you, was considered, and it was found to be as far as we could see an unqualified approval by competent and reliable counsel who were familiar with the facts. In cases of that sort it has not been the practice of the stock exchange in the past to go beyond the action of the board of directors assuming responsibility toward their stockholders for acquisitions made in this manner and supported by the opinion of qualified and responsible counsel.

Mr. PECORA. The counsel that you referred to in the answer that you have just made was not counsel for the stock exchange, but counsel for the American Commercial Alcohol Corporation?

Mr. ALTSCHUL. Quite right, sir.

Mr. PECORA. Was it the procedure or practice or custom for the stock list committee in the past, or has it been in the past its custom, practice, and procedure, to make no independent investigation of the matters set forth in applications for listing additional shares of stock?

Mr. ALTSCHUL. Beyond the investigations I have just described to you in connection with the additional listings of stock, it has not been the practice of the stock exchange to go further.

If you want me to amplify it: When we have before us for consideration an initial listing of stock where the question that is before us is primarily the question of whether that is a stock that should be made available for a public market place at all, the examination is very thoroughgoing and exhaustive. When it comes to an additional listing of stock where a concern has passed the first test and is on the list, simply applies for stock on the basis of a determination of the board of directors to issue the stock for certain corporate purposes, it has not been the practice of the stock exchange to go on the theory that they should examine into what the business judgment was or what other reasons led the board of directors to take the steps they took, and this application as it was submitted to us, there was nothing on the face of it that struck us as suggesting that we ought to go further.

Mr. PECORA. The fact of the matter is then that the stock-list committee virtually took for granted that the statements and representations made in the applications in question here, exhibits nos. 11 and 12, were truthful and accurate statements of fact?

Mr. ALTSCHUL. In view of the fact that they were backed up by opinion of reputable counsel confirming the authority of the board to proceed in this matter, that is quite right.

Mr. PECORA. Do you think that affords proper measure of protection to the public that might deal in those shares once they are listed, those additional shares?

Mr. ALTSCHUL. I would like to answer that question this way, if I may, Mr. Pecora: In this particular case, from the evidence that we have heard here today I think that I would be only fair to the stock-list committee to say that we had been misled as to the purposes of this thing. I further believe—

Mr. PECORA (interposing). Don't you think that an independent inquiry into the matters set forth in those two applications might have prevented your committee from having been misled; that is, an independent inquiry might have brought to light for the guidance of the committee the facts that you have heard testified to here today by Mr. Brown?

Mr. ALTSCHUL. I would have to be prepared to admit that it might have brought them to light in this particular case; yes, sir.

Mr. PECORA. By the procedure that it is customary to follow the stock-list committee virtually precluded itself from making the kind of inquiry that would have developed the true facts, the actual facts; isn't that so?

Mr. ALTSCHUL. I prefer to deal with that rather more generally. The alternative would be to inquire into the business judgment, the business wisdom, the honesty, and propriety of every additional listing that is submitted to us with the approval of the board of directors. Now, we have never conceived that that was an obligation that we could either properly discharge or that would be proper for us to try to discharge, and the number of cases of this sort in the course of a long experience that have come to our attention are exceedingly few. We assume that the board of directors, by and large, are acting in the interest of the stockholders. If they bring us a statement covering an additional listing of some stock issue for a corporate purpose, in general our experience has been that the purpose set forth in the application is the purpose that actually guided the board in making the decision. I can see that in this case we have been misled.

Mr. PECORA. Were there not circumstances or allegations set forth in those two applications which, in and of themselves, should have operated to put the committee on notice that it ought to make an independent inquiry and not assume that the directors were acting in good faith with the stock exchange?

Mr. ALTSCHUL. Well, as I have read these applications over since this matter came to our attention, I do not see just what there is on the face of either one of them that should have led us to think that the acquisitions of these properties were not quite within the realm of the fair business judgment of the board of directors.

Mr. PECORA. There is a reference in those applications to an exchange of stock to be issued for the stock of other companies that, according to the face of the applications themselves, were companies very recently organized.

Mr. ALTSCHUL. They were companies very recently organized. In one case it was a company that was supposed to have taken over the business, I think, of a company that was previously organized. Isn't that the fact? And the other one it is quite true it was just recently

organized? In the case of the one that was just recently organized the value of the stock in the opinion of the directors was set forth in the application.

Mr. PECORA. As how much, as being how much?

Mr. ALTSCHUL. \$300,000.

Mr. PECORA. Which company was that?

Mr. ALTSCHUL. That is the Maister Laboratories.

Mr. PECORA. Yes. That company, according to the application itself, had been only very recently organized?

Mr. ALTSCHUL. Yes.

Mr. PECORA. Well, was it conceivable that it would have at the very outset assets worth at least \$300,000?

Mr. ALTSCHUL. In our experience that happens every day. A business that may have been conducted in private form and something new has been turned up, it is put into corporate form, and at the time of the corporation it already has a substantial value.

Mr. PECORA. Isn't that a circumstance that in and of itself, in your opinion now, should have put the stock list committee on notice and caused it or prompted it to make an independent inquiry or investigation of the matters set forth in the application?

Mr. ALTSCHUL. You mean the mere fact that these companies that they acquired had been recently organized?

Mr. PECORA. Yes.

Mr. ALTSCHUL. I would say that in the light of what we have heard today something could be said from that viewpoint, but as the thing was before us at the time, the mere fact of its recent organization was not a fact of such a nature that would put us on notice about anything at all.

Mr. PECORA. Well now, you know a Mr. L. Hasselbach, do you not?

Mr. ALTSCHUL. Yes, sir. He is in our office, office of the committee on stock list.

Mr. PECORA. What is he, an auditor?

Mr. ALTSCHUL. He is an examiner.

Mr. PECORA. And his services are utilized to make investigations or examinations of these applications for listings?

Mr. ALTSCHUL. That is right.

Mr. PECORA. And he makes a report or recommendation to the committee for its possible guidance?

Mr. ALTSCHUL. He makes his report to the executive assistant, who afterward makes his own report to us.

Mr. PECORA. The executive assistant is Mr. George Tirrell, isn't it?

Mr. ALTSCHUL. No; Mr. Hoxsey. Mr. Tirrell is one of the expert examining officers.

Mr. PECORA. I have here what purports to be a copy of a memorandum dated June 7, 1933, addressed to Mr. George Tirrell and signed by L. Hasselbach. This copy was furnished to us by the stock exchange at our request. Will you look at it and tell me if you recognize it as a copy of a report or memorandum made to Mr. Tirrell by Mr. Hasselbach for the use and guidance of the committee on stock list in connection with the application to list the fifty-one-thousand-odd shares of the American Commercial Alcohol Corporation?

Mr. ALTSCHUL. I do not recognize it. I have never seen it, but I do not question it. It is a document that has every appearance of

being the sort of communication that Mr. Hasselbach would have addressed to Mr. Tirrell.

Mr. PECORA. I want to offer that in evidence.

The CHAIRMAN. Let it be admitted.

(Memorandum dated June 7, 1933, from L. Hasselbach to George Tirrell, was thereupon designated "Committee Exhibit No. 15, February 15, 1934", and appears in the record immediately following, where read by Mr. Pecora.)

Mr. PECORA. The exhibit marked "Committee Exhibit No. 15" of this date reads as follows [reading]:

JUNE 7, 1933

Memorandum to Mr. George Tirrell:

American Commercial Alcohol Corporation Additional Common Stock

Application is presented by Mr. Page, Secretary of the company, 405 Lexington Avenue, Vanderbilt 3-7390.

Application is made to list 10,000 additional shares of common stock in exchange for 10,000 shares of common stock of Maister Laboratories, Inc., and 41,293 additional shares pursuant to an offer to stockholders to subscribe.

Maister Laboratories, Inc., was recently organized to acquire certain processes for the manufacture of vitamin yeast and other products from Dr. Hanns Maister. American Commercial will acquire all of the issued outstanding shares of the Maister Laboratories. It is stated in the application that the directors of American Commercial Alcohol valued the stock of Maister at more than \$300,000.

The company has also offered the common stockholders of the company the right to subscribe to additional shares of common stock at \$20 per share (par value) on a basis of one additional share for each five shares held. 10,000 shares to be issued for the Maister Company will also have the right to subscribe.

There doesn't appear to be any relationship between the manufacture of commercial alcohol and the manufacture of vitamin yeast and other products. Apparently for that reason a new corporation is created to handle this line of business. The proceeds from the sale of the additional shares of common stock will be used for paying off bank loans and providing funds for working capital.

(Signed) L HASSELBACH

Mr. ALTSCHUL. Yes, sir.

Mr. PECORA. Do you recall whether this memorandum was brought to the notice of yourself and the other members of the stock-list committee?

Mr. ALTSCHUL. Why, probably it was not. It would be a memorandum which would be one of the documents on the basis of which Mr. Tirrell, who apparently was acting for Mr. Hasselbach in this matter, would make his report to our committee.

Mr. PECORA. Was that in conformity with the general practice and procedure of the stock-list committee in making these applications for additional listings?

Mr. ALTSCHUL. In accordance with the general practice and procedure, the juniors who will do the studying will file with one of the executive assistants, and he may exchange memoranda with the executive assistants covering this point, and after the executive would digest all this material he would make a report to us, which would come to us at the time the application was passed on.

Mr. PECORA. Have you the report that was formally made to the committee?

Mr. ALTSCHUL. I think that was in the papers that we gave you this morning. I have not seen it. I do not have it.

Mr. PECORA. I show you what purports to be a memoranda with respect to the additional listing of 51,293 shares of common stock

of the American Commercial Alcohol Corporation. Will you look at it and tell me if that is the report that was formally made by the examiners of the stock-list committee to the committee and upon which the committee acted on an application for such listing?

Mr. ALTSCHUL. This is the report that was made, sir, and upon this report in connection with the listing application itself the committee acted.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted.

(Memorandum dated June 12, 1933, with regard to additional listing of 51,293 shares American Commercial Alcohol Corporation stock was thereupon designated "Committee Exhibit No. 16, Feb. 15, 1934", and appears in the record immediately following where read by Mr. Pecora.)

Mr. PECORA. The memorandum in question has been marked in evidence as "Committee's Exhibit No. 16", and reads as follows [reading]:

MEETING OF JUNE 12, 1933—COMMENT BY MR. TIRRELL

American Commercial Alcohol Corporation common stock \$20 par value (additional listing) 51,293 shares.

The stock covered in this application is to be issued as follows:

10,000 shares of common stock in exchange for 10,000 shares, the entire outstanding common stock, of Maister Laboratories, Inc, and

41,293 shares for subscription by stockholders at \$20 per share in the ratio of one share for each five shares held as of June 14, 1933. The 10,000 shares to be issued in exchange for Maister stock is included in the subscription offer. The proceeds of the sale will be used for the purpose of paying off bank loans and providing working capital.

The Maister Laboratories, Inc, was recently organized to acquire certain patented processes for the manufacture of vitamin yeast and other similar products from Dr. Hanns Maister. It is stated that American Commercial Alcohol Corporation values the stock of the Maister Company at more than \$300,000.

Although the production relationship between vitamin yeast and commercial alcohol is not entirely clear to me, it is stated that the company expects to derive a large profit from the sale of the dietary yeast which will be produced under the Maister processes

The common stock of the applicant company is quoted 32 to 32½.

There is no objection to the listing requested.

And it was upon the data just presented in evidence, plus the application itself, that your committee granted the application in this case?

Mr. ALTSCHUL. That is correct.

Mr. PECORA. Now, with regard to the application to list 15,000 additional shares dated June 27, 1933, which is before you, your committee followed the same procedure as it followed on the application of June 2, 1933?

Mr. ALTSCHUL. Yes, sir.

Mr. PECORA. Do you know what data the committee had before it other than the information set forth in the application itself that prompted the committee to grant the application?

Mr. ALTSCHUL. Whatever data the committee had before it beyond what is in the application itself, sir, is filed with you now. It is in the general data covering this particular transaction, and it includes among other things the legal opinion of counsel.

Mr. PECORA. Mr. Altschul, I show you what purports to be a photostatic reproduction of a memorandum relating to the application for the additional listing of the 15,000 shares of the American Commercial Alcohol Corporation common stock. Will you look at it and tell me if you recognize it to be a true and correct copy of a memorandum or report made by the examiners of the stock list committee to the stock list committee?

Mr. ALTSCHUL. I do recognize it, sir.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted.

(Memorandum dated July 10, 1933, in regard to 15,000 shares American Commercial Alcohol Corporation common stock, was thereupon designated "Committee Exhibit No. 17, Feb. 15, 1934", and appears in the record immediately following where read by Mr. Pecora.)

Mr. PECORA. The document which has just been received in evidence is marked "Committee Exhibit No. 17" of this date, and reads as follows [reading]:

COMMITTEE EXHIBIT NO 17

Meeting of July 10, 1933—Comment by Mr Tirrell

AMERICAN COMMERCIAL ALCOHOL CORPORATION

Common Stock, \$20 Par (Voting Additional Listing)-----15,000 shares

The stock covered in this application will be issued in exchange for 2,700 shares of 6% Cumulative Preferred Stock, \$100 Par, and 3,900 shares of the Common Stock, no Par, of Noxon, Inc, a Maryland Corporation. The total authorized capitalization of Noxon, Inc is 3,000 shares of Preferred, and 6,000 shares of Common. The acquisition represents a controlling interest in the Noxon Company

Noxon, Inc, is the owner of valuable formulae and processes for the manufacture of cleaner polish, floor waxes, household insecticides, etc, which are the property of one Ralph Nottebaum, Sr, of Short Hills, New Jersey. He is practically the sole owner of the Noxon Company

Because of the private nature of the business, no formal financial statements are available, but the assets to be acquired are regarded by the Directors of the applicant Company as of a value considerably greater than that of the stock which is to be issued.

The applicant Company made application early in June for the listing of additional shares. The financial statements provided with the current application are the same as those submitted in the earlier one.

There is no objection to the listing requested.

Do you know whether there were any other data or facts submitted to your committee than this memorandum that has just been read in evidence, and the listing application plus any opinion of counsel, that prompted your committee to grant the application?

Mr. ALTSCHUL. I am perfectly satisfied that there was nothing more than that submitted, sir.

Mr. PECORA. I assume that this memorandum marked "Committee Exhibit No. 17" was prepared by Mr. Tirrell?

Mr. ALTSCHUL. I do not know, sir.

Mr. PECORA. I judge so, from the fact that it bears the parenthetical statement reading "Comment by Mr. Tirrell."

Mr. ALTSCHUL. Yes.

Mr. PECORA. Mr. Tirrell says that Noxon, Inc., is the owner of valuable formulas and processes for the manufacture of cleaner polishes, floor wax, household insecticides, and so forth, which are the property of one Ralph Nottebaum, of Shorthills, N.J. Do you know how Mr. Tirrell reached the conclusion that these formulas and processes were valuable?

Mr. ALTSCHUL. He based that statement undoubtedly on information furnished in the listing application and such discussions as he may have had with the company in preparation of it.

Mr. PECORA. You notice that in his memorandum report to your committee Mr. Tirrell says also that because of the nature of the business no formal financial statements are available, but that the assets to be acquired are regarded by the directors of the applicant company as of a value considerably greater than that of the stock which is to be issued. In view of that comment or statement of Mr. Tirrell, don't you think the stock-listing committee was put on notice to make some independent inquiry as to the value of those assets of the Noxon company?

Mr. ALTSCHUL. In a case of this sort, where the issue is relatively small in relation to the total, while he would like to have had financial statements for the reasons advanced, as in this case here, if no financial statement should be furnished we would not have considered it essential. From what we have heard today we would be prepared to draw the conclusion that we ought to make in every case an effort to obtain financial statements of the vendor companies.

Mr. PECORA. But now, despite the fact that Mr. Tirrell said in this memorandum or report to your committee, that no formal financial statements are available, it would seem that there were financial statements available; and in connection therewith let me call your attention to the following memorandum for Mr. Tirrell dated July 5, 1933, signed by Mr. L. Hasselbach and attached to which is a so-called "pro forma" balance sheet of Noxon, Inc., as of June 27, 1933. Do you recognize that memorandum of Hasselbach to Tirrell with the accompanying pro forma balance sheet, as having been brought to the notice of your committee?

Mr. ALTSCHUL. I do not recognize it. I do not question it, but I am sure it was never brought to the attention of the stock-listing committee.

Mr. PECORA. We were furnished that copy of a memorandum, with the accompanying pro forma balance sheet, by the stock exchange.

Mr. ALTSCHUL. Quite right. I am sure it is a part of the records.

Mr. PECORA. I offer it in evidence as one exhibit.

The CHAIRMAN. Let it be admitted.

(A 2-page document dated July 5, 1933, and headed "Memorandum for Mr. Tirrell in re American Commercial Alcohol Corporation", etc., was received in evidence, marked "Committee Exhibit No. 18, Feb. 15, 1934.")

Mr. PECORA. The document which has just been received in evidence as committee's exhibit no. 18, reads as follows [reading]:

COMMITTEE EXHIBIT NO. 18

JULY 5, 1933.

Memorandum for Mr Tirrell.

In re American Commercial Alcohol Corporation Additional Common Stock. Application presented by Mr. Cecil Page, Secretary; 405 Lexington Avenue; telephone Vanderbilt 3-7390

Application is made to list 15,000 additional shares of common stock in exchange for 2,700 shares of 6 percent preferred stock and 3,900 shares of common stock of Noxon, Inc

Noxon, Inc. is a recently organized corporation which acquired formulae, processes, etc., for the manufacture of cleaner polish, floor waxes, and a household insecticide, machinery and equipment, etc.

American Commercial has acquired all the outstanding preferred stock and 3,900 shares out of 6,000 shares of the outstanding common stock of Noxon.

Noxon products have been manufactured and sold for a number of years by a predecessor corporation.

American Commercial made an application two or three weeks ago for the listing of additional shares. The financial statements in this application are identical with those published in the last application. I have requested the company to furnish a pro forma balance sheet or a balance sheet of the Noxon Company. Attached is a letter from the treasurer of the company giving reasons why financial statements of the predecessor corporation are not available.

L. HASSELBACH.

Mr. PECORA. And the pro forma balance sheet of Noxon, Inc., as of June 27, 1933, shows the following:

Notes receivable	\$270,000
Inventory	25,000
Machinery and equipment	25,000
Good will, licenses or processes	380,000
Total assets	\$700,000
Liabilities:	
Purchase contract payable	\$80,000
Preferred stock, \$100 par, authorized, 300,000 shares, less unissued outstanding 30,000 shares	\$270,000
Common stock, no par, 6,000 shares	\$350,000
Total liabilities	\$700,000

It says "Certified correct this 27th day of June 1933."

You say that this pro forma balance sheet was never brought to the notice of the stock list committee?

Mr. ALTSCHUL. Surely not, sir.

Mr. PECORA. Can you give any reason why that was not done?

Mr. ALTSCHUL. There are only two reasons. One is that a mistake was made in the office, and the other reason is that the balance sheet only came to our hands long after the action had been taken. I do not know the date of Mr. Hasselbach's first memorandum.

Mr. PECORA. July 5, 1933.

Mr. ALTSCHUL. The first one in which it was stated that no balance sheet was available, the one which you read a photostatic copy of.

Mr. PECORA. That had reference to the Maister Laboratories situation.

Mr. ALTSCHUL. I do not mean that; I mean the first comment you read of Mr. Hasselbach in regard to—

Mr. PECORA. It is here. It says [reading]:

I have requested the company to furnish a pro forma balance sheet or a balance sheet of the Noxon Company. Attached is letter from the treasurer of the company giving reasons why financial statement of the corporation are not available

Mr. ALTSCHUL. But there was an earlier comment that you read. I am trying to find out where the slip up occurred—the comment of Mr. Hasselbach in which he came to the conclusion that there was no objection to the listing. I do not remember which one that was.

Mr. PECORA. That had reference to the Maister Laboratories.

Mr. ALTSCHUL. Did you not read a comment in regard to Noxon from Hasselbach, an earlier one?

Mr. PECORA. No.

Mr. ALTSCHUL. I thought there was one.

Mr. PECORA. The memorandum identified as exhibit no. 18 is a memorandum addressed to Tirrell by Hasselbach. It is dated July 5, 1933. The report by Mr. Tirrell to the committee on this application for the listing of the 15,000 additional shares is dated July 10, 1933, 5 days after the date of Hasselbach's memorandum to Tirrell.

Mr. ALTSCHUL. As I say, the only explanation that can possibly be made is that either these reports that you have before you came into our office at some subsequent date—we will try to trace that—or if it was in there at the time, the memorandum to our executive assistant was not complete, and the material that would have affected our judgment was not in our hands.

Mr. PECORA. Let us assume that this pro forma balance sheet did not come to the attention of any of the employees or attaches of the stock-listing committee at the time that the committee acted on the application, which was apparently on July 10, 1933. When it was received, do you know why it then was not brought to the notice of the stock-listing committee?

Mr. ALTSCHUL. It should have been; there is no question about that.

Mr. PECORA. Do you know why it was not?

Mr. ALTSCHUL. I do not.

Mr. PECORA. This is the first time you have ever seen it?

Mr. ALTSCHUL. Yes, sir.

Mr. PECORA. Looking at it now, would it excite your suspicion if you had seen it before you acted?

Mr. ALTSCHUL. Without the slightest question.

Mr. PECORA. What are the circumstances that would have aroused your suspicion as you now look at this pro forma balance sheet?

Mr. ALTSCHUL. In view of the facts set forth in the application, the bobbing up in this balance sheet of \$270,000 of notes receivable would have been the first thing that would have struck us. The second thing would be the item of purchase contracts payable, \$80,000; and the balance sheet as a whole would have put us on notice that before there were a number of things that we would like to inquire into.

Mr. PECORA. Would you not particularly have liked to inquire into the valuation of \$380,000 under the item of goodwill, licenses, and processes?

Mr. ALTSCHUL. There is no question about that.

Mr. PECORA. You will note that in the memorandum of Hasselbach to Mr. Tirrell, dated July 5, 1933, and marked "Committee Exhibit No. 18" in evidence, the statement is made as follows:

Attached is a letter from the treasurer of the company giving reasons why financial statements of the predecessor corporation are not available.

And the letter apparently which was attached to this memorandum is the letter which I now show you [handing a paper to the witness]. A copy of that letter was introduced in evidence here this morning. Do you know whether or not you ever saw that letter before?

Mr. ALTSCHUL. I know I did not. I have not had a chance to read it. Are you going to read it to the committee?

Mr. PECORA. I will read it for your benefit. It is already in evidence. It was put in this morning when you were not here.

I will read it, but you need not put it in the record, Mr. Reporter. (Mr. Pecora then read committee exhibit no. 13)

Mr. PECORA (after reading exhibit no. 13). That you never saw before or never heard of before?

Mr. ALTSCHUL. No, sir; but I would assume, sir, that from the facts we got the impression from the background that it was just a normal business transaction, and therefore it was not drawn to our attention. When this thing [indicating] came in I do not know.

Mr. PECORA. By "this thing" you mean the pro forma balance sheet?

Mr. ALTSCHUL. Yes. It was enough to put anybody on notice.

Mr. PECORA. The letter which has just been read was marked in evidence this morning as committee exhibit no. 13.

Now, I want to show you another letter that was addressed, under date of July 1, 1933, to Mr. Louis Hasselbach, of the committee on stock list, New York Stock Exchange, signed by Cecil Page, secretary of the American Commercial Alcohol Corporation, which has been furnished to us as an original letter received by the New York Stock Exchange. Did you ever see that before?

Mr. ALTSCHUL. No, sir.

Mr. PECORA. Do you know whether or not that was ever brought to the notice of your committee in passing on this application of the American Commercial Alcohol Corporation?

Mr. ALTSCHUL. No, sir.

Mr. PECORA. I offer the letter in evidence.

The CHAIRMAN. Let it be admitted.

(Letter dated July 1, 1933, from Cecil Page, secretary American Commercial Alcohol Corporation, to Mr. Louis Hasselbach, was received in evidence, marked "Committee Exhibit No. 19, February 15, 1934", and appears in the record where read by Mr. Pecora.)

Mr. PECORA. The letter is marked "Committee Exhibit 19" and reads as follows [reading]:

COMMITTEE EXHIBIT No 19

AMERICAN COMMERCIAL ALCOHOL CORPORATION,
New York, July 1, 1933.

Mr. LOUIS HASSELBACH,

*The Committee on Stock List, New York Stock Exchange,
11 Wall Street, New York, N.Y.*

DEAR MR. HASSELBACH: Mr. Colby and I tried to get you on the phone this morning, but I understand you will be away until Monday.

We wanted to read to you, before mailing, the letter Mr. Colby was to write, and I wanted to give you my suggestion as to the revision of the text under Authority for and Purpose of Issue.

In order to save time I am enclosing Mr. Colby's letter as drafted, and also my suggestions for your consideration.

Will you kindly phone me at your convenience Monday morning and let me know if you desire any changes.

Thanking you for your uniform courtesy and cooperation that you have always shown us.

Sincerely yours,

(Signed) *CECIL PAGE, Secretary.*

Do the contents of this letter suggest anything to you, Mr. Altschul, with regard to the procedure followed by Hasselbach in behalf of the stock list committee?

Mr. ALTSCHUL. Quite frankly, it would suggest to me that he was following his normal procedure of trying to bring the text of the application into accord with the facts as he understood them; and I think I would like to add, sir, that as a matter of routine of the office this correspondence is only brought to our attention in exceptional cases where there seems to be something that requires special note.

Mr. PECORA. Do you recall an application made to the Stock Exchange to list shares, that is, an original application for original listing, of the shares of General Theatres?

Mr. ALTSCHUL. That takes me back a long time.

Mr. PECORA. Have you any present recollection of it?

Mr. ALTSCHUL. Yes; I have a recollection that there was such an application. I recollect that there was quite a lot of discussion in connection with it.

Mr. PECORA. Discussion where?

Mr. ALTSCHUL. In the committee. It was a troublesome application, as I remember it.

Mr. PECORA. Before the stock list committee?

Mr. ALTSCHUL. Yes, sir.

Mr. PECORA. The application was granted eventually, was it not?

Mr. ALTSCHUL. As I remember, it was, sir.

Mr. PECORA. Are you familiar with the testimony that was given before this committee—I believe it was in November 1933—by Mr. Harley L. Clarke?

Mr. ALTSCHUL. I am familiar with some sections. It is rather a voluminous document, and I have only gone through it very casually.

Mr. PECORA. Are you familiar with that portion of his testimony in which he referred to that particular application for the listing of shares of that company?

Mr. ALTSCHUL. No, sir.

Mr. PECORA. Are you familiar with the portion of his testimony in which he admitted here, in words or in substance, that the asset value of the company was marked up from \$4,000,000 and a fraction to upwards of \$24,000,000?

Mr. ALTSCHUL. I remember there was something of that sort said, but I am not familiar with the details.

Mr. PECORA. Original applications for listing I assume are given the most thorough kind of investigation before the stock is listed?

Mr. ALTSCHUL. Yes.

Mr. PECORA. Do you recall what investigation was given to that particular application?

Mr. ALTSCHUL. I am very much handicapped, because I did not have a chance to look this thing up to see what was done; but I

am sure there was an appearance or several appearances, according to my recollection, of Mr. Harley Clarke, and, of course, the affairs of the company were discussed rather fully. But I did not realize that that was going to be one of the topics of the day, and I am not prepared.

Mr. PECORA. When did Mr. Clarke's testimony to that effect first come to your notice?

Mr. ALTSCHUL. The testimony before the committee?

Mr. PECORA. Yes.

Mr. ALTSCHUL. My recollection is that I saw a transcript of the minutes of the meeting of the Committee on Banking and Currency and had a chance to look through it rather hurriedly, some parts of it, before it was in print. Since it was in print I have had a chance to look through it again.

Mr. PECORA. Do you recall coming across that part of his testimony wherein he admitted that the assets had been marked up in value from around \$4,000,000 to \$24,000,000, at the time they filed their application for the original listing of their stock with the stock list committee of the New York Stock Exchange?

Mr. ALTSCHUL. I have a general recollection of it, but not very detailed or completely satisfactory in order to answer any questions about it.

Mr. PECORA. When that testimony of Clarke, which was given last November, came to your notice did it not arouse in you a desire to find out, as chairman of the stock list committee, how it was that your committee, after a thorough investigation of that application for an original listing, approved it, although there had been a mark up in asset value of from \$4,000,000 to over \$24,000,000?

Mr. ALTSCHUL. The general history of the Fox Film and General Theatres Equipment Co. development was such that the committee was misled—

Mr. PECORA. Even when you learned through the testimony given here by Mr. Clarke last November that your committee had been misled into the approval of the application for the listing of the stock of a company which in its application showed assets worth \$24,000,000 which in reality were worth only about \$4,000,000, did not that arouse in you an intense desire to find out how your committee had been misled in that fashion?

Mr. ALTSCHUL. Of course the committee is guided by its desire to determine the facts in all these cases. I cannot say that this particular revelation had impressed us with any new desire to look into that particular thing which was a matter of history; but a desire to make our investigation more satisfactory in the future than in the past. When the damage was done I am afraid we did not go into it.

Mr. PECORA. It was a great American patriot who said that we can only judge the future by the light of the experience of the past. When through the medium of Clarke's testimony you learned that your committee had been deceived in that case into the approval of an original application for the listing of shares of a corporation allegedly worth and having assets worth \$24,000,000, when in reality they were only \$4,000,000, did you not seek to find out how you had been misled, so that you could guard against such deceptions in the future?

Mr. ALTSCHUL. I can answer that I do not know of any positive steps taken purely as a result of that revelation. We were constantly in process of trying to protect against misleading statements. We have a few bad experiences in the course of a year which cause us a great deal of concern.

Mr. PECORA. In connection with the testimony that this committee received last November with regard to that application for original listing there was put in evidence here a memorandum prepared by Mr. Murray W. Dodge, who at that time was an officer of one of the security affiliates of the Chase National Bank; and that memorandum, or letter, appears at pages 3528 and 3529 of the printed minutes of the hearings before this committee.

Mr. ALTSCHUL. Yes; I remember that.

Mr. PECORA. Let me read that letter to you. Do you recall the letter?

Mr. ALTSCHUL. Yes; I remember that.

Mr. PECORA. Well, let me read it to you again. It is dated October 14, 1929, and reads as follows [reading]:

Mr HARLEY L CLARKE,

President Utilities Power & Light Corporation, Chicago, Ill.

DEAR HARLEY Enclosed is the latest list of members of the stock exchange committee on stock listing. Of course, I could be of assistance to you if Charlie Sargent were here. He is on the board of directors of Chase Securities Corporation, and has been very helpful to us in the past. Unfortunately, however, he is abroad. He sails the end of this week and will not be back until the end of next week. We may be able to do something with Ruxton of Spencer Trask & Co., but I do not like to ask favors of them until we get into a tough position. Frank Altschul of Lazard Freres is the one I called up this morning. He will probably be back for next week's meeting, and I think will be friendly and helpful. Gibson, the chairman, is the most important one, but we do not know him very well. He is a hard nut to crack. I am always fearful in cases like this that we would do more harm than good pressing the matter too hard. I do feel that when the right time comes, whether it is a week from today, or 2 weeks from today, after Charlie Sargent is back, that if you appear before them and I go with you we may be able to push the matter over.

Enclosed find also memorandum given me by Tim Edwards. I think this is the one you are working on. If so, do you want me to call Mahoney off, or can we make use of him in some way? This conversation took place while I was out West.

Sincerely yours,

M. W. D.

Which are the initials of Murray W. Dodge.

The listing application, Mr. Altschul, to which this memorandum refers, was that very listing application by which your committee apparently was deceived as to the asset value of the company which sought to list its shares.

Mr. ALTSCHUL. Mr. Pecora, may I interject something here? I think my testimony would be unfair to the committee if I did not say that Mr. Haskell, who is here, informs me that Mr. Hoxsey, our executive assistant, has been making an exhaustive study of the situation with regard to the General Theaters Equipment to see what steps can be taken to guard against such things in the future.

Mr. PECORA. Apparently Murray Dodge and Harley Clarke appeared before your committee back in October 1929, and, to borrow the picturesque language of Mr. Dodge, pushed the matter over. Is that so?

Mr. ALTSCHUL. The listing application was granted.

Mr. PECORA. The listing application was granted, so the matter was pushed over.

Mr. ALTSCHUL. I prefer not to indorse Mr. Murray Dodge's language in that regard.

Mr. PECORA. Unfortunately, it is his language and it is in the record, and I am bound by it. Apparently, from this memorandum of Dodge, or letter of Dodge to Clarke, he had previously spoken to you about this application. Do you recall whether he had or not?

Mr. ALTSCHUL. I think it is quite possible he had.

Mr. PECORA. The reason I say that apparently he had is because in this letter he says [reading]:

Frank Altschul, of Lazard Freres, is the one I called up this morning. He will probably be back for next week's meeting, and I think will be friendly and helpful.

Do you recall what he said to you that caused him to tell Harley Clarke in this letter that you probably would be friendly and helpful to the granting of the application?

Mr. ALTSCHUL. I have no recollection of it at all. I take it for granted that I was polite.

Mr. PECORA. What was it you said a moment or two ago that you had just been informed, that the exchange had been looking into the deception that was practiced on it in October 1929 by Harley Clarke?

Mr. ALTSCHUL. Mr. Haskell tells me that when this testimony was made up Mr. Hoxsey immediately undertook a study of the testimony and was going over it and comparing it with our records to see what lessons could be learned from the facts in the case. Mr. Hoxsey would be here today, but he happens to be on his way to Rio de Janeiro for a vacation, and will not be back for a few weeks.

Mr. PECORA. Mr. Clarke's testimony was given here last November, or about 3 months ago. Has not that investigation been completed?

Mr. ALTSCHUL. I do not know when the printed record of it was available. I do not know when Mr. Hoxsey was in a position to start his study.

Mr. PECORA. As I recall it, Mr. Altschul, one or more of the New York newspapers published this testimony practically verbatim the day after it was given here.

Mr. ALTSCHUL. What conclusions Mr. Hoxsey may have reached as a result of his study I am not in a position to inform you today.

Mr. PECORA. Is Mr. Hoxsey a member of the committee?

Mr. ALTSCHUL. Mr. Hoxsey is the executive assistant. He is the right hand of the committee.

Mr. PECORA. No report has been made by him to you as yet, as chairman of the committee, with regard to the investigation he undertook to make after becoming familiar with Harley Clarke's testimony?

Mr. ALTSCHUL. No, sir.

Mr. PECORA. Are you acquainted with the fact that early last August I personally asked Mr. Whitney, president of the New York Stock Exchange, to make an inquiry, through the facilities and authority of the exchange, into the trading that had taken place on the floor of the exchange on the so-called "alcohol stocks", including the American Commercial Alcohol Corporation issues?

Mr. ALTSCHUL. Yes, sir. I am familiar with that fact.

Mr. PECORA. In connection with that inquiry which the exchange made, didn't it occur to you, or to any other member of the stock-list committee, or to the board of governors of the exchange, to inquire also into the applications for the listing of these additional shares last year by the American Commercial Alcohol Corporation?

Mr. ALTSCHUL. We had no information as to what the purpose of the investigation was. We assumed it was purely an investigation of the speculative developments in the market, which is a matter that comes up from time to time in various departments of the market. We did not connect that with this application. We did not know it had any bearing on it.

Mr. PECORA. The statement has been made in the past, I believe, either in behalf of the stock exchange or its stock-list committee, that the committee had also been deceived on the occasion of its granting the application for the listing of the Krueger and Toll stock on the exchange?

Mr. ALTSCHUL. There is no question about that.

Mr. PECORA. Do you know how that deception was practiced?

Mr. ALTSCHUL. Yes; I do know, but it is a very long story. I do not know whether it is necessary to take your time with it.

Mr. PECORA. Has the committee made a complete investigation into that situation?

Mr. ALTSCHUL. We have made a very complete investigation into the Krueger and Toll situation. The basis for the deception in that case was the outstanding personal reputation of Ivar Krueger, who was considered all over the modern industrial world as one of the outstanding constructive forces of the post-war world. Even after his death the London Economist had laudatory articles about the tragedy of Ivar Krueger, and how this great constructive force that had been going on, and doing such wonderful things, had disappeared from the picture. Nobody had the remotest conception of Ivar Krueger's real activities. It was just one of those things that occasionally happens in the world, unfortunately, but it occasionally does.

Mr. PECORA. In other words, it is another one of those instances where the exchange took for granted matters set forth in an application because of the identity of some great personality with the security.

Mr. ALTSCHUL. In the case of Ivar Krueger we had before us applications which, in the manner of applications for foreign companies, were unaudited in the case of Krueger and Toll. We have drawn from that the very obvious conclusion that unaudited statements should no longer be accepted by the committee, and rules to that effect have been incorporated in our procedure. Beyond that, we had the case of International Match Co., which was another one of the Krueger group where, curiously enough, statements were audited by reputable American accountants.

In that case we investigated, and we found that the trouble had come in that it was a holding-company audit that they submitted, and that they had never gone in themselves and audited the subsidiaries of the holding company. Obviously, in that case we also drew some important lessons for the future.

Mr. PECORA. But none of those lessons were of a character that caused your committee, in June and July of last year, when it had before it for its determination, judgment, and decision these applications for listings of additional shares of the American Commercial Alcohol Corporation, to inquire into the situation where not even a balance sheet of a corporation whose shares were to be acquired in exchange of some of the new shares which the American Commercial Alcohol Corporation sought to list was inquired into?

Mr. ALTSCHUL. I am not trying to go into the American Commercial Alcohol case at the moment. The cases were not analogous, and the lessons of the Krueger & Toll case would not be the lessons that would be applicable in this particular instance. However, in this particular instance I think there is a lesson to be drawn from it.

Mr. PECORA. What is that lesson, as you now see it?

Mr. ALTSCHUL. In connection with the additional application for the acquisition of ownership of the stock of another corporation, the balance sheet and the income account, if any, of the vendor corporation should be incorporated in the listing application. You have drawn to my attention this document [indicating]. If this had been in the listing application, the action on it would have been very different. The lesson is perfectly obvious.

Mr. PECORA. Mr. Altschul, that pro forma balance sheet you have referred to was received by the stock exchange sometime, and was never brought to the notice of the stock list committee. Do you know the reason for that?

Mr. ALTSCHUL. No, sir.

Mr. PECORA. Does not that indicate a laxity or weakness in your procedure somewhere along the line?

Mr. ALTSCHUL. As I said before, that is capable of two explanations, neither of which is satisfactory. The first explanation would be that this balance sheet reached us after the event, sometime after the event, in which case it should still have been drawn to the attention of the committee. The other explanation is that the balance sheet was actually in the hands of the staff at the time when a memorandum was prepared to the effect that no balance sheet was available, in which case a mistake was made. There is no question about that.

Mr. PECORA. While we are on this subject of the deceptions that have been practiced on the stock list committee in the past, let me read to you a very brief extract from a speech delivered by Mr. Richard Whitney, president of the New York Stock Exchange, before the Industrial Club of St. Louis and the Chamber of Commerce of St. Louis and over the Nation-wide network of the National Broadcasting Co. on September 27, 1932, a printed copy of which I have before me. Here is what he said [reading]:

I say, without fear of contradiction, that our listing requirements are the most searching in the world.

Mr. ALTSCHUL. I think that is correct, sir.

Mr. PECORA. Do you subscribe to that statement?

Mr. ALTSCHUL. Compared with the listing applications on the London Stock Exchange, the Paris Stock Exchange, or the Berlin Stock Exchange, which are the only three that come into play, there

is no question that our listing requirements are the most searching in the world.

Mr. PECORA. Did they apply these searching methods in connection with the application to list the Krueger & Toll securities?

Mr. ALTSCHUL. Are you talking about the conditions abroad?

Mr. PECORA. No; on the New York Stock Exchange.

Mr. ALTSCHUL. They probably applied the methods they always applied. I tell you in that case we were deceived. I have here, in case it is of interest to you, a rather lengthy document, which I do not think would be of very much interest, showing you the general tightening up in our procedure from 1926 to 1933. It is constantly in process of development, on the basis of experience. I do not know of any experience in any field that is going to forearm you against every new kind of deceit. With the enormous number of applications acted upon when they are put on the floor, the cases of deceit are rather few, and we try to improve our procedure every time something new comes to our attention, but the trouble about those things is that there is always somebody who is smart enough to try something new, and if he tries something new that has never been tried before, even with the most rigid requirements in the world, he may find some way of fooling you. Whenever that happens, we try to profit by it. I think Mr. Whitney's statement that our requirements go far beyond those of any other market place in the world is unquestionably so.

Mr. PECORA. Last November your committee learned, in an informal way through the medium of Harley Clarke's testimony here, the deception that had been practiced in October 1929 upon your committee.

Mr. ALTSCHUL. Yes.

Mr. PECORA. It has not yet found out how that deception was practiced?

Mr. ALTSCHUL. I am not familiar with the details.

Mr. PECORA. Although 3 months have elapsed since that time?

Mr. ALTSCHUL. I am not familiar with the details of Harley Clarke's practice, but I understand Mr. Hoxsey is familiar with it. Mr. Hoxsey is our expert on accounting matters, and whatever lessons he has learned from that he is undoubtedly applying in his day's work.

The CHAIRMAN. Are you familiar with the listing requirements on the London, Berlin, and Paris exchanges?

Mr. ALTSCHUL. Yes, sir. They are very casual in nature. In London, as far as I remember it, under the British companies act a certificate has to be filed at Somerset House covering the major particulars of the company in a very general and sketchy form. The listing requirements in Paris really do not exist. The Agents de Change get together and make up their minds that a security is going to be put on the list or is not going to be put on the list. That is about all there is to that. In Berlin, also, there is no printed document that gives the information. Furthermore, in all the continental centers the audited report is almost an unknown instrument. So that, while I am the last one to argue that we have reached the end in developing our methods, we have gone very much further than any other stock exchange has gone. I say that without the slightest hesitation.

Mr. PECORA. There was a third application filed by the American Commercial Alcohol Corporation, which I have not time to inquire about now.

Mr. ALTSCHUL. I can tell you this much about it. That was an application the listing of which was authorized on official notice of issuance. The procedure would be that when the stock was going to be issued for the purposes covered by the application, the transfer agent would inform us, and if we found that there were no impediments in the way of the issue, we would tell the registrar he could register the stock. After hearing the evidence that was brought before you today, as you can imagine, we were much disturbed about it, and we took steps to advise our office in New York that that permission should not be given, pending subsequent developments.

Mr. PECORA. I want to go into that tomorrow morning.

There is one more thing I want to call to your attention before we adjourn. Is it part of the custom and procedure of the stock-list committee, in passing upon applications for additional listings, to require an officer of the company making the application to fill out a questionnaire?

Mr. ALTSCHUL. It is.

Mr. PECORA. I show you what purports to be an original questionnaire filled out by the American Commercial Alcohol Corporation, by Guy I. Colby, as its treasurer, dated June 2, 1933. Will you look at it and tell us if that was the questionnaire that your committee received as part of the application?

Mr. ALTSCHUL (after examining paper). No doubt about it.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted.

(Questionnaire June 2, 1933, American Commercial Alcohol Corporation to listing committee, New York Stock Exchange, was received in evidence, marked "Committee's Exhibit No. 20", Feb. 15, 1934, and portions thereof were subsequently read into the record by Mr. Pecora.)

Mr. PECORA. There is just one question and answer on this questionnaire that I want to read to you. The questionnaire is marked "Committee's Exhibit No. 20." Question no. 2 reads as follows [reading]:

Are there within your knowledge any syndicate or concentrated holdings of this security

The answer is "No."

Today Mr. Russell R. Brown testified that there was a syndicate formed on May 31, 1933, and that there was a pool operation formed.

Mr. ALTSCHUL. Also that there were concentrated holdings.

Mr. PECORA. That there were concentrated holdings vested in about four officers and directors of the company, amounting to approximately 50 percent of the total outstanding capital common stock. So that it would appear that that answer was incorrect, if Mr. Brown's testimony was correct.

Mr. ALTSCHUL. There is no doubt about it.

The CHAIRMAN. We will now take a recess until 10:30 tomorrow morning.

(Whereupon, at 4:40 p.m., Thursday, Feb. 15, 1934, an adjournment was taken until tomorrow, Friday, February 16, 1934, at 10:30 a.m.)

NEW YORK, N Y, *February 10, 1934*

HON DUNCAN U. FLETCHER,

Chairman Senate Committee on Banking and Currency

The courage and constructive statesmanship of the highest order manifested by you and your colleagues and counsel in inaugurating this epochal reform merits the profound gratitude and enthusiastic acclaim of every right-thinking citizen. I wish to express my sincere tribute

ARTHUR M WICKWIRE

HON DUNCAN U FLETCHER,

*Chairman Committee on Banking and Currency, United States Senate,
Washington, D C*

DEAR SENATOR FLETCHER: Congratulations to you and your conferees for the good job done in the proposed "National Securities Act of 1934" introduced by you in the Senate last Friday

While the bill is broad in scope, there are two or three phases, in my judgment, which should be incorporated in any regulatory law controlling stock exchanges and their member brokers

May I make the following suggestions

First, incorporate in section 6 (B) provision that margins must be based on the cost price of issue, so as to prohibit basing margin on amount of broker loans, known as debit balance (I wrote you regarding this trick last October 3)

Second, prohibit marginal trading in all issues quoted under and at \$10 a share (This will protect the man whose capital resources are limited to a few hundred dollars A case in point came to my knowledge last week A man whose sole capital was \$300, bought 100 shares Chicago & Northwestern on margin at \$6 The price dropped to 5% in 36 hours He was called for \$125 additional margin Unable to produce, he was sold out Of course, he was a fool But it is from the large army of fools totally ignorant of the odds against them that certain types of member houses of the New York Stock Exchange and other exchanges derive their largest income just as does the gambling houses thrive off the "piker player."

Third, prohibit brokers from borrowing stocks, instead of actual buying for the customer's account, and pocketing the larger share of the deposited margin, after paying interest on the stock loan, which I suspect was done in the case cited above

If the greatest number of our people who are inveigled into marginal trading in stocks are to be protected against this most damnable and destructive form of gambling, then the marginal requirements should be placed at the highest limit, and issues selling at specified minimum price be restricted from marginal trading

It is because of the rich pickings from margin trading that practically all stock brokerage houses discourage outright buying orders from their customers, because from those orders the broker gets only his commission

Unless the "margin player" has large available resources for additional marginal requirements, 7 out of every 10 margin traders are wiped out

By no stretch of the imagination or any logical reasoning can margin trading be defended as fair speculation. It is fundamentally gambling in its worst phase

It is to be hoped that every national legislator will stand fast and fight for the most drastic regulatory measure, despite the strenuous opposition which will be leveled against its passage by the interests that profit the most from the now most indefensible racket

With highest esteem and the hope you will, with others, make a herculean fight to at least curb this form of racketeering,

Sincerely and cordially,

WILLIAM A GORDON.

FEBRUARY 12, 1934.

DAHLEBENDER Co.,
New York, February 10, 1934.

Hon. Senator DUNCAN U. FLETCHER,
Chairman Senate Committee on Banking and Currency,
Washington, D C.

DEAR SIR: More power to you and to the people back home who sent you to Washington. Honest brokers certainly have nothing to fear from the anticipated stock market bill and the investors throughout the country have everything to gain. It does appear to me that Mr. Roosevelt is more interested in those who do the investing than in those who merchandise the securities, and this is as it should be. I am a Wall Street man and make my livelihood here in the Street trading for my clients in but one stock, namely, General Electric common, listed on the New York Stock Exchange. I do believe that many others on the Street, like myself, want to see the public get a square deal in the market.

I merely trade for my clients; I do not take part in any pools, do not match any orders, do not wash any sales, do not give any market tips, do not manipulate any stocks, do not take any options on any stocks, do not use any stop orders. All of my transactions are executed through New York Stock Exchange houses with whom I have my accounts. I am merely enclosing a copy of my agreement with my clients so as you can see for yourself just what I do do and what I don't do. This agreement was compiled for me by a very able attorney, by name Mr. Carl Ehlerman, of Ehlerman & Crawford, at 42 Broadway, New York City. Mr. Ehlerman is a friend and college classmate, I believe, of our President, Mr. Roosevelt.

I shall be very happy to reveal the names of my clients if you wish and you can see for yourself what we have accomplished under the present administration, and it could not have been accomplished under the previous administration because the confidence was not there. I honestly believe that this bill will restore even more confidence than ever. To be certain, it will no doubt reduce trading and turn over in the beginning, but in the long run it will bring more money from the little fellow into American securities. We little fellows just hope and pray that God will spare this administration and keep them with us for a long time. More power to you.

Very respectfully yours,

GROVER C. DAHLEBENDER.

DAHLEBENDER & Co, Inc.,
42 Broadway, New York City.

DEAR SIR: I authorize you to trade for me in the common stock of the General Electric Company as follows:

1 Herewith I pay you the amount set opposite my name. Others have signed or will sign, similar authorizations for varying amounts. All transactions are for all, proportionately, on basis of amount signed for, with adjustment as to earlier signatures, plus or minus, for transactions made before respective signature. The total signed for by all shall not exceed seventy-five thousand dollars (\$75,000)

2. You are to determine in your sole discretion, when to buy, and whether outright or on margin, and when to sell, including short sales, and that when any purchase is made on margin, or any short sale, the total margin including previous margin transactions not completed, shall be at least 50%, though it might later fall below that according to market fluctuations.

3 Trading will be in your name. You are to keep detailed accounts, to exhibit them to me on request, to furnish daily statement of all transactions, but collectively, for the day, for this and similar authorizations, and to render a complete statement, collectively, at the end of each month. All securities are to be held by you or Stock Exchange firms selected by you, but subject to their customary terms, including usual right of such firm to hypothecate.

4. Upon closing my account, (a) any loss shall be borne by me and none by you, but I shall not be required to pay in more than the amount I am now paying and, if the final accounting for my whole account, after deducting profits paid me, shows a loss in excess of the amount I am paying in, you will bear the excess; (b) net profits shall be divided 75% to me and 25% to you. We pay our own office expenses, but transfer stamps and Stock Exchange com-

missions and any loss through failure of a Stock Exchange firm, are expenses or losses of the account, and are deductible before determining profits. Distribution of profits, from time to time, is considered desirable but is not required.

5. Profits include trading profits, dividends stock dividends, rights and all other profits on my account, but any loss to me in a prior accounting under this authorization shall first be deducted. You receive your share in any partial distribution of profit without responsibility to repay should there be a subsequent loss.

6. I may terminate my account on written notice to you and purchases and sales to close my account shall be made not later than the day of receipt of my notice, plus one additional day on which the Exchange is open, such transactions being for me (and not proportionally for all) You may also terminate all accounts under this and similar letters any time. Upon any such closing, a final account shall be promptly rendered me and payment and delivery made accordingly.

Yours very truly,

(Date) (Name and address) (Amount)

I approve the foregoing (1934).

We accept the foregoing and agree to its terms (1934).

DAHLBENDER & COMPANY, INC.

By _____

752 WEST END AVENUE,

February 12, 1934.

MY DEAR SENATOR FLETCHER: Congratulations! If anything, the proposed stock-market legislation is not drastic enough.

The stock market has been and always will be (unless the stocketeers are curbed) the greatest single source of misfortune and disaster in the history of the American people. The professional gambler and his prostitute broker perform no economic function, in spite of their rationalization about "making a marker" and "minimizing fluctuations." Actually is it value that attracts them? No; it is technical position, the possibilities for profit. They exploit an essential market place with the poker player's economic motive—profit through disservice. Indeed, they cannot profit except through the frailty of human nature. They must have fools to work on or they cannot make a living.

Small wonder they are up in arms against this vital legislation. Are they expected to go into honest toil? Are they to be compelled to work for a living? Are they no longer to be permitted to get together and run a small issue up and unload on pathetic suckers? Is the Government and "politics" going to spoil that nice game they have been playing with impunity for so long? Not if they know it. They have instructed all their help to write letters to Washington complaining that they will lose their jobs if the bill goes through. But do they ever think of the hundreds of thousands who have lost their small pittances and savings through this degradation of an essential economic function of security transfer?

Hew to the line, Senator. Put real teeth into this act. Let's have places where we can buy and sell shares of stock as business men, not common crap shooters. Let's prevent the country, my sons and daughters and yours, from ever being drawn into the gambling vortex again. Let's back up the President in his enunciation of caveat vendor. Let us forbid or tax away the fruits of cupidity.

Don't be misled by the press which opposed the securities act because it would curtail their financial advertising, and who now oppose this legislation because it may do the same. The great, vast, preponderant majority of the people want this legislation. The sound, conservative, mature business man wants it. The country wants it and expects it.

In closing, I am sorry that the dice-throwing floor trader was not covered by a sliding scale of taxes depending upon the time interval in the consummation of trades. That would have been a splendid thing, but probably will be considered later.

With kindest wishes,
Cordially yours,

GEORGE D. HIRST.

HON. DUNCAN U. FLETCHER, BROOKLINE, MASS., February 12, 1934.
United States Senate, Washington, D C.

DEAR SIR: As an owner and purchaser of securities and having no interest in any brokerage or investment business, I wish to inform you of my convictions that the proposed clause in the Fletcher stock exchange regulation bill requiring "60 percent margin, etc.", will prove a mistake and will result in the safety of investors being less secure than with the present regulation.

The proposed clause will limit the borrowing so materially that the tendency will be to buy much nearer the limit. This would result in distress selling with smaller market fluctuations.

I would respectfully suggest the present margin regulation, 50 percent on accounts under \$5,000, and 30 percent over that figure.

Very truly,

I. R. EDMANDS.

HON. DUNCAN U. FLETCHER, JACKSONVILLE, FLA., February 12, 1934.
United States Senate, Washington, D.C.

MY DEAR SENATOR FLETCHER: I have taken the liberty of sending you a night message, copy of which is enclosed.

I am informed that when a member of the stock exchange, or broker, makes a loan to a customer, they require the customer to give them written permission to hypothecate his securities to any extent that the member or broker may see fit.

The effect of this could be, to illustrate, a customer might borrow 25 percent of the value of his securities and the broker could pledge such securities for 75 percent of their value, 50 percent of which would be for his own benefit. In the event of the insolvency of the broker, the customer would lose his stock unless it was so identified and so separated from the assets of the broker, and the loan on same restricted to the amount of the loan to the customer, then the customer could pay the amount of his loan and redeem his stock.

I am sure that you will understand exactly what I mean, and, if possible, amend your bill so as to protect the customer as far as possible.

With kindest personal regards, I am

Very truly yours,

R. V. COVINGTON.

COMMITTEE EXHIBIT No. 11 FEBRUARY 15, 1934

Francis E. Fitch (Inc), 188 Pearl St., New York.

A-10073

COMMITTEE ON STOCK LIST
 NEW YORK STOCK EXCHANGE

AMERICAN COMMERCIAL ALCOHOL CORPORATION

(An operating and holding company organized under the laws of Maryland,
 April 19, 1928)

COMMON STOCK (\$20 PAR VALUE)

Application to list additional Common Stock:

	Shares
Additional listing.....	51, 293
Authorized by Charter.....	375, 000
Previously authorized to be listed.....	196, 468
Outstanding June 2nd.....	194, 748
Total applied for.....	247, 761
Authorized by Directors.....	May 31, 1933

CAPITAL SECURITIES

Stock	Par value	Number of shares			
		Authorized by charter	Authorized for issuance	Previously listed	Outstanding
Class of stock:					
7% cumulative preferred stock.....	\$100	1 16, 024	None	None	None
Common stock.....	20	375, 000	247, 761	194, 748	194, 748

1 Original authorization of Preferred Stock was 40 000 shares. 23,976 were issued. All retired on February 1st, 1930 whereby the authorized Preferred Stock was reduced by that amount.

Neither the Company nor its subsidiaries have any funded debt.

NEW YORK, N. Y., June 2, 1933.

Referring to their previous applications, and especially to A-9904, dated April 21, 1932, American Commercial Alcohol Corporation (hereinafter called the "Company"), hereby makes application for the listing on the New York Stock Exchange of

10,000 shares of the Common Stock of the Company of the par value of \$20 per share, on official notice of issuance, in exchange for 10,000 shares of the common stock of Maister Laboratories, Incorporated, of the par value of \$20 per share; with authority to add

41,293¹ shares of the Common Stock of the Company of the par value of \$20 per share, upon official notice of issuance thereof pursuant to offer to stockholders to subscribe to such additional stock; making the total amount applied for

247,761 shares (of a total authorized issue of 375,000 shares).

All of said shares of the Common Stock will be, when issued, full paid and non-assessable, with no personal liability attaching to holders thereof.

AUTHORITY FOR AND PURPOSE OF ISSUE

At a meeting held May 31, 1933, the Board of Directors authorized the issuance of 10,000 shares of the Common Stock of the Company of the par value of \$20 per share in exchange for 10,000 shares of the common stock of Maister Laboratories, Incorporated, of the par value of \$20 per share, which will then be the only issued and outstanding stock of the latter Corporation. Maister Laboratories, Incorporated, a Maryland corporation, is the owner of valuable processes acquired from Dr. Hanns Maister for the manufacture of vitamin yeast and other products. The Directors of American Commercial Alcohol Corporation at their said meeting valued this stock at more than \$300,000.

At said meeting the Board also authorized the offering to Common stockholders of the Company of the right to subscribe for additional shares of the authorized but unissued common stock of the Company at the price of \$20 for each share subscribed for, in the proportion of one additional share for each five shares held by common stockholders of record at the close of business on June 14, 1933, all subscriptions upon such offerings accompanied by payment in full in New York funds to be made at the office of the City Bank Farmers Trust Company, 22 William Street, New York City, New York, on or before 3 P. M. July 5, 1933. Said offering will be based on the 194,748 shares of Common Stock outstanding, the 10,000 shares authorized for issuance in exchange for common stock of Maister Laboratories, Incorporated, and any additional shares which may be issued on or prior to June 14, 1933, pursuant to the exercise of stock purchase warrants outstanding in connection with the original bond issue of the Company.

The proceeds of the issue and sale of the said additional Common Stock offered to stockholders, are to be used for the purpose of paying off bank loans, and providing funds for working capital.

To evidence such subscription rights, the Board of Directors at said meeting authorized the issuance to Common stockholders of record at the close of business June 14, 1933, of subscription warrants registered in the name of the stockholder for the full number of shares to which his holdings at the close of business on June 14, 1933, entitle him to subscribe, and fractional warrants representing any fractional interest in his subscription rights. No fractional shares will be issued. Fractional interests in the additional stock will be represented by Scrip. Such Scrip shall be non-dividend bearing, shall confer no voting rights, shall be exchangeable in round amounts for shares of the additional stock and shall be void at 3 00 o'clock P. M. Daylight Saving Time, on July 5, 1935.

Subscription rights evidenced by the warrants issued to Common stockholders will terminate at 3 o'clock P. M. on July 5, 1933 and warrants will become null and void at that time.

Arrangements have been made for the underwriting of this offer, for the consideration of \$1 per share.

BUSINESS

The Company is, and its predecessors were, engaged in the business of manufacture and sale of alcohol for commercial purposes. Under a ruling by the United States Treasury Department dated January 21, 1928, industrial alcohol is now produced by the various manufacturers according to definite quantity allotments. The Company at the present time has permits (including permits held

¹ 344 shares of this number are issuable on subscription to the extent that holders of stock purchase warrants, who are entitled to buy 1,720 shares of Common Stock, may purchase such stock on or before the close of business on June 14, 1933.

by American Commercial Alcohol Corporation of California) to produce 11.82% of the gallons authorized under the allotment plan of the Treasury Department.

PLANTS AND PROPERTIES

The Company owns directly manufacturing plants at Pekin, Ill., Philadelphia, Pa., New Orleans, La., and, through its subsidiary, American Commercial Alcohol Corporation of California, a manufacturing plant at Sausalito, Calif. The Company also leases warehouses in strategic distribution centers throughout the country. For a more extensive description of the properties of the Company see Exhibit A, which is attached to application A-8723

SUBSIDIARY COMPANIES

The Company owns the entire issued and outstanding Capital Stock (except necessary qualifying shares) of American Commercial Alcohol Corporation of California and The Kessler Chemical Corporation. For detailed information with respect to the acquisition and organization of these companies reference is made to applications A-8723 and A-8922.

EMPLOYEES

The Company and its subsidiaries, American Commercial Alcohol Corporation of California and The Kessler Chemical Corporation, employed 242 persons on June 2, 1933, exclusive of brokers and salesmen working entirely on commission.

DEPRECIATION POLICY

Since organization, depreciation amounts have been written off annually on the basis of the life of the property depreciated. An approximate table of depreciation percentages in accordance with the straight line method, which have been written off each year follows

	Percent
Buildings-----	2
Machinery-----	5
Equipment (depending upon its nature)-----	10-20

DIVIDENDS

Preferred Stock. At the rate of 7% per annum, declared and paid quarterly from its issuance on April 25, 1928, until retired on February 1, 1930.

Common Stock: An initial dividend on the Common Stock of 40 cents in cash and 3% in Common Stock was paid on July 15, 1929. Similar cash dividends were paid quarterly up to and including April 15, 1930, at which time a dividend of 2% payable in Voting Trust Certificates representing Common Stock was also paid. Since the last mentioned date no dividends have been declared.

FINANCIAL STATEMENTS

The following financial statements as of December 31, 1931, December 31, 1932 and March 31, 1933, are set forth below in comparative columns:

- (a) Condensed consolidated statements of income and profit and loss.
- (b) Consolidated condensed statement of capital surplus as at December 31, 1931 and December 31, 1932.
- (c) Consolidated Condensed General Balance Sheets.

The statements of December 31, 1931 and December 31, 1932 have been prepared by the Company's auditors, Messrs F. W. LaFrentz & Co. and certified by them as follows:

To the Stockholders of American Commercial Alcohol Corporation:

We have examined the records and books of account of American Commercial Alcohol Corporation and its Subsidiaries, for the years ending December 31, 1931, and December 31, 1932, and have prepared therefrom the following Exhibits applicable to the year ending December 31, 1931, and to the year ending December 31, 1932; and

Hereby certify that the following Consolidated Condensed General Balance Sheets, and statements of Income and Profit and Loss, and Capital Surplus, applicable to the year ending December 31, 1931 and the year ending December 31, 1932, compiled from our general reports, in our opinion, correctly reflect the financial status of the Company, as at December 31, 1931 and December 31, 1932, and the results of its operations for these years

F. W. LAFRENTZ & CO.,
Certified Public Accountants.

The statements of March 31, 1933 have been prepared by the Company, and are certified to by the Treasurer as follows.

I hereby certify that the following Consolidated Condensed General Balance Sheet, and Statement of Income and Profit and Loss, in my opinion, correctly reflect the financial status of the Company, as at March 31, 1933, and the results of its operations for three months ended that date

AMERICAN COMMERCIAL ALCOHOL CORPORATION,
GUY I. COLBY, Vice President and Treasurer.

American Commercial Alcohol Corporation and its subsidiaries

(A) CONSOLIDATED CONDENSED STATEMENT OF INCOME AND PROFIT AND LOSS

	Year 1931	Year 1932	First quarter 1933
Profit on sales before depreciation.....	\$387,047 59	\$1,449,829 67	\$224,410 09
Interest received.....	10,056 13	4,001 49	1,903 21
Other income.....	20,723 92	8,459 12	2,025 08
Total.....	397,827 64	1,462,290 28	228,338 38
Deductions*			
Selling expenses.....	365,781 24	330,577 32	52,173 37
Administrative expenses.....	298,113 03	227,968 81	29,829 38
Bad debts.....	55,817 23	30,356 32	8,007 11
Interest paid.....	17,116 66	56,237 90	7,709 54
Discount on sales.....	31,777 54	26,670 24	3,970 73
Depreciation.....	226,873 41	204,041 30	49,876 82
Total.....	995,479 11	875,851 89	151,566 95
Profit for the period.....	597,651 47	586,438 39	76,771 43
Surplus beginning of period.....	46,483 93		586,438 39
Miscellaneous surplus adjustments.....	25,144 87		244 56
Charged against capital surplus.....	¹ 576,312 14		
Balance earned surplus from December 31, 1931.....		586,438 39	662,965 26

¹ Loss.

(b) CONSOLIDATED CONDENSED STATEMENT OF CAPITAL SURPLUS—AS AT DECEMBER 31, 1931

Amount of Capital Surplus determined and authorized by the stockholders at their meeting of November 24, 1931, arising out of an apportionment of the amount shown on the Company's books at that date, of \$3,769,697 42, representing outstanding Common Stock to the number of 389,495 shares of no par value. This sum was apportioned in such manner as to show \$3,894,950 as representing the 389,495 shares of Common Stock at a par value of \$10 each, and the remainder as Capital Surplus, i. e.----- \$4,374,747 42

At the same meeting the stockholders authorized the directors to charge the deficit in Surplus Account against the Capital Surplus so created, and further authorized the Directors in their discretion, to set up reserves out of the Capital Surplus so created. In accordance with this authority, the directors have authorized and directed that the following several sums be entered on the books of account, as of December 31, 1931

Appropriation of Capital Surplus		
Reduction of book value of treasury stock from \$230,531 11 to a par value basis of \$130,970 30.....		\$149,560 81
Reserve provided for excess cost of raw materials.....		267,493 19
Reserve provided for future contingencies.....		8,614 67
Extraordinary losses and adjustments		
Reduction of inventory valuations, necessitated by the purchase of molasses under contracts made in prior years.....	\$144,915 77	
Losses due to trading in corn options.....	87,591 04	
Reduction in valuations of fixed assets, based upon appraisals and estimates made by the officials of the Company.....	156,635 82	
Losses due to revaluations of containers.....	212,819 35	
Organization expenses—Unamortized balance.....	72,669 68	
Provision for income tax assessments, applicable to prior years.....	110,977 99	
Miscellaneous items.....	36,483 83	
Total extraordinary losses and adjustments.....		822,093 48
Net deficit—December 31, 1931—Charged to Capital Surplus.....		576,312 41
Total deductions from Capital Surplus.....		1,824,074 06
Balance—Capital Surplus December 31, 1931.....		\$3,050,673 36

American Commercial Alcohol Corporation and its subsidiaries—Continued

CONSOLIDATED CONDENSED STATEMENT OF CAPITAL SURPLUS—AS AT DECEMBER 31, 1932

Capital surplus—Balance December 31, 1931.....		\$3,050,673.86
Add—Balance of reserves, December 31, 1931, which were created out of Capital Surplus in 1931		
Income taxes prior years.....	\$112,391 76	
Provision for Stock Warrants.....	8,653 30	
Provision for raw material commitments.....	267,493 19	
Provision for contingencies.....	8,614 67	
		<u>397,152.92</u>
Total.....		3,447,826 28
Deduct—Charges to Capital Surplus and Reserves.		
Income taxes for prior years and expenses in connection therewith.....	\$54,412 41	
Settlement of claim for liability in connection with Stock Warrants.....	7,000 00	
Cost of molasses and grain consumed in manufacture.....	\$1,161,239 55	
Less—Charged to operations on basis of market price deter- mined as at December 31, 1931.....	905,839 09	
Balance charged to reserve for raw material commitments provided for at December 31, 1931.....	255,400 46	
Salary due at December 31, 1931, under a contract made at time of organ- ization of the Company with an executive who discontinued function- ing as an officer of the Company—as at January 1, 1932.....	39,798 59	
Loss incurred through sale of Treasury Stock and extinguishment of employee stock purchase agreements.....	46,478 91	
Legal, printing and other expenses incident to change of Capital Stock from No Par Value to a Par Value of \$10 00 per share, and from a Par Value of \$10 00 per share, to a Par Value of \$20 per share.....	10,636 27	
Portion of cost of moving Chemical Plant from Orange, N J, to Phila- delphia, Pa.....	3,676 20	
Bonus to discharged employees and salary contract adjustment paid in recognition of long term services.....	5,852 56	
Expenses and adjustments applicable to prior years		
Allowances to customers and adjustment of claims.....	\$16,063 70	
Excess of allowances for and expenses incident to recondi- tioning drums—in hands of customers December 31, 1931— over actual inventory value.....	10,592 87	
Experimental expenses.....	3,566 43	
Legal and auditing expenses.....	6,139 21	
Sundry other expenses.....	6,422 52	
Total.....	\$42,784 73	
Less—Collection of freight claims and other credit adjust- ments.....	6,108 72	
Balance of expenses and adjustment applicable to prior years.....	36,676 01	
Total of charges to Capital Surplus and Reserves.....		<u>459,931 41</u>
Balance.....		\$2,987,894 87
Reserve for Stock Warrants—Balance remaining December 31, 1932.....	\$1,653 30	
Reserve for contingencies—Authorized by Board of Directors at their meeting March 2, 1933.....	400,000 00	
		<u>401,653 30</u>
Capital Surplus—Balance December 31, 1932.....		\$2,586,241.57

(c) CONSOLIDATED CONDENSED GENERAL BALANCE SHEET

	December 31, 1931	December 31, 1932	March 31, 1933
ASSETS			
Current assets			
Cash.....	\$443,228 14	\$251,961 24	\$216,004 68
Notes and acceptances receivable—Trade.....	\$47,452 97	\$46,851 78	\$45,839 14
Accounts receivable			
Trade.....	\$839,260 25	\$601,826 55	\$556,887 40
Less: Reserve for doubtful accounts.....	81,174 38	70,927 61	55,160 67
Balance.....	\$758,084 87	\$530,898 94	\$501,726 73
Due from officers and employees.....	13,222 90	12,724 05	8,689 89
Miscellaneous accounts.....	14,677 55	12,871 31	12,500 00
Total accounts receivable.....	\$785,985 32	\$557,494 30	\$522,896 62
Inventories (at the lower of cost or market)			
Finished product.....	\$513,775 41	\$739,801 22	\$781,402 08
Raw materials and supplies.....	431,168 09	893,870 83	979,210 17
Advance payment on raw material purchased.....	62,768 77	50,000 00	238,907 06
Containers.....	64,489 28	48,256 12	82,501 29
Total inventories.....	\$1,052,191 55	\$1,731,628 17	\$2,082,020 60
Total current assets.....	\$2,328,857 98	\$2,587,935 49	\$2,866,761 04

American Commercial Alcohol Corporation and its subsidiaries—Continued

(c) CONSOLIDATED CONDENSED GENERAL BALANCE SHEET

	December 31, 1931	December 31, 1932	March 31, 1933
Fixed assets			
Land, buildings, machinery, etc (appraisal value December 31, 1927 plus additions at cost).....	\$6,600,700 33	\$6,679,519 40	\$6,673,440 05
Less—Depreciation reserve.....	669,761 14	827,998 27	875,118 19
Construction work in progress.....	\$5,940,949 19	\$5,851,521 13	\$5,798,321 86
	5,781 90		39,349 59
Total fixed assets.....	\$5,946,731 09	\$5,851,521 13	\$5,837,671 45
Cash in escrow—on account of contingent liability under Property Purchase Agreement.....	\$94,668 96		
Prepaid and deferred items			
Cost of investment in Rossville Alcohol & Chemical Corporation Syndicate.....		\$284,006 87	\$284,006 87
Insurance and taxes prepaid.....	\$69,957 21	42,089 66	38,090 35
Miscellaneous expenses.....	14,830 66	42,597 91	48,119. 13
Deferred expenses.....			52,821 45
Total prepaid and deferred items.....	\$84,787 87	\$368,694 44	\$423,038 30
Goodwill trade marks formulae, etc.....	\$1 00	\$1 00	\$1 00
Total assets.....	\$8,455,046 90	\$8,808,152 06	\$9,127,471 79
LIABILITIES			
Current liabilities			
Notes payable to bank.....	\$400,000 00	\$794,739 16	\$886,500 00
Trade acceptances.....	\$492,701 65	\$290,302 62	\$539,612. 97
Accounts payable			
Trade.....	\$286,706 97	\$180,153 52	\$145,334 35
Others.....	45,465 30	61,952 50	46,155 34
Total accounts payable.....	\$332,172 27	\$242,106 02	\$191,539 69
Total current liabilities.....	\$1,224,873 92	\$1,327,147 80	\$1,567,652 66
Sundry reserves			
Provision for containers in customer's hands.....	\$18,367 50	\$11,721 00	\$14,009. 00
Income tax prior years.....	112,391. 76		
Provision for Stock Warrants.....	8,663. 30	1,653 30	1,663 30
Provision for raw material commitments.....	267,493 19		
Provision for contingencies.....	8,614 67	400,000 00	400,000. 00
Total sundry reserves.....	\$415,520 42	\$413,374 30	\$415,662 30
Capital Stock and surplus			
Capital Stock—Common	1931 par \$10 Shares	1932 par \$20 Shares	
Authorized.....	750,000 00	375,000 00	
Less—Unissued.....	360,605 00	180,252 50	
Issued.....	389,495 00	194,747 50	\$3,894,950 00
Less in Treasury.....	13,097 08		\$130,970 80
Outstanding.....	376,397 92	194,747 50	\$3,763,979 20
Capital surplus.....			\$2,586,241 57
Earned surplus from December 31, 1931.....			536,438 39
Total Capital Stock and surplus.....			\$7,144,156 83
Total liabilities.....	\$8,455,046 90	\$8,808,152 06	\$9,127,471 79

NOTE—None of the 16,024 shares of Preferred Stock at present authorized, was outstanding at the above dates Contingent liability as at December 31, 1931 under property purchase agreement—\$189,331 04

¹ The Company is under agreement with the Whitney National Bank of New Orleans to retain on hand at all times, sufficient molasses, which at inventory values will amount to 110% of the Company's unpaid notes—\$86,500 00 as at December 31, 1932

AGREEMENTS

American Commercial Alcohol Corporation, in consideration of the listing of the securities covered by this application, agrees with the New York Stock Exchange as follows

To notify the New York Stock Exchange promptly of any change in the general character or nature of its business

To notify the New York Stock Exchange immediately if it or any subsidiary or controlled company should dispose of any property or of any stock interest in any of its subsidiary or controlled companies, when such disposal would impair or materially affect its financial position or the nature or extent of its operations as theretofore conducted

To publish periodical statements of earnings, as agreed upon with the Committee

To publish at least once in each year and submit to stockholders at least fifteen days in advance of the annual meeting of the Corporation, but not later than March 15th, a Balance Sheet, and Income Statement for the last fiscal year and a Surplus statement of the applicant company as a separate corporate entity and of each corporation in which it holds directly or indirectly a majority of the equity stock; or, in lieu thereof, eliminating all intercompany transactions:

A similar set of consolidated financial statements. If any such consolidated statements exclude any companies a majority of whose equity stock is owned, (a) the caption will indicate the degree of consolidation; (b) the Income Account will reflect, either in a footnote or otherwise, the parent company's proportion of the sum of or a difference between current earnings or losses and the dividends of such unconsolidated subsidiaries for the period of report; and (c) the Balance Sheet will reflect, in a footnote or otherwise, the extent to which the equity of the parent company in such subsidiaries has been increased or diminished since the date of acquisition as a result of profits, losses and distributions. Appropriate reserves, in accordance with good accounting practice, will be made against profits arising out of all transactions with unconsolidated subsidiaries, in either parent company statements or consolidated statements

Such statements will reflect the existence of any default in interest, cumulative dividend requirements, sinking fund or redemption fund requirements of any controlled corporation whether consolidated or unconsolidated.

To publish all future annual financial statements of any character, in substantially the form contained in the listing application and, in the publication of reports of earnings for any period of less than a fiscal year, to show net profits in the aggregate with the same degree of consolidation as in the annual report and earnings per share after Depreciation, Depletion, Income Taxes and Interest, estimating the proportionate amount of these items as accurately as may be if not finally determined at date of publication

Not itself, and not to permit any subsidiary, directly or indirectly controlled, to take up as Income stock dividends received at an amount greater than that charged against Earnings, Earned Surplus or both of them by the issuing Company in relation thereto

Not to make any change in depreciation policies as described in the application and not to make any substantial change in any percentages therein recited as applicable to particular classes of property without notifying the Stock Exchange and without calling attention to such changes in the next succeeding published report and, if this be an interim report, also in the next succeeding annual report

To maintain, in accordance with the rules of the Stock Exchange, a transfer office or agency in the Borough of Manhattan, City of New York, where all listed securities shall be directly transferable, and the principal of all listed securities with interest or dividends thereon shall be payable; also a registry office in the Borough of Manhattan, City of New York, south of Chambers Street, other than its transfer office or agency in said city, where all listed securities shall be registered. If its transfer books should be permanently closed, to continue to split up certificates of listed stock into smaller denominations in the same name so long as such stock shall be retained upon its list by the New York Stock Exchange. If its transfer office or agency should be or should become located north of Chambers Street, to arrange, at its own cost and expense that its registry office will receive and re-deliver all securities deposited at such registry office for the purpose of transfer.

Not to add to the number of its transfer agencies nor to make any change of a transfer agency, or of a trustee, or fiscal agent of its listed bonds or securities, without prior notice to the Committee on Stock List, and not to add to the num-

ber of registrars of its listed stock nor to change a registrar of its listed stock without the prior approval of the Committee on Stock List, nor to select an officer or director of the Company as a trustee of its mortgages or other listed securities unless such officer or director be a co-trustee for an issue having a corporate trustee.

Not to make any change in the form or nature of its listed securities or in the rights or privileges of the holders thereof, without having given twenty days' prior notice to the Committee on Stock List of such proposed changes, and having made application for the listing of the securities as changed, if the Committee on Stock List so requires

To notify the Stock Exchange in the event of the issuance or creation in any form or manner of any rights to subscribe to, or to be allotted, its securities, or of any other rights or benefits pertaining to ownership in its securities, and to afford the holders of its listed securities a proper period within which to record their interests and to exercise their rights, and to issue all such rights in form approved by the Stock Exchange and to make the same transferable, payable and deliverable in the Borough of Manhattan, City of New York

To notify the Stock Exchange promptly in the event of issuance of Options or Warrants to purchase stock, otherwise than

(a) pro rata to stockholders,
(b) to officers and employees under general employees' stock purchase plan,
(c) firm offers of stock to be taken in a block within four months from the date of such offer, of the number of shares covered by such Options, of their terms and of the time within which they may be exercised and of any subsequent changes therein and thereafter to include this information together with like information as to any Options in existence at the time of approval of this application so long as said Options are outstanding, in all annual financial reports furnished to stockholders and in all formal published reports

To make application to the Stock Exchange for the listing of additional amounts of listed securities sufficiently prior to the issuance thereof to permit action in due course upon such application.

To publish promptly to holders of listed stock any action in respect to dividends on shares, or allotments of rights for subscription to securities, notices thereof to be sent to the Stock Exchange, and to give to the Stock Exchange at least ten days' notice in advance of the closing of the transfer books, or extensions, or of the taking of a record of holders for any purpose.

To forward to the Stock Exchange copies of all notices mailed to stockholders looking toward Charter amendments, and to file with the Stock Exchange two copies of amended Charter, or Resolutions of Directors in the nature of amendments (one of which must be certified) as soon as such amendments or resolutions have become effective

Not to purchase listed Preferred Stock for retirement at a price in excess of that at which the stock purchased might then be obtained in the open market and not to select Preferred Stock for redemption otherwise than pro rata or by lot; to notify the Stock Exchange immediately and at least fifteen (15) days in advance of any such redemption, and to furnish to the Stock Exchange any information requested in reference to such redemption

To notify the Stock Exchange immediately of any change or removal of collateral deposited under any of its mortgage or trust indentures under which listed securities are outstanding.

To have on hand at all times a sufficient supply of certificates to meet the demands for transfer.

If at any time the stock certificates of the Company do not recite the preferences of all classes of stock the Company agrees with the Exchange that it will furnish stockholders, upon request and without charge, with a printed copy of the preferences of all classes of stock.

To furnish the New York Stock Exchange, on demand, such reasonable information concerning the Company as may be required

GENERAL

The fiscal year of the Company ends December 31st.

The annual stockholders meeting of the Company is held on the first Tuesday in April in each year, but if that be a legal holiday, on the next succeeding day not a legal holiday. All stockholders meetings of the Company are held at the statutory office of the Company, 10 Light Street, Baltimore, Md.

The principal executive office of the Company is located in the Chrysler Building, 405 Lexington Avenue, New York, N. Y. The Company also has offices at each plant and sales offices throughout the country.

The Directors (elected annually) are Robert W. Atkins, Russell R. Brown, Guy I. Colby, Humphrey W. Chadbourne, Warren W. Foster, Richard H. Grimm, J. M. Kessler, W. S. Kies, Cecil Page, Edward S. Paine, Robert L. Pond and Marshall H. Runk, all of New York City, N. Y.; H. G. Atwood, Chicago, Ill.; Walter E. Buck, San Francisco, Calif.; James A. S. MacMeekin and Phillip Publicker, Philadelphia, Pa.; S. M. Mayer, Gretna, La.

The Elective Officers (elected annually, but the Board of Directors may elect for a period not exceeding five years) are Russell R. Brown, Chairman of the Board; Richard H. Grimm, President; Walter E. Buck, Guy I. Colby, Samuel M. Mayer and A. L. Oppen, Vice-Presidents, Guy I. Colby, Treasurer; and Cecil Page, Secretary.

The Transfer Agent for 7% Cumulative Preferred Stock and for Common Stock of the Company is City Bank Farmers Trust Company, New York, N. Y.

The Registrar of the 7% Cumulative Preferred Stock and for Common Stock of the Company is The National City Bank of New York, N. Y.

AMERICAN COMMERCIAL ALCOHOL CORPORATION,
By **CECIL PAGE**, *Secretary*.

This Committee recommends that the above-mentioned

10,000 shares of Common Stock (\$20 Par Value) be added to the list on official notice of issuance in exchange for a like number of shares of the Common Stock of Maister Laboratories, Incorporated, with authority to add

41,293 shares of said Common Stock on official notice of issuance pursuant to an offer to stockholders to subscribe to such additional stock, in accordance with the terms of this application,

making the total amount authorized to be listed:

247,761 shares of Common Stock (\$20 Par Value).

FRANK ALTSCHUL, *Chairman*.

J. M. B. HOXSEY,
*Executive Assistant to the
Committee on Stock List.*

Adopted by the Governing Committee, June 14, 1933.

ASHBEL GREEN, *Secretary*.

COMMITTEE EXHIBIT No 12, FEBRUARY 15, 1934

Francis E. Fitch (Inc), 138 Pearl St., New York

COMMITTEE ON STOCK LIST
NEW YORK STOCK EXCHANGE

A-10102

AMERICAN COMMERCIAL ALCOHOL CORPORATION

(An operating and holding company organized under the laws of Maryland,
April 19, 1928)

COMMON STOCK (\$20 PAR VALUE)

	Shares
Additional listing.....	15,000
Authorized by Charter.....	375,000
Previously authorized to be listed.....	247,761
Outstanding June 2nd.....	204,953
Total applied for.....	262,761
Authorized by Directors.....	June 15, 1933

Capital securities

Stock	Par value	Number of shares			
		Authorized by charter	Authorized for issuance	Previously authorized to be listed	Outstanding
Class of stock					
7% Cumulative preferred stock.....	\$100	1 16,024	None	None	None
Common stock.....	20	375,000	262,761	247,761	204,953

¹ Original authorization of Preferred Stock was 40,000 shares. 23,976 were issued. All retired on February 1st, 1930 whereby the authorized Preferred Stock was reduced by that amount.

Neither the Company nor its subsidiaries have any funded debt.

NEW YORK, N.Y., June 27, 1933.

Referring to their previous applications, and especially to A-10073, dated June 2, 1933, American Commercial Alcohol Corporation (hereinafter called the "Company"), hereby makes application for the listing on the New York Stock Exchange of

15,000 additional shares of the Common Stock of the Company of the par value of \$20 per share, on official notice of issuance, in exchange for 2,700 shares of the 6% Cumulative Preferred Stock of the par value of \$100 per share, and 3,900 shares of Common Stock without par value of Noxon, Inc.; making the total amount applied for

262,761 shares (of a total authorized issue of 375,000 shares)

All of said shares of the Common Stock will be, when issued, full paid and non-assessable, with no personal liability attaching to holders thereof

AUTHORITY FOR AND PURPOSE OF ISSUE

At a meeting held June 15, 1933, the Board of Directors authorized the issuance of 15,000 shares of the Common Stock of the Company of the par value of \$20 per share, in exchange for 2,700 shares of the 6% Cumulative Preferred Stock of the par value of \$100 a share, and 3,900 shares of the Common no par Stock of Noxon, Inc., a Maryland Corporation. The total authorized capitalization of Noxon, Inc., is 3,000 shares of 6% Cumulative Preferred Stock of the par value of \$100 per share and 6,000 shares of Common Stock without par value. The 2,700 shares of Preferred Stock is all the issued and outstanding Preferred Stock of the latter Corporation. All the 6,000 shares of Common Stock have been issued, 3,900 shares to the Company as stated above, and 2,100 shares to other interests.

Noxon, Inc., was organized on June 19, 1933 and has acquired certain valuable formulae, processes, etc., for the manufacture of a certain cleaner polish, floor waxes, and a household insecticide, heretofore manufactured and sold for many years under the trade name of "Noxon," and also certain machinery, equipment, materials and other assets required for the manufacture of said products on an adequate commercial scale. Noxon, Inc. has furthermore contracted with the Company to purchase all of its requirements for the manufacture of its products, which consist of alcohol, solvents, etc., so far as they are manufactured or handled by the Company, at prevailing market prices, for a period of ten years. The Company has also acquired as a part of above transactions, exclusive rights to certain formulae and processes for the manufacture of new agricultural and horticultural plant sprays, which the Company believes can be manufactured and sold on a profitable basis. These sprays consist of about 85% of Alcohol.

BUSINESS

The Company is, and its predecessors were, engaged in the business of manufacture and sale of alcohol for commercial purposes. Under a ruling by the United States Treasury Department dated January 21, 1928, industrial alcohol is now produced by the various manufacturers according to definite quantity allotments. The Company at the present time has permits (including permits held by American Commercial Alcohol Corporation of California) to produce 11 82% of the gallons authorized under the allotment plan of the Treasury Department.

PLANTS AND PROPERTIES

The Company owns directly manufacturing plants at Pekin, Ill., Philadelphia, Pa., New Orleans, La., and, through its subsidiary, American Commercial Alcohol Corporation of California, a manufacturing plant at Sausalito, Calif. The Company also leases warehouses in strategic distribution centers throughout the country. For a more extensive description of the properties of the Company see Exhibit A, which is attached to application A-8723.

SUBSIDIARY COMPANIES

The Company owns the entire issued and outstanding Capital Stock (except necessary qualifying shares) of American Commercial Alcohol Corporation of California, The Kessler Chemical Corporation, and Maister Laboratories Incorporated. For detailed information with respect to the acquisition and organization of these companies reference is made to applications A-8723, A-8922, and A-10073.

EMPLOYEES

The Company and its subsidiaries, American Commercial Alcohol Corporation of California, The Kessler Chemical Corporation, and Mauster Laboratories Incorporated, employed 242 persons on June 2, 1933, exclusive of brokers and salesmen working entirely on commission

DEPRECIATION POLICY

Since organization, depreciation amounts have been written off annually on the basis of the life of the property depreciated. An approximate table of depreciation percentages in accordance with the straight line method, which have been written off each year follows

	Percent
Buildings	2
Machinery	5
Equipment (depending upon its nature)	10-20

DIVIDENDS

Preferred Stock. At the rate of 7% per annum, declared and paid quarterly from its issuance on April 25, 1928, until retired on February 1, 1930.

Common Stock An initial dividend on the Common Stock of 40 cents in cash and 3% in Common Stock was paid on July 15, 1929. Similar cash dividends were paid quarterly up to and including April 15, 1930, at which time a dividend of 2% payable in Voting Trust Certificates representing Common Stock was also paid. Since the last mentioned date no dividends have been declared.

FINANCIAL STATEMENTS

The following financial statements as of December 31, 1931, December 31 1932 and March 31, 1933, are set forth below in comparative columns:

- (a) Condensed consolidated statements of income and profit and loss.
- (b) Consolidated condensed statement of capital surplus as at December 31, 1931 and December 31, 1932.
- (c) Consolidated Condensed General Balance Sheets

The statements of December 31, 1931 and December 31, 1932 have been prepared by the Company's auditors, Messrs F. W. LaFrentz & Co. and certified by them as follows

To the Stockholders of American Commercial Alcohol Corporation.

We have examined the records and books of account of American Commercial Alcohol Corporation and its Subsidiaries, for the years ending December 31, 1931, and December 31, 1932, and have prepared therefrom the following Exhibits applicable to the year ending December 31, 1931, and to the year ending December 31, 1932; and

Hereby certify that the following Consolidated Condensed General Balance Sheets, and statements of Income and Profit and Loss, and Capital Surplus, applicable to the year ending December 31, 1931 and the year ending December 31, 1932, compiled from our general reports, in our opinion, correctly reflect the financial status of the Company, as at December 31, 1931 and December 31, 1932, and the results of its operations for these years

F. W. LAFRENTZ & CO.,
Certified Public Accountants.

The statements of March 31, 1933 have been prepared by the Company, and are certified to by the Treasurer as follows

I hereby certify that the following Consolidated Condensed General Balance Sheet, and Statement of Income and Profit and Loss, in my opinion, correctly reflect the financial status of the Company, as at March 31, 1933, and the results of its operations for three months ended that date.

AMERICAN COMMERCIAL ALCOHOL CORPORATION,
GUY I. COLBY, Vice-President and Treasurer

American Commercial Alcohol Corporation and its subsidiaries (a) consolidated condensed statement of income and profit and loss

	Year 1931	Year 1932	1st quarter 1933
Profit on sales before depreciation.....	\$367,047.59	\$1,449,829.67	\$224,410.09
Interest received.....	10,066.13	4,001.49	1,903.21
Other income.....	20,723.92	8,459.12	2,025.06
Total.....	397,827.64	1,462,290.28	228,338.36
Deductions:			
Selling expenses.....	365,781.24	330,577.32	52,173.37
Administrative expenses.....	298,113.03	227,968.81	29,829.38
Bad debts.....	55,817.23	30,356.32	8,007.11
Interest paid.....	17,116.66	56,237.90	7,709.54
Discount on sales.....	31,777.54	26,670.24	3,970.73
Depreciation.....	226,873.41	204,041.30	49,876.32
Total.....	995,479.11	875,851.89	151,566.95
Profit for the period.....	1 597,651.47	586,438.39	76,771.43
Surplus beginning of period.....	46,483.93		586,438.39
Miscellaneous surplus adjustments.....	1 25,144.87		1 244.66
Charged against capital surplus.....	1 576,312.41		
Balance earned surplus from December 31, 1931.....		586,438.39	662,965.26

¹ Loss

(b) Consolidated condensed statement of capital surplus—as at December 31, 1931

Amount of Capital Surplus determined and authorized by the stockholders at their meeting of November 24, 1931, arising out of an apportionment of the amount shown on the Company's books at that date, of \$3,769,697.42, representing outstanding Common Stock to the number of 339,496 shares of no par value. This sum was apportioned in such manner as to show \$3,694,950 as representing the 339,496 shares of Common Stock at a par value of \$10 each, and the remainder as Capital Surplus, i. e. \$4,874,747.42

At the same meeting the stockholders authorized the directors to charge the deficit in Surplus Account against the Capital Surplus so created, and further authorized the Directors in their discretion, to set up reserves out of the Capital Surplus so created. In accordance with this authority, the directors have authorized and directed that the following several sums be entered on the books of account, as of December 31, 1931:

Appropriation of Capital Surplus

Reduction of book value of treasury stock from \$230,531.11 to a par value basis of \$120,970.30.....	\$149,560.81
Reserve provided for excess cost of raw materials.....	267,493.19
Reserve provided for future contingencies.....	8,614.67
Extraordinary losses and adjustments:	
Reduction of inventory valuations, necessitated by the purchase of molasses under contracts made in prior years.....	\$144,915.77
Losses due to trading in corn options.....	87,591.04
Reduction in valuations of fixed assets, based upon appraisals and estimates made by the officials of the Company.....	156,635.32
Losses due to revaluations of containers.....	212,819.35
Organization expenses—Unamortized balance.....	72,669.68
Provision for income tax assessments, applicable to prior years.....	110,977.99
Miscellaneous items.....	36,488.83

Total extraordinary losses and adjustments..... \$22,093.45
 Net deficit—December 31, 1931—Charged to Capital Surplus..... 576,312.41

Total deductions from Capital Surplus..... 1,824,074.06
 Balance—Capital Surplus December 31, 1931..... \$3,050,673.36

Consolidated condensed statement of capital surplus—as at December 31, 1932

Capital surplus—Balance December 31, 1931.....		\$3,060,673 36
Add—Balance of reserves, December 31, 1931, which were created out of Capital Surplus in 1931.....		
Income taxes prior years.....	\$112,391 76	
Provision for Stock Warrants.....	8,653 30	
Provision for raw material commitments.....	267,493 19	
Provision for contingencies.....	8,614 67	
		<u>297,152 92</u>
Total.....		\$3,447,826 28
Deduct—Charges to Capital Surplus and Reserves.....		
Income taxes for prior years and expenses in connection therewith.....	\$54,412 41	
Settlement of claim for liability in connection with Stock Warrants.....	7,000 00	
Cost of molasses and grain consumed in manufacture.....	\$1,161,239 56	
Less—Charged to operations on basis of market price determined as at December 31, 1931.....	905,839 09	
		<u>255,400 48</u>
Balance charged to reserve for raw material commitments provided for at December 31, 1931.....		255,400 48
Salary due at December 31, 1931 under a contract made at time of organization of the Company with an executive who discontinued functioning as an officer of the Company—as at January 1, 1932.....		39,798 59
Loss incurred through sale of Treasury Stock and extinguishment of employees stock purchase agreements.....		46,478 91
Legal, printing and other expenses incident to change of Capital Stock from No Par Value to a Par Value of \$10 00 per share, and from a Par Value of \$10 00 per share, to a Par Value of \$20 per share.....		10,636 27
Portion of cost of moving Chemical Plant from Orange, N J to Philadelphia, Pa.....		3,676 20
Bonus to discharged employees and salary contract adjustment paid in recognition of long term services.....		5,852 56
Expenses and adjustments applicable to prior years.....		
Allowances to customers and adjustment of claims.....	\$16,063 70	
Excess of allowances for and expenses incident to reconditioning drums—in hands of customers December 31, 1931—over actual inventory value.....	10,592 87	
Experimental expenses.....	3,566 43	
Legal and auditing expenses.....	6,139 21	
Sundry other expenses.....	6,422 52	
		<u>\$42,784 73</u>
Less—Collection of freight claims and other credit adjustments.....		6,108 72
		<u>36,676 01</u>
Balance of expenses and adjustment applicable to prior years.....		36,676 01
Total of charges to Capital Surplus and Reserves.....		<u>459,931 41</u>
Balance.....		\$2,987,894 87
Reserve for Stock Warrants—Balance remaining December 31, 1932.....	\$1,653 30	
Reserve for contingencies—Authorized by Board of Directors at their meeting March 2, 1933.....	400,000 00	
		<u>401,653 30</u>
Capital Surplus—Balance December 31, 1932.....		\$2,586,241 57

American Commercial Alcohol Corporation and its subsidiaries

(C) CONSOLIDATED CONDENSED GENERAL BALANCE SHEET

	December 31, 1931	December 31, 1932	March 31, 1933
ASSETS			
Current assets			
Cash.....	\$443,228 14	\$251,961 24	\$216,004 68
Notes and acceptances receivable—Trade.....	\$47,452 97	\$46,851 78	\$45,839 14
Accounts receivable			
Trade.....	\$839,259 25	\$601,826 55	\$556,887 40
Less Reserve for doubtful accounts.....	81,174 38	70,927 61	55,160 67
Balance.....	\$758,084 87	\$530,898 94	\$501,726 73
Due from officers and employees.....	13,222 90	13,724 05	8,669 93
Miscellaneous accounts.....	14,677 55	12,971 31	12,500 00
Total accounts receivable.....	\$785,985 32	\$557,494 30	\$522,896 62
Inventories (at the lower of cost or market)			
Finished product.....	\$512,775 41	\$789,801 22	\$781,402 08
Raw materials and supplies.....	431,169 09	898,570 83	679,210 17
Advance payment on raw material purchased.....	52,768 77	50,000 00	238,907 06
Containers.....	64,489 23	48,266 12	82,501 29
Total inventories.....	\$1,061,192 50	\$1,786,638 17	\$2,062,020 60
Total current assets.....	\$2,328,867 98	\$2,587,935 49	\$2,866,761 04

American Commercial Alcohol Corporation and its subsidiaries—Continued

(C) CONSOLIDATED CONDENSED GENERAL BALANCE SHEET

	December 31, 1931	December 31, 1932	March 31, 1933
Fixed assets			
Land, buildings, machinery, etc (appraisal value December 31, 1927 plus additions at cost).....	\$6,600,700 33	\$6,679,519 46	\$6,673,440 05
Less—Depreciation reserve.....	689,751 14	827,908 27	875,118 19
Construction work in progress	\$5,940,949 19	\$5,851,521 13	\$5,798,321 86
	5,781 90		39,349 59
Total fixed assets	\$5,946,731 09	\$5,851,521 13	\$5,837,671 45
Cash in escrow—on account of contingent liability under Property Purchase Agreement	\$94,668 96		
Prepaid and deferred items			
Cost of investment in Rossville Alcohol & Chemical Corporation Syndicate.....		\$284,006 78	\$284,006 87
Insurance and taxes prepaid.....	\$89,957 21	42,089 66	38,090 85
Miscellaneous expenses.....	14,830 66	42,597 91	48,119 13
Deferred expenses.....			52,821 45
Total prepaid and deferred items	\$84,787 87	\$368,694 44	\$423,038 30
Goodwill trade marks formulae, etc	\$1 00	\$1 00	\$1 00
Total assets	\$8,455,046 90	\$8,808,152 06	\$9,127,471 79
LIABILITIES			
Current liabilities			
Notes payable to bank.....	\$400,000 00	¹ \$794,739 16	¹ \$836,500 00
Trade acceptances.....	\$492,701 65	\$290,302 62	\$539,612 97
Accounts payable			
Trade.....	\$286,706 97	\$180,153 52	\$145,384 35
Others.....	45,485 30	61,952 50	46,155 34
Total accounts payable	\$332,172 27	\$242,106 02	\$191,539 69
Total current liabilities	\$1,224,873 92	\$1,327,147 86	\$1,567,652 66
Sundry reserves			
Provision for containers in customer's hands.....	\$18,367 50	\$11,721 00	\$14,009 00
Income tax prior years.....	112,391 76		
Provision for Stock Warrants.....	8,653 30	1,653.30	1,653 30
Provision for raw material commitments.....	267,493 19		
Provision for contingencies.....	8,614 67	400,000 00	400,000 00
Total sundry reserves	\$415,520 42	\$413,374 30	\$415,662 30
Capital Stock and surplus			
	1931	1932	
	par \$10	par \$20	
Capital Stock—Common	Shares	Shares	
Authorized.....	750,000 00	375,000 00	
Less—Unissued.....	360,505 00	180,252.50	
Issued.....	389,495 00	194,747 50	\$3,894,950 00
Less in Treasury.....	13,007 08		\$130,970 80
Outstanding	<u>376,397 92</u>	<u>194,747 50</u>	\$3,763,979 20
Capital surplus	\$3,050,673 36	\$2,586,241 57	\$2,586,241 57
Earned surplus from December 31, 1931		586,438 39	662,965 26
Total Capital Stock and surplus	\$6,814,652 56	\$7,067,629 96	\$7,144,156 83
Total liabilities	\$8,455,046 90	\$8,808,152 06	\$9,127,471 79

NOTES—None of the 16,024 shares of Preferred Stock at present authorized, was outstanding at the above dates

Contingent liability as at December 31, 1931 under property purchase agreement—\$189,331 04

¹ The Company is under agreement with the Whitney National Bank of New Orleans to retain on hand at all times, sufficient molasses, which at inventory values will amount to 110% of the Company's unpaid notes—\$96,500 00 as at December 31, 1932

Nozon, Inc., pro forma balance sheet June 27, 1933

ASSETS	
Notes receivable.....	\$270,000.00
Inventory.....	25,000.00
Machinery and equipment.....	25,000.00
Good will, licenses and processes.....	350,000.00
Total assets.....	\$700,000.00
LIABILITIES	
Purchase contract payable.....	\$80,000.00
Preferred Stock \$100 par Authorized 300,000 shares Less unissued outstanding—30,000 shares.....	270,000.00
Common Stock, No Par—6,000 shares.....	350,000.00
Total liabilities.....	\$700,000.00

AGREEMENTS

American Commercial Alcohol Corporation, in consideration of the listing of the securities covered by this application, agrees with the New York Stock Exchange as follows.

To notify the New York Stock Exchange promptly of any change in the general character or nature of its business.

To notify the New York Stock Exchange immediately if it or any subsidiary or controlled company should dispose of any property or of any stock interest in any of its subsidiary or controlled companies, when such disposal would impair or materially affect its financial position or the nature or extent of its operations as theretofore conducted.

To publish periodical statements of earnings, as agreed upon with the Committee

To publish at least once in each year and submit to stockholders at least fifteen days in advance of the annual meeting of the Corporation, but not later than March 15th, a Balance Sheet, and Income Statement for the last fiscal year and a Surplus statement of the applicant company as a separate corporate entity and of each corporation in which it holds directly or indirectly a majority of the equity stock; or, in lieu thereof, eliminating all intercompany transactions:

A similar set of consolidated financial statements. If any such consolidated statements exclude any companies a majority of whose equity stock is owned, (a) the caption will indicate the degree of consolidation; (b) the Income Account will reflect, either in a footnote or otherwise, the parent company's proportion of the sum of or difference between current earnings or losses and the dividends of such unconsolidated subsidiaries for the period of report; and (c) the Balance Sheet will reflect, in a footnote or otherwise, the extent to which the equity of the parent company in such subsidiaries has been increased or diminished since the date of acquisition as a result of profits, losses and distributions. Appropriate reserves, in accordance with good accounting practice, will be made against profits arising out of all transactions with unconsolidated subsidiaries, in either parent company statements or consolidated statements.

Such statements will reflect the existence of any default in interest, cumulative dividend requirements, sinking fund or redemption fund requirements of any controlled corporation whether consolidated or unconsolidated.

To publish all future annual financial statements of any character, in substantially the form contained in the listing application and, in the publication of reports of earnings for any period of less than a fiscal year, to show net profits in the aggregate with the same degree of consolidation as in the annual report and earnings per share after Depreciation, Depletion, Income Taxes and Interest, estimating the proportionate amount of these items as accurately as may be if not finally determined at date of publication.

Not itself, and not to permit any subsidiary, directly or indirectly controlled to take up as Income stock dividends received at an amount greater than that charged against Earnings, Earned Surplus or both of them by the issuing Company in relation thereto.

Not to make any change in depreciation policies as described in the application and not to make any substantial change in any percentages therein recited as applicable to particular classes of property without notifying the Stock Ex-

change and without calling attention to such changes in the next succeeding published report and, if this be an interim report, also in the next succeeding annual report.

To maintain, in accordance with the rules of the Stock Exchange, a transfer office or agency in the Borough of Manhattan, City of New York, where all listed securities shall be directly transferable, and the principal of all listed securities with interest or dividends thereon shall be payable; also a registry office in the Borough of Manhattan, City of New York, south of Chambers Street, other than its transfer office or agency in said city, where all listed securities shall be registered. If its transfer books should be permanently closed, to continue to split up certificates of listed stock into smaller denominations in the same name so long as such stock shall be retained upon its list by the New York Stock Exchange. If its transfer office or agency should be or should become located north of Chambers Street, to arrange, at its own cost and expense that its registry office will receive and re-deliver all securities deposited at such registry office for the purpose of transfer.

Not to add to the number of its transfer agencies nor to make any change of a transfer agency, or of a trustee, or fiscal agent of its listed bonds or securities, without prior notice to the Committee on Stock List, and not to add to the number of registrars of its listed stock nor to change a registrar of its listed stock without the prior approval of the Committee on Stock List, nor to select an officer or director of the Company as a trustee of its mortgages or other listed securities unless such officer or director be a co-trustee for an issue having a corporate trustee.

Not to make any change in the form or nature of its listed securities or in the rights or privileges of the holders thereof, without having given twenty days' prior notice to the Committee on Stock List of such proposed changes, and having made application for the listing of the securities as changed, if the Committee on Stock List so requires.

To notify the Stock Exchange in the event of the issuance or creation in any form or manner of any rights to subscribe to, or to be allotted, its securities, or of any other rights or benefits pertaining to ownership in its securities, and to afford the holders of its listed securities a proper period within which to record their interests and to exercise their rights, and to issue all such rights in form approved by the Stock Exchange and to make the same transferable, payable and deliverable in the Borough of Manhattan, City of New York.

To notify the Stock Exchange promptly in the event of issuance of Options or Warrants to purchase stock, otherwise than

- (a) pro rata to stockholders,
- (b) to officers and employees under general employees' stock purchase plan.
- (c) firm offers of stock to be taken in a block within four months from the

date of such offer, of the number of shares covered by such Options, of their terms and of the time within which they may be exercised and of any subsequent changes therein and thereafter to include this information together with like information as to any Options in existence at the time of approval of this application so long as said Options are outstanding, in all annual financial reports furnished to stockholders and in all formal published reports.

To make application to the Stock Exchange for the listing of additional amounts of listed securities sufficiently prior to the issuance thereof to permit action in due course upon such application.

To publish promptly to holders of listed stock any action in respect to dividends on shares, or allotments of rights for subscription to securities, notices thereof to be sent to the Stock Exchange, and to give to the Stock Exchange at least ten days' notice in advance of the closing of the transfer books, or extensions, or of the taking of a record of holders for any purpose.

To forward to the Stock Exchange copies of all notices mailed to stockholders looking toward Charter amendments, and to file with the Stock Exchange two copies of amended Charter, or Resolutions of Directors in the nature of amendments (one of which must be certified) as soon as such amendments or resolutions have become effective.

Not to purchase listed Preferred Stock for retirement at a price in excess of that at which at which the stock purchased might then be obtained in the open market and not to select Preferred Stock for redemption otherwise than pro rata or by lot; to notify the Stock Exchange immediately and at least fifteen (15)

QUESTIONNAIRE

(To be signed by an officer of the company)

JUNE 2, 1933.

This questionnaire accompanies application of the AMERICAN COMMERCIAL ALCOHOL CORPORATION for the listing of 51,293 additional shares of its \$20 par common stock.

- 1—Is the management control of the Company held by any other Company through either stock ownership, lease or contract? No.
- 2—Are there within your knowledge any syndicate or concentrated holdings of this security? No
- 3—Is there any restraint on any portion of the security? No
- 4—What dividends (if any), are in arrears on the preferred stocks either of the Company or of any of its subsidiaries? Kessler Chemical Corp (wholly owned subsidiary) pfd. stk
- 5—What dividends (if any) have been declared (and not paid) since the date of this application? None.
- 6—What rights (if any) to subscribe to any present securities or new securities remain unsettled as of the date of this application? None except present offering to stockholders
- 7—Are the transfer books to be closed or a record of stockholders to be taken in the near future for any purpose? Record on June 14, 1933 of stockholders entitled to subscribe on the new offering
- 8—Has there been any change in your Charter or By-Laws since previous filing with the Committee? No.
- 9—Will you agree to publish quarterly statements of earnings based upon the same degree of consolidation as shown in annual reports and transmit copies of such statement to the Committee on Stock List? Yes.
- 10—If it is legal under your Charter will you agree to take a record of stockholders for dividends and meetings instead of closing your books? Yes
- 11—To avoid the congestion caused by the fact that numerous corporations have adopted the same date of record of stockholders for payment of dividends, will you agree to make your record date of stockholders for such purpose some date other than the 15th of March, June, September and December? Yes.
- 12—In case the securities to be listed are in temporary form, will you agree that orders for permanent engraved securities to replace them shall be placed within thirty days and that, when ready for delivery, a notice will be sent to stockholders asking that temporary certificates be exchanged immediately for permanent and calling attention to the fact that it is the practice of the New York Stock Exchange to strike temporaries from the list ten days after the admission of permanents? Not applicable.
- 13—When and by whom was the last audit of your books prepared? Dec. 31, 1932 by F. W. Lafrentz & Co.
- 14—What accountant or accounting firm audits the books and accounts of the company? F W. Lafrentz & Co.
- 15—Will you inform the Stock Exchange immediately if there is a change? Yes.
- 16—Has any member or employee of the accounting firm any official relation with the applicant company? No. Describe relationship
- 17—Will you make copies of the audits of your books available to the Committee on request? Yes.
- 18—Have any other reports of a financial, accounting or engineering nature been made either on your behalf or on behalf of any banker or underwriting or banking group within the past three years? No. If so, please indicate the character of these reports and state whether they will be made available for the inspection of this Committee upon request?
- 19—Is there any litigation pending or threatened that would affect the Company's income from, title to, or possession of any of its property? No.
- 20—The Committee in order to facilitate the business of the Exchange, desires that the transfer agent of your Company be directed to sign the Stock Transfer Department receipts for all stock submitted by the Stock Clearing Corporation for transfer Will you so agree? Yes
- 21—Will you agree to issue new certificates replacing lost ones forthwith upon notification of loss and receipt of proper indemnity, making any changes which may be necessary in your Charter or By-Laws to permit this to be done? Yes.

- 22—Will you agree that in the event of the issuance of any duplicate bond to replace a bond which has been alleged to be lost, stolen or destroyed, and the subsequent appearance of the original bond in the hands of an innocent bondholder, you will take up either the original or duplicate and replace the bond taken up by another bond theretofore issued and outstanding? Not applicable
- 23—Will you agree that all calls for redemption (Foreign Bonds) published abroad will be published on the same day or days in a newspaper of general circulation published in the Borough of Manhattan, City of New York? Not applicable
- 24—The Committee desires to be kept informed as to any diminution in the supply of stock available for the market occasioned by deposit of stock under Voting Trust Agreements or other deposit agreements. If knowledge of any such actual or proposed deposits should come to the official knowledge of the officers or directors of the Company, will you agree promptly to notify the Exchange giving the names and addresses of the Deposit Committee and, if known to the Company, the amount or number of shares so deposited? Yes.
- 25—If action on your application is favorable how many copies of the application do you require printed for you at your expense? 100.
- 26—In the event any additional papers should be required for the Committee's files, will you agree to furnish same on request? Yes.

AMERICAN COMMERCIAL ALCOHOL CORPORATION,
By GUY I. COLBY, *Treasurer*.

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