

**NOMINATIONS OF HENRY C. WALLICH,
IRVING M. POLLACK AND JEROME W. VAN GORKOM**

**HEARING
BEFORE THE
COMMITTEE ON
BANKING, HOUSING AND URBAN AFFAIRS
UNITED STATES SENATE
NINETY-THIRD CONGRESS**

SECOND SESSION

ON

THE NOMINATIONS OF

**HENRY C. WALLICH TO BE A MEMBER OF THE BOARD OF
GOVERNORS OF THE FEDERAL RESERVE SYSTEM, IRVING
M. POLLACK TO BE A MEMBER OF THE SECURITIES AND
EXCHANGE COMMISSION, AND JEROME W. VAN GORKOM
TO BE A DIRECTOR OF THE SECURITIES INVESTOR PRO-
TECTION CORPORATION**

FEBRUARY 7, 1974

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(II)

NOMINATIONS OF HENRY C. WALLICH, IRVING M. POLLACK, AND JEROME W. VAN GORKOM

THURSDAY, FEBRUARY 7, 1974

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING
AND URBAN AFFAIRS,
Washington, D.C.

The committee met at 9:30 a.m., pursuant to call, in room 5302, Dirksen Building, Senator John Sparkman, chairman of the committee, presiding.

Present: Senators Sparkman, Proxmire, Biden, Brooke, Brock, and Weicker.

The CHAIRMAN. Let the committee come to order, please.

We have three candidates for confirmation. I would like for us to complete this hearing so that we can move right into the housing markup at 10 o'clock. Even though we don't have many members here yet I think we had better proceed. They will be in. At least practically all of the members have promised to come. Three cannot be here but we will move ahead.

We are meeting for the purpose of holding hearings on three nominations that have been sent to the Senate by the President.

The first is Mr. Henry C. Wallich; the second is Mr. Irving M. Pollack; and the third is Mr. Jerome W. Van Gorkom.

Mr. Henry C. Wallich of Connecticut is nominated to be a member of the Board of Governors of the Federal Reserve System for a term of 14 years starting February 1, 1974.

Mr. Wallich, we are very glad to have you. We have approval by both the Senators from Connecticut.

Let me ask you a few questions. Have you filed a financial report with the committee?

Mr. WALLICH. Yes, I have it here, Mr. Chairman.

The CHAIRMAN. Very well.

Mr. WALLICH. The relevant passage to look at is page 4 of Mr. O'Connell's memorandum, Mr. Chairman.

The CHAIRMAN. Do you have a letter from counsel regarding it?

Mr. WALLICH. Yes, I do.

The CHAIRMAN. Counsel of the Federal Reserve Board?

Mr. WALLICH. Yes, sir.

The CHAIRMAN. Here it is, signed by Thomas J. O'Connell, General Counsel. Let me read the concluding paragraph of that: "Accordingly, once the committed positions have been achieved by and on behalf of Dr. Wallich, I am satisfied that no ownerships, interests, or activities by or involving Dr. Wallich will present any conflict with, or impediment to, Dr. Wallich's service as a member of the Board of Governors and of the Federal Open Market Committee."

Can you tell us in just a few words what those commitments are?
 Mr. WALLICH. Yes. I have been engaged in writing several books. I am a professor at Yale and I am writing one book that has been going on for far too long, on comparison of monetary systems. There's a second book, done by and under the sponsorship of the Brookings Institution which covers the economy of Japan. I contribute a chapter on Japanese banking. There are minor articles and things of that order that a professor normally has in the works. Those I'm going to be allowed, according to this memorandum, to complete. It would be a very unfortunate breach in my undertakings with the sponsors if I didn't complete them.

The CHAIRMAN. And that has all been discussed and cleared with the General Counsel?

Mr. WALLICH. Yes, it has.

The CHAIRMAN. And will you tell us, this committee, in your opinion do you have any interests, any holdings, that would in any way conflict with your holding this office if you are confirmed?

Mr. WALLICH. None after the actions that I'm completing now.

The CHAIRMAN. And you have assumed the responsibility of taking the action that the General Counsel has recommended?

Mr. WALLICH. Yes, sir.

The CHAIRMAN. Now one other question I want to ask you and we ask this of everyone up here before us. If you're confirmed in this position will you be ready to respond to requests from this committee or any other appropriate committee of Congress to appear before the committee and testify without reservation?

Mr. WALLICH. Yes, I certainly would, Mr. Chairman.

The CHAIRMAN. Senator Proxmire. May I say that we have Mr. Wallich's biographical sketch and that will be included in the record.
 [Biographical sketch follows.]

BIOGRAPHICAL SKETCH OF HENRY C. WALLICH

Dr. Wallich is the Seymour H. Knox Professor of Economics at Yale University, where he has been a teacher since 1951. He is a former member of the Council of Economic Advisers (May 1959-January 1961), and served as Assistant to the Secretary of the Treasury (September 1958-May 1959), and with the Federal Reserve Bank of New York (June 1941-September 1951).

Born in Germany in 1914, he became a U.S. citizen in 1944. His formal education, begun in Germany, included studies at Oxford University in England, and led to a masters degree from New York University and a Ph. D. degree from Harvard in 1944.

Before joining the staff of the Federal Reserve Bank of New York in 1941, Dr. Wallich was associated with private firms in Latin America and New York City.

Since 1969, Dr. Wallich has been a senior consultant for the Treasury Department. He has also served with the Advisory Board of the Arms Control and Disarmament Agency (1972-1973) and as the U.S. Representative on the United Nations Experts Panel on Economic Consequences of the Arms Race (1971-1972). He is a director of several business firms and has served on the Research Advisory Board of the Committee for Economic Development from time to time since 1951.

His published works include four books and numerous articles in economic and financial journals dealing, among other things, with monetary policy, the international payments system, and our financial structure. From 1961 to 1964, he was an editorial writer for the Washington Post; since 1965 he has been a columnist for Newsweek Magazine.

He is married and has three children.

Senator PROXMIRE. Dr. Wallich, you served on the Council of Economic Advisers under President Eisenhower; is that correct?

Mr. WALLICH. That is right, Senator Proxmire.

Senator PROXMIRE. I know of your distinguished record as an economist. You are one of the ablest economists in the country. You have served with great distinction in various capacities for the Government. We are fortunate that you have agreed to serve on the Federal Reserve Board for the 14 years. This is one of the best appointments that President Nixon has made. I have been urging that the appointments to the Federal Reserve Board be of competent economists and I am just delighted to see a man of your stature has received the appointment.

Incidentally, I have received letters from some of the most outstanding economists in the country, some of whom disagree with some of your positions and policies in economics, but all of whom unanimously feel that you are a very distinguished choice and will serve this country well as a member of the Federal Reserve Board. I am just delighted that you have been appointed.

Mr. WALLICH. I'm very happy to hear that. Thank you, Senator.

The CHAIRMAN. Senator Brooke.

Senator BROOKE. Mr. Chairman, Senator Tower unfortunately, could not be here this morning, but he did want me to express his appreciation to the President for the quality of this appointment. He, as I am, is well aware of your very distinguished career, as Senator Proxmire has pointed out, as truly one of the leading economists in this country and perhaps in the world, and we feel that the administration and the country is fortunate to have you come into government and serve in this capacity.

We also have had the benefit of reading the statement discussing your nomination by the distinguished Senator from Connecticut, Senator Weicker. He has come into the room and we look forward to a long and distinguished career in government. We welcome you and we are very proud to cast a vote for your confirmation.

Mr. WALLICH. Thank you very much. Senator Brooke, I feel somewhat humbled by these compliments and I will do my best.

The CHAIRMAN. Mr. Weicker.

Senator WEICKER. Mr. Chairman, I'm delighted to vote for Dr. Wallich's confirmation and as I said to him when we met just a few minutes ago in my office I would only hope that he would have some input. It's fine to have these credentials and he certainly has those, and he has a fine mind and I think he will make a very positive contribution. I just hope that he will be allowed to make that contribution rather than being just named, and he assured me that in every way possible he would bring his views to bear on our economic problems as they relate to this particular position.

The CHAIRMAN. Thank you very much, Mr. Wallich, and we wish you well.

Mr. WALLICH. Thank you very much, Mr. Chairman.

The CHAIRMAN. We shall hope to be seeing you from time to time up here.

Mr. WALLICH. Yes, sir.

The CHAIRMAN. Next is Mr. Irving M. Pollack, of Maryland, to be a member of the Securities and Exchange Commission for a term ex-

piring June 5, 1975, to succeed Mr Hugh F. Owens who has resigned.

Mr. Pollack, we are very glad to have you here, sir. Do we have your financial statement?

Mr. POLLACK. Yes, sir.

The CHAIRMAN. You have a letter signed by the general counsel of the Securities and Exchange Commission and he says, "I found nothing in said statements which does not fully comply with the requirements of that Executive order that relates to conflicts of interest."

I will ask you, do you have any interests or any holding of any kind that would constitute a conflict of interest in holding this office if you are confirmed?

Mr. POLLACK. No, sir.

The CHAIRMAN. Will you stand ready to accept a request from this committee and any other appropriate committee of Congress to appear and testify without reservation at any time?

Mr. POLLACK. I have and I will.

The CHAIRMAN. We have your biographical sketch. That will be placed in the record, together with some additional letters and newspaper articles we've received.

[The information follows:]

Mr. Pollack has been on the staff of the Securities and Exchange Commission since 1946 and has been Director of the Division of Enforcement since September 1972. He had previously served as an attorney with the Office of the Solicitor (1946-48), attorney-adviser with the Office of the General Counsel (1948-57), Assistant General Counsel (1957-61), Associate Director of the Division of Trading and Markets (1961-65) and Director of the Division of Trading and Markets (1965-72).

He was born on April 8, 1918, in Brooklyn, New York. Mr. Pollack received his B.A. degree, cum laude, from Brooklyn College in 1938 and his LL.B., magna cum laude, from Brooklyn Law School in 1942. After serving from 1942 to 1946 as an officer in the U.S. Army, he was an attorney with the New York law firm of Nathan L. Goldstein during 1946.

Mr. Pollack was the 1968 recipient of the Rockefeller Public Service Award in the field of law, legislation or regulation, and the 1967 SEC Distinguished Service Award for outstanding career service. He is a member of the Federal Bar Association.

HON. JOHN SPARKMAN,
Chairman, Banking, Housing and Urban Affairs Committee,
5300 Dirksen Senate Office Building,
Washington, D.C.

DEAR MR. CHAIRMAN: I applaud President Nixon's nomination of Irving M. Pollack as a Commissioner to the Securities and Exchange Commission.

I consider his nomination to this highly important commission a noteworthy one. It elevates to a vital and sensitive agency of the Federal government a person of exceptional ability, industry and integrity.

Mr. Pollack is a career executive who has worked his way to the top by brilliant, dedicated service. Appointed to the staff of the general counsel in 1946, his outstanding service over the years resulted in successive promotions to high level positions with the Commission—1961 associate director of the Division of Trading and Markets—1965 director of that division—in the reorganization of the Commission in 1972, director of the Division of Enforcement in which capacity he now serves.

Irving Pollack has appeared many times before the Committee on Appropriations in connection with its annual budget presentation to the Congress. He is well and favorably known to many Members of the Congress. He is highly respected

by the appropriations subcommittee which I chair as an extremely capable program manager. From my own personal observation of his ability, vast knowledge and expertise of the securities industry, I am confident that the public, the government and the industry will be well served by the splendid attributes he possesses.

Mr. Chairman, this career appointment is a fitting reward for a person of recognized ability. The Federal government needs public servants like Irving Pollack who give so generously and unselfishly of their time, effort and dedication to the commonweal.

In this day, the Securities and Exchange Commission deserves the best. It gets it in the appointment of Mr. Pollack.

I urge this committee to recommend his confirmation by the United States Senate.

Sincerely yours,

EDWARD P. BOLAND,
Member of Congress.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., February 5, 1974.

Hon. JOHN SPARKMAN,
*Chairman, Committee on Banking, Housing and Urban Affairs,
New Senate Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: This letter is to urge the speedy confirmation of Irving M. Pollack as a Commissioner of the Securities and Exchange Commission.

Mr. Pollack is a long-time federal servant, having served on the staff of the Securities and Exchange Commission for 27 years. During that time he has built an extraordinary reputation for himself as being a thoroughly competent, honest and fair administrator of the Federal Securities Laws. This was recognized just 6 years ago when Mr. Pollack was awarded the Rockefeller Public Service Award for his distinguished federal service in the field of law, legislation or regulation. The inscription on that award reads:

"In recognition of more than two decades of singular achievements and notable contributions to the cause of investor protection and the preservation of investor confidence in the integrity of the capital markets of the nation."

As Chairman of the House Subcommittee with legislative oversight responsibility of the Securities and Exchange Commission, I have had the pleasure of working with Mr. Pollack on numerous occasions. I always found him to be extremely cooperative and most helpful to the Subcommittee and its staff. I cannot remember an occasion when Mr. Pollack's appearance before us did not help to make clear the issues under discussion.

Mr. Pollack's nomination to the Commission is a truly outstanding appointment, and I urge his speedy confirmation by the Senate.

Sincerely,

JOHN E. MOSS,
*Chairman, Subcommittee on
Commerce and Finance.*

INDEPENDENT BROKER DEALERS TRADE ASSOCIATION,
Washington, D.C., February 2, 1974.

Senator EDWARD W. BROOKE,
*Committee on Banking, Housing and Urban Affairs,
U.S. Senate, Dirksen Building, Washington, D.C.*

DEAR SENATOR: The Committee on Banking, Housing and Urban Affairs will soon consider Irving M. Pollack for the position of Commissioner of the Securities and Exchange Commission. We heartily support his nomination for this most important position.

Unfortunately, a few so-called industry spokesmen belonging to the Wall Street crowd have created an illusion that there is broad industry opposition to Mr. Pollack's appointment, as reported in the attached Wall Street Journal article of January 31, 1974. Members of our organization resent this broad brush treatment.

To the contrary, our nation's 30 million investors and the three thousand securities firms operating outside of Wall Street will benefit from the tough, but fair, policy and the enormous practical experience that Mr. Pollack will add to the Commission.

As a member of the Committee we hope you will support Mr. Pollack's confirmation at the Hearings, and urge your colleagues to do the same.

Sincerely,

RAYMOND W. COCCHI,
President.

[From the Wall Street Journal]

NIXON APPOINTS SEC'S ENFORCEMENT CHIEF TO AGENCY SEAT DESPITE INDUSTRY OPPOSITION

WASHINGTON—President Nixon named Irving M. Pollack, director of the Securities and Exchange Commission's enforcement division, to a seat on the panel.

The appointment, which was expected, was made despite what SEC and Capitol Hill officials called strong securities industry opposition to Mr. Pollack, who has made some enemies during his nine years as the agency's enforcement chief.

SUPPORT FROM GARRETT

In addition, Wall Street had urged President Nixon to appoint a stock exchange or brokerage firm official to the SEC, which is pressing ahead with plans to restructure the stock markets. The industry had hoped for a sympathetic ear on the five-member commission.

But Mr. Pollack had strong support from SEC Chairman Ray Garrett Jr. and the three other commissioners, who thought his enforcement experience during a 27-year SEC career would round out the commission. The current panel comprises three former securities lawyers and an economist, three of whom have sat on the panel for less than a year.

BLOTS ON SEC'S RECORD

Mr. Pollack, a 55-year-old Democrat, must be confirmed by the Senate. He will replace Hugh F. Owens, who left the commission in November to head Securities Investor Protection Corp., and will return the SEC's political makeup to three Republicans and two Democrats. SEC commissioners earn \$38,000 a year.

The Pollack appointment should help erase blots on the SEC's reputation that resulted from charges G. Bradford Cook, Mr. Garrett's predecessor as chairman, performed political favors for the Nixon administration.

In fact, Mr. Pollack and his division brought the multimillion dollar fraud charges against New Jersey financier Robert L. Vesco that ultimately led to the resignation of Mr. Cook. He quit in May after a federal grand jury said he yielded to political pressure to delete from an SEC complaint against Mr. Vesco a reference to a sum of money from which, it turned out, Mr. Vesco made a secret cash contribution to Mr. Nixon's reelection campaign. Mr. Cook denied any wrongdoing and wasn't charged with a crime.

Stanley Sporkin, Mr. Pollack's deputy, is expected to follow him as head of the enforcement division.

[From Time Magazine, Feb. 11, 1974]

MAIGRET OF THE SEC

His name is Irving M. Pollack, but to his staff he is "Irv." He often answers his own phone. His clothes appear to come from off the rack at Macy's. Peering into a legal brief through smudged spectacles, he looks like a bookkeeper on his way to nowhere. But he has long been the Securities and Exchange Commission's top cop as head of its tough Division of Enforcement and previously chief of its Division of Trading and Markets. Last week President Nixon promoted Lawyer Pollack (*magna cum laude*, Brooklyn Law School) to become one of the SEC's five commissioners.

He had been passed over for a commissioner's job two or three times before in his 27-year SEC career, largely because he has not built a political base by cultivating Congressmen or influensial Wall Streeters. Now, with the Administration

struggling to restore confidence in Government and the SEC striving to revive faith in the securities markets. Pollack's moment has come. Says an SEC staffer: "Because of Watergate, the Administration had to come up with a completely honest guy."

Pollack, 55, never accepts even a free lunch from anyone in the securities business. He lives in a modest house that he bought in 1956 for \$18,500. If he left Government, he could easily multiply his salary of \$36,000; as a commissioner, he will get a raise—of \$2,000.

KNACK FOR NAILING

Pollack has been centrally involved at the commission in moves to reform the market system and protect investors. Instead of wasting resources trying to track down small-time securities sharpies, he has concentrated on nailing the big operators, and he has shown a knack for it that would be worthy of the fictional Inspector Maigret, another unprepossessing sleuth. He was active in or headed the SEC investigations that led to charges being filed against such celebrated operators as Lowell Birrell, Eddie Gilbert, Louis Wolfson, Robert Vesco and Bernard Cornfield.¹ When tremendous pressure was brought on the SEC to allow Cornfield to sell mutual funds in the U.S., Pollack said no—and likely saved countless millions for American investors.

Recently Pollack directed the SEC's investigation of Financier C. Arnholt Smith, Nixon's longtime friend and financial backer, who has been charged with fleeing \$100 million from the stockholders of a San Diego-based conglomerate, Westgate-California Corp. Pollack did not know about the Nixon connection until he read about it in the newspapers when the investigation was well under way. Casually, Pollack asked his staff: "Is this guy *the* C. Arnholt Smith?" Told that he was, Pollack simply shrugged and went back to work.

[From the Boston Globe]

A GOOD APPOINTMENT

In naming Irving M. Pollack to the Federal Securities and Exchange Commission President Nixon has made a sensible selection for a difficult task. Pollack, who is chief of the SEC's enforcement division and has been on the staff in one capacity or another for 27 years, knows the industry well and is not its servant. This is important for a regulator.

One would not expect Mr. Nixon, apart from the need to name a Democrat to the vacancy on the SEC, to pick a man who has achieved a reputation in the industry for being a tough cookie. During the 1968 election Mr. Nixon complained about "heavy-handed regulation" by the SEC, a vague complaint but one that might easily have encompassed Mr. Pollack's activities.

Indeed, the securities industry has developed a perceptible sense of hostility toward Mr. Pollack, and it will be refreshing to have the Senate consider a regulatory nominee who cannot be accused of merely representing its interests—the kind of charge leveled sometimes unfairly but understandably when a man emerges from the regulated industry itself.

Mr. Nixon's preoccupation with other issues may have led him to take this sensible step because it is easy. Mr. Pollack enjoys the support of SEC Chairman Ray Garrett Jr., also a Nixon appointee, and this support eliminates the need to hunt for a man who, under other circumstances might be more in Mr. Nixon's style.

The appointment also suggests a helpful element in the Watergate dominated atmosphere of Washington. The regulatory agencies are in a sense freed from White House interference as Mr. Nixon struggles with other problems and tries to restore public confidence in the integrity of government. The occasion is a sad one, but the result may be healthy.

The CHAIRMAN. Senator Proxmire.

Senator PROXMIRE. Well, this is a great day for the President I think. He's made some fine appointments. Dr. Wallich, as I said, is a very distinguished appointment and Mr. Pollack I think is in the

¹ Cornfield, now in a Swiss jail awaiting trial on fraud charges, had his bail reduced last week from \$2.5 million to \$1.5 million. He was still unable to post it.

best traditions. Here's a man who served in the Securities and Exchange Commission for more than 20 years with outstanding distinction and had been promoted to a position of authority on the staff of the Securities and Exchange Commission. I understand you were head of the Division of Enforcement.

Mr. POLLACK. Yes, sir.

Senator PROXMIRE. That used to be Trading and Markets?

Mr. POLLACK. They split it off. The regulations section was made the Division of Market Regulation and they gave all the enforcement functions to the newly created Division of Enforcement.

Senator PROXMIRE. As you know, for the last couple years I have been chairman of the subcommittee that handles the appropriations for the Securities and Exchange Commission and I have had some association with your operations then, and, of course, I have been on this committee for 17 years, and I am just delighted to see this kind of appointment.

This is the kind of appointment that I think is very good for our country and for our Government. I might say that I have talked with the staff of Senator Williams who of course has dealt with you very closely and he joins in his pleasure and strong approval of your appointment and has indicated that he is very pleased that the Securities and Exchange Commission is—it seems to be about to become one of the strongest that we have ever had in our history.

Mr. POLLACK. The mail I received has reflected that, Senator.

The CHAIRMAN. Senator Brooke.

Senator BROOKE. This is indeed a great day for the President to have Senator Proxmire be so laudatorily in his praise of him. This, in itself, is a most significant day. But I certainly agree with my good friend, Bill Proxmire, in all the things he has to say. Moreover, I want to add that the chairman of the Securities Subcommittee, Senator Williams also joins in support of the comments of the Senator from Wisconsin. Unfortunately he couldn't be present on this occasion.

Mr. Pollack, Senator Proxmire and I conducted a hearing of the Appropriations Committee at which you appeared. Your forthrightness, your obvious integrity, and your knowledge of the Commission was something that brought joy to both of our hearts at that time and certainly assured us the Commission had some very able members of the staff. The fact that the President elevates you to the position of SEC commissioner after some 27 years at the Commission is certainly a highlight of your career in the Securities and Exchange Commission.

I received a letter from a Raymond W. Cocchi and he said: "Our Nation's 340 million investors and the 3,000 securities firms operating outside of Wall Street will benefit from the tough but fair policy and the enormous practical experience that Mr. Pollack will add to the Commission." I think those words are certainly well spoken.

I also refer to the Boston Globe editorial, a newspaper which is the largest in New England which is not always favorable to the President and his appointments, and it speaks very highly of your appointment, and I could go on with many others; but suffice it to say that I know your feelings and your views for the small investor. I know that you are very knowledgeable about the industry itself, the internal workings of the SEC, and I think that you come at a time when this post represents a great challenge to you personally and a great opportunity for true service which can help to restore the industry which is so vital to our Nation.

So I welcome you and look forward as ranking member of the Securities Subcommittee to working with you and I'm just pleased as punch that the President saw fit to appoint you to this high post.

Senator PROXMIRE. Mr. Chairman, would the Senator yield for 1 minute?

I, unfortunately, have to leave right now for another hearing and I would like to say that I don't, unfortunately, know Mr. Van Gorkom, although I am most impressed by his résumé. He obviously is a man of very distinguished background. I might say that he also comes from my little town where I grew up and lived until I was 30 years old before I carpetbagged into Wisconsin, so I'm very happy that the President has chosen to appoint a Lake Forester.

The CHAIRMAN. Did you say "carpetbag?"

Senator PROXMIRE. I carpetbagged into Wisconsin. I did indeed.

The CHAIRMAN. Senator Brock.

Senator BROCK. Mr. Pollack, I'm sorry I missed you yesterday. I know you had a chance to visit my assistant. I would like to pursue one of the matters he raised with you just a little bit with regard to your feelings on fixed rates or negotiated rate commissions and the level at which we make that breakpoint, if any. I'd like your thoughts on that.

Mr. POLLACK. Well, speaking generally on the fixed rates, I think that our hearings and our studies indicated that the markets would be better off with competitive rates. Unfortunately, of course, the market has operated for some 200 years under fixed rates and therefore the question is how you place the minimum. The Commission's view originally was to allow 10-percent discount from the fixed commission that allowed the people to use their ingenuity. More recently we have determined, I believe, to allow them to start from the bottom and work up. The purpose is to attempt to give the industry an opportunity to experiment with the new pricing package or schedule so that they can adapt to the ultimate elimination of fixed rates which are scheduled for 1975.

I should say, secondly, that our hearings indicated that because of the heterogeneous nature of the securities industry it is not possible really to establish fixed rates for it as you would for a public utility.

Senator BROCK. I gather you are not concerned about the potential adverse impact on the total elimination of fixed rates on what I would refer to as regional firms.

Mr. POLLACK. I think the Commission is concerned on what impacts there will be. I think the judgment is that the regional firms, because of the nature of the service that is provided, will be in a favorable or as favorable position as they are now, if not more so, because the regional firm will have a flexibility in competing with national wire houses in terms of setting rates in their own regions while the national wire houses in my own view undoubtedly have to go for a nationwide rate.

In addition, they would be able to modify the services that they offer or the combination of services that they offer in order to give more effective competition than they have been able to do somewhat in the past. Indeed, in our hearings it was suggested that the fixed rate combination of the so-called give-ups that institutions gave to firms made it possible for the larger houses who were able to exercise greater leverage to move into some of the smaller cities and offer competition which previously they were unable to do.

So the judgment is that the regional firms will come out of this all right. I know that many of the regional firms are concerned about it. I have talked with some of them. But I feel that my own judgment is that they will be able to remain competitive in this market.

Senator BROCK. You don't fear or foresee a situation where a national house could establish different regional rates in order to eliminate competition in a region-by-region basis?

Mr. POLLACK. I think that would violate the antitrust laws, if I understand them.

Senator BROCK. Do you?

Mr. POLLACK. I think the differential pricing to drive out somebody in a local area—

Senator BROCK. You know you can always justify differential pricing from a competitive point of view and that's allowed.

Mr. POLLACK. Well, I'm talking to the practical element. I think it's very difficult for a large house to establish one rate in Tennessee, for example, and another one in Kentucky with the ease of communication that you have today. But, where today somebody can just lift up the phone and call the broker anywhere in this country free on the WATS line, I don't see how the national houses can do differential pricing in the various States and regions.

Senator BROCK. What percent of national listings on the New York Stock Exchange—what percent of the stocks are there actually traded on the floor? In other words, how much is traded outside of the market?

Mr. POLLACK. Are you referring to the third market?

Senator BROCK. Yes.

Mr. POLLACK. The last figure was somewhere in between 7 or 8 percent, in that neighborhood.

Senator BROCK. You don't consider that a problem?

Mr. POLLACK. No. I think that the third market competition has served to spur the exchange to take on new developments that possibly would not have occurred without this outside competitive factor.

Senator BROCK. Thank you.

The CHAIRMAN. Senator Weicker.

Senator WEICKER. Mr. Chairman, I had the opportunity of meeting with Mr. Pollack yesterday and indeed I am very impressed by his background, by what he's accomplished to date and I have no doubt in my mind that he will bring a high degree of intelligence and integrity to the Commission.

However, Mr. Pollack, I wonder if I just might ask a few questions relative to that period of time when you headed up the Enforcement Division as the Director of the Enforcement Division of SEC. It was during that time of controversy, if you will, that we have since heard about relative to the transfer of ITT files to the Justice Department.

Were you—I say that in the strictest sense of the word—were you consulted relative to that transfer?

Mr. POLLACK. No, not at the time that the transfer took place.

Senator WEICKER. The actual files themselves, were these within the Enforcement Division?

Mr. POLLACK. Yes. My staff was conducting a subsequent inquiry after we had completed the first injunctive suit against ITT. We learned from newspaper reports that certain documents had not been

produced pursuant to a subpoena served in our earlier inquiry. My deputy, Mr. Sporkin, upon learning this, called counsel and inquired why the records had not been produced and asked counsel to make suitable inquiry.

Thereafter, counsel came down with certain records that hadn't been produced and wished to tender them but with a string attached that we might return them on the theory that he believed they were not within the subpoena. Mr. Sporkin declined to do so and at that time my recollection is he consulted with me and I agreed with him that we would not take them under any restrictive conditions.

In addition, each one of us apparently independently advised counsel because of the time period in which this was occurring that we felt that it was appropriate for him not only to deliver the documents to us, which we had not seen I might say at the time, but also to the Senate Judiciary Committee that was engaged in the inquiry involving ITT at that point.

I was subsequently advised by Mr. Sporkin that he had been advised by counsel that such a tender had been made but had been declined by the committee or its chairman.

Senator WEICKER. Insofar as October 6—or rather, the 5th and 6th of October—when did you receive the first information that these matters should be transferred to the Justice Department?

Mr. POLLACK. When Mr. Sporkin advised me either on the 5th—they were transferred on the 6th, I think—it was either 1 or 2 days before they were transferred because a question arose as to: (1) whether we would proceed with our inquiry; and (2) if we did, what warning would we give to the witness in addition to our usual one.

Senator WEICKER. Which brings me to the next question. Were you in the middle of an investigation yourselves relative to ITT?

Mr. POLLACK. We were engaged in one aspect of the inquiry that we were conducting. We had previously suggested to Justice that we—at least Mr. Sporkin had talked I think on two occasions to them—suggesting that we felt a grand jury inquiry might be preferable to our inquiry. They declined at that time and so we picked up the inquiry that we were then conducting on the 4th or 5th of October when the transfer of records took place.

Senator WEICKER. So that when the request from Justice came about for the files to be transferred to Justice, you were in the middle of an inquiry?

Mr. POLLACK. We were.

Senator WEICKER. Did that require, in your mind, some action insofar as the persons that you were questioning relative to the inquiry, specifically the ITT people or whoever else was involved?

Mr. POLLACK. Yes, it did, Senator, because you remind me that I think the staff at that time told me—I didn't know that before—that the people had questioned our proceeding when they knew that some inquiry purportedly was also going on in Justice covering roughly the same general area. So when we transferred the records, as a matter of fairness, my people raised the question immediately and we agreed that the witness should be advised that the Commission had ordered its records transferred to Justice because we thought that was only fair that they know that. They then declined to proceed to testify once they knew that fact.

Senator WEICKER. Was there any consultation between yourself and Mr. Casey during this period of time in October as to the matter of transferring the files to Justice?

Mr. POLLACK. No. The matter was being handled by his staff and I believe the general counsel's office; but there were consultations before Mr. Sporkin had gotten clearance and talked to Justice that I mentioned previously to see whether we couldn't get them to do the inquiry. For reasons that I don't want to go into in detail, we felt it would be preferable at a point we had reached in our earlier inquiry for the Justice Department to pick up the investigation and conduct it before a grand jury.

Senator WEICKER. This was back in August–September?

Mr. POLLACK. Yes, the August–September period.

Senator WEICKER. So August–September Justice declined to do that?

Mr. POLLACK. Correct.

Senator WEICKER. And on October 5–6 the Justice asked for the files to be turned over to them?

Mr. POLLACK. Yes. The Commission minutes reflect that Justice requested—we weren't at the Commission, but I have seen the Commission's minutes and it's reflected in the hearings at the House, that Justice requested the files. We were directed to prepare, as I recall, a memorandum and to offer them our full assistance. The memorandum was prepared by Mr. Sporkin and his staff. Files were sent to Justice and thereafter Mr. Sporkin communicated with the staff at the Department of Justice because we were anxious that the ball not be dropped, and suggested that they proceed promptly to conduct the grand jury investigation and offered our assistance to them.

Senator WEICKER. Did you sign the transmittal letter or did Mr. Sporkin?

Mr. POLLACK. The transmittal letter I think was signed by the chairman, if I recall correctly, Senator. I'm not absolutely certain of that.

Senator WEICKER. Do you recall a conversation related to the language in that letter whereby language which said "at your request" referring in other words to the Justice Department, was changed to "it is agreed that the files will be transferred to the Department of Justice?"

Mr. POLLACK. I only know about that from subsequent readings. I did not know about that at the time.

Senator WEICKER. Were there discussions between Mr. Casey's staff and your staff relative to shifting this over to Justice Department in September–October?

Mr. POLLACK. You mean before it occurred?

Senator WEICKER. That's right.

Mr. POLLACK. Not that I'm aware of.

Senator WEICKER. So, in other words, insofar as input to the decision in October of sending the files to Justice, to the best of your knowledge, you had no such input nor did a member of your staff as it relates to Mr. Casey's staff? I understand the contacts between Mr. Sporkin and Justice.

Mr. POLLACK. Except as I pointed out that the earlier efforts to get Justice to take them—there were conversations between Mr. Sporkin and the Commission. I don't know about Mr. Casey, but there were conversations with respect to that.

Senator WEICKER. I see. And Justice had refused to take them?

Mr. POLLACK. That's right. They said they were busy enough with what they had. They would prefer not to. And then, just so I complete the chronology as I understand it, then there were conversations of other people with Justice which we didn't participate in, and the assertion is that they requested the files to be delivered. We were directed to deliver the files. We did. And then I'm advised by my people that shortly thereafter they went over to Justice, Sporkin and the people who worked on the case as I indicated before, to advise Justice that we were anxious that they pick it up promptly and that we assist them in doing whatever we could to complete it as promptly as possible.

Senator WEICKER. But the final decision to send the files to Justice was made without consultation with you and was made during the time when you were in the middle of your own investigation. Is that correct?

Mr. POLLACK. Yes. We were not at the Commission. That was an executive session of the Commission when that was made. There was no staff present at that time.

Senator WEICKER. I have no further questions, Mr. Chairman.

Senator BROCK. May I interject just a question?

The CHAIRMAN. Yes.

Senator BROCK. Having already established your own intent to transfer, you did that in August and September as I gather, I would ask you if you felt like this was an unusual procedure then to go ahead and do what you had suggested in August, to do it in October?

Mr. POLLACK. Unusual only in the sense, Senator, that we were in the midst of interrogating the witnesses; so I would say that the timing of it from our point of view was unusual because we had to stop and determine whether we could continue the inquiry which we had originally intended to try to do. We made summaries of the documents and instructed our people to continue to interrogate the witnesses if they could. The witnesses, as I indicated to Senator Weicker, declined once they knew the files had been referred. So then what would happen normally is Justice would then pick up the witnesses that declined to us in the grand jury and we would be able to assist them.

Senator BROCK. But in the sense it was not a break in the pattern that you had already established—you had desired to transfer them at another time—it was not an upsetting of your rights and prerogatives and interests in getting the investigation resolved?

Mr. POLLACK. Mr. Sporkin's preference, as I indicated earlier, was to refer these files to Justice. For various reasons we felt the inquiry could be better handled and more expeditiously handled by Justice. It was just the timing that I say was unusual because we then picked up the inquiry and then when the records were transferred we had to reorient our inquiry to see whether we could continue to do it; and as I said, because the witnesses then refused, we concluded ours and offered Justice our assistance in continuing the inquiry.

Senator BROCK. But you don't see that would have any debilitating effect on the inquiry itself, do you?

Mr. POLLACK. No, except to the extent that we were in the midst of an inquiry and we had to turn it over to them.

Senator BROCK. So they could pursue it?

Mr. POLLACK. Yes.

Senator BROOKE. Mr. Chairman, if I may, Mr. Pollack, there is nothing irregular about the SEC conducting an investigation and the Justice Department conducting an investigation and the congressional committee conducting the inquiry on the same subject matter at the same time, is there?

Mr. POLLACK. No, sir.

Senator BROOKE. And this, in effect, was true concerning the *ITT* case?

Mr. POLLACK. Correct.

Senator BROOKE. Now, at some time the congressional committee requested of the SEC that files be turned over to them. Is that correct?

Mr. POLLACK. Right, sir.

Senator BROOKE. Now at some time, to your knowledge, did the Commission take a vote as to whether they should turn those files over to the congressional committee?

Mr. POLLACK. Yes, sir.

Senator BROOKE. And what was the result of that vote?

Mr. POLLACK. They declined to turn them over to the congressional committee.

Senator BROOKE. Do you recall whether that was a unanimous vote of the Commission?

Mr. POLLACK. It was.

Senator BROOKE. It was. And you had knowledge of it at the time. Is that correct?

Mr. POLLACK. Yes, sir.

Senator BROOKE. Now at some time the Justice Department requested those files be turned over to them. Is that correct?

Mr. POLLACK. Yes, sir.

Senator BROOKE. And again, was there a vote taken by the Commission as to whether they would turn over those files?

Mr. POLLACK. Yes, sir.

Senator BROOKE. And what was the result of that vote?

Mr. POLLACK. Unanimous to turn them over to the Department of Justice with the direction to us (1) to prepare the memorandum I referred to, Senator, and (2) to cooperate fully with the Department of Justice in their inquiry.

Senator BROOKE. So the decision not to turn over the files to the congressional committee and the decision to turn over the files to the Justice Department were not decisions arrived at independently or made independently by the Chairman of the Commission, Mr. Casey. Is that correct?

Mr. POLLACK. That's right, sir.

Senator BROOKE. And in both instances these were issues raised before the Commission, voted upon, and ultimately resolved unanimously by the Commission?

Mr. POLLACK. Yes, sir.

Senator BROOKE. Did you at any time object or voice any objection or did your particular division voice any objection to the Commission relative to its refusal to turn over the files to the congressional committee?

Mr. POLLACK. No, sir.

Senator BROOKE. Did you make any recommendation as to whether those files should be turned over to the congressional committee?

Mr. POLLACK. I'm not sure of that. I think Mr. Sporkin may have indicated that he preferred that we not turn them over but that the people obtain them from the company. I should explain that I think there was an unfortunate misunderstanding here, Senator Brooke. I think people thought that we had documents that were irreplaceable. In fact, these were documents which the company had—the originals or the copies, I don't remember now—and so I think because of our inquiry Mr. Sporkin had expressed the view—and I'm doing this from testimony that he gave at hearings—that he would prefer that the committee get them from the company, ITT, so as not to get into our investigatory file.

Senator BROOKE. Did you make a recommendation to the Commission as to whether they should turn over the files to the Justice Department?

Mr. POLLACK. That was made, as I indicated earlier, by Mr. Sporkin, that we should, in either August or September—I don't remember the date, Senator—on the basis that we felt that the inquiry would be better pursued in certain elements of it by the Justice Department rather than we.

Senator BROOKE. As I pointed out, you have been in the Commission for 27 years. If you know, and only if you know, is there any precedent or was there any violation of any precedent by the failure of the Commission to turn over these files to the congressional committee?

Mr. POLLACK. I don't know that. I don't know the answer to that.

Senator BROOKE. Is it usual procedure to turn over the files to the Justice Department when the Justice Department makes such a request?

Mr. POLLACK. Yes, sir.

Senator BROOKE. In fact, you have done this on many occasions?

Mr. POLLACK. Yes, sir.

Senator BROOKE. And you find nothing irregular in the action of the Commission, nothing unusual in the action of the Commission, both in the refusal to turn them over to the congressional committee or the agreement to turn them over to and the fact of turning them over to the Justice Department?

Mr. POLLACK. No, sir, except as I have previously stated.

The CHAIRMAN. Gentlemen, I'd like to make this suggestion. These queries have nothing to do with Mr. Pollack's qualification for office. They relate to an entirely different matter that may be before us at a later date, and I don't see that we should continue this line of questioning. They have nothing to do with the qualifications of this man to serve as a member of the Securities and Exchange Commission and I'd like to suggest that we withhold further questions on these matters.

Senator WEICKER. Mr. Chairman, I have to disagree with you. I disagree because, as I've indicated, I think he's superbly qualified and has absolute integrity.

The CHAIRMAN. That's the only thing at issue before us.

Senator WEICKER. But Mr. Pollack is before us, and, in his present capacity as Director of the Enforcement Division of the SEC, he was involved, knowingly or unknowingly, in a matter which is of some concern to me, if not to others. All I'm trying to do is to relate to his own knowledge, which apparently was very small indeed, relative to the actual transfer; and I think it rather extraordinary that the knowledge

was that small considering the fact that he was director of that particular bureau. I think he should have been consulted before an investigation which he was conducting was halted.

The CHAIRMAN. But does that bear upon his fitness to hold this office? That's what's before us.

Senator WEICKER. It does to the extent that Mr. Pollack was doing everything he should be doing, if you will. That's all I want to establish. I'm not going to get into any other individuals that are involved except to establish that he was conducting his office as it should have been conducted. I think that's important to have.

The CHAIRMAN. Yes. I agree with you.

Senator WEICKER. That's it.

The CHAIRMAN. That does go to his fitness to hold the office, relating only to that, but it seems to me it's gone rather afield. Anyhow, go ahead, anyone that has any questions.

Senator BROOKE. I have no further questions.

The CHAIRMAN. Senator Brock?

Senator BROCK. Nothing.

The CHAIRMAN. Senator Weicker?

Senator WEICKER. I have no further questions.

The CHAIRMAN. Senator Biden?

Senator BIDEN. Just a comment, Mr. Pollack. I'm very pleased to see that you have been nominated and you have my wholehearted support. I am in complete agreement with Senator Weicker. You are a man of absolute integrity and you are superbly qualified. I'm delighted to have an opportunity to vote in favor of your nomination.

Senator BROOKE. Mr. Chairman, Senator Tower would like to be recorded as supporting the confirmation.

The CHAIRMAN. Thank you. By the way, I overlooked saying that Mr. Pollack has the endorsement of both Senators from Maryland, and Mr. Van Gorkom has the endorsement from both Senators from Illinois. I did announce that Dr. Wallich had the endorsement of both Senators from Connecticut.

Mr. POLLACK. Mr. Chairman, I just may say I received so many flattering comments I think it would be remiss if I didn't state that in large measure many of these should be credited to my associates, staff, and the Commission which have both given me the ability to carry on and done a lot of the work for which very frequently the director gets credit but really doesn't do.

I would also like to take the opportunity to say that my wife and family have endured a lot of personal sacrifices and I think they are pleased that this has arrived.

The CHAIRMAN. I think we can all testify to that from our own experiences.

The CHAIRMAN. Let me say to all of those who have been nominated this morning, your financial statements are available to the members of the committee here in the committee room. Then they will be locked up in our safe and kept there for the duration of your office and 1 year beyond.

Mr. Van Gorkom, we do have your financial statement?

Mr. VAN GORKOM. Yes.

The CHAIRMAN. And I believe it's certified by the general counsel?

Mr. VAN GORKOM. Yes.

The CHAIRMAN. And will you tell this committee whether or not you have any holdings or any interest that would constitute a conflict-in-interest in connection with your duties in this office if you are confirmed?

Mr. VAN GORKOM. None whatsoever that I know of.

The CHAIRMAN. I will ask you the formal question: If you are confirmed to this office, will you respond to requests from this committee and any other appropriate committee of Congress to appear and testify freely without reservation?

Mr. VAN GORKOM. I certainly will.

The CHAIRMAN. Senator Brooke?

Senator BROOKE. Nothing other than I have read your résumé and I think you are ably qualified for this job, Mr. Van Gorkom, and again, as I said earlier, Senator Proxmire, it's three out of three excellent appointments and yours certainly is an excellent appointment. I am particularly pleased that you're interested in opera. I served as president of the Boston Opera Company for 5 years so we're opera buffs together. Any man who loves opera certainly is going to perform a good job. I wish you well and Senator Tower also couldn't be here this morning and he knows of your qualifications and he supports your appointment and we both congratulate the President on the quality of your appointment.

The CHAIRMAN. I will say that your biographical sketch will be made a part of the record.

[Biographical sketch follows:]

Biographical Sketch of J. W. Van Gorkom

Mr. Van Gorkom was born in 1917. He attended the University of Illinois and received his Bachelor of Science degree in 1939, his J.D. in 1941 and his C.P.A. certificate in 1950. He was admitted to the Illinois Bar in 1941.

After the completion of four years of Navy duty during World War II, Mr. Van Gorkom joined the Chicago law firm of KixMiller Baar & Morris, which specialized in federal taxation. In 1947 he joined the accounting firm of Arthur Andersen & Co. He was elected a partner of the firm in 1954.

J. W. Van Gorkom joined Trans Union Corporation in 1956 when he accepted the position of controller. He was elected to the corporation's Board of Directors in 1957, and was made a vice president in 1958. He was named executive vice president in 1960 and became president in 1963.

Mr. Van Gorkom has served as treasurer, president and chairman of the board of the Chicago Lyric Opera Association. He currently is vice chairman of the board of the Association.

He is a member of the Board of Trustees of Loyola and the University of Notre Dame, the Council of the University of Chicago's Graduate School of Business, and the University of Chicago Citizens Board. He is a member of the Board of Directors and Chairman of the Investment Committee of Chicago Community Ventures, Inc., the nation's largest MESBIC (Minority Enterprise Small Business Investment Co.).

Mr. Van Gorkom is a director of Stepan Chemical Company; Scott, Foresman & Co.; the National Boulevard Bank of Chicago; the Illinois Central Industries; Illinois Central Gulf Railroad; and Midas-International Corporation.

He is a member of the Board of Advisors of Mercy Hospital, Board of Trustees of Michael Reese Hospital and Medical Center, the Chicago Club, Commercial Club, Mid-America Club, Onwentsia Club, Union League Club, and Old Elm.

Mr. Van Gorkom is married to the former Betty Jean Alexander. They have two daughters, Gayle and Lynne. The Van Gorkoms live at 908 Ringwood Road in Lake Forest, Illinois.

The CHAIRMAN. Senator Biden?

Senator BIDEN. I have no questions. I have no objection whatsoever and from what I have heard of and read in the résumé, I think you are very well qualified.

The CHAIRMAN. Senator Brock?

Senator BROCK. No questions, I wish you well.

The CHAIRMAN. Senator Weicker?

Senator WEICKER. No questions, Just good luck.

The CHAIRMAN. May I say that Senator Williams, who is chairman of our Securities Subcommittee and who's had a great deal to do with setting up the office of which you will be a part, is not able to be here this morning but I am informed that he strongly supports this nomination.

Thank you very much. We congratulate you and wish you well, all of you.

Mr. VAN GORKOM. Thank you very much.

The CHAIRMAN. Now I wonder if we may change the rules just a little bit and vote on these now so we can turn them in and hope to get them confirmed.

Senator BROOKE. I move we confirm all three nominations.

The CHAIRMAN. Without objection it is so ordered.

[Whereupon, at 10:25 a.m., the hearing was adjourned.]

