

# STOCK EXCHANGE PRACTICES

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## HEARINGS

BEFORE THE

## COMMITTEE ON BANKING AND CURRENCY UNITED STATES SENATE

SEVENTY-THIRD CONGRESS

FIRST SESSION

ON

### S. Res. 84

(72d CONGRESS)

A RESOLUTION TO INVESTIGATE PRACTICES OF STOCK  
EXCHANGES WITH RESPECT TO THE BUYING AND  
SELLING AND THE BORROWING AND LENDING  
OF LISTED SECURITIES

AND

### S. Res. 56 and S. Res. 97

(73d CONGRESS)

RESOLUTIONS TO INVESTIGATE THE MATTER OF BANKING  
OPERATIONS AND PRACTICES, TRANSACTIONS RELATING TO  
ANY SALE, EXCHANGE, PURCHASE, ACQUISITION, BORROW-  
ING, LENDING, FINANCING, ISSUING, DISTRIBUTING, OR  
OTHER DISPOSITION OF, OR DEALING IN, SECURITIES OR  
CREDIT BY ANY PERSON OR FIRM, PARTNERSHIP, COMPANY,  
ASSOCIATION, CORPORATION, OR OTHER ENTITY, WITH A  
VIEW TO RECOMMENDING NECESSARY LEGISLATION, UNDER  
THE TAXING POWER OR OTHER FEDERAL POWERS

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### PART 15

NATIONAL SECURITIES EXCHANGE ACT 1934

FEBRUARY 26 TO MARCH 16, 1934

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Printed for the use of the Committee on Banking and Currency



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# STOCK EXCHANGE PRACTICES

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MONDAY, FEBRUARY 26, 1934

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

The committee met at 2:50 p.m., pursuant to call, in room 301 of the Senate Office Building, Senator Duncan U. Fletcher presiding.

Present: Senators Fletcher (chairman), Wagner, Barkley, Bulkley, Gore, Costigan, Adams, Carey, and Kean.

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. The matter now coming before the committee for consideration is S. 2693, a bill, which if enacted into law will be entitled "National Securities Exchange Act of 1934."

These hearings now being begun will continue day after day, except Saturdays and Sundays, until we conclude, and those who wish to be heard, either for or against the bill, will please signify their intention to Mr. Sparkman, the acting clerk of the committee, give their names, and generally if you will, the subject which you wish to discuss. In other words, there is no need of duplicating and repeating over and over again the same arguments and the same views on any particular subject.

We want to speed the hearings as rapidly as we can, but we do not wish to deny anyone the opportunity to be heard if he signifies a wish to be heard. Those who are not insistent upon being heard orally may submit papers and the committee will insert such papers in the record as a part of our hearings.

I think it proper to begin the hearings with the printing of the bill, and then to have some outline of the bill or explanation regarding certain provisions of the bill made so that the committee will understand fully just what we have before us; and perhaps we should begin with an appropriate reference to the economic background of the proposed legislation, and for that purpose we will first hear from Dr. E. A. Goldenweiser, director of the division of research and statistics, Federal Reserve Board.

Now, Dr. Goldenweiser, you may take a seat where you are, opposite the microphone on the committee table, and we will be glad if you will give the members of the committee the benefit of your views regarding the economic background of the bill. I presume you have familiarized yourself with the bill and understand it, and we will now be very glad to hear from you.

[S 2693, Seventy third Congress, second session]

A BILL To provide for the registration of national securities exchanges operating in interstate and foreign commerce and through the mails and to prevent inequitable and unfair practices on such exchanges, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## SHORT TITLE

SECTION 1 This Act may be cited as the "National Securities Exchange Act of 1934"

## REGULATION OF EXCHANGES USING THE CHANNELS OF INTERSTATE COMMERCE AND THE MAILS NECESSARY IN THE PUBLIC INTEREST

SEC 2 Transactions in securities as commonly conducted upon securities exchanges by means of the mails or instrumentalities of transportation or communication in interstate commerce are affected with a national public interest. Such transactions are carried on in large volume by the public generally and by persons engaged in the business of dealing in securities in interstate commerce. The prices established and offered in such transactions are generally quoted and disseminated throughout the United States and foreign countries as a basis for determining and establishing prices at which securities are bought and sold by investors in interstate commerce and in the several States and as a basis for establishing and determining the value of securities for the purpose of calculating the amount of taxes owing to the United States and the several States by owners, buyers, and sellers of securities. Such transactions involve the use of credit and affect the financing of trade, industry, and transportation in interstate commerce. Such transactions give rise at times to a large volume of speculation in securities, a considerable proportion of which originates outside the States in which the exchanges are located. At times the prices of securities on such exchanges are susceptible to manipulation and control and the dissemination of such prices gives rise to excessive speculation. By reason of such manipulation and control and excessive speculation, sudden and unreasonable fluctuations in the prices of securities on such exchanges occur. Such sudden and unreasonable fluctuations in prices coupled with excessive speculation and manipulation cause alternately unreasonable expansion and unreasonable contraction of the volume of credit available for trade, transportation, and industry in interstate commerce and divert credits available from their proper channels. Such unreasonable fluctuations hinder the proper appraisal of the value of securities by investors in interstate commerce and in the several States and the fair calculation of taxes owing to the United States and the several States by owners, buyers, and sellers of securities. Such unreasonable fluctuations constitute obstruction to and a burden upon interstate commerce and upon the national banking and Federal Reserve System. Transactions in securities upon exchanges create a flow of securities in interstate commerce to and from the places where such exchanges are located. The national credit and the safety and stability of investment are intimately related to and affected by the prices for which securities are sold and offered for sale upon exchanges. National emergencies, which produce wide-spread unemployment and the dislocation of trade, transportation, and industry and which burden interstate commerce and adversely affect the public welfare are precipitated, intensified, and prolonged by manipulation and control of prices and excessive speculation on exchanges. Regulation of transactions in securities conducted upon exchanges by means or instrumentalities of transportation and communication in interstate commerce or of the mails is imperative in the public interest for the protection of interstate commerce, and the national banking and Federal Reserve System.

## DEFINITIONS

SEC 3 When used in this Act, unless the context otherwise requires—

1 The term "exchange" means any board market place, exchange, chamber of commerce, or association, whether organized or unorganized, however managed or conducted, and whether incorporated or unincorporated, where, or by means of any facility of which, contracts or offers for the purchase or sale of



securities or other transactions in such securities are made, and includes the members of an exchange

2 The phrase "facility of an exchange" includes its premises, tangible or intangible property, whether on the premises or not, any right to the use of such premises or property or any service thereof, including, among other things, any system of communication to or from the exchange, by ticker or otherwise maintained by or with the consent of the exchange, and any right of the exchange to the use of any property or service

3 The term "member" means any person who is permitted or has a right to use in person any facility of an exchange, for the purpose of making offers or contracts for the purchase or sale of any security thereon, or any firm of which a member is a partner

4 The term "broker" means any person engaged in a business of effecting transactions in securities for the account of others

5 The term "dealer" means any person engaged in a business of buying and selling securities for his own account, through a broker or otherwise

6 The term "specialist" means any person who specializes in the execution of orders in respect of any security or securities on an exchange and who commonly receives from other members of the exchange orders for execution in respect of such security or securities

7 The term "issuer" means any person who issues or proposes to issue any security or who guarantees a security either as to principal or income, except that with respect to certificates of deposit voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued, and except that with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is or is to be used

8 The term "customer" means any person for whose account a broker or dealer effects any transaction in any security, or from whom a broker or dealer solicits such business, or to whom a broker or dealer extends credit on any security

9 The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, any unincorporated organization or exchange. As used in this paragraph the term "trust" shall include only a trust where the interest or interests of the beneficiary or beneficiaries are evidenced by a security

10 The term "security" means any note, stock, treasury stock, bond, debenture certificate of interest or participation in any profit-sharing agreement, oil, gas, and other mineral royalties and deeds, collateral-trust certificate, pre-organization certificate or subscription, transferable share, investment contract, voting-trust certificate, or in general, any instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing, but the term "security" as used in this Act shall not include any direct obligation guaranteed as to principal or interest by the United States

11 The terms "buy" and "purchase" each include any contract to buy, purchase, or otherwise acquire, contract of purchase, attempt or offer to acquire or solicitation of an offer to sell a security or any interest in a security

12 The terms "sale" and "sell" each include any contract of sale or disposition of, contract to sell or dispose of, attempt or offer to dispose of, or solicitation of an offer to buy a security or any interest therein

13 The term "communication" means communication of any kind or description, including written, oral, radiographic, radiophonic, telegraphic, or telephonic, or by ticker, television, or cablegram

14 The term "Commission" means the Federal Trade Commission

15 The term "State" means any State of the United States, the District of Columbia, Alaska, Hawaii, Puerto Rico, the Philippine Islands, Canal Zone, the Virgin Islands, and the insular possessions of the United States

16 The term "interstate commerce" means trade or commerce in securities or any transportation or communication relating thereto among the several

States or between any foreign country and any State, or between any State and any place or ship outside the United States

For the purpose of this Act (but not in anywise limiting the definition of interstate commerce) a transaction in respect of any security shall be considered to be in interstate commerce if such transaction is part of that current of commerce usual in a security transaction whereby an order to purchase or to sell a security originates from a person in one State with the expectation that it will or may be consummated by the receipt on an exchange of an order to sell or purchase the same security originating from another person in another State, including, in addition to cases within the above general description, all cases where it is contemplated that a purchase or sale of any security will be preceded or followed by the shipment of such security from another State. Any security transaction normally in such current of commerce shall not be considered out of such commerce through resort being had to any means or device intended to remove the transaction from the provisions of this Act.

**PROHIBITION OF THE USE OF CHANNELS OF INTERSTATE COMMERCE AND THE MAILS TO UNREGISTERED EXCHANGES**

**SEC. 4** Unless an exchange is registered as a national securities exchange under section 5 of this Act, it shall be unlawful for any person, directly or indirectly, to make use of the mails or any means or instrumentality of communication or transportation in interstate commerce for the purpose of using any facility of such exchange to effect any transaction in a security or to report any such transaction

**REGISTRATION OF NATIONAL SECURITIES EXCHANGES**

**SEC. 5. (a)** Any exchange may be registered with the Commission as a national securities exchange under terms and conditions hereafter provided by filing a registration statement in such form as the Commission may prescribe containing the undertakings, setting forth the information, and accompanied by the documents here below set forth:

(1) An undertaking to comply with, and to enforce so far as is within its powers compliance by its members and by issuers whose securities are registered thereon with any provision of this Act and any amendment thereto and any rule or regulation made or to be made by the Commission thereunder

(2) Such data as to its organization, rules of procedure and membership, and other information as the Commission may by rules and regulations require as being necessary or appropriate in the public interest or for the protection of investors

(3) Copies of its constitution, articles of incorporation with all amendments thereto, and of its existing bylaws or rules or instruments corresponding thereto, whatever the name, which are hereinafter collectively referred to as the "rules of the exchange"

(4) An undertaking to furnish to the Commission copies of any amendments to the documents or instruments mentioned in clause (3) of this subsection forthwith upon their adoption

(b) If it appears to the Commission that the exchange applying for registration is so organized as to be able to comply with the provisions of this Act and the rules and regulations made by the Commission thereunder and that the rules of the exchange are just and adequate to ensure fair dealing and to protect investors, the Commission shall cause such exchange to be registered as a national securities exchange

(c) The Commission shall enter an order either granting or, after appropriate notice and opportunity for hearing, denying an application for registration as a national securities exchange within thirty days after the filing of the application, unless the exchange applying for registration shall withdraw its application or consent to the Commission's deferring action on its application for a stated longer period after the date of its filing. The filing with the Commission of an application for registration by an exchange shall be deemed to have taken place upon the receipt thereof. Amendments to an application may be made upon such terms as the Commission may prescribe.

(d) No registration shall be granted unless the rules of the exchange provide for the expulsion and suspension of a member for conduct or proceeding inconsistent with just and equitable principles of trade and declare that the

violation of any provision of this Act or any rule or regulation made by the Commission thereunder shall be considered conduct or proceeding inconsistent with just and equitable principles of trade.

(e) Nothing in this Act shall be construed to prevent any exchange from adopting and enforcing any rule not inconsistent with this Act and the rules and regulations of the Commission made thereunder and the applicable laws of the State in which it is located

(f) An exchange may, upon appropriate application in accordance with the rules and regulations of the Commission and upon such terms as the Commission may fix withdraw its registration.

#### MARGIN REQUIREMENTS ON LONG ACCOUNTS

Sec. 6. (a) It shall be unlawful for any member of a national securities exchange or any person who transacts a business in securities through the medium of any such member, directly or indirectly, to extend or maintain credit or arrange for the extension or maintenance of credit to or for any customer on any securities not registered upon a national securities exchange

(b) It shall be unlawful for any member of a national securities exchange or any person who transacts a business in securities through the medium of any such member, directly or indirectly, to extend or maintain credit or arrange for the extension or maintenance of credit to or for any customer on any securities registered on a national securities exchange in an amount exceeding at any time whichever is the higher of (1) 80 per centum of the lowest price at which such security has sold during the preceding three years; or (2) 40 per centum of the current market price. The Commission may by rules and regulations prescribe lower loan values as may be deemed appropriate in the public interest or for the protection of investors during any stated period of time or in respect of any specified class of securities

(c) It shall be unlawful for any person to extend or maintain credit or arrange for the extension or maintenance of credit to any person (other than to a dealer to aid in the financing of the distribution of securities to customers not through the medium of an exchange) upon any security registered on a national securities exchange in an amount exceeding the amount which it is lawful for a member of a national securities exchange to lend to any customer on such security, unless the application for the loan is accompanied by a statement by the borrower that such security has been acquired by the borrower and paid for in full more than thirty days prior to the making of the loan. Any person who for the purpose of obtaining a loan makes such a statement which is false in any material respect, shall be deemed guilty of a violation of this subsection

(d) The Commission shall by rules and regulations prescribe the times at and the specific methods by which values shall be calculated for the purposes of this section, the time within which initial and subsequent payments shall be made by the customer, and the notice to be given and the method to be followed in closing out accounts, and no person who shall comply with such rules and regulations shall be deemed to have violated any provision of this section.

#### RESTRICTIONS OF MEMBERS' BORROWING

Sec. 7. It shall be unlawful for any member of a national securities exchange or person who transacts a business in securities through the medium of such member, directly or indirectly—

(a) To borrow on any security registered on a national securities exchange from any person other than a member bank of the Federal Reserve System,

(b) To permit the aggregate indebtedness of such member or person to all other persons, including customers' deposits, to exceed such percentage of the net current assets owned by the borrower and employed in the business not exceeding 1,000 per centum as the Commission may by rules and regulations prescribe;

(c) To use, if a broker, the capital employed in the business to carry or finance the carrying of securities for himself or for others than bona fide customers excluding any partner or employee of such broker,

(d) To hypothecate or arrange for the hypothecation of more of any securities carried for the account of a customer than is fair and reasonable in view of the indebtedness of such customer;

(e) To hypothecate or arrange for the hypothecation of any securities carried for the account of a customer under circumstances that will permit the comingling of the securities of one customer with those of any other person, without the written consent of such customer,

(f) To lend or arrange for the lending of securities pledged by or carried for the account of any customer without the consent of such customer and without crediting the interest received on account of such lending to the account of the customer

PROHIBITION AGAINST MANIPULATION OF SECURITY PRICES

SEC 8 (a) It shall be unlawful for any person, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange—

(1) To effect any fictitious transaction in any security registered on a national securities exchange, or any transaction which purports to be a sale of any such security but involves no change in the beneficial ownership thereof,

(2) To effect, or to authorize another or others to effect for such person's account, transactions for the purchase and sale of any security registered on a national securities exchange at substantially the same time at substantially the same price, whether such transactions of purchase and sale be with the same or with different parties, except transactions made on the exchange as a matter of record only and appropriately recorded and reported as an "arranged transaction",

(3) To effect, either alone or in concert with one or more other persons, transactions for the purchase and sale of any security or securities registered on any national securities exchange for the purpose of raising or depressing the price of such security or securities or for the purpose of creating or with the expectation that there will be created a false or misleading appearance of active trading in such security or securities, or a false or misleading appearance in respect of the market for such security or securities,

(4) If a dealer, broker, or member or a person in the employ of a dealer, broker, or member, to circulate or disseminate in the ordinary course of business of business information to the effect that the price of any security or securities registered on a national securities exchange will or is likely to rise or fall partly or wholly because of the market activity of any one or more persons, if the person disseminating such information has reason to believe that the circulation or dissemination of such information on his part may induce the purchase or sale of any such security in the expectation of such market activity,

(5) To circulate or disseminate information regarding any security registered on a national securities exchange which statement is, in the light of the circumstances under which it was made, false or misleading in respect of any matter sufficiently important to influence the judgment of an average investor, if the person disseminating such information has reason to believe that the circulation or dissemination of such information on his part may induce the purchase or sale of such security, and does not prove that he acted in good faith and in the exercise of reasonable care had no ground to believe that the statement was false or misleading,

(6) To pay or cause to be paid directly or indirectly any consideration or anything of value to any person to circulate, disseminate, or finance the cost of circulating and disseminating, information to the effect that the price of any security or securities registered on a national securities exchange will or is likely to rise or fall partly or wholly because of the market activity of any one or more persons,

(7) To engage in any series of transactions or in any operation for the purchase and sale of any security registered on a national securities exchange which has the purpose or effect of pegging, fixing, or stabilizing the price of such security without having prior thereto reported to the exchange authorities and to the Commission such information regarding the purpose and nature of such transactions or operations, the details thereof, and the person or persons interested therein as the Commission by rules and regulations may prescribe as appropriate or necessary in the public interest or for the protection of investors,

(8) To acquire substantial control of the floating supply of any security registered on a national securities exchange for the purpose of causing the price of such security to rise on the exchange because of such control of the floating supply,

(9) To effect by use of the facility of any national securities exchange—

(i) any transaction in any security whereby any party to such transaction acquires any put, call, straddle, or other option or privilege of buying a security from or selling a security to another party to the transaction without being bound to do so, or

(ii) any transaction in any security with relation to which he has, directly or indirectly, any interest in such put, call, straddle, option, or privilege, or

(iii) any transaction in any security for account of any person who, he has reason to believe, has, directly or indirectly, any interest in any such put, call, straddle, option, or privilege with relation to such security,

or if a member, directly or indirectly, to have or guarantee any interest in any put, call, straddle, option, or privilege in relation to any security registered on a national securities exchange

(b) Any person who participates in any act or transaction in violation of subsection (a) of this section shall be liable to any person who shall purchase any security, the price of which may have been effected by such act or transaction, and the person so injured may sue in law or equity in any court of competent jurisdiction to recover the difference between the price he paid for such security and the lowest price for which such security shall have sold on the exchange during the ninety days preceding and the ninety days following such purchase, and such additional damages, if any, as the person suing may prove that he sustained as a result of any such transaction

(c) Any person who participates in a transaction or transactions in violation of subsection (a) of this section shall be liable to any person who shall have sold a security, the price of which may have been effected by such transaction or transactions, and the persons so injured may sue in law or equity in any court of competent jurisdiction to recover the difference between the price for which he sold such security and the highest price for which such security shall have sold on the exchange during the ninety days preceding and the ninety days following such sale, and such additional damages, if any, as the person suing may prove that he sustained as a result of any such transaction

(d) Every person who becomes liable to make any payment under this section may recover contribution as in cases of contract from any person who, if sued separately, would have been liable to make the same payment, unless the person who has become liable was, and the other was not, guilty of fraudulent misrepresentation

(e) No action shall be maintained to enforce any liability created under this section unless brought within two years after the discovery of the violation upon which it is based

#### REGULATION OF THE USE OF MANIPULATIVE DEVICES

**SEC 9** It shall be unlawful for any person, directly or indirectly, by use of any means or instrumentality of interstate commerce or of the mails or of any facility of any national securities exchange—

(a) To effect the sale of any security registered on a national securities exchange, which at the time of such sale was not owned by such person or his principal except in accordance with such rules and regulations as the Commission may prescribe as appropriate or necessary in the public interest or for the protection of investors,

(b) To use or employ or to execute or accept for execution any stop-loss order in connection with the purchase or sale of any security registered on a national securities exchange except in accordance with such rules and regulations as the Commission shall prescribe as appropriate or necessary in the public interest or for the protection of investors,

(c) To use or employ in connection with the purchase or sale of any security registered on a national securities exchange any device or contrivance which, or any device or contrivance in a way or manner which the Commission may by its rules and regulations find detrimental to the public interest or to the proper protection of investors

#### SEGREGATION AND LIMITATION OF THE FUNCTIONS OF BROKER, SPECIALIST, AND DEALER

**SEC 10** It shall be unlawful for any member of a national securities exchange or any person who as a broker transacts a business in securities through the medium of any such member to act as a dealer in or underwriter of securities,

whether or not registered on any national securities exchange. It shall be unlawful for any member of a national securities exchange to act as a specialist unless registered as such with the exchange, subject to such rules and regulations as the Commission may prescribe, and it shall be unlawful for any specialist on a national securities exchange (a) to effect on the exchange any transaction except on fixed price orders or (b) to disclose to any other person information in regard to orders placed with him which is not available to all members of the exchange. An exchange may provide that officers or employees of the exchange may perform the functions of specialists subject to such rules and regulations as the Commission may prescribe.

REGISTRATION REQUIREMENTS FOR SECURITIES

SEC 11. (a) It shall be unlawful for any person to effect any transaction in any security on a national securities exchange unless a registration is effective as to such security in accordance with the provisions of this Act and the rules and regulations made by the Commission thereunder and unless such security has been issued.

(b) A security may be registered with a national securities exchange upon application by the issuer, by filing with such exchange and with the Commission such undertakings, information, and documents as the Commission may by its rules and regulations require in the public interest and for the protection of investors together with such additional undertakings, information, and documents as the exchange may require. If the exchange authorities certify to the Commission that the security has been approved by the exchange for listing and registration, the registration shall become effective thirty days after the filing of such certification with the Commission: *Provided*, That if it appears to the Commission prior to the expiration of such thirty days that the application for registration does not comply with the provisions of this Act or the rules and regulations made by the Commission hereunder, it may, after appropriate notice and opportunity for hearing within such period, enter an order denying the application for registration unless the issuer shall withdraw its application or consent to the Commission's deferring action on its application for a stated period longer than such thirty days.

(c) The rules and regulations of the Commission in regard to registration shall require—

(I) An undertaking by the issuer to comply with and so far as is within its power to enforce compliance by its officers, directors, and stockholders with the provisions of this Act and any amendments thereto and with the rules and regulations made or to be made by the Commission thereunder and, unless the issuer is a member bank of the Federal Reserve System, not to lend any funds in the money market of any exchange or to any member thereof or to any person who transacts a business in securities through the medium of any such member except in accordance with such rules and regulations as the Commission may prescribe,

(II) Such information as to the issuer and affiliates in respect of—

(1) the organization, financial structure, and nature of the business,

(2) particulars regarding the terms, position, rights, and privileges of the different classes of securities outstanding,

(3) particulars regarding terms on which securities have been or are to be offered to the public

(4) particulars regarding the directors, officers, and principal security-holders and underwriters, their remuneration and their interests in the securities of and material contracts with the issuer and affiliates,

(5) particulars regarding remuneration to others than directors and officers exceeding \$20,000 per annum,

(6) particulars regarding bonus and profit-sharing arrangements,

(7) particulars regarding management and service contracts,

(8) particulars of options in respect of securities existing or to be created;

(9) particulars regarding material contracts not made in the ordinary course of business, and material patents;

(10) balance sheets for preceding years certified by independent public accountants;

(11) profit and loss statements for preceding years certified by independent public accountants; and such other information as the Commission may by rules and regulations require as necessary and appropriate in the public interest or for the protection of investors.

(III) Copies of articles of incorporation, bylaws, trust indentures, or corresponding documents, whatever the names, underwriting arrangements, and other documents of the issuer and affiliates which the Commission by rules and regulations may require as necessary in the public interest or for the protection of investors.

A security registered with a national securities exchange may be withdrawn or stricken from listing and registration in accordance with the rules of the exchange and upon such terms as the Commission may fix, upon application by the issuer or the exchange to the Commission.

#### ANNUAL, QUARTERLY, AND MONTHLY REPORTS

SEC 12. (a) Every issuer of a security registered on a national securities exchange shall file with the exchange and with the Commission, in accordance with rules and regulations to be prescribed by the Commission and in such form and in such detail as the Commission may by rules and regulations prescribe in the public interest and for the protection of investors—

(1) Such information and documents as the Commission may require to keep reasonably current the information and documents filed pursuant to section 11;

(2) Annual and quarterly reports, including, among other things, a balance sheet and profit-and-loss statement certified by an independent public accountant;

(3) Monthly reports including, among other things, a statement of sales or gross income;

(4) Such other reports and at such times as the Commission may by rules and regulations prescribe in the public interest or for the protection of investors or with a view to ensuring that the security-holders' interests shall not be prejudiced by the use of information for the advantage of any special group or interest.

(b) The failure of an issuer to register information, documents, or reports as required by this section shall be ground for the removal of any of its securities from a national exchange by the exchange or by the Commission

#### PROXIES

SEC 13 (a) It shall be unlawful for any person by the use of the mails or of any means or instrumentality of transportation or communication in interstate commerce or of any facility of any national securities exchange or otherwise to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security registered on any national securities exchange unless at such time prior to such solicitation as the Commission shall by rule or regulation prescribe the persons named to exercise such proxy, consent, or authorization shall file with the Commission a statement, which shall be included as a part of every such solicitation, setting forth the purposes of the proxy, consent, or authorization, the persons to exercise it, their relations to and interest in the security, the names and addresses of the persons from whom similar proxies, consents, or authorizations are being solicited, and such further information, and in such form and detail as the Commission may by rules and regulations prescribe in the public interest or for the protection of investors.

(b) It shall be unlawful for any member of a national securities exchange or any person who transacts a business in securities through such member to give a proxy, consent, or authorization in respect of any security registered on a national securities exchange and carried for the account of a customer without a specific written authorization from such customer.

#### OVER-COUNTER MARKETS

SEC 14. It shall be unlawful for any person singly or in concert with others to make use of the mails or of any means or instrumentality of communication or transportation in interstate commerce for the purpose of making or creating, or enabling another to make or create, a market for any security, whether or not registered on a national securities exchange, without complying with such rules and regulations as the Commission may prescribe as appropriate in the public interest or for the protection of investors

## TRANSACTIONS BY DIRECTORS, OFFICERS, AND PRINCIPAL STOCKHOLDERS

SEC 15 (a) Every director, officer, or owner of securities, owning as of record and/or beneficially more than 5 per centum of any class of securities of any issuer any security of which is registered on a national securities exchange, shall file with the exchange and with the Commission at the time of the registration of such security or at the time he becomes such a director officer, or owner of securities the amounts of all securities of such issuer of which he is the record and/or beneficial owner, and within ten days after the close of each calendar month, if there has been any change in his record or beneficial ownership during such month, shall file with the exchange and the Commission a statement indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month

(b) It shall be unlawful for any director, officer, or owner of securities, owning as of record and/or beneficially more than 5 per centum of any class of stock of any issuer, any security of which is registered on a national securities exchange—

(1) To purchase any such registered security with the intention of expectation of selling the same security within six months, and any profit made by such person on any transaction in such a registered security extending over a period of less than six months shall inure to and be recoverable by the issuer, irrespective of any intention or expectation on his part in entering into such transaction of holding the security purchased for a period exceeding six months such suit may be instituted in law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer shall fail or refuse to bring such suit within sixty days after request or shall fail diligently to prosecute the same thereafter For the purposes of this subsection the profit shall be calculated on the sale or sales by such person of such security made at the highest price or prices and on the purchase of purchases made by such person of such security at the lowest price or prices during the six months' period, irrespective of the certificates for such security received or delivered by such person during such period.

(2) To sell any such registered security, if the person selling does not own the security sold or if the person selling owns the security but does not deliver it against such sale within five days,

(3) To disclose, directly or indirectly, any confidential information regarding or affecting any such registered security not necessary or proper to be disclosed as a part of his corporate duties Any profit made by any person, to whom such unlawful disclosure shall have been made, in respect of any transaction or transactions in such registered security within a period not exceeding six months after such disclosure shall inure to and be recoverable by the issuer unless such person shall have had no reasonable ground to believe that the disclosure was confidential or was made not in the performance of corporate duties Such suit may be instituted in law or in equity in any court of competent jurisdiction by the issuer or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer shall fail to bring such suit within sixty days after request or shall fail diligently to prosecute the same thereafter For the purposes of this subsection the profit shall be calculated on the sale or sales by such person of such security made at the highest price or prices and on the purchase or purchases made by such person of such security at the lowest price or prices during the six months' period irrespective of the certificates for such security received or delivered to such person during such period

## ACCOUNTS AND RECORDS, REPORTS EXAMINATIONS OF EXCHANGES, MEMBERS, AND OTHERS

SEC 16 Every national securities exchange, every member thereof, every person transacting a business in securities through the medium of such member, every dealer making or creating a market for securities through the mails or the use of any means or instrumentality of interstate commerce, shall make, keep, and preserve such accounts, correspondence, memoranda, papers, books, and other records and make such reports as the Commission by its rules and regulations may prescribe The accounts, correspondence, memoranda, papers, books, and other records of such persons shall be subject at any time or from



time to time to such periodic, special, or other examinations by examiners or other representatives of the Commission as the Commission may deem necessary or appropriate, and the cost of such examinations, including the compensation of the examiners, shall be fixed by the Commission and paid by the person examined. Any representatives of the Commission designated by it shall have access to the premises or any part thereof of any national securities exchange and the right to attend any meeting or proceeding of the exchange or any committee thereof.

#### LIABILITY FOR MISLEADING STATEMENTS

SEC 17 (a) Any person who shall make or any person, including any director, officer, accountant, or other agent of such person, who shall be responsible for the making of any statement in any application, report, or document filed with the Commission, which statement is, in the light of the circumstances under which it was made, false or misleading in respect of any matter sufficiently important to influence the judgment of an average investor shall be liable to any person (not knowing that such statement was false or misleading) who shall have purchased or sold a security the price of which may have been affected by such statement, and the person injured may sue in law or in equity in any court of competent jurisdiction for the damages caused by such statement, unless the person sued shall sustain the burden of proof that he acted in good faith and in the exercise of reasonable care had no ground to believe that such statement was false or misleading.

(b) In case the person injured purchased a security the price of which was affected by such statement, the damages shall be not less than the difference between the price for which he purchased the security and the lowest price for which it shall have sold within ninety days preceding and ninety days following such purchase.

(c) In case the person injured sold a security the price of which was affected by such statement, the damages shall be not less than the difference between the price for which he sold such security and the highest price for which it shall have sold within ninety days preceding and ninety days following such sale.

(d) Every person who becomes liable to make any payment under this section may recover contribution as in cases of contract from any person who, if sued separately, would have been liable to make the same payment, unless the person who has become liable was, and the other was not, guilty of fraudulent misrepresentation.

(e) No action shall be maintained to enforce any liability created under this section unless brought within two years after the discovery of the violation upon which it is based.

#### SPECIAL POWERS OF COMMISSION

SEC 18 (a) The Commission shall have authority from time to time to make, amend, and rescind such rules and regulations as it may deem necessary or appropriate to carry out and to implement, administer, and enforce the provisions of this Act, including rules and regulations governing the form and content of registration statements and reports for various classes of exchanges, members, securities, and issuers, and defining accounting, technical, and trade terms used in this Act.

(b) The authority above given the Commission shall include, among other things, authority to prescribe the form or forms in which required information shall be set forth, the items or details to be shown in the balance sheet and earning statement, and the methods to be followed in the preparation of accounts, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and nonrecurring income, in the differentiation of investment and operating income, and in the preparation, where the Commission deems it necessary or desirable, of consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer, but insofar as they relate to any common carrier subject to the provisions of section 20 of the Interstate Commerce Act, as amended, the rules and regulations of the Commission with respect to accounts shall not be inconsistent with the requirements imposed by the Interstate Commerce Commission under authority of such section 20.

(c) The authority above given the Commission shall include, among other things, authority to prescribe such rules and regulations for national securities exchanges, their members and persons transacting a business in securities through such members, in addition to those specifically provided in this Act, as it may deem necessary or appropriate in the public interest or for the protection of investors, and may by its rules and regulations more specifically define the form and procedure to be followed in carrying the provisions of this Act into effect. The Commission, among other things, may prescribe the time and method of making settlements, payments, and deliveries, the time and method of calculating margin requirements, and the time and method of closing out under-margined accounts. The Commission, among other things, may by rules and regulations prescribe rules for the conduct of business on exchanges, for the classification of members, for the election of officers and committees to ensure a fair representation of the membership, for the suspension, expulsion, or disciplining of members, for the listing or striking from listing of any security with right of appeal by the issuer to the Commission, for the reporting of transactions on the exchanges and upon tickers maintained by or with the consent of any exchange, including the method of reporting short sales, sales of securities in default in bankruptcy or receivership, and sales involving other special circumstances. The Commission may fix or prescribe the method of fixing uniform rates of commission, interests, and other charges, may prescribe minimum units of trading, rules limiting the manner, method, and place of soliciting business, rules for odd-lot purchases and sales, rules regarding minimum deposits on marginal accounts, and rules limiting or prohibiting the registration or trading in any security within a specified period after the issuance or primary distribution thereof, prescribe rules governing the carrying of accounts and to prohibit fictitious or numbered accounts and require the disclosure of the real and beneficial owners thereof. The Commission shall have power to fix the hours of trading, and, if the public interest in its opinion so requires, summarily to suspend trading in any registered security or upon any registered exchange for a period not exceeding ninety days.

(d) The rules and regulations of the Commission shall be effective upon publication in the manner which the Commission shall prescribe.

(e) For the purpose of all investigations which, in the opinion of the Commission, are necessary and proper for the enforcement of this Act, any member of the Commission or any officer or officers designated by it are empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records which the Commission deems relevant or material to the inquiry. Such attendance of witnesses and the production of such records may be required from any place in the United States or any State at any designated place of hearing. Such power of subpoena and examination shall not abate or terminate by reason of any action or proceeding brought by the Commission under this Act. The Commission shall have authority to investigate and in its discretion to publish information concerning any facts, conditions, or practices which it may deem necessary and proper as an aid in the prescribing of rules and regulations or the recommendation of further legislation concerning exchanges. If any person subpoenaed to attend any inquiry fails to obey the command of his subpoena without reasonable cause, or if a person in attendance upon such inquiry shall without reasonable cause refuse to be sworn or to be examined or to answer a question or to produce any books, papers, or correspondence, memoranda, or other records when ordered so to do by the officer conducting such inquiry, he shall be guilty of a misdemeanor and punishable accordingly. Any officer participating in such inquiry and any person examined as a witness upon such inquiry who shall disclose to any person other than a member or officer of the Commission the name of any witness examined or any other information obtained upon such inquiry, except as directed by the Commission or an officer thereof, shall be guilty of a misdemeanor and punishable accordingly.

#### LIABILITY OF CONTROLLING PERSONS

SEC 19 (a) Every person who, by or through stock ownership, agency, or otherwise, or who pursuant to or in connection with any agreement or understanding with one or more other persons by or through stock ownership, agency, or otherwise, controls any person liable under any provision of this Act or of

any rule or regulation made pursuant thereto shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable

(b) It shall be unlawful for any person, directly or indirectly, to do any act or thing which it would be unlawful for such person to do under the provisions of this Act or any rule or regulation thereunder through or by means of any other person who is controlled by such person by or through stock ownership, agency, or otherwise or through or by means of any other person who is controlled by such person and one or more other persons by or through stock ownership, agency, or otherwise for the purpose of avoiding any provisions of this Act or any rule or regulation made thereunder

(c) It shall be unlawful for any director, officer, or security holder of any issuer of any security registered on a national securities exchange to hinder, delay, or obstruct the making or filing of any document or report required to be filed with the Commission under this Act or any rule or regulation thereunder.

(d) If the spouse of a person subject to any provision of this Act or of any rule or regulation thereunder, or a child or parent residing with such person, or a person holding in trust for such person money or property used in the transaction in question shall effect any transaction in a security which would be a violation of any such provision if effected by such person subject thereto, such person subject thereto shall be deemed to have violated such provision unless he shall sustain the burden of showing that the transaction was not effected with his approval or was not for the purpose of evading such provision

**INJUNCTIONS AND PROSECUTION OF OFFENSES SUSPENSION OR WITHDRAWAL OF REGISTRATION OF AN EXCHANGE OR OF A SECURITY**

SEC 20 (a) Whenever the Commission, either upon complaint or otherwise, shall be of the opinion that in the public interest it should make an investigation to determine whether any person has violated or is about to violate any provision of this Act, or of any rule or regulation thereunder, it may investigate such facts, and it may, in its discretion, either require or permit such person, or any person making such complaint, to file with it a statement in writing, under oath, or otherwise, as to all the facts and circumstances concerning the subject matter which it believes to be in the public interest to investigate

(b) Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this Act, or of any rule or regulation prescribed under authority thereof, it may in its discretion—

(1) Bring an action in any district court of the United States, United States court of any Territory, or the Supreme Court of the District of Columbia to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices to the Attorney General, who may, in his discretion, institute the necessary criminal proceedings under this title. Any such criminal proceeding may be brought in the district wherein the violation complained of occurred,

(ii) After appropriate notice and opportunity for hearing, make an order suspending for a period not exceeding twelve months or withdrawing altogether the registration of a national securities exchange if the Commission finds that such exchange has violated any provision of this Act or of the rules and regulations thereunder or has failed to enforce compliance therewith by a member or an issuer of a security registered thereon, or withdrawing altogether the registration of a security the issuer of which has failed to comply with the provisions of this Act or the rules and regulations made thereunder,

(iii) After appropriate notice and opportunity for hearing, make an order suspending for a period not exceeding twelve months or ordering the expulsion altogether from a national securities exchange any member or officer thereof whom it finds has violated any provision of this Act or the rules and regulations thereunder or has effected any transaction for any other person who he has

reason to believe is violating in respect of such transaction any provision of this Act or the rules or regulations thereunder

(c) Upon application of the Commission the district courts of the United States, the United States courts of any Territory, and the Supreme Court of the District of Columbia shall also have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this Act or any order of the Commission made in pursuance thereof

#### HEARINGS BY COMMISSION

SEC 21 All hearings shall be public and may be held before the Commission, any member or members thereof or an officer or officers of the Commission designated by it, and appropriate records thereof shall be kept

#### PUBLIC CHARACTER OF INFORMATION

SEC 22 The information contained in or filed with any application, report, or document shall be made available to the public under such regulations as the Commission may prescribe, and copies thereof, photostatic or otherwise, shall be furnished to every applicant at such reasonable charge as the Commission may prescribe

#### COURT REVIEW OF ORDERS

SEC 23 (a) Any person aggrieved by an order of the Commission may obtain a review of such order in the Circuit Court of Appeals of the United States, within any circuit wherein such person resides or has his principal place of business, or in the Court of Appeals of the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or be set aside in whole or in part. A copy of such petition shall be forthwith served upon the Commission, and thereupon the Commission shall certify and file in the court a transcript of the record upon which the order complained of was entered. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission. The finding of the Commission as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The jurisdiction of the court shall be exclusive and its judgment and decree, affirming, modifying, or setting aside, in whole or in part, any order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U S C, title 28, secs 346 and 347)

(b) The commencement of proceedings under subsection (a) shall not unless specifically ordered by the court, operate as a stay of the Commission's order

#### PENALTIES

SEC 24 Any person who willfully violates any provision of this Act or any rule or regulation made thereunder, or any person who shall make, or any person, including a director, officer, accountant, or agent thereof who willfully is responsible for any statement in any application, report, or document filed with the Commission, which statement is, in the light of the circumstances under which it was made, false or misleading in any matter sufficiently important to influence the judgment of an average investor, shall upon conviction be fined not more than \$25,000 or imprisoned not more than ten years, or both, except that when such person is an exchange, a fine not exceeding \$500,000 may be imposed

## JURISDICTION OF OFFENSES AND SUITS

SEC 25 (a) The district courts of the United States, the United States courts of any Territory, and the Supreme Court of the District of Columbia shall have jurisdiction of offenses and violations under this Act and of all suits in equity and actions at law brought to enforce any liability or duty created by this Act. Any such criminal proceeding may be brought either in the district wherein the exchange involved is operated, or in the district wherein a transaction violating such provision was consummated, or in the district wherein an act or agreement to act constituting such violation was effected. Any such civil suit or action may be brought in any such district or in the district wherein the defendant is found or is an inhabitant or transacts business and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 128 and 240 of the Judicial Code, as amended (U.S.C. title 28, secs. 225 and 347). No costs shall be assessed for or against the Commission in any proceeding under this Act brought by or against it in the Supreme Court or such other courts.

(b) In case of contumacy or refusal to obey a subpoena issued to any person, any of the said United States courts, within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides, upon application by the Commission, may issue to such person an order requiring such persons to appear before the Commission, or one of its examiners designated by it, there to produce documentary evidence if so ordered, or there to give evidence touching the matter in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(c) No person shall be excused from attending and testifying or from producing books, papers, contracts, agreements, and other records before the Commission, or in obedience to the subpoena of the Commission or any member thereof or any officer designated by it, or in any cause or proceeding instituted by the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him, may tend to incriminate him or subject him to a penalty or forfeiture, but no individual shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

## EFFECT OF EXISTING LAW

SEC 26 (a) The rights and remedies provided by this Act shall be in addition to any and all other rights and remedies that may exist at law or in equity, except that this Act shall supersede such laws of any State as are inconsistent with the provisions or purposes of this Act and such laws of any State as provide for the supervision or regulation of the administration or conduct of business on any exchange which is licensed by the Commission.

(b) Nothing in this Act shall be construed to modify existing law with regard to the binding effect on any member of any exchange of any action taken by the authorities of such exchange to settle disputes between members or with regard to the binding effect of such action on any person who has agreed to be bound thereby or with regard to the binding effect on any member of any disciplinary action taken by the authorities of the exchange as a result of violation of any rule of the exchange, insofar as the action taken is not inconsistent with the provisions of this Act or the rules and regulations of the Commission thereunder.

## VALIDITY OF CONTRACTS

SEC 27 (a) Any condition, stipulation, or provision binding any person to waive compliance with any provision of this Act or of any regulation promulgated pursuant thereto, or of any rule required by such regulation shall be void.

(b) Every contract made in violation of, or the performance of which involves the violation of, any provision of this Act or of any rule or regulation thereunder shall be void as regards any cause of action arising after the effective date of such provision, regardless of whether the contract was made before or after such effective date.

## FOREIGN EXCHANGES

SEC 28 It shall be unlawful for any broker or dealer, directly or indirectly, to make use of the mails or of any means, or instrumentality of transportation or communication in interstate commerce for the purpose of effecting on an exchange situated in a place not subject to the jurisdiction of the United States any transaction in any security the issuer of which is a resident of, or is organized under the laws of, or has its principal place of business in, a place subject to the jurisdiction of the United States except in accordance with such rules and regulations as the Commission may prescribe

## REGISTRATION FEES

SEC 29 Every national securities exchange shall pay an annual registration fee for the privilege of doing business as a national securities exchange during the preceding calendar year or any part thereof. Such fee shall be paid to the Commission on or before March 15 of each calendar year. Such fee shall be an amount equal to one five hundredths of 1 per centum of the aggregate dollar amount of the sales of securities transacted on such national securities exchange during the preceding calendar year

## EMPLOYEES OF FEDERAL TRADE COMMISSION

SEC 30 For the purposes of this Act and of the Securities Act of 1933, the Federal Trade Commission may select, employ, and fix the compensation of such employees, attorneys, and agents as shall be necessary for the transaction of the business of the Commission with respect to such Acts without regard to the provisions of other laws applicable to the employment and compensation of officers or employees of the United States

## SEPARABILITY OF PROVISIONS

SEC 31 If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby

## EFFECTIVE DATE

SEC 32 This Act shall become effective on October 1, 1934, except that applications for necessary registrations under this Act may be made to the Commission in accordance with its rules and regulations at any time on and after July 1, 1934: *Provided*, That section 30 shall become effective immediately upon the enactment of this Act

**STATEMENT OF E. A. GOLDENWEISER, ECONOMIST,  
WASHINGTON, D.C.**

Mr. GOLDENWEISER. Mr. Chairman and gentlemen of the committee, I should like to say to begin with that, while I am connected with the Federal Reserve Board as director of its research and statistical work, I am not appearing here as a representative of the Board but as an individual, and that whatever I say presents my own views and not the view of the Board.

The CHAIRMAN. We understand that.

Mr. GOLDENWEISER. When I was asked to testify on this bill I was called on particularly for the reason that I am in sympathy with the objectives which this bill attempts to accomplish. While, Mr. Chairman, as you have stated, I have read this bill, and have given it some study, yet I am not familiar with all of the details of it, and I am not, in my own opinion, competent to pass upon

specific points and specific methods proposed in this bill for the purpose of accomplishing the broad purposes that the bill is aimed at.

My interest in the bill is from three distinct points of view: I am interested in a bill for the regulation of stock exchanges because of the effect that stock exchange speculation has on the general trend of business, on the rise and fall in business activity, by accentuating the booms, and making depressions deeper and more disastrous.

I am also interested in this bill from the point of view of the credit machinery, and of the banking machinery. I should like later in my testimony to say a few words on the relationship between stock exchange credit, or the use of credit in the stock exchange, and the soundness of the banking situation; and, finally, I am interested in it from the point of view of protecting the public from the dangers and the losses caused to them by participation in stock exchange speculation without being in possession of the necessary means of information or of finances to put them in position to cope with situations that are frequently well in hand by people on the inside.

Senator GORE. Dr. Goldenweiser, do you think that can be done?

Mr. GOLDENWEISER. I do not know, Senator. But I think some moves in that direction are possible, and I think that any moves that are effective, that will reduce that evil, deserve the support of those interested in the public welfare.

The CHAIRMAN. You may proceed.

Mr. GOLDENWEISER. Taking the three main lines of discussion upon one at a time, it is very clear that the very wide fluctuations in stock exchange values have an effect upon the development of booms and of depressions. That has always been the case in nearly every period of inflationary development, and in every depression. But it has become much more accentuated in recent years because of the very great development of communications—the network of telephones, telegraphs, and radio; the gradual acquaintanceship with the possibilities of the stock exchange that has reached greater and still greater numbers of the people.

We used to have a relatively few branches of stock exchange houses. In 1910, there were only 500. In 1929 there were 1,600. There are very few States now that do not have tickers, and most of them have a great many tickers. So that access to the stock exchange has very greatly developed, and this very fact has been a factor in making the influence of this speculative development on the market much greater than it was when the activities of the Stock Exchange were supported by a much smaller number of people.

As an illustration of the relationship between fluctuations of security values and the business situation, I might mention that the prices of stocks rose from 60 in 1922, based on the Standard Statistics average, to 212 in 1929.

During that same period brokers' loans increased from 1½ billion dollars to 8½ billion dollars, and of this very large increase of brokers' loans, 5 billions of dollars took place in 3 years, and 1½ billion dollars in 3 months.

When the break came in October of 1929, brokers' loans, which had reached that very high level, collapsed very rapidly, declined by 3 billions of dollars in 10 days, and by 8 billions of dollars in 3 years, while stocks declined from an average of 212 to an average of 35.

Now, the very rapid rise in securities values, with the great volume of brokers' loans supporting them, which preceded 1929, was a very important contributing factor toward the over-expansion of business activity and the stimulation of speculation in many fields.

Senator GORE. What was the first part of that sentence, Dr. Goldenweiser? I did not quite understand you.

Mr. GOLDENWEISER. I say, this very rapid rise in securities' values prior to 1929 was a very important factor in the over-expansion of business, and the development of the vast speculation going on during that period.

Senator KEAN. How much were brokers' loans in 1929?

Mr. GOLDENWEISER. They were  $8\frac{1}{2}$  billions of dollars.

Senator CAREY. Do you know what portion of the loans of the country that represented—I mean as compared to the total loans?

Mr. GOLDENWEISER. Well, offhand I should say it was about one fourth of the loans, from a fifth to a fourth of the total loans.

Senator BARKLEY. A fourth of what loans?

Mr. GOLDENWEISER. Of all loans extended by banks. Is that what you meant, Senator?

Senator CAREY. Yes.

Senator BARKLEY. Do you mean long-time and short-term loans?

Mr. GOLDENWEISER. I mean all loans by banks.

Senator KEAN. The newspapers published that the Standard Oil Co. had loaned 20 billions of dollars. Now, if they had loaned 20 billions of dollars, and the total loans were only  $8\frac{1}{2}$  billions of dollars, it does not seem to fit into the picture very well. In addition to that, the Standard Oil Co. testified that they received for their loans \$4,900,000, which would be one quarter of 1 percent interest on the amount of 20 billions of dollars. How about that?

Mr. GOLDENWEISER. Well, Senator, I do not know about those figures, but either that figure is just wrong or else—

The CHAIRMAN (interposing). I think it is perfectly well understood that the amount they claimed to have loaned covered amounts that had been loaned by them temporarily and came back and were reloaned.

Mr. GOLDENWEISER. Yes; no doubt.

The CHAIRMAN. The total amount of their loans was something like 70 million dollars, I believe.

Mr. PECORA. The daily average of their loans during 1929, that is to say, their call loans, was about 69 million dollars.

Mr. GOLDENWEISER. Yes.

Mr. PECORA. That was their daily average of call loans throughout the year 1929.

Mr. GOLDENWEISER. Yes, sir.

Mr. PECORA. Which indicates the real amount of money they had outstanding in call loans. The figure of 20 billion dollars referred to by Senator Kean, as having been mentioned by the newspapers, was probably a totalling of the same money reloaned several times, instead of the 69 million dollars, which represented the aggregate at any one time.

Senator KEAN. That was in the newspapers, the figure of 20 billion of dollars. Figuring the amount that the Standard Oil Co. testified they received for these loans, it would make them lending their money at one quarter of 1 percent.



Mr PECORA But it was made clear in the hearings last Friday with regard to Street loans made by the Standard Oil Co., that really what they had outstanding represented a daily average of 69 million dollars approximately, and that the interest received of nearly 5 million dollars which they received in the aggregate for the year on their call loans, represented a rate of about 7 percent. That is, as an average for that year.

Senator KEAN. All right.

The CHAIRMAN. The interest rate ranged from 5 percent to 15 percent, but the average for the year was about 7 percent You may now proceed with your statement, Dr. Goldenweiser.

Mr. GOLDENWEISER. What I was going to say in this connection is, that when there is a prosperous condition of the country and prospects for business success are good, that in itself creates an atmosphere in which a great many people wish to participate in the prosperity by buying stocks, and when they buy stocks they are tempted by the facilities of the market, to which I shall refer a little later, to buy not only what their capital or savings will buy, but to buy as much as they can by borrowing the maximum amount that is permitted to them to borrow.

And what does that result in? These streamlets of speculative funds coming in from all sections of the country, over all the wires and in the mails, make the stream of speculation greatly swollen in size, and contribute to the heights that security prices can be carried to. In 1929 security prices had reached a level that was not in conformity with any economic appraisal, or even the wildest expectations of future prosperity. Those securities were at a level which could be reached only in circumstances where no one bought securities except in the hope that he would be able to sell them again in a few days to someone who was even more optimistic than himself.

It is when people buy securities, not for the purpose of investing money, nor even for the purpose of profiting by reason of the increased prosperity of the industry in which they are buying participation, but are simply buying like they would buy a lottery ticket or a number in a number game, that the situation becomes entirely vicious and socially and economically undesirable.

The stock exchange is fundamentally an institution which makes it possible to collect capital for the purpose of launching new enterprises, and also makes it possible for persons who own shares in an enterprise to sell them to each other through organized machinery without having to seek for buyers; it furnishes a market place, and those are the legitimate functions of a stock exchange.

When, however, a stock exchange ceases to be, or in addition to being that, when it develops into a place where people from all over the country, without any particular knowledge of what they are doing, are risking their savings and incurring heavy indebtedness on the chance of being able to dispose of their holdings at higher prices, then such a stock exchange is not serving a useful social function. On the contrary, it performs a very dangerous part in our economic machinery, and is destructive and disastrous to many individuals and also to the prosperity of the country as a whole.

It is against these excesses that measures need to be taken, and the bill under consideration here is actuated, as I understand it,

by the desire to moderate and regulate the activities of stock exchanges in such a way as to prevent a recurrence of the excesses of appreciation in stocks, of fantastic rises in stocks such as occurred during the period from 1922 to 1929; and also to prevent the disastrous drops in securities prices, with their repercussions, that have happened since that time.

A stock exchange is an extremely efficient organization. As a piece of mechanism I think it is unsurpassed. And it is in its very efficiency that lies the danger of wielding its power at a time of rapid movement, either up or down, of accelerating the movement to a point where no reasonably conceived brakes can retard its action. It is like a 16-cylinder machine fitted with a brake derived from an antediluvial cart. The very efficiency of the stock exchange mechanism is one of the reasons why it plays such a dangerous part in the course of developments.

The borrowing facilities for the purpose of carrying stocks on speculative margins in this country under the existing system are unequaled anywhere. One need to have no credentials; one need to have no line of credit; one needs no introduction to a broker. All that one needs is a few dollars that can be put up as a margin, and the rest of the money required is supplied by the broker, who, in turn, has very easy, perfect access to the credit reservoir through the banks.

Often the person who is buying stocks on margin is not even aware of the fact that he is incurring a liability, or that is so at least in many cases. He simply thinks that he is giving a broker a certain amount of money for the purpose of assuring him of his good will and good intentions, and that if the stocks go up, why, he wins, and if the stocks go down he loses. The fact that he is really signing up for a very large loan, and if the broker is not able to dispose of his securities in time, he has a liability to discharge may not be known to him, or very frequently it is a fact that is not known to the person who is engaged in a margin transaction.

It is for that reason that it has occurred to some of us that it might be a desirable thing to require the customer who borrows on margin to sign a note and become aware of the fact that he is incurring a liability as well as buying himself the right to participate in any advance in the stock that he is buying.

In other countries the machinery employed for a similar purpose does not function just in that way. In England a person cannot borrow any amount of money that he pleases just because he may happen to have the necessary collateral. There he has to establish a line of credit, and when he comes to borrow all that he has to show, so long as it is within his line of credit, is that fact, and no further questions are asked of him. And in establishing that line of credit the directors of the institution that established it consider his needs and his financial responsibility. And if he wants to increase that line he has to go before the board of directors, or his request goes before them, and it must be considered and has to be approved. In the meantime, in the matter of the collateral he offers, he cannot borrow as a matter of course an indefinite amount.

I think that is one particular in which our mechanism is entirely too easy. It seems to me that an important part of that arrange-

ment is the amount that brokers themselves can borrow from banks. Brokers' loans could not have increased from  $1\frac{1}{2}$  billion of dollars to  $8\frac{1}{2}$  billions of dollars, if the facilities for that purpose had not been provided.

Now, brokers' loans are unusually liquid loans. There are very few losses arising out of brokers' loans. Probably their record during the last few years from the point of view of solvency of banks is as good or better than that of any other class of loans. Yes; I should say they are probably better than any other class of loans. There is no money that a bank can lend that is usually as easily repaid as brokers' loans. There is no customer relationship, no obligation to see the customer through and carry him through a difficult situation. There is no unpleasantness about calling such a loan. Brokers' loans can be called by merely pushing a button.

So that it is not a question of the loan itself being a bad loan. The loan is good. But the aggregate amount of such loans creates a socially and economically dangerous situation, because when the turn comes and the loans are being liquidated it results in sales of securities on a vast scale, and while the person who has made the loan gets his money out, in the meantime the values of the securities which he has dumped are declining.

That brings a lot of other loans under water, and those securities are dumped, and there is a further decline. The result is that there is an enormous loss of values that affects not only the people in the market but affects trust companies, savings banks, and insurance companies, and results also in a vast number of bank failures through depreciation of their security portfolios. It is more a matter of depreciation of their security holdings than it is a matter of losses on their loans. They may be able to realize on their loans by selling the collateral, but the sale of the collateral makes the portfolio decline to a point where the capital is impaired or wiped out, and that has been one of the important causes of bank failures.

Mr. Chairman, I had not intended to discuss at this point the banking part of the situation, because I was not quite through with the economic part, with the business situation, but I think that makes relatively little difference, I mean as to the order in which I take them up.

One reason why the very rapid rise in securities values accentuates the height to which a boom may rise, is because it encourages security flotations at a time when every security is snatched up the minute it is issued. Stories are now current in circulation that there were some issuing houses that would announce a security without indicating what it was to be, and that it was oversubscribed before the issuing house had an opportunity to indicate what it was they were going to issue. That kind of situation was not an infrequent occurrence in 1929. Everybody's appetite for securities was unappeasable, and their optimism was inexhaustible. It was a situation that, curiously enough, had been paralleled in history. There were similar situations during the John Law bubble, and the South Sea bubble. Once a passion for speculation gets fully under way it has a capacity of resulting in blindness and dumbness on the part of followers.

In addition to encouraging the flotation of securities, which, of course, results in an enormous amount of funds accumulating in the

hands of business concerns, and overexpansion of plant that later has serious consequences, a rapid rise of security prices in addition means profits taken out of the market by those who sell as rises occur, and results in an enormous demand for a great many kinds of goods on the part of those profit-takers.

Those demands, however, are concentrated to a very large extent in what are generally known as luxury goods, and that results in an overexpansion in the production of such goods, of plants which cater to the rich, or more particularly to the newly rich. Those goods expand very rapidly, and result in a very large overexpansion of plant for the production of those particular kinds of goods, while the demands for other goods are likely not to be affected so much, or not to increase at all, so that there is a dislocation of industry.

When, on the other hand, the boom breaks and depression develops, there is a very rapid decline in these luxury goods, followed by very great difficulty on the part of those concerns which built themselves up on such trade; and there is also an absolute drying up of the capital market, because whereas one year everyone would buy almost everything blindly, the next year they would not buy anything whatsoever because of two reasons—for one reason, because their faith in anything they might buy had been forfeited; and for another reason, and perhaps the more impelling reason, that they do not have the means with which to buy.

So that the decline in business following upon a collapse of the stock market is also disastrous, and it accentuates the decline in business activity, which may be due in the first instance to other maladjustments in our economic life.

It is not my purpose here to give the impression that stock-exchange speculation is the only thing that causes great changes in our business activities. I think it is only one of the factors. I think it is, however, a factor that does contribute to the excessive rises at the height of a boom and to the excessive declines at the depth of a depression.

It is often said that the stock exchange absorbs a very large amount of credit. Strictly speaking, that phrase is not accurate, because the credit that goes into the stock market does not stay there. If it is used to buy new securities, the money goes to the corporation. If it is used in order to pay the profits made by speculation, it is disbursed in the purchase of other securities or of luxury goods.

The stock market does not, strictly speaking, absorb credit in the sense that is often stated. On the other hand, it does divert credit from a very large number of small industries throughout the country. Funds which might go to feed those industries are drawn out and put into the general big money market and then are concentrated in the larger industries.

So that a rapid rise in brokers' loans reflects a diversion of credit from numberless little industries throughout the country into the larger corporations that can utilize it in security flotations.

At the same time it has one other effect on credit, and one that is as important, perhaps, as the first. It has the effect of making credit enormously expensive during a period like 1929, when there was a bidding up of credit going on in the stock market, when paying 15 or 20 percent for money meant nothing. That is, paying 15 or 20

percent per annum meant nothing to a speculator, or to a person who thought he was a speculator, whereas he probably was simply throwing his money away, and yet he thought he was putting his money into a market where it might increase 15 or 20 percent in a day, and therefore paying 15 or 20 percent a year for the money he required was of very little concern to him.

But all this bidding up of the price of money had many consequences in the way of making certain lines of activity, the more sober and quiet activities throughout the country more difficult, because funds were not available for them inasmuch as people were able to draw such large rewards in the money market

In addition, this bidding up of the price of credit had the effect of attracting a very large amount of funds from abroad. Foreigners sent money here, both for the purpose of getting the benefit of the high rates of interest available for short time money in the market and in the hope of participating in the speculative advances in securities.

The accumulation of short-time foreign funds at one time reached the staggering sum of \$3,000,000,000, and that was another factor that accentuated our difficulties, because after England went off the gold standard in 1931, and again in the spring of 1932 there were enormous withdrawals of those balances in gold, and that created panicky conditions and contributed to the domestic hoarding movement, and therefore to the whole cycle of difficulties, including the bank failures and other consequences.

So that to sum up from the credit point of view, the difficulty in the first place is that an accumulation of loans, on the scale that it was accumulated during our boom period, is very dangerous, because when the turn comes and security values drop very rapidly, they are being dumped, and that affects a great many institutions that are anything but speculative; on the contrary, institutions that constitute the backbone of the country's economic life, insurance companies, banks, savings banks, trust companies, and so forth, you can see what it means.

In the second place, the situation is dangerous because it results in an over-issue of securities, and in a diversion of credit from a great many small industries, into a few large industries, and particularly into industries manufacturing luxury goods.

In the third place, it is dangerous because it tends to attract funds from all over the world, which in the conditions that existed then, became mortgages upon our gold, because they were withdrawable in gold, and resulted in enormous runs on our gold, runs that shook the foundations of our economic and financial structure.

It is for all of these reasons, both because of the effect on banking, which I have outlined in some detail, and because of the effect on business stability, and because of the social desirability of protecting the public from stock-exchange manipulation, that this bill appears to me to be in the right direction and to represent a social advance toward better-controlled economy

That is all that I wish to say, Mr. Chairman.

The CHAIRMAN. Any questions by members of the committee?

Senator KEAN. I should like to ask a few questions, if everybody else is through.

The CHAIRMAN. Go ahead, Senator Kean.

Senator KEAN. I should like to ask you, Dr. Goldenweiser, whether you were familiar with conditions in Germany before the World War?

Mr. GOLDENWEISER. Not intimately, Senator.

Senator KEAN. Well, during their industrial development just before the World War, isn't it true that money in Germany was bringing, say, 10 to 12 percent?

Mr. GOLDENWEISER. During their industrial development?

Senator KEAN. No. Just before the World War, wasn't money in Germany for industrial purposes bringing, say, 10 to 12 percent?

Mr. GOLDENWEISER. I am not very certain about that. That sounds very high to me, but I would have to look it up in order to be sure about it.

Senator KEAN. If you will look it up you will find that every exchange house in the United States was sending money to Germany in order to loan it at those rates.

Mr. GOLDENWEISER. Do you mean before 1914?

Senator KEAN. Along about 1912.

Mr. GOLDENWEISER. Germany was undergoing a very rapid industrial expansion, and presumably the demand for capital was great, but the height of the interest rate surprises me.

Senator KEAN. It was something like 10 or 12 percent, I think. Are you familiar with the Paris Bourse?

Mr. GOLDENWEISER. Again, not intimately. I do not even know the New York Exchange intimately.

Senator KEAN. You know, do you not, that on the Paris Bourse a large number of the seats are owned by the Government?

Mr. GOLDENWEISER. Yes.

Senator KEAN. They control the Paris Bourse.

Mr. GOLDENWEISER. Yes.

Senator KEAN. And, owing to their control of the Paris Bourse, there is an outside market which is larger than the Bourse market, is that correct?

Mr. GOLDENWEISER. I think that is correct.

Senator KEAN. But owing to the control of the Government over the Paris Bourse, the outside market is bigger than the Bourse market.

Mr. GOLDENWEISER. Yes.

Senator KEAN. I just wanted to get that into the record. As far as brokers go, do not nearly all of them require that the customer shall sign an agreement by which they are allowed to pledge the securities for the difference between the amount he puts up and the amount of the value of the securities?

Mr. GOLDENWEISER. I think there is such a requirement, but it is one that has been complied with more universally in recent years than it was before 1929, and also one that is very frequently in a very inconspicuous place on the slip that the customer signs.

Senator KEAN. I think it is printed in pretty large letters.

Senator BULKLEY. Does it not go even further than that and permit them to rehypothecate generally?

Senator KEAN. Yes.

Senator BULKLEY. Not merely for the difference.

Senator KEAN. To rehypothecate for the difference. That is all they are entitled to borrow.

Mr. GOLDENWEISER. As I say, I am not fully familiar with the details of the exchange operations.

Senator KEAN. That is notice to the customer, is it not?

Mr. GOLDENWEISER. It is notice to the customer.

Senator KEAN. He must read that circular, or thing that he signs?

Mr. GOLDENWEISER. Yes.

Senator KEAN. And that is a notice to him that they are going to hold him liable for that whole amount, is it not?

Mr. GOLDENWEISER. I think you are right, Senator. I would agree with you in everything except the verb. I think you say he must. I think he should. I think he very frequently does not.

Senator CAREY. How does he sign it when he wires in or telephones in to sell a certain stock?

Senator KEAN. He would probably wire it from a correspondent, and that correspondent has those forms, and he signs it.

Mr. GOLDENWEISER. He signs it at the time he makes his commitment, but he does not sign it over again when he increases his commitment, and it is not a vital part of his understanding of the situation. Of course, when I say "his" I do not mean everyone, because there are no doubt a great many people who are wise to the whole situation. But I think it is a fair statement that a great many do not know.

Senator KEAN. Witnesses who have testified here on behalf of several large corporations have testified that they loaned very large amounts. They also testified—I think I am correct in the statement—that they did not lose a dollar; is that correct?

Mr. PECORA. That is my recollection.

Mr. GOLDENWEISER. I think that sounds right.

Senator KEAN. So that I do not believe, as far as I know, that any bank or trust company lost a dollar on brokers' loans during all this depression.

Mr. GOLDENWEISER. I think a statement as absolute as that probably could be contradicted, but I think that it is certainly correct in essence.

Senator KEAN. There is one other question I would like to ask, and that is this: Many people believe that an important factor was the income tax allowing people to take profits and losses on their profits or losses in the stock market. In 1929, when they had large profits, they refused to sell, which they otherwise would, and a large part of the floating stock was absorbed by people who were speculating in it, but who refused to sell because their profits were so large that they would not sell, and that gave other people an opportunity to put up the prices to the roof. Do you agree to that?

Mr. GOLDENWEISER. I agree to the fact that it was a factor. I have always been told it was a factor. I think it probably was a factor, but I should say, on the basis of my own opinion, that it was not a major factor in the situation.

Senator KEAN. Many people that I know regard it as a major factor.

Mr. GOLDENWEISER. Yes. A great many people have considered it as a major factor, and they may be right. But in my humble opinion it is relatively a small number of people who were in that class, and in the wave of speculation that swept the country at that time

this particular factor was not of major importance. It does not mean that there may not be some defect in the tax machinery that ought to be corrected. I am not a tax expert, either.

Senator GORE. It works just the other way when the market goes into reverse. They sell to take their losses.

Mr. GOLDENWEISER. It may emphasize sales, and it may emphasize purchases. It certainly has resulted in breaks toward the end of the year, when people sold to establish losses, but I think, on the whole, two things about that, Senator, if you will bear with me. One is that in the situation of the country as a whole, I feel that is relatively minor, and also that it hits people mostly of the type who are much better able to take care of themselves than the rank and file of the little folks that lose their money in the market.

Senator KEAN. Yes; but the point of the thing is this. They refused to sell when the market was going up.

Mr. GOLDENWEISER. Yes.

Senator KEAN. Then, when the market started to go down, they were obliged to sell, and that increased the pressure of sales on the market.

Mr. GOLDENWEISER. Yes.

Senator KEAN. And if it had not been for that income tax, you would have had them selling all the way up, and blocking the market from going so high, and, on the other hand, they would not have had anything to sell when the market dropped.

Mr. GOLDENWEISER. That is right. It was a factor, unquestionably.

Senator WAGNER. How did the market go down, except that there must have been a wave of selling?

Senator KEAN. Yes.

Senator WAGNER. You said they refused to sell.

Senator KEAN. They refused to sell when the market was going up, and they were forced to sell when the market went down.

Senator WAGNER. Did not the market go down because there was less demand for the commodity than there were securities offered for sale?

Senator KEAN. It carried it very much further.

Mr. GOLDENWEISER. You mean, why did it start to go down at all? I suppose Senator Kean would not claim that that caused it to turn, but when it turned for other reasons, this accentuated the rapidity of the decline.

Senator KEAN. That is what I mean exactly.

Mr. PECORA. Dr. Goldenweiser, do you know to what extent new securities were issued and absorbed by the market in 1929 prior to October?

Mr. GOLDENWEISER. The volume of security issues?

Mr. PECORA. New issues; yes.

Mr. GOLDENWEISER. Quoting entirely from memory, I think that year there were 10 billions.

Mr. PECORA. Of new issues?

Mr. GOLDENWEISER. Yes, sir.

Mr. PECORA. Prior to October 1929?

Mr. GOLDENWEISER. Yes; 10 billions of new issues.

Senator WAGNER. That means that that 10 billions went into expanding facilities for production, probably.



Mr. GOLDENWEISER. Yes. I think that needs to be modified, Senator, because some of it went into brokers' loans. People issued securities and made money, and then used that money to lend on the stock exchange, because there was a good opportunity to issue securities, and then they had idle funds, and they placed them on the stock exchange. In the very last lap of that expansion, the securities issued were those of investment trusts, which were not using it for any purpose other than to buy other securities. In other words, there was a pyramiding, and sucking in. I could not say offhand what proportion, but I do know that the last heights were reached through securities that were not issued for any productive purpose, but were issued either for the purpose of benefiting by the easy money, or for the purpose of forming security companies, investment companies.

Senator WAGNER. And during that period was there not investment of a great deal of excess profits in securities which went into the expansion of production facilities?

Mr. GOLDENWEISER. Yes, sir. That is right.

Senator WAGNER. That was one of our difficulties, was it not?

Mr. GOLDENWEISER. Oh, yes. I am not minimizing that. I just wanted to say that that was not all. There were also other factors.

Mr. PECORA. As I recall, officers of certain of these nonbanking corporations who testified before this committee last Friday stated how much money they loaned out on call loans during 1929, and they stated that they got a good deal of that money through the sale of securities which they issued.

Mr. GOLDENWEISER. Yes.

Senator GORE. That was the inducement at the time, in order to make call loans. I have been told this, Doctor—and I would like to get your reaction—that that group was among the first and the worst to withdraw these brokers' loans when the danger signals appeared.

Mr. GOLDENWEISER. Of course. The so-called "loans for account of others", the loans by corporations, were all withdrawn almost overnight when the turn came. It is different from bank money, in that it has a complete lack of responsibility toward the market, and has its entire responsibility toward its stockholders. It was perfectly good, straightforward business for a corporation to float securities and get money while it could get it cheap, because it thought that some day it might need it, and in the meantime it could get 10 or 12 percent by loaning it on the market. But when the market turned that corporation quite naturally tried to get all that money out just as soon as possible, so that almost overnight billions of dollars were withdrawn, and the New York banks had to step in and carry the loans in order not to let the market go into an even worse collapse than it had.

It was a very critical situation, and the banks had to borrow from the Federal Reserve, and the Federal Reserve had to help them, because when all those billions started out of the market in that hurry, it had to be supported. I think, with regard to these loans for account of others—I refer to them by the technical name. Partly because they are entirely irresponsible money, irresponsible from the point of view of the money market, they are a very vicious

institution. They are now prohibited both by the rules of the clearing house exchange and by the Banking Act of 1933.

Senator GORE. Then the investment trust was another thing that accelerated the fall, was it not?

Mr. GOLDENWEISER. Investment trusts?

Senator GORE. Yes; those that bought securities at high figures.

Mr. GOLDENWEISER. I think there must have been some investment trusts that did. I am not very familiar with that.

Senator GORE. It was charged at the time that they were dumping securities in order to get out of the stock market.

Mr. GOLDENWEISER. The poorer kind of investment trusts, which themselves borrowed money in order to buy, no doubt had to dump, but a properly conducted investment trust would not have to dump, because it would only buy with money that it received from its investors, and therefore had full equities. It might sell because it thought it was a good thing to sell, but it would not be forced to sell by debt.

Senator KEAN. There is one question I would like to ask if I may. You talked about the development of the stock business from 1922, or whenever it was, on. Is not the reason there was a large development of the stock business owing to the fact that the Government went all over this country trying to sell Government bonds, and organized that activity, and got people trading in bonds, and then they drifted into trading in other things?

Mr. GOLDENWEISER. I have often heard it said that the Liberty Loan campaigns were the first time that many small folks around the country got acquainted with investment possibilities, and that that organization contributed to the ease with which the market reached out all over the country. It is one of those things that it would be very difficult to estimate the extent of, but it has often been considered a factor, and may have been a factor.

The CHAIRMAN. Nobody made any very great profits on Liberty bonds, or fortunes in investment in Liberty bonds.

Mr. GOLDENWEISER. No, sir.

Senator GORE. Except those that bought them at 80 or 84 or 85.

Senator KEAN. In reply to the chairman, I would like to show him some of the accounts of savings banks in New York that bought Liberty bonds at 85 and sold them above par, and made a pretty good profit on them.

Mr. PECORA. Dr. Goldenweiser, I think you made some reference in the early part of your statement to the committee about the tremendous liquidation of these call loans after the first crash in October 1929. I do not recall whether you told the committee the extent of that liquidation.

Mr. GOLDENWEISER. I did, but I would be very glad to repeat that. From 8½ billions it diminished by 3 billions in the course of 10 days, and it diminished 8 billions in the course of 3 years, so that at the end of 3 years, from 8½ billions, it had gone down to 500 million.

Mr. PECORA. And that was all attended by the liquidation of securities.

Mr. GOLDENWEISER. Yes.

The CHAIRMAN. What do those loans amount to now, Doctor, do you think?

Mr. GOLDENWEISER. They are about 900 million now.

The CHAIRMAN. They have increased somewhat?

Mr. GOLDENWEISER. Yes. Since last spring there has been a rise in securities values, and a rise in broker's loans.

Senator GORE. How low did they get—about a quarter of a billion, or something like that?

Mr. GOLDENWEISER. I think the lowest point was around half a billion, as near as I recall. [After conferring with an associate.] As low as between 300 and 400 million.

Senator GORE. Doctor, are there any particular provisions in this act which you think are especially designed to accomplish the ends you have in mind, and which you think we ought to seek, that you care to point out?

Mr. GOLDENWEISER. I am not intimately familiar with all the provisions. I think the general object of the bill is to do away with some of those things that I was talking about.

Senator GORE. There is no doubt about that.

Mr. GOLDENWEISER. As to the details of the provisions, I really am not sufficiently familiar with the stock-exchange mechanism to be able to make concrete suggestions.

Senator GORE. As I understood you, you think the stock exchange, as an institution, is desirable as a market place for the public to buy and sell securities when the public wants to buy and sell?

Mr. GOLDENWEISER. Oh, yes. There is a very definite place in the economic organization for a stock exchange, because without it it would be very difficult to raise capital, and it would be very difficult for capital to change hands.

Senator GORE. You would have to peddle every stock.

Mr. GOLDENWEISER. Yes.

The CHAIRMAN. If you have nothing further, Doctor, we are very much obliged to you.

#### STATEMENT OF WOODLIEF THOMAS, DIVISION OF RESEARCH AND STATISTICS, FEDERAL RESERVE BOARD

The CHAIRMAN. Please state your name, place of residence, and occupation.

Mr. THOMAS. Woodlief Thomas; I am connected with the division of research and statistics of the Federal Reserve Board. For the past 12 years I have been with the Federal Reserve Board, or the Federal Reserve bank, of New York, except for a year and a half, when I was in Germany with the Transfer Committee connected with the office for reparations payments.

While at the Federal Reserve bank in New York, mostly in the past 3 years, I have attempted to make a study of brokers' loans and stock-market credit. A tentative copy of that study, I think, was filed with Senator Glass' subcommittee when he was working on the Banking Act of 1933.

In early 1932, I happened to be in Europe for a few weeks, and I made a very, very casual and more or less superficial inquiry into methods of financing stock market speculation in some of the European countries. The results of that have never been written up.

Senator GORE. That is just what I wanted to ask about.

Senator KEAN. Where was that, Mr. Thomas? Where was the study made?

Mr. THOMAS. I spent a few days in Berlin, a couple of days in Amsterdam, 2 or 3 in Paris, and 3 or 4 in London, questioning stock brokers and bankers, and finding out how stock-market speculation, or stock-market trading, I might say, was financed.

Senator GORE. Do you know where that information can be had?

Mr. THOMAS. No; I do not think it is compiled. I think the stock exchange authorities themselves, in their library, have a great deal of information about the operation of foreign stock markets.

Senator GORE. No doubt.

Mr. THOMAS. I want to limit my statement, more or less, to questions of detail in describing the credit mechanism as it affects the stock exchange, supplementing the statements that Dr. Goldenweiser has made. I will limit myself, as I say, more largely to questions of detail, without taking up questions of general policy.

I should also like not to discuss matters of stock-market manipulation, or listing requirements, or questions of corporation reports, on which I do not feel that I can say a great deal.

At the beginning I might say that most stock-market speculation is done on credit. One can go out and buy a stock with the idea of selling it, and pay for it outright, but generally that is not done. Generally they borrow.

I might also say that nowhere else in the world are there such easy facilities for advancing credit for purposes of stock-market speculation as there are in the New York money market.

There are three types of credit, you might say, employed in the stock market.

First. A broker can go to his bank and borrow, giving a signed note, and purchase the securities in his own name.

Second. A trader can go to a brokerage commission house and purchase and sell securities through this house on open-book account.

Third. A brokerage house, in order to finance the customer's transactions, borrows from banks and others. These brokers, in doing that, can sign promissory notes to the lenders and deposit collateral value in excess of the amount borrowed. These are the brokers' loans.

Taking the first two types, that is, the trader himself, there are several important differences between a bank loan and a customer's margin account with a wire house or a commission house.

In the case of a loan from the bank the trader has to sign a note for a specified amount, and if his commitments are increased he has to sign a new note, whereas in the case of a brokerage house, long commitments are simply entered as a debit in the books of the broker, and short commitments as a credit. The principal requirement in the case of a brokerage house is that the account be adequately margined.

Second. In the case of bank loans, the title to the securities pledged remains with the borrower, whereas the broker generally takes title to securities held against customers' debit balances.

Third. Banks deal only with their customers who maintain a deposit balance in addition to the collateral, and banks are also likely to require larger margins than brokers. I am not so sure that that is always true, but in general it is probably true.

Fourth. In general—although not always—it has not always been a practice in the past, at any rate, bankers are more particular than brokers in arranging credit transactions for purposes of stock-market trading. More recently some brokerage houses are reported to have been a little stricter in their selection of customers.

Fifth. Brokers keep a close current check on margins and do not hesitate to sell out accounts that are undermargined. They may also encourage customers to increase their commitments when rising prices increase the margins held. In other words, the very nature of a brokerage account encourages pyramiding. It makes necessary rapid sales in case of a declining market, and therefore adds to the flexibility or the erratic character of the market.

Banks, on the other hand, are not supposed to encourage extensions on speculative loans, and are likely to carry undermargined customers longer. The latter they can afford to do, because of the note held, because of the possession of better information regarding the customer's credit standing, because of the larger margin, and because of the additional security obtained from the deposit carried by the customer.

We have not any particular information regarding the relative magnitudes of bank loans and brokerage debit balances. At least, we did not have up until the other day. I think Mr. Whitney gave a figure of brokers' debit balances of about \$1,390,000,000. Bank loans to customers on securities at the present time are about three and one half billions, that is, their loans to others than brokers.

Of course, security loans by member banks to other than brokers are not always for stock-market trading, by any means. Many of them are simply customer's loans which are collateraled.

Those loans, at the peak in 1929, bank loans to customers on securities, again representing both loans for stock market trading and loans for other purposes that were collateraled by securities, amounted to something over 7 billion dollars, whereas, as Mr. Goldenweiser has told you, brokers' loans at the same time amounted to eight and one half billion dollars. They were only brokers' loans to the members of the New York Stock Exchange. There were fully 1 billion dollars of brokers' loans to members of other exchanges made by banks.

In general I have described the relationship of the broker to his customer. Brokers' loans do not represent, as a matter of fact, all the credit that is advanced for stock-market trading. As has been pointed out in the press in the last few days, brokers are now borrowing some \$900,000,000, and their customers' debit balances are nearly \$1,400,000,000. In other words, there is a great deal of credit that is advanced for stock-market trading that does not come from the banks. It comes through the brokers themselves, through the commission houses. That may represent brokers' own funds that they put up. It may represent customers' credit balances that they maintain.

Those customers' credit balances can be of two kinds. One covers credit balances against short sales, and the other, free credit balances, which are pretty much the same as deposits. In other words, brokerage commission houses, in effect, do a banking business. They make loans and they accept deposits. I think after next July

it will be illegal for them to accept deposits under the Banking Act of 1933. They can, by short selling, however, offset customers' debit commitments by corresponding credit commitments. In a system of term settlements, for example, such as prevails abroad, for a period of 2 weeks—

Senator KEAN. Now you are talking of London?

Mr. THOMAS. Yes; London, Paris, and Berlin. They all have term settlements. For a period of 2 weeks the short sales exactly balance the purchases, because everybody who sells is selling short for a period of 2 weeks. A man does not have to settle for that time. So during that period no one borrows from a bank or from anyone else. He simply is, in effect, borrowing from the person to whom he sold. That is what would take place in this country even under a system of daily settlements, if you had enough short sales to balance the long commitments, the brokers would not have to borrow at all. Of course, that never exists.

Senator BULKLEY. What facilities are there for margin trading in those European markets?

Mr. THOMAS. The facilities for margin trading in London seem to be exceedingly difficult. In fact, I could not find a broker who would admit that he did a margin business. They would all tell me "Well, you go to the next man. He does it." And I would go to him, and he would not admit it either. But apparently there are some houses that do it.

To open an account with a broker in London, as far as I could ascertain, one had to show that he was more or less of a gentleman. He had to have a credit reference from his bank, and he had to show that he was a person of high credit standing who was able to undertake such commitments as he might have. Some of the houses, as a matter of fact, do not require margins of their customers.

On the question of term settlements, one could buy with the idea of settling after two weeks' time. Generally he did not settle. He simply sold again before the end of 2 weeks, and the accounts balanced, and he either paid or received the difference. But frequently, as I was informed, they did not actually require margins. Generally, however, brokers encourage an individual to go to his bank. If he wants to buy securities on credit and hold them for longer than 2 weeks, he is encouraged to go to his bank and borrow.

Senator BULKLEY. You are speaking about London now?

Mr. THOMAS. Yes, sir.

Senator KEAN. Did you take up the question of carry-over?

Mr. THOMAS. Yes, sir. I could not find many brokers at that time who were willing to do a carry-over business.

Senator GORE. There is one point on which I am not entirely clear. They have over there what they call fortnightly settlements, which you refer to as term settlements.

Mr. THOMAS. Yes.

Senator GORE. Suppose you buy on the 5th of the month. Does that mean that a fortnight from then you settle, or are these fortnightly settlements for a stated period when everybody has to clear?

Mr. THOMAS. Yes. Everybody has to clear on certain days.

Senator GORE. The same date for everybody?

Mr. THOMAS. The same date for everybody.

Senator KEAN. Is there not a regular fixed rate, just the same way as the stock exchange makes a rate in the morning for loans?

Mr. THOMAS. Yes.

Senator KEAN. That is the rate for the day for loans—the renewal rate.

Mr. THOMAS. It is the rate for the next period.

Senator KEAN. And you get the same rate to carry-over; is that right?

Mr. THOMAS. That is right; yes, sir. It is called the “contango” rate, and in case there happens to be more of a demand for that particular stock, or in case short sales are very heavy in that stock, and more people who have sold want to carry over than have bought, you may have to pay what is called “backwardation.” That is, the short will pay rather than the long trader.

Senator KEAN. That is the same thing as a premium in our market.

Mr. THOMAS. Exactly the same thing as a premium.

Senator GORE. What was the term you used?

Mr. THOMAS. Backwardation.

Senator GORE. Suppose you spell that.

Mr. THOMAS. B-a-c-k-w-a-r-d-a-t-i-o-n.

There is a certain amount of borrowing. Then, of course, in London also you have the institution of the jobber, which corresponds, in a sense, to our specialist, but it is not in a very important sense, in that the jobber is not a broker. He deals only for his own account, but he stands ready to buy or sell from brokers and from other jobbers at any time, at certain stated prices. A jobber may find himself, at the end of a term, having bought or sold more than he can deliver—not more than he can deliver, but more than he can carry on his own resources, so that he has to go to a bank and borrow, but the amount of loans that are made by the five big London joint-stock banks to brokers and jobber, that is, to the stock exchange, is a very small figure compared with ours. I think the figures published in the McMillan report ranged from twenty-five to forty or fifty million pounds, which means something less than 200 million dollars, even at the peak of 1929 or 1928, when they reached their peak.

Senator GORE. Do you have any idea what all the stocks listed on the London Exchange were worth at that time?

Mr. THOMAS. There is no such figure available, Senator, I think.

Senator KEAN. If you wanted to buy 5,000 shares you would go to the jobber, and the jobber would make a price on 5,000 shares.

Mr. THOMAS. The broker would.

Senator KEAN. But if you should go direct to the jobber—

Mr. THOMAS. Not as individual, as I take it.

Senator GORE. They deal with brokers and other jobbers; is that the idea?

Mr. THOMAS. Jobbers deal with brokers and other jobbers. Brokers deal with the public and with jobbers. So that the total amount of credit that is advanced by London banks to the stock market is, I believe, if I remember correctly, only about 1 percent of the total loans advanced by those banks for all purposes, and the important part about it is that it fluctuates very slightly. An advance to a

broker or a jobber is a customer's loan. It is not, as in the case of our market, an open-market loan. It is a customer's loan. I will explain how that works.

When a jobber wants to borrow from his bank, as he expresses it, he puts on his top hat and goes and makes a call. He gets a line of credit. If he wants to increase that line of credit he makes another call.

In our market if a broker wants to borrow, he may call his bank and say, "I want to increase my commitment", and he can do it over the telephone. That may be a perfectly legitimate customer's transaction, along perfectly normal lines. The bank may consider that it has advanced that broker a line of credit. On the other hand, if the bank does not want to lend to him or increase his line of credit, he can go to the money desk on the stock exchange, or he can go to a money broker and borrow practically any amount he wants, if he is willing to pay the market rate.

Senator GORE That is in New York.

Mr. THOMAS. That is in New York; yes. That system in New York has grown up because of reasons that I think are more or less inherent in both our stock exchange practices and our banking practices. We have to have call loans in the New York market, because we have a system of daily settlements in New York. A broker likes to be able to pay off his loans as soon as he gets additional cash. The banks can call their loans very freely, but the banking part I will take up later.

The system of daily settlements practically required call loans, although as I understand, in Amsterdam they have a system of daily settlements and they do not have call loans. They borrow on a monthly basis, but they manage to arrange their maturities so that they can always reduce or increase their loans day by day, as the case may be.

Senator BULKLEY. Is margin trading prevalent in Amsterdam?

Mr. THOMAS. To a certain extent; yes. The Amsterdam market is very much like our market in many respects.

Senator KEAN. Except that they deal in one share instead of 100?

Mr. THOMAS. Yes.

Senator KEAN. I would like to ask you a question about this banking situation in London. They do not require collateral from their customers. They give you an open account of so much.

Mr. THOMAS. On their loans to the stock market they generally have collateral, I think.

Senator KEAN. I am talking about others.

Mr. THOMAS. Yes. They have both, but in general their advances on "current account" are not collateralized.

Senator KEAN. In other words, in London you do not sign a note or anything else. All you do is just draw on your bank.

Mr. THOMAS. But you have a line of credit.

Senator KEAN. Up to so much.

Mr. THOMAS. Yes, sir. It is a definitely limited amount.

Another factor that has made the call money market so important in New York has been the nature of our banking system, I think. Before the Federal Reserve System the country banks kept their reserves mostly in large cities, very largely in New York. Those



reserves were callable on demand. The New York banks had very large bankers' balances, which they knew had to be drawn out very promptly, and they liked to invest them in such a way that they could get the money promptly. In that way the call money market provided a very efficient use of these funds, and it has been a very important part of our monetary and financial mechanism.

Senator CAREY. What do you think the effect of that has been on the rest of the country?

Mr. THOMAS. I think Mr. Goldenweiser has answered that question. The call money market is to our money market practically what the bill market is to the London money market. When banks have surplus funds they put them in call loans in this country. In London they put them in bills.

The CHAIRMAN. They send the money from all parts of the country.

Mr. THOMAS. They take money from all parts of the country. When that money gets to be used, and speculative enthusiasm is worked up on the basis of cheap money, then the banks decide that they need the money for their own customers, and generally—I may say it is quite generally true that banks put their customers first. They have been quite free in the past about drawing loans out of the call money market. In 1928 and 1929 banks' loans to brokers decreased, actually. There was an increase in business activity. Banks drew their funds out of the call money market, and increased their loans to their business customers. The increase in brokers' loans in that period was not due to the banks. It was due to the loans for others, which were attracted by the high rates, which were bid up by the speculating and trading community. When they found they could not get bank funds, they bid up until they got the others. It is the first time in our history that that has ever happened to anything like that extent. Previously when the bank loans were withdrawn—at least in many of our previous crises—as bank funds were withdrawn from the stock market, in order to make loans to customers, the stock market crashed or started down. In 1906 the stock market started down one full year before the crisis came, before business really began to show signs of difficulty, and by 1908 the stock market was fully liquidated, funds came back after business had declined, money was cheap, there was little business demand for funds, and they came back into New York. The banks outside sent it in to New York, and the stock market was ready to rise again. That increase in stock market credit probably did a great deal to bring about business revival.

So far as the banks are concerned, that happened in this crisis, or in this depression. The banks began, after business declined and customers' loans decreased, to send their money to New York, but the market was in such condition that it did not have the demand. It did not offer the demand for the money, so it was unused.

Senator GORE. Bank loans, then, ran up during the crisis.

Mr. THOMAS. Bank loans to brokers reached the peak in 1930. Of course, that does not mean that brokers' loans as a whole reached the peak, because the loans for others were declining.

Senator GORE. The banks stepped in.

Mr. THOMAS. The banks stepped in and increased their loans during that period.

The close relationship between our banking system, the central money market, and stock market speculation, brings about the results that Mr. Goldenweiser has already pictured to you. It makes the most fluid and one of the most important elements in our credit supply dependent upon the results of stock market speculation. If speculation is active we can get tremendous expansion in credit. If speculation is dull we get a contraction of credit. If speculation is declining we get a contraction of credit. An expansion of credit temporarily increases purchasing power. A contraction of credit decreases the volume of purchasing power, and has an effect upon the business situation.

Of course, all funds loaned on the stock market are not surplus funds of banks. Banks like to keep a certain amount of funds in liquid secondary reserves, as they call it. They like to keep them there always, so that even in 1928 and 1929 you had some brokers' loans by banks because it was a useful way of keeping money temporarily. Banks have from day to day demands, and they have to withdraw funds quickly, and that provides a very useful market for them. Then, also, the New York banks have a certain definite customer relationship to the brokers, sometimes a perfectly understandable and legitimate one, and they feel some responsibility for the market. For instance, at the end of the month, the outside lenders, the outside banks particularly, will draw their funds from call loans in order to meet certain end-of-the-month requirements. At that period the New York banks will come in and take the place of those loans and will, in fact, borrow from the reserve bank for a few days in order to provide that stability which is essential in any reasonable market operation.

Senator GORE. Who made the withdrawals in that case?

Mr. THOMAS. Outside banks. Outside banks generally have a lot of payments to make over the end of the month. They will withdraw funds from brokers' loans and leave them on deposit for a few days with New York banks so that brokers' loans with outside banks will decline for a few days at the end of the month, whereas bankers' balances held by New York City banks will increase. Then, you might say, the New York City banks will take those funds deposited with them and lend them to brokers. It is simply a shift of practically the same funds. Also, they add a few more, because brokers themselves need a little additional money at the end of the month to meet perfectly legitimate and temporary end-of-the-month demands.

Senator GORE. And the banks meet those requirements?

Mr. THOMAS. The banks meet those requirements, and for that short period of time will borrow from the Federal Reserve bank for that purpose.

Senator GORE. These loans for the account of others have virtually vanished, have they not?

Mr. THOMAS. They have virtually vanished; yes. There are a few still made through some stock-exchange houses—I think about \$100,000,000.

The CHAIRMAN. What are the evils or vices or abuses that this bill would correct?

Mr. THOMAS. By placing larger margin requirements that would make the margin business more difficult. The secret of the whole

importance of the stock exchange is the fact that in this country more than in any other country it is easier to trade on margin through a brokerage house, and the holding of this large volume of small margin accounts makes manipulation and pool operations and short selling and all those things important and successful, because a manipulator can go in and, by bidding up the price of stocks, will increase the margins that are held by small traders, and will also increase their optimism and enthusiasm for these particular stocks, and it will be possible for them to go in and pyramid on the basis of those margins, increasing their commitments, and at the same time on a decline they can go in and, by depressing the price of stocks, deplete margins, so that it is necessary—it is not voluntary as in the case of a rise—it is absolutely essential in the case of a declining market for these small traders to sell out, because their margins become depleted, and that intensifies the nature of the movement.

Senator KEAN. Yes, but if your margin has to be 50 percent, when the customer gets to 49 percent you are going to sell him out?

Mr. THOMAS. Yes. A fixed margin requirement—

Senator KEAN (interposing). It is just the same whether it is 30 percent or whether it is 50 percent?

Mr. THOMAS. If that is followed, that practice, that would be true.

Senator KEAN. But under the law you have got to follow that practice.

Mr. THOMAS. Not necessarily.

The CHAIRMAN. We have not heard much complaint about the requirement here of 60 percent, because the suggestion generally is that 40 percent would be better, high enough.

Mr. THOMAS. Forty percent margin, you mean?

The CHAIRMAN. Yes.

Mr. THOMAS. Well, it makes some difference, because of the amount of cash that has to be put up. But Senator Kean is correct that a fixed, inflexible margin requirement would force selling in the same way. But if this requirement is applied at the time the loan is made, the commission can no doubt make certain regulations regarding what time the customer should be sold out. It gives him a much larger cushion than he had before.

Senator KEAN. Yes, but the point of this business is that today we have testimony—and I think it is practically true—that all through this decline there has not been a dollar lost on stock exchange collateral loans.

Mr. THOMAS. Oh, yes.

The CHAIRMAN. Yes.

Mr. THOMAS. There has not been a dollar lost.

Mr. PECORA. Has not been a dollar lost on call loans.

Senator KEAN. That is what I mean.

Mr. THOMAS. There has not been a dollar lost on brokers' loans.

Senator KEAN. Therefore, increasing the margin has been ample as far as protecting the banks.

Mr. THOMAS. Yes; that is exactly true, so far as the protection is concerned.

Senator BARKLEY. Of course, that comes about in part, if not in whole, by reason of the fact that before the margin is exhausted a broker sells a man out and he uses the money to pay the bank.

Senator KEAN. Of course.

Mr PECORA It protects the bank, but it does not protect the investor.

Mr. THOMAS. There are two points that I can make on that, Senator: One is that the very safety of the brokers' loans is responsible for the lack of safety of some of the bank loans. Suppose the banks which had a certain amount of collateral loans to their customers and also sold out their customers at the same time the brokers did with the same impunity; the brokers would not have come out so fortunately.

Senator KEAN. Maybe not

Mr. THOMAS. It is the very fact that the brokers do build up these large margin requirements and sell them out so quickly that endangers the whole situation.

And the second point that I would make is that the thing we would want to safeguard against is the building up of these tremendous margin commitments to the position where they become important. A certain amount of margin trading is not unsound. It is the rapid expansion and contraction of these margin commitments which is unsound, and if the customer has a fairly safe cushion of protection, the broker will not be so quick about selling him out, and it will provide some stability to the market.

Senator KEAN. I am not sure but what the broker under those circumstances would not be liable for the losses

Mr. THOMAS. There would not be any losses to the customer.

Senator KEAN. Oh, yes; there would.

Mr. THOMAS. Unless the margin was fully depleted.

Senator KEAN. Suppose a man bought a hundred shares of New York Central and put up 50 percent margin and New York Central was selling at par, and he put up 50 percent margin, and the requirements were 50 percent margin, and then it went to 49 and he did not sell him out and it went to 40. Why wouldn't the customer have a claim there?

Mr. THOMAS. I should not think so.

Senator KEAN. I should.

Senator BARKLEY. I was just going to ask you this question, which you partly answered by stating that you think a certain amount of marginal trading is not unsound: Do you think that any amount of pyramiding is unsound, or what is your reaction to that? For instance, if a man buys a hundred shares of stock selling at 50 and he is required to put up 50 percent, which is \$2,500, and it goes up, we will say, to 70, and as it goes up he protects himself by stop-loss orders. Do you think that in a case like that he ought not to be permitted to use his profits to buy more stock if he wanted to?

Mr THOMAS Well, personally I haven't any objection to that practice as a single case. I am not trying to deal with that particular aspect of the situation. But what I am saying is that a general movement in that direction is unsound, since it rapidly increases the credit supply of the country in such a way as to give a false stimulus to business and to such an extent that it must be liquidated sooner or later.

Senator GORE. Speculative profits are pretty easily used in further speculation?

Mr. THOMAS. Yes, sir.

Senator BARKLEY. Presumably, the increase in the market requirements is intended to keep the little fellow out, protect him against the putting in of a little dab of money and losing it. Of course, if he has got enough to buy anything at all he can still deal when he would buy less; instead of buying 200 shares he might buy 100.

Mr. THOMAS. Yes.

Senator BARKLEY. The only way to keep the small man out of the market is to require him to pay cash. If he hasn't got the cash enough to pay for the amount of stock, why, he would not be able to go in.

Mr. THOMAS. He could borrow from his bank.

Senator BARKLEY. He might borrow from his bank—that is, he “used to could.” [Laughter.] I don't know how long it is going to be before he will be able to do it again.

Senator GORE. Let me ask you this in connection with what Senator Barkley has just asked you: What I have in mind is the eighteenth amendment. Suppose we make this margin requirement 60 percent. A man cannot buy on a big or small scale unless he puts up 60 percent margin. Is there anything in this bill to prevent some fellow from hovering around in the shadows and operating as an intermediary between the little fellow who wants to buy on a 10 or 15 percent margin and the big fellow who wants to buy on a margin according to the law. Would there be bootlegging around the corner? Can you stop that?

Mr. THOMAS. I am not sure about that, Senator. I have not looked into the bill carefully enough to see that that could be done.

Senator GORE. I do not see how it could be possible. It may be.

Mr. THOMAS. Well, the thing is that the bootlegger would not have—should not have—as free access to the banking system as a reputable brokerage house has now

Senator GORE. That is true. Some men have a good deal of resources of their own, who, with a good margin of surplus, might operate in that fashion—like these rackets that are organized.

Mr. THOMAS. Yes, but probably you could not get it up to anything like as large proportion as it has been.

Senator GORE. I sometimes doubt, Mr. Thomas, whether you can protect the fool against his folly.

Mr. THOMAS. Yes, sir. I have an idea that is true, Senator, and for that reason—

Senator GORE (interposing). He will do it somehow.

Mr. THOMAS. For that reason I would attempt to control the magnitude and the wide fluctuations.

Senator GORE. You mean the number of the fools and the extent to which they are permitted to operate. If you do that, you are striking at the root of the evil.

Mr. THOMAS. Yes.

Senator BARKLEY. In normal times my observation has been, by watching the papers and keeping fairly well informed about the movement of securities, that there are certain very large number of stocks, I would say the majority, that do not have wide fluctuations

from day to day but are fairly well stabilized, and my information is that New York Stock Exchange houses require a smaller margin in those cases because there is less liability of having to sell out a customer in order to protect themselves, and they require a larger margin in case of volatile shares that are liable to go up 10 or down 10 points a day or within a week. Would you leave any flexibility in the law so as that the Stock Exchange could continue to fix some relative margin, depending upon the character of the stock?

Mr. THOMAS. That, Senator, I think, is the beauty of the particular margin provision in this bill, that with stocks that are relatively stable or which have not fluctuated very widely, you can borrow up to 80 percent of which might be up to very close its present value in the market. On those more volatile stocks they can borrow only up to 40 percent of the market or 80 percent of the lowest price, which does provide a larger cushion in the case of the more volatile stocks. It is an automatic thing.

Senator BARKLEY. In the case of a stock which had gone down to \$20 a share within the last 3 years, if a man wanted to put up a margin on that under this bill, he could buy that stock by putting up \$4 a share, although it is selling now at 40?

Mr. THOMAS. If it has been to \$20, yes; he could buy it with \$4.

Senator BARKLEY. He could borrow within 80 percent of the lowest price?

Mr. THOMAS. Yes.

Senator BARKLEY. Which would be \$16 a share, although that stock is now selling at 40 or 50?

Mr. THOMAS. Well, if it is selling at 50 he could borrow \$20 on it; if it is selling at 40, he could borrow exactly the same. He could borrow \$16 on it if the lowest price is 20 and its market is 40. If it goes up above 40, he can borrow an increasing amount on it.

Senator BARKLEY. Of course, that would not necessarily tend to keep the little fellow out.

Mr. THOMAS. No.

Senator BARKLEY. If he could put up \$4 a share on a stock that had been down to as low as 20 and was up at 40 now. He really would be able to buy it on a smaller margin than he can now, according to the regulations of the stock exchange.

Mr. THOMAS. It would decrease the amount of credit expansion that you could get on the basis of a given amount of stocks, and also decrease the rate of increase in that credit as prices rose. A man would have to put up more money constantly.

Senator KEAN. What would he have to put up if the stock went to 70? According to Senator Barkley he could buy it for \$4 now, on a \$4 margin, if it is selling at 40. Is that right?

Mr. THOMAS. He could buy it by borrowing \$16 on it selling at 40. Selling at 70 he could borrow \$28 on it, which would give him a margin of 42.

Senator KEAN. I am talking about the margin the customer would have to put up.

Mr. THOMAS. Yes. Giving him a margin of 42 selling at 70.

Senator KEAN. Have to put up 42?

Mr. THOMAS. Have to put up \$42.

Senator KEAN. For each share, you mean?

Mr. THOMAS. For each share; yes.

Senator KEAN. Then if it went up, why, he could not afford to hold it, could he?

Mr. THOMAS. Well, he would not have to put up any more if it went up. That gives him more margin, if it went up.

Senator BARKLEY. Of course, if it went up he would not have to put up any more money.

Mr. THOMAS. He can borrow always 40 percent. He could borrow money on it. He could draw some out.

The CHAIRMAN. Is there anything else, Mr. Thomas?

Senator GORE. I wish you would state a case a little more in detail, carry it through under those operations.

Mr. THOMAS. Exactly how these margin provisions would operate?

Senator GORE. Yes, sir; that you have just been discussing.

Senator BARKLEY. Of the bill.

Senator GORE. Yes; get it in the record in a completed statement.

Mr. THOMAS. Maybe someone who is more familiar with commission-house practice could do it better than I.

Senator GORE. Oh, yes; all right.

Mr. THOMAS. I could give you a general picture of it.

The CHAIRMAN. We are much obliged to you, Mr. Thomas. We will wait until tomorrow to call Mr. Corcoran. The committee will now take a recess until 10 o'clock tomorrow morning.

(Accordingly, at 4:25 p.m., the committee adjourned until 10 o'clock on the following morning.)





# STOCK EXCHANGE PRACTICES

TUESDAY, FEBRUARY 27, 1934

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

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

Present: Senators Fletcher (chairman), Barkley, Bulkley, Gore, Reynolds, Byrnes, McAdoo, Goldsborough, Carey, and Kean

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; also Roland L. Redmond, counsel to the New York Stock Exchange.

The CHAIRMAN. The committee will come to order. Now, Mr. Corcoran, will you please state your name, place of residence, and occupation.

## STATEMENT OF THOMAS GARDINER CORCORAN, IN THE OFFICE OF COUNSEL FOR THE RECONSTRUCTION FINANCE CORPORATION, WASHINGTON, D.C.

Mr. CORCORAN. My name is Thomas Gardiner Corcoran. I am in the office of counsel for the Reconstruction Finance Corporation here in Washington, but I want it fully understood that I do not speak for the Reconstruction Finance Corporation.

The CHAIRMAN. We understand that. Are you familiar with the bill the committee has under consideration, S. 2693?

Mr. CORCORAN. Yes; Senator Fletcher. I am one of the persons whom Mr. Landis called in to help on the drafting of the bill after you requested of him that, in cooperation with Mr. Pecora and members of his staff, a bill be prepared for you.

Mr. PECORA. Mr. Chairman, might I interrupt Mr. Corcoran for just a moment?

The CHAIRMAN. Certainly.

Mr. PECORA. Mr. Redmond, can you have available for us here in the next day or two the minute books of the committee on business conduct the conference committee, the governing committee, and the law committee of the New York Stock Exchange?

Mr. REDMOND. We will produce them here if you wish?

Mr. PECORA. All right, please do so. And the balance sheets and operating statements of the New York Stock Exchange for the last 3 years.

Mr. REDMOND. For what term?

Mr. PECORA. For the last 3 years, of the New York Stock Exchange and its affiliated and associated corporations.

Mr. REDMOND. I do not know whether such balance sheets exist.

Mr. PECORA. How about the treasurer's reports of such corporations?

Mr. REDMOND. Yes, they exist.

Mr. PECORA. But there is no consolidated balance sheet for the associated and affiliated corporations?

Mr. REDMOND. There may be, but only as filed with the Federal income tax authorities, and that, of course, is a privileged document.

Mr. PECORA. Well, whatever the treasurer's reports are, that those associated and affiliated corporations made, we should like to have.

Mr. REDMOND. We will produce those, of course, before the committee. We feel that they are confidential papers and should be produced, if required by the committee, in open hearing.

Mr. PECORA. That is what we want them for, for the committee in open hearing.

Mr. REDMOND. All right.

Mr. PECORA. And then there is a special report of the secretary of the committee on publicity of the New York Stock Exchange, which was acted upon at a meeting of that committee held on April 21, 1931.

Mr. REDMOND. Suppose I make a note of these things?

Mr. PECORA. All right. Please do so.

Mr. REDMOND. April 21, 1931, did you say?

Mr. PECORA. Yes.

Mr. REDMOND. All right. And now you say you want the minutes of the business conduct committee, the conference committee, the governing committee, and what else was it?

Mr. PECORA. The law committee.

Mr. REDMOND. There are no minutes of the law committee.

Mr. PECORA. Then, of course, they cannot be reproduced.

Mr. REDMOND. I think I now have a memorandum of what you request.

Mr. PECORA. And the operating statements or balance sheets of the New York Stock Exchange and its affiliated or associated corporations.

Mr. REDMOND. All right. I have a memorandum.

The CHAIRMAN. Mr. Whitney, do you desire to have Mr. Redmond appear as counsel for the New York Stock Exchange at these hearings and to take such part as he may see fit to take in the hearings?

Mr. WHITNEY. If you please, Senator Fletcher.

The CHAIRMAN. Without objection, that will be agreed to. So, Mr. Redmond, you may be here at the table.

Mr. REDMOND. I will take a seat down here beyond the person appearing, if I may.

The CHAIRMAN. Yes; as the representative of the New York Stock Exchange.

Mr. REDMOND. All right. I thank you.

The CHAIRMAN. Now, Mr. Corcoran, you may proceed. Please take up the bill and explain it to us, and let us see if the members of the committee understand its provisions. It has been published,

but we would like to have it explained, and how we may expect it to accomplish the results aimed at.

Mr. CORCORAN. I understood, Senator Fletcher, that that was what you wanted me to do, to explain the bill, the ideas behind the bill, and to try to illuminate some of the objections that have been made to the bill.

Senator BARKLEY. May I ask you whether you assisted in the preparation of the bill?

Mr. CORCORAN. Yes; I did, Senator Barkley. This bill was prepared at Senator Fletcher's request by the cooperation of two groups: Mr. Pecora's group, who have been carrying on the investigation before this committee, and Mr. Landis' group. Mr. Landis is one of the commissioners of the Federal Trade Commission. Senator Fletcher asked Mr. Landis to prepare a bill in combination with Mr. Pecora's group, and Mr. Landis asked me, along with some others, to help him on the bill. One of us is at the House this morning, and Senator Fletcher has asked that I come over and simply try to explain what the bill is about.

Senator BARKLEY. I just wanted to get your connection with the bill, so that I might understand the situation and, so to speak, qualify you as an expert witness on it.

Mr. CORCORAN. I do not think anyone is an expert on stock exchanges.

Senator BARKLEY. I know a lot of people who wished they were or that they had been.

Mr. CORCORAN. Perhaps so.

Mr. PECORA. And there are people who thought they were experts but who now wish they had not thought so.

Mr. CORCORAN. I once thought so, but I no longer do.

Senator BARKLEY. All right.

Mr. CORCORAN. There are 49 pages of this bill, and there is a great deal of technical language in it relating to stock-exchange practices and to corporate practices, as there must be on any subject of this kind. There is, however, a very definite structure in the bill in the shape of provisions aimed at four general fields of operation which you must regulate if you are going to do a thorough job of regulating stock exchanges.

There are, first of all, provisions relating to the control of the credit that gets into the stock market, to the field which Dr. Goldenweiser and Mr. Thomas discussed with you yesterday. In this connection there are provisions relating to borrowing by brokers to finance their own operations and to finance their customers' operations. Then the bill tries to get at the same problem, of borrowed money in the stock market, by regulating the loans which individuals may obtain from brokers or from banks to carry securities.

A second group of provisions in the bill relates to the protection of investors from evils in the stock market machinery as presently set up, from manipulations, and from what is considered to be the evil of the combination of the functions of the broker who executes orders on commission for customers, and of the dealer who is trading in securities for his own account and has something of his own to sell to the same man from whom he is taking an order as a broker.

The problem of the specialist comes under that general category, that is the group of provisions designed to protect investors from existing evils of the market machinery; and, likewise, under that heading fall the provisions for control by a Government commission over the actual practices of stock exchanges.

Then there is a third group of provisions, designed to protect investors in the market from ignorance and from exploitation by corporate insiders. Lack of information on the part of investors and ignorance of what they are buying is one of the real factors in connection with that speculation the President talked about in his message.

And then there is a fourth group of provisions, designed to regulate the over-the-counter market in unlisted securities, to protect listed securities from having the provisions of this law so burdensome on them that a corporation with unlisted securities will be in a preferable position.

Now, these provisions have been worked out with the best advice we have been able to obtain here in Washington. The provisions with reference to control of credit were worked out in consultation with the best men we could find to work on that matter in the Federal Reserve System. The provisions for the protection of investors from evils in market machinery were worked out largely by Mr. Pecora's staff, who are probably the best-informed men in the United States on that subject at the present time.

The provisions for the protection of investors in the market from corporate insiders, particularly insofar as corporate publicity is concerned, were worked out with the help of the manager of one of the biggest investment trusts in New York City, a professional investor who invests for 20,000 stockholders, and who testified before the House committee.

Senator BARKLEY. Who was that?

Mr. CORCORAN. A man named Presley. I have a newspaper release of his which I will try to read into the record a little later on. The problem of handling the over-the-counter market is one on which we consulted many brokers in New York. Likewise the problem of regulating the stock exchange machinery.

Within the limitations as to the time that could be put on a bill like this, I really think the field has been fairly well covered. Of course, in any bill produced to order there will be some errors in language that need to be corrected. And I, no more than anyone else who worked on the drafting of the bill, am here to say that this is something perfect in the last detail.

Now, there has been a great deal of criticism of the bill that it is too drastic, that it goes surprisingly far; but you must remember that if you are going to tackle the problem of regulating stock exchanges, and all the implications of stock exchange operations, and of the flow of credit from the savings of the average investor into corporate financing, and the problem of handling decent publicity for the investor in connection with all the intricacies of corporation finance, you have a job which is so big that unless you do it right you might just as well not attempt to do it at all.

The criticism which has been made of the bill, that it gives too great powers to an administrative commission, does not take into consideration the fact that the commission which is given this job

is given a job of regulating the most powerful single institution in the United States, an institution which with all its connections cannot be expected tamely to submit to regulation when you pass this bill or any other bill, that you will have constant pressure on any organization set up to regulate an institution as powerful as the Stock Exchange and and the roots of invested interests in which run as deep as in the case of the Stock Exchange; that you are always going to have pressure on any administrative commission in such a case.

Really, to say that the Congress should put a commission without very large powers in charge of the regulation of stock exchanges, would be like advising that one put a baby into a cage with a tiger to regulate the tiger. For a commission must have full powers or the stock exchanges and the forces allied with the stock exchanges, which are supposedly being regulated, will actually regulate the regulators.

There is one other matter which I think we ought to discuss before we get into a detailed report on the bill. This bill is in a sense the third report on this subject that has come out within the year. There was an earlier report of a committee headed by the Secretary of Commerce, known as the "Dickinson report", which the President sent to both Houses of Congress without comment. Then there is another report that was worked out by a staff of 30 market specialists and investigators, under the auspices of the Twentieth Century Fund, which, I understand, will be released in full in the papers tomorrow morning, and which has been released piecemeal in newspaper reports since about the 9th of February. The Twentieth Century Fund is governed by a board of trustees that includes men you certainly would not call radical. Newton D. Baker is a member of the board, as well as Owen Young of the General Electric Co., Henry Bruere of the Bowery Savings Bank, John Fahey, chairman of the Home Loan Bank System, Henry Dennison of the Industrial Advisory Board of the N.R.A., and several others. The director of the investigation resulting in this particular set of reports is Evans Clark. Some of the ideas of that committee were used in the preparation of this bill, and you will find that on many of the very controversial points this supposedly impartial expert committee, who have made the most thorough investigation made this year of market operations, agree with this bill, contrary to the arguments of the stock exchange.

There is one other thing we ought to remember before we go into a detailed discussion of the bill. Normally when you think of a stock exchange you think of the New York Stock Exchange. Just remember that there are many other stock exchanges beside the New York Stock Exchange. I do not know how many there are, but there is a stock exchange in practically every important city in the United States. The New York Stock Exchange is so far ahead of these other stock exchanges, in its rules and regulations, with few exceptions, that there is almost no comparison, and many of the provisions of this bill that might not seem absolutely necessary if you were dealing only with the New York Stock Exchange, and if you were sure that the reform of the New York Stock Exchange would go on at a sufficiently accelerated pace, become absolutely necessary

when you are dealing with the standards of the smaller stock exchanges in other cities of the country. Now, if we may go on—

Senator BARKLEY (interposing). Let me ask you a question right there. These local stock exchanges that you are speaking of deal very largely in local stocks, don't they?

Mr. CORCORAN. Yes.

Senator BARKLEY. And there is not usually that feverish enthusiasm and impatience and expectation and deferred hope in connection with such local exchanges because of their limitations and the limited number of stocks listed, that pertain to the New York Stock Exchange.

Mr. CORCORAN. That is true. Of course, one difficulty with the small exchanges is that they were used unfairly as a method of qualifying securities under blue-sky laws. Blue-sky laws in some States regulating the distribution of securities were rather onerous. You really had to do something in order to qualify before the State blue-sky commission, and under the pressure that was always present in the distribution of a big issue of securities, there was neither the inclination nor the time to satisfy the blue-sky commissioner of some of these marketing States on some of these matters. They really wanted to know something about the securities before they would permit them to be sold within the State. The favorite device was, therefore, for some second-rate stock exchange, within the borders of the State, to go to the legislature of the State and obtain an exemption from the blue-sky laws of the State for issues listed on that stock exchange. Then the issue could, by listing the stock with the second-rate stock exchange, duck the blue-sky law of the State. Small exchanges were also, unfortunately, used merely as a place, although there was practically no trading, on which a quotation could be established in order to help the salesmen of securities, which could not be listed on the big stock exchanges, so that they could go to their customers and say: "See. This is a listed stock. There is a quotation."

Senator BARKLEY. To what extent are the local stock exchanges regulated by the laws of the States in which they are located, if at all?

Mr. CORCORAN. Not very much.

Senator BARKLEY. Is there any law in any of them which provides that no stock shall be listed unless it passes through the blue-sky process?

Mr. CORCORAN. No.

Senator BARKLEY. They can list any stock, whether it has been approved by the State authority or not?

Mr. CORCORAN. It is very difficult for the States to regulate stock exchanges. You cannot very well regulate the home team, you know.

The CHAIRMAN. They claim that they do an intrastate business and not an interstate business.

Mr. CORCORAN. Well, sir, even before the Congress acts, of course any attempt by a State to regulate a stock exchange finds itself subject to a certain degree of political pressure, brought on State legislatures, through local interests. You cannot expect effective legislation of stock exchanges from within the State itself.

The CHAIRMAN. They are almost obliged to do an interstate business, aren't they?

Mr. CORCORAN. Yes, sir.

The CHAIRMAN. And they cannot succeed in the conduct of interstate business without the postal regulations being involved.

Mr. CORCORAN. That is true of the very large exchanges, although it would not be true in the case of the small exchanges, such as Senator Barkley spoke about a moment ago, because in the case of the small exchanges they do a great proportion of their business in local securities.

Senator BARKLEY. To what extent does the New York Legislature attempt to regulate the New York Stock Exchange?

Mr. CORCORAN. Very little; there is regulation which has been incorporated in this bill and to which Mr. Whitney makes no objection, concerning the hypothecation of stocks of customers. But there is very little regulation, or at least I think this is right, of the New York Stock Exchange under the New York law.

Mr. PECORA. There is none at all of the exchange. There are various laws in regard to practices.

Senator BARKLEY. Of course, there is a sort of twilight zone, legally speaking, between the power of a State to regulate an exchange that transacts its business within the borders of the State, and the power of the Congress to regulate that same exchange insofar as its transactions cross State lines.

Mr. CORCORAN. That is true.

Senator BARKLEY. All right.

Mr. CORCORAN. Now, if we may go on and discuss, first of all, the provisions of the bill relating to control of credit. Those provisions are set forth in section 6 (a) and in section 7 of the bill, beginning on page 12 and extending over on page 13; and I suggest that inasmuch as we probably shall not have as much time as would be necessary to read the bill word for word from the beginning, I be permitted to work on the sections which are the most important.

As Mr. Goldenweiser and Mr. Thomas stated to you yesterday, there is a direct relationship between the amount of credit that gets into the stock market and speculation on the stock market on the one hand and the fluctuations that result from speculation on the other hand.

That, first of all, has a very definite effect upon business and, secondly, a very definite effect upon the pocketbook of the average small investor who goes in on too small a margin.

This bill tries to hit the problem of control of credit from two angles. On page 12, section 6 (a) it tries to hit the problem from the angle of the amount that a customer can borrow to buy securities in the market; and in section 7 it tries to hit the problem from the angle of the amount and the manner in which a broker can borrow to finance those same customers or to finance himself.

If we may just go through this section 6 (a):

It shall be unlawful for any member of a national securities exchange—

That is, for an exchange that will be licensed under the provisions of this act—

or any person who transacts a business in securities through the medium of any such member, directly or indirectly, to extend or maintain credit or

arrange for the extension or maintenance of credit to or for any customer on any securities not registered upon a national securities exchange

The purpose of that provision is to prevent a broker engaged in the brokerage business from lending on anything but securities listed on a national securities exchange, and therefore subject to regulations to be prescribed for national securities exchanges.

Senator CAREY. Does that mean that a customer could not borrow on a perfectly good security if it did not happen to be so listed?

Mr. CORCORAN. He could not borrow from a broker on unlisted securities.

Senator CAREY. Suppose he had some good securities that were not listed on an exchange, and there are a good many good issues that are not so listed, does that mean that he could not use that security to borrow money to buy other securities?

Mr. CORCORAN. That is true.

Senator CAREY. Even though a perfectly good security?

Mr. CORCORAN. Yes.

The CHAIRMAN. But how about banks?

Mr. CORCORAN. Will you let me come to that, which is a very important point?

The CHAIRMAN. Yes.

Mr. CORCORAN. You will notice that in paragraph (b) it provides:

It shall be unlawful for any member of a national securities exchange or—

And this is important language, gentlemen of the committee—  
any person who transacts a business in securities through the medium of any such member, directly, or indirectly—

That language was not intended to catch banks. And I do not believe it does catch banks. It was intended to bring within the limitation that loans can be made only on listed securities, not only the broker who is actually a member of an exchange, but a great class of brokers who are not members of exchanges but who receive orders from customers for securities listed on exchanges and then execute those orders through a broker on the exchange.

Of course under the Glass-Steagall bill a bank can no longer peddle securities at retail. It can do two things: it can buy securities for its own account, for its own investment; and it can act as agent to transmit to a broker an order to purchase or sell securities, given to it by one of the bank's customers.

Certainly we had no conception when we drafted the language of this bill that it would be said that if a bank bought securities for its bond account, or merely transmitted, for a service charge, an order from a customer to a broker (because very often customers of banks do not know whom to go to for brokerage service), that operations of that kind on the part of a bank constituted transacting a business in securities.

And I might say that if there is any difficulty with that language, or any conception that it does cover a bank, acting as banks may act under the Glass-Steagall Act, then the language should be changed so that banks so acting are not within the scope of the language; but that brokers who are not members of an exchange but who clear through or operate through a broker who is a member of an exchange, or a dealer who operates through a broker who is a member of an exchange, will be within the scope of that language.



Now, objection has been made that it is not fair to deny to holders of unlisted securities the privilege of putting them up with a broker and having the broker make a loan on those unlisted securities as a part of a mixed margin account.

Senator GOLDSBOROUGH. Do I understand that they are ineligible for credit? I mean, such securities as municipal bonds, or the stocks of national banks, insurance companies, and public utilities, that they will be ineligible under section 6 of this bill?

Mr. CORCORAN. No. They will be eligible for a loan by a bank, but not for a loan by a broker. If you wanted to carry such securities on margin you would have to carry them at your bank.

Senator GOLDSBOROUGH. But section 6 of this bill so far as brokers are concerned would not make eligible even the type of securities I have asked you about.

Mr. CORCORAN. No.

Senator CAREY. As this reads now, I would think a bank which made a loan of money on securities that were not listed on an exchange would be violating the law. How about that?

Mr. CORCORAN. No; I do not think so, because the business that a bank can do in securities now, as the statutes have been changed, would not be what you could fairly call business coming within that language: "Who transacts business in securities."

Senator CAREY. It says:

or any person who transacts a business in securities through the medium of any such member, directly, or directly—

Let us presume that a bank has securities and was selling them through such member, that bank would be precluded from lending on unlisted securities, wouldn't it?

Mr. CORCORAN. Well, Senator, I have just said if that interpretation can be given to that language, you are quite right that the language should be changed.

Senator CAREY. Then you will agree with me that it should be changed?

Mr. CORCORAN. Oh, yes. I do not believe that is the correct interpretation of the language, but no chance should be taken upon it and the language should be changed if there is any doubt about it.

Now, if I may answer your question, Senator Goldsborough, about unlisted securities, I think I can better do that a little further along.

Senator GOLDSBOROUGH. All right.

Mr. CORCORAN. Section 6 (b) provides that—

It shall be unlawful for any member of a national securities exchange or any person who transacts a business in securities through the medium of any such member—

That is the same language and would be subject to the same change.

directly or indirectly, to extend or maintain credit or arrange for the extension or maintenance of credit to or for any customer on any securities registered on a national securities exchange in an amount exceeding at any time whichever is the higher of (1) 80 per centum of the lowest price at which such security has sold during the preceding 3 years, or (2) 40 per centum of the current market price. The Commission may, by rules and regulations, prescribe lower loan values as may be deemed appropriate in the public interest or for the protection of investors during any stated period of time or in respect of any specified class of securities

You will notice that as the language is now written it gives the commission discretion only to lower the loan value. That is, taking the correlative of that, to raise the margin requirement. There is no provision in here, as the bill is now written, permitting the commission to lessen the margin requirement beyond the alternative of the 80 percent of the lowest price the security has sold for during the preceding 3 years, or 40 percent of the current market price, whichever is the higher.

These margin requirements were worked out, in collaboration with individuals in the Federal Reserve System, to try to put a premium for margin purposes on comparatively stable securities, like bonds, municipals, governments—and governments are exempt from this bill, anyway—bank stocks, or other stocks that keep comparatively stable over a period of time.

Senator GOLDSBOROUGH. And insurance company stocks?

Mr. CORCORAN. And insurance company stocks, and all that sort of thing.

Senator GOLDSBOROUGH. And public utilities?

Mr. CORCORAN. Yes, sir; although a lot of them dropped pretty badly during the period. It would make for a much higher loan value on a bond that sold very little below par during the last 3 years.

Now, if we may go on and finish this section before we discuss the interrelations of it as a whole.

The CHAIRMAN. May I ask you right there: A great many letters have come in complaining about that. They claim that it is too high, that the margin ought to be 40 percent instead of 60 percent.

Mr. CORCORAN. Senator Fletcher, I am coming to that. But I want to take it up in connection with this paper I have distributed to the members of the committee. And may I just finish this section and then go back to that and discuss the inter-relations as a whole?

The CHAIRMAN. The reason I asked the question was that I thought you were finishing that section right now.

Mr. CORCORAN. No; I have not finished that section.

The CHAIRMAN. You may proceed.

Mr. CORCORAN. I want to go back over this whole section in detail after reading it entire to get the feel of the inter-relations of the paragraph.

The CHAIRMAN. All right.

Mr. CORCORAN. I will now read paragraph (c):

It shall be unlawful for any person to extend or maintain credit or arrange for the extension or maintenance of credit to any person (other than to a dealer to aid in the financing of the distribution of securities to customers not through the medium of an exchange)—

That is, a loan to an underwriter—

upon any security registered on a national securities exchange—

It is limited to listed securities, mind you—

in an amount exceeding the amount which it is lawful for a member of a national securities exchange to lend to any customer on such security, unless the application for the loan is accompanied by a statement by the borrower that such security has been acquired by the borrower and paid for in full more than 30 days prior to the making of the loan

The exception in there for securities that have been owned outright for 30 days was to provide a convenient way by which it might be determined that the borrowing on the security was not made for the purpose of carrying the security so that the limitations here on securities loans would not apply in cases when a person wanted to raise some money to pay a bill, to arrange a loan at a bank and put up securities owned outright as collateral; or when a manufacturer raising a loan for inventory purposes was asked by the bank to put up, in addition to his note and in addition to his commercial paper, some collateral security.

Any person who, for the purpose of obtaining a loan, makes such a statement which is false in any material respect, shall be deemed guilty of a violation of this subsection

I will go to section (d)

The Commission shall by rules and regulations prescribe the times at and the specific methods by which values shall be calculated for the purposes of this section, the time within which initial and subsequent payments shall be made by the customer, and the notice to be given and the method to be followed in closing out accounts, and no person who shall comply with such rules and regulations shall be deemed to have violated any provision of this section

Now, let us discuss this section as a whole. What the section tries to do is this: It tries to fix a certain margin requirement on securities that is very much higher, yes, very much higher, than the margin requirements in vogue at the present time. It fixes those margin requirements on listed securities for brokers. It must, or there will be evasion by brokers, prevent brokers from lending on unlisted securities where one really never does know what the market value of the security is.

That comment is not correct for certain categories of unlisted securities, such as New York bank stocks, and stocks of certain big insurance companies, of certain big public utility companies; but you must remember and when you are dealing with unlisted securities that the number of unlisted securities you can think of as having a well-organized over-the-counter market is very small in proportion to the number that you have never heard about; and a broker could, if he were permitted to lend upon unlisted securities, where the value is indifferently known, completely evade the margin requirements for listed securities by taking into an account and putting a value upon unlisted securities which would enable him to balance up for the difference in the margin requirement provided by this act on listed securities as distinguished from the margin requirements we now have.

There are other reasons for pushing unlisted securities into banks. One is to give listed securities a frank premium for the purpose of brokers' loans, as another inducement to keep listed securities on the exchanges. Another reason is that it is not sound national economics to have excessive loans made on securities. The value of an unlisted security for the purpose of a loan is not a market proposition, as is the case with a listed security. It is essentially a commercial proposition. Remember, again, that only a few unlisted securities have the certain market value you can attribute to New York bank stocks, stocks of large insurance companies, and so on. It is much

better to put loans on unlisted securities in the banks, which will deal with them as a commercial proposition, and where you have the further check of the examinations of bank examiners.

## MARGINS

## (1) MARGIN RULES

NOTE—All the following rules relate to *minimum* margins, the broker as a matter of his private relations with his customers can always require *more* on particular securities

- (a) Present New York Stock Exchange rules  
maintain margin of 50% of debit balance—equivalent of permitting broker to lend 66% of value of securities, applies to all accounts where customer "puts up" less than \$2,500
- (y) On accounts with debit balance of more than \$5,000, customer must maintain margin of 30% of debit balance—equivalent of permitting broker to lend 77% of value of securities; applies to all accounts where customer puts "up" \$2,500 or more.
- (b) Rule proposed by Fletcher-Rayburn bill  
The broker may not lend *more* than whichever is the higher of—
- (a) 40% of the current value of securities—equivalent to the customer's putting up 60% of the market value of securities purchased or 150% of the debit balance (i.e., the broker's loan of 40% of the market value), or
- (b) 80% of lowest price within three years—equivalent to customer putting up 20% of the market value of the securities purchased or 25% of the debit balance (i.e., the broker's loan of 80% of the market value).

## (2) COMPARATIVE TABLE ILLUSTRATING OPERATION OF MARGIN RULES

	Maximum % of value of securities broker may lend	Minimum % of value of securities customer must put up as mar- gin	Maximum number of times his deposit cus- tomer can buy in mar- ket value of securities	Minimum % of debit bal- ance cus- tomer must put up as margin
N Y Stock Exchange—debit of less than \$5,000.....	66%	33%	3	50
N Y Stock Exchange—debit of more than \$5,000.....	77	23	4½	33½
Fletcher-Rayburn—40% loan value on speculative securities.....	40	60	1½	150
Fletcher-Rayburn—80% loan value on stable securities.....	80	20	5	25

## (3) HOW MUCH STOCK CAN A CUSTOMER BUY WITH A GIVEN DEPOSIT?

With a \$2,500 deposit a customer can buy the following values of securities:

- (a) \$7,500—under present New York Stock Exchange rule  
(b) \$4,100—under Fletcher-Rayburn 40% speculative loan rule  
(c) \$12,500—under Fletcher-Rayburn 80% stable loan value rule

With a \$10,000 deposit

- (a) \$43,333—under present New York Stock Exchange rule  
(b) \$16,666—under Fletcher-Rayburn 40% speculative loan rule.  
(c) \$50,000—Fletcher-Rayburn 80% stable loan value rule

## (4) PROTECTION AFFORDED MARGIN TRADER BY LARGER MARGIN

(a) Suppose a trader without resources to meet additional margin calls buys 100 shares X stock at 100 on New York Stock Exchange margin—putting up \$2,300 on \$10,000 market value of securities

Account reads Market value long position, \$10,000, debit, \$7,700.

If stock drops suddenly to 77 where market value equals debit customer's margin is wiped out.

(b) Suppose the trader buys the same 100 shares of X's stock at \$100 on the Fletcher-Rayburn 40-percent loan-value margin. He will have to deposit \$6,000 on \$10,000 market value of securities and his account will stand:

Market value long position, \$10 000; debit, \$4,000

If the stock drops to 77 the trader can still readjust the account to the required margin on a smaller number of shares without additional cash. By selling 20 shares at 77 for \$1,540 and applying the proceeds to the debit balance, the trader can reestablish his account on the following basis:

Market value long position, \$6,160, debit, \$2,460

By the drop in the market the trader will have lost part of his investment, but not all.

(c) Suppose that with the same down payment of \$2,300 referred to in the first case above, the trader buys the maximum number of shares of the same stock at the same price which the broker will be permitted to carry for him under the Fletcher-Rayburn 40% loan-value margin rule. He will be able to buy 38 shares of a market value of \$3,800 and his account will stand:

Market value long position, \$3,800, debit, \$1,500

If the stock drops to 77, the trader can still readjust the account to the required margin on a smaller number of shares without additional cash. By selling 8 shares at 77 for \$616 and applying the proceeds to the debit balance, the trader can reestablish his account on the following basis:

Market value long position, \$2,310, debit, \$884

By the drop in the market the trader will have lost approximately  $\frac{1}{2}$  of his original investment but he will still have an equity in an account and may be able to recoup with a rise in the market.

Now, let us go to the matter of the amount of this margin. I have distributed figures you will want to have so that you will not have to figure too much with pencil and paper. The computation that has been distributed to you, shows just what the margins provided for in this bill are in comparison with the margins provided for by the New York Stock Exchange rules at the present time.

The New York Stock Exchange has margin rules at the present time. They are not inflexible. Mr. Whitney testified the other day before the House committee, as I understand, that the New York Stock Exchange had had percentage margin rules since about 1921 or 1922. But Mr. Pierce testified before the House committee the other day that those margin rules were very flexible, and that he was not sure that any objection was raised to trading on much smaller margins for big operators, of whose ultimate solvency the broker was sure. That is, the margin rules had been put into effect for the protection of the broker on his loans to the customer, and not to dissuade customers from going into the market on too small a margin. I think he said he was not sure but thought the account of one big operator must have been carried on something like a 10-percent margin. I do not know whether there are any margin requirements expressed in percentages, or in any different percentages, on other stock exchanges at the present time.

So I must deal, for the purpose of comparison, with the margin requirements of this bill and the similar requirements of the New York Stock Exchange rules. Now, this bill expresses margins in the way in which the average layman thinks of margins. The layman thinks of a margin in terms of how much he has to put up to buy 100 shares of such and such stock.

The broker and the banker do not think of a margin in that way. They think in terms of the amount that the customer owes them on debit account, and the percentage of security they have up

for that account in terms of the ratio between the value of that security and the value of the loan outstanding on the security.

The bill has expressed the margin requirements in the way the average investor thinks of margin. This little table we have here is a translator's table for turning margins, computed on the basis which the bill adopts, into margins computed on the basis that the New York Stock Exchange adopts.

One other thing while we are talking about margins: Mr. Whitney the other day in his testimony before the House committee intimated that one of the difficulties arising in connection with an inflexible margin was that some securities needed more margin than others. That argument is not applicable to the bill, however, because the provision, stated in section 6 (b) of the bill, relates to minimum margins. A broker may, of course, have an arrangement with his customer to refuse to carry the account unless securities are more heavily margined. All the matters we will talk about from now on relate to minimum margins.

Present New York Stock Exchange rules, as we present them on page 1 of the paper which you have, say that on accounts with a debit balance of less than \$5,000 the customer must maintain a margin of 50 percent of that debit balance. That is equivalent to permitting the broker to lend 66 $\frac{2}{3}$  percent of the value of the securities as contrasted with the 40 percent which the broker is permitted to lend under the terms of section 6 (b) of this section 6.

That rule, which is a different rule from that applying to the bigger traders, applies to all accounts where the customer's initial risk, in the sense of the initial deposit that he puts up, is \$2,500 or less.

For the larger accounts, the accounts with a debit balance of more than \$5,000, the New York Stock Exchange rules require the customer to maintain a margin of 30 percent of the debit balance, which is the equivalent of permitting the broker to lend 77 percent of the value of the securities purchased or carried, as compared with 40 percent under section 6 (b) of this bill.

And then the rule proposed by this bill is the alternative of permitting a broker to lend 40 percent of the current value of the security, or 80 percent of the lowest value to which the security has fallen within 3 years, whichever is the higher.

Now, on page 2 there is a comparative table illustrating the operation of these margin rules.

Senator GORE. What are you reading from, Mr. Corcoran?

Mr. CORCORAN. I am reading, Senator, from a tabulation which I have made up for the convenience of the committee on the comparative operation of the margin rules prescribed by the New York Stock Exchange and those embodied in the bill.

Senator GORE. Has it been distributed?

Mr. CORCORAN. It has been distributed, Senator. I will see that you get a copy.

You will notice in here, so that we think all around this subject, that we have shown in these comparative tables the maximum percentage of the value of the securities the broker may lend under all four rules; the minimum percentage of the value of the securities which a customer must put up as margin; the maximum number of

times his deposit a customer can buy in market value of securities, which is a very important calculation of a customer, particularly as we stand on the threshold of a bull market.

Senator GORE. State that again.

Mr. CORCORAN. The maximum number of times his deposit a customer can buy in market value of securities.

Senator GORE. You mean deposit with the broker?

Mr. CORCORAN. Yes. Suppose a customer has a thousand dollars and he wants to buy as much as he possibly can with his thousand dollars, the largest possible market value of securities. He could buy three times his thousand dollars if he were operating under the New York Stock Exchange rule relating to accounts with a debit of \$5,000 or less. He could buy four and a third times his thousand dollars in market value of securities if he were operating under the New York Stock Exchange rule relating to accounts with a debit of more than \$5,000. He could buy only one and two thirds times his thousand dollars in market value of securities operating under the 40 percent rule laid down in section (b) of this act, or he could buy five times his thousand dollars in the market value of stable bonds under the 80-percent rule laid down in section (b) of this act.

Then there is another column, the fourth column to the right, showing margin percentages computed in the way a broker computes a percentage. Under the New York Stock Exchange rules on accounts with a debit of less than \$5,000 there has to be a margin of 50 percent of the debit balance. Under the New York Stock Exchange rules on an account with a debit of more than \$5,000 there has to be 33 $\frac{1}{3}$  percent of the debit balance. Under the Fletcher-Rayburn bill, with a 40 percent loan value on the securities, since the broker can only lend two thirds as much as the customer puts up, the margin expressed in the way brokers express margins is 150 percent, and under the Fletcher-Rayburn 80 percent rule, if you are dealing with securities that come under that rule, the margin is 25 percent of the amount of loan that the broker puts up. You can buy five times as much in securities as you put up, and the amount that you put up is one quarter of the remainder of the price of the securities which the broker lends you.

At the bottom of this page we can see some more tangible illustrations. How much stock can a customer buy with a given deposit under these margin rules? With a \$2,500 deposit—that has been taken because it is the limit under the New York Stock Exchange rule—the customer can buy the following amounts of securities. Under the New York Stock Exchange rule \$7,500 market value, you put up \$2,500 and the broker will carry you for a market value of \$7,500 worth of securities. Under the Fletcher-Rayburn 40 percent rule—

Senator GORE (interposing). In that case your deposit is half?

Mr. CORCORAN. Your deposit, sir, is \$2,500. You owe \$5,000, and your deposit, therefore, is 50 percent of what you owe. That is the way a broker computes his margins. You could buy \$7,500 worth of securities under the present New York Stock Exchange rule. You could buy only \$4,100 worth of securities under the Fletcher-Rayburn 40 percent rule. You could buy \$12,500 worth of very stable securities if the Fletcher-Rayburn 80 percent rule were applicable.

Senator BULKLEY. That would only be in case you were buying at the lowest price it sold in 3 years?

Mr. CORCORAN. Yes; your margin is computed at the lowest price. That is true.

Senator BULKLEY. Then you could only buy this amount if you were actually buying it at the lowest price within 3 years?

Mr. CORCORAN. Yes.

Senator BULKLEY. So that if you happened to buy it at the lowest price that it got in 3 years, then you could buy it for this amount?

Mr. CORCORAN. Yes.

Senator BULKLEY. But if you bought it at a higher price than that—

Mr. CORCORAN. There would be some other scale. You cannot work it out for the purposes of a comparative tabulation until you know what price you buy at.

Now, with a \$10,000 deposit—and I take a second figure because the New York Stock Exchange rules are different for small accounts and for big accounts—with a \$10,000 deposit a customer could buy under the present New York Stock Exchange rules \$43,333 worth of securities. Under the Fletcher-Rayburn 40 percent rule he could buy \$16,666 worth, which you see is less than half, considerably less than half. And buying at the bottom under the 80 percent rule he could buy \$50,000 worth of securities.

Senator KEAN. Why not take a case like this: Suppose Industrial Alcohol, that we had here the other day; that price was something like 7. It is now—what is it now?

Mr. CORCORAN. It went to 80, and it went down again to under 30. I don't know where it is now.

Senator KEAN. Well, say, 40.

Mr. PECORA. The last time I looked it was around 49, but that was only a week ago.

Mr. CORCORAN. You want to know how the margins work out?

Senator KEAN. Yes.

Mr. CORCORAN. Well, it all depends. How much do you want to put up, sir?

Senator KEAN. \$10,000.

Mr. CORCORAN. Well, under the Fletcher-Rayburn rule you get 80 percent of 7 or 40 percent of 40, whichever is the higher. Obviously, you would take the 40 percent of the 40. So that you could lend on that \$1,600; a broker could lend \$16 a share. That means that the customer would have to put up the difference between \$16 a share and \$40 a share—\$24 a share. Approximately \$25 a share. For \$10,000, therefore, you could buy 400 shares.

Senator KEAN. That is all?

Mr. CORCORAN. That is all.

Mr. PECORA. Mr. Corcoran, I think perhaps there is a misconception about the answer you made to Senator Bulkley's question, and if there is, perhaps it would be clarified if you answer this question. When does the 80-percent rule apply under the Fletcher-Rayburn bill?

Mr. CORCORAN. When it is the higher, sir; when the computation on that basis is higher than the 40-percent computation on the current basis.



Mr. PECORA. And does that mean that the purchase must be made at the time when the security is selling for its lowest price within 3 years?

Mr. CORCORAN. No. The computation of margin is made on that basis.

Senator BULKLEY. Yes; but if the computation of margin is made at the lowest price, then it would be a different percentage if you paid any higher price. So unless you buy within that lowest price, you cannot get the benefit of the 20 percent margin.

Mr. CORCORAN. No. Let us take, for instance, the case of a bond that has a par of a thousand dollars, sir, and suppose during the break that bond went down to \$80.

Senator KEAN. Suppose it went to 30?

Mr. CORCORAN. I will work out several sets of illustrations. If it went down to 80, then the rule will not work—it is not that it will not work, but the computation on current value yields you a greater loan value. Suppose the bond went down to 80. Suppose the bond is now selling at par. If we could lend 80 percent on 800, it would be \$640 on the lowest price. You could lend only \$400 on the current price.

Senator BULKLEY. Yes; but you could still lend the 640, but it would be 64 percent instead of 80 percent.

Mr. CORCORAN. That is true, because you lend 80 percent of whatever—

Senator BULKLEY (interposing). You only get the benefit of the 80 percent loan if you happen to buy at the very lowest price in 3 years?

Mr. CORCORAN. Yes; that is true. What you mean is that the amount that is lent on a security computed on this 80 percent basis will not be 80 percent of current market value.

Senator BULKLEY. That is it exactly.

Mr. CORCORAN. But it will be 80 percent of the lowest value within the 3 years and in the case of a stable security the percentage of current market price which you reach on the 80 percent computation will be higher for a stable security than 40 percent of current market value.

Senator BULKLEY. Yes, it might be, but it would be very seldom as high as 80 percent?

Mr. CORCORAN. That is true.

Senator GORE. It could work out in that case. It looks to me like it would have to be lower than the lowest in order to function under that.

Mr. CORCORAN. No, Senator. Take the thousand dollar par bond case that we have had just a minute ago. I can illustrate Senator Bulkley's point by that. You have a bond that has a par of \$1,000. During the deepest of the dark days that bond sold for \$800, and that is the lowest price within 3 years. The bond is presumably back to par at \$1,000.

Now, if you take 80 percent of the low, it will be 80 percent of \$800, which is \$640. That does not represent 80 percent of present current market value; it really means 64 percent of current market value.

But the alternative rule based on current market value would give you only a \$400 loan value. So that, although the larger loan value permitted by the 80 percent rule is not 80 percent of current market price but is 64 percent, it is nevertheless higher than the current loan value.

Senator KEAN. Yes, but suppose you take the instance that I quoted a minute ago, when the bond went down to 35, somewhere around there?

Mr. CORCORAN. Which computation gives you the higher margin, sir, depends upon the particular set of figures that you use. But there is a very definite premium placed upon the securities that have had the slightest drop within the last 3 years, which normally will be the securities that you think of as falling into stable categories. Good municipal bonds, good underlying bonds of railroads, stocks of good insurance companies, and that sort of thing.

Senator GORE. In that case the broker could carry the customer for \$640?

Mr. CORCORAN. Yes.

Senator GORE. Instead of \$400.

Senator KEAN. Now, take municipal bonds—why, lots of them went down to 50-odd.

Mr. CORCORAN. That is true, sir. Lots of municipal bonds deserved to go further than down to \$50.

Mr. REDMOND. Mr. Chairman, may I ask a question?

The CHAIRMAN. Yes.

Mr. REDMOND. Mr. Corcoran, isn't it equally true that this 80 percent provision will apply to a declining security irrespective of its quality?

Mr. CORCORAN. Once you get, sir, below the lowest price which the security has reached in 3 years.

Mr. REDMOND. So that, throughout, let us say, 1930 and 1931—

Mr. CORCORAN (interposing). It would have allowed you much more liberal margins.

Mr. REDMOND. Even the most speculative securities could have been carried on a more liberal margin?

Mr. CORCORAN. That is true, sir, but, of course, the answer to that is, as we have said before, that this applies only to the minimum which the broker can exact, and you and I know perfectly well that in a declining market, although that is a time when you like to have by law the most liberal computation for margins, a broker would superimpose upon the minimum margin requirement we required an additional amount for his own protection. Always trust the broker to take care of himself on the way down, sir.

Mr. REDMOND. Mr. Corcoran, my point is not that, but you described this 80-percent provision as applying to stable securities.

Mr. CORCORAN. Yes.

Mr. REDMOND. That is actually a misnomer, isn't it, because it applies to stable or declining securities?

Mr. CORCORAN. It applies to stable securities in its normal application. There is a possibility that in a declining market, after once in the course of the decline the price gets below the lowest price to which the security has gone during the preceding 3 years, it will apply to speculative as well as to stable securities. But that op-

eration is insignificant, because, as you and I know, in a situation like that the broker will take care of himself.

Mr. REDMOND. Might I ask you simply this, As I read this provision the prohibition is not only against the extension but also the maintenance of credit. Therefore, as securities decline——

Mr. CORCORAN. Yes.

Mr. REDMOND (continuing). This 80 percent provision, which might have applied, let us say, to a stable security initially——

Mr. CORCORAN. Yes.

Mr. REDMOND (continuing). Goes down with the decline in the market.

Mr. CORCORAN. Yes.

Mr. REDMOND. Isn't that going to be a factor which will tend to force liquidation?

Mr. CORCORAN. No; because, sir, again remember it is expressed as a percentage of loan value, and in this case is a maximum percentage of loan value, so that it does not put the broker in a position where he has to liquidate as the stocks go down. That is up to the broker. This provides for more liberal margins by reason of law when stocks are going down.

That is why I cannot understand in your own brief, sir, why you object to this. "In periods of necessity or of decreasing prices it will permit over-liberal margins." As to that the broker can take care of himself. The law should be in such shape that in periods of declining prices if a broker wants to take the chance, he can give what from a business point of view is a more liberal margin, and that in periods of rising prices it will fix prohibitively high margins, which is again just exactly the correct result if you want to keep the market from running away on the upside.

Mr. REDMOND. I am addressing myself now, Mr. Corcoran, to a different point, if I may, and that is that it seems to me that this requirement governs not only the extension but also the maintenance of credit.

Mr. CORCORAN. Yes.

Mr. REDMOND. And that it is going to mean that in a loan, let us say, made on stable securities, where your 80 percent clause applied, and the loan was made on that basis, a perfectly conservative loan, let us say on municipal bonds.

Mr. CORCORAN. Yes.

Mr. REDMOND. If you should get a decline in the market from par to 80, as you used yourself——

Mr. CORCORAN. Yes.

Mr. REDMOND (continuing). Automatically the loan value of those so-called "stable securities" gets fixed at 64 for at least 3 years to come.

Mr. CORCORAN. Are you talking about an immediately undesirable effect in driving the market down?

Mr. REDMOND. True, because it is going to force loans which are otherwise well margined to be liquidated, because you go over from your 80 percent to your 40 percent category.

Mr. CORCORAN. No. What you are saying to me, Mr. Redmond, is this, that a broker may lend 80 percent on the value of securities. If the security is at 1,000 the broker may lend \$800. If the security

falls from a thousand to 800 the broker can lend only \$640. Well, of course, the broker lends a less aggregate amount as the security goes down.

As far as the drop in the particular market is concerned, you will agree with me that of course if you are lending 80 percent you are lending up to about the limit anyway, and if the value of the security goes down of course the aggregate amount that may be lent against it on an 80 percent basis also goes down.

Is this what you are worried about: We will say it goes down to 640 and then comes back to 1000. The benefit that is given to stable securities through this 80 percent loan value will always be fixed until you get another year rolling by at 64 percent rather than at 80 percent after the market comes back.

Mr. REDMOND. No, I was not concerned with that. But remember that as soon as you reach the limit of the loans that can be made—

Mr. CORCORAN. Yes.

Mr. REDMOND. Because this bill imposes criminal penalties, the loan will have to be liquidated.

Mr. CORCORAN. Well, you mean when the loan gets below 80 percent loan value?

Mr. REDMOND. Yes.

Mr. CORCORAN. Certainly. That is true.

Mr. REDMOND. In the slightest degree?

Mr. CORCORAN. Yes; that is true, except that the commission is given power in here to determine the time at which you can close out the account. But it is absolutely true that when a security drops in value that is what happens. You cannot have a loan higher than 80 percent loan value, no matter what value the security has.

Mr. REDMOND. That is true.

Mr. CORCORAN. Well, I did not understand that a broker objected to marking down the margins as the securities went down, sir.

Mr. REDMOND. They do not, Mr. Corcoran, but I think you are increasing the complexity of the problem. Very few brokerage accounts consist, or even bank loans, of a single security.

Mr. CORCORAN. No. On some you would loan 80 and some you would loan 40.

Mr. REDMOND. And there, when you once get a decline which carries you down below, then on that security, taking the example that you yourself used a minute ago, that bond is then marked at 64 for all purposes, even if it recovers, while other securities in the loan may decline.

Mr. CORCORAN. That is true.

Mr. REDMOND. So that you permanently write down the so-called "stable security."

Mr. CORCORAN. You write down the security, sir, for 3 years; that is true.

Mr. REDMOND. For 3 years?

Mr. CORCORAN. And that is an inevitability of this way of working out a more flexible margin.

Mr. REDMOND. I agree.

Mr. CORCORAN. Of course, you realize that this 80-percent rule is lagniappe as far as the general margin provisions of this bill are concerned.

Senator GORE. Do I understand that that fixes that value for a period of 3 years?

Mr. CORCORAN. It fixes the low. Of course, the 80-percent calculation is based upon the lowest price within 3 years. Mr. Whitney says you should not talk too much about the advantage that is given stable securities by the 80-percent margin rule, because the 80 percent is based of course upon the lowest price within 3 years, and you may have a situation in a catastrophic market where the value of a stable security will drop very, very low and then that very, very low price is the basis on which your 80-percent calculation is made for the next 3 years. That is very true.

The CHAIRMAN. Mr. Corcoran, what effect will this have on the volume of business?

Mr. CORCORAN. That is what I wanted to come to next. If you look at paragraph three in this computation and see how much stock the customer can buy with a given deposit—and you realize that brokers collect a commission on the market value of securities purchased, irrespective of the margin requirements—you can readily see from those figures why brokers are howling about the bill.

This bill will cut the margin business at least in half, and the brokers will lose that half of the commissions they would collect under the present margins. It is easy to understand for that reason why the brokers do not like the bill.

Senator GOLDSBOROUGH. That is the "flight of commissions"?

Mr. CORCORAN. That is the flight of commissions, sir.

Senator KEAN. It would cut it more than half.

Mr. CORCORAN. I don't know, sir. It all depends on how much of your accounts are big accounts and how much are small accounts. You see, the comparative figures are \$7,500 and \$4,100 that may be bought with a \$2,500 deposit for small accounts. There the proportion is about  $7\frac{1}{2}$  to 4. So, that it does not quite cut it in half.

But when you get into the bigger accounts you more than cut it in half. The proportions are 43 to 16. So, that you really appreciably cut into the margin business.

Senator BULKLEY. What do you conceive to be the advantages of having margin trading?

Mr. CORCORAN. Sir, you heard yesterday—I don't remember whether you were present, but I think you were—

Senator BULKLEY. Not all day. No; I was on the floor.

Mr. CORCORAN. You heard yesterday the argument of Dr. Goldenweiser and of Mr. Woodlief Thomas about margin trading. From the social point of view there are two justifications for margin trading. I do not think they are very good myself, but I will give them to you, state them fairly for what I think they are worth.

The first is that you should permit a man when a stock is down, as stocks now are down, and when there is a prospect that those stocks are going to get out of sight, to buy on a down payment and then pay in as he goes along. You buy a stock now at 50. If you wait 2 months for it, it might be 100. The market on many stocks is already, sir, 100 percent of what it was last March, when we were in the depths. The argument is that a man who is acquiring for investment may very well want to buy at 50 more stock than he can presently pay for, and then, just as he buys an automomo-

bile on the installment plan, he will pay for it out of future earnings until he owns the stock outright.

The difficulty with that situation is that in a rising market human nature is such that the man never pays for the stock as it goes up. He just pyramids his margin and buys some more.

The second justification is one that is of a piece with the arguments of the economists of the stock exchange in favor of speculation generally; that if you are going to have a liquid market you must have a very active market. To have a very active market you must have a speculative market, because a market of investors is not active enough. To have a speculative market you must have a market into which borrowed money can enter, and to have a borrowed money market you must have a margin market.

Now, the nub of that argument goes back to the purely pragmatic question of how valuable speculation is in the market. You have seen the report on that of the Twentieth Century Fund, the group of experts I have just been talking about. There is no question as to the position Mr. Meeke and all the rest of the stock exchange people take on the value of a speculative market. It is very significant that the Twentieth Century Fund, which has been looking into this proposition and examining on a completely independent basis the premises of that argument in favor of a speculative market reported the other day—I have to read from a report in the Herald Tribune.

All the conclusions we have reached on the basis of our factual studies converge at one point. Speculation, especially when accompanied by manipulation, should be drastically curbed, not only because it actively interferes with the proper evaluating functions of the market, but also because it does not exert the beneficial effects which it has been commonly supposed to produce.

Senator BULKLEY. Would it not be a good idea to confine speculation to a man speculating with his own funds instead of being encouraged to borrow?

Mr. CORCORAN. Well, sir, I think so, because I am not so sure that the prospective value of having a liquid market is worth what it has cost society to have the debacle we have had in the last few years. There is not any way, however, of finally determining it. I mean it is a matter of judgment.

When we sat down to draw this bill there was a very strong element that believed in cutting out margin trading altogether. This bill is a compromise between those who believe that you should eliminate margin trading altogether and those who are willing to go along with the stock exchange for a time in its thesis that a liquid market made liquid with borrowed funds is worth enough so that some margin money should be left in it, though not much. The particularly drastic cut in margins that has been made in this bill is based on a theory that if any bill is going to have any effect by cutting down the amount of borrowed money in the market it has got to go a long way; that cutting margins 5 percent won't make any difference at all.

Senator BULKLEY. Of course, my criticism of your theory is that you do not really go the whole way and take the broker out of the banking business.

Mr. CORCORAN. The difficulty with that, sir, is the necessity of compromising. You will find a great many people who think there

should be no margin business at all; but at least, although you do not go the whole way, if you moderate the amount of borrowed money in the market you may help the situation considerably, providing you moderate enough. If you cut these margins 5 percent, you may just as well not legislate on margins. If you cut the amount of borrowed money that gets in the market by a half, you may have done something toward attaining the social benefits that are urged by those that think there should be no margin trading at all.

Mr. PECORA. In other words, Mr. Corcoran, it is not deemed that we should go to either one extreme or the other?

Mr. CORCORAN. That is true, sir.

Mr. PECORA. We wanted a middle ground that was sought to be found in the provision that is now in the bill.

Mr. CORCORAN. That is true, sir.

Mr. REDMOND. Mr. Corcoran, is that based upon your conclusion that there is too much borrowed money in the market today?

Mr. CORCORAN. Well, of course, today—you provided some figures the other day about the amount of brokers' loans in the market.

Mr. REDMOND. The borrowed money has been published right straight along for years, Mr. Corcoran.

Mr. CORCORAN. Yes; that is true.

Mr. REDMOND. What we provided the other day were the figures of the brokers' debit balances.

Mr. CORCORAN. The brokers' debit balances showed how much of the borrowed money in the market was represented by borrowed money in brokerage accounts as distinguished from borrowed money in bank accounts.

To answer the question somebody asked me just a minute ago, whether I thought there was too much borrowed money in the market, I do not pretend to be an economist, sir; but Dr. Goldenweiser of the Federal Reserve told you yesterday that he felt there was entirely too much money in the market.

Mr. REDMOND. I do not remember his making that statement as of the present time.

Mr. CORCORAN. That was the aggregate. And of course what we are doing is sitting down at the bottom of the market, even with prices at a hundred percent above last March, and legislating with respect to what we all expect is going to be a rise in the stock market. If you take hold of the situation now you may prevent the market from running away, with the inevitable repercussions on business you get from a run-away market, and with the repercussions you had in the business situation last year.

Senator BULKLEY. Are you giving us a reliable tip that the market is going to rise?

Mr. CORCORAN. No, sir.

Mr. REDMOND. Mr. Corcoran, on that very point, though, I suppose you appreciate that the adoption of these margin requirements means necessarily an immediate liquidation of part of the brokers' debit balances held today?

Mr. CORCORAN. Let us talk about that right now. When this section was drawn, perhaps in a little overexpectancy of how fast the market was going to move, it was thought that by putting the date

at which these margin provisions would become applicable over to October 1, after the expected spring and expected fall rise in the market, and by confining these margin requirements to listed securities, which in the case of the best securities are well above the lows of last fall, at which level present brokerage accounts are being held, there would be plenty of time for the market to rise to a point by that date where most brokerage accounts that could get out of the red would be out of the red on the standards of these particular margins.

There has been a great deal of factual criticism to the effect that that judgment is wrong, and that by next October 1 there will still be many brokerage accounts and many bank accounts carrying securities that will be under water on the present margin requirements.

Therefore, the other day before the House, talking for those who drafted the bill, and very humbly as such, we suggested that this section should be modified so that the new margin requirements would not apply to accounts that were presently existent; that they could be carried indefinitely if in the judgment of Congress it were wise to carry them indefinitely; but that the new margin requirements, to prevent evasion, should apply if any substitutions were made in those accounts after the 1st of October.

Senator KEAN. What do you mean by "substitutions"?

Mr. CORCORAN. Suppose, sir, you have an account now that is under water; but suppose you have an account with stock X in it that has a market value of \$1,000. The account is under water on October 1. You think that the X stock won't go up as fast as Y stock now selling at a thousand dollars. You say to the broker "Sell out the thousand dollars worth of X stock and buy me a thousand dollars worth of Y stock." So long as you carry the X stock which you have held in that account prior to the time when the new margins went into effect, it will be carried for you at whatever margin rate the bank is carrying it. But the minute you transfer to a new stock, then the new margin requirements apply.

Clamping down on substitutions is an absolute necessity. If you are going to permit the leniency of carrying present accounts indefinitely, then you must prevent the certain evasion that would come about by customers rushing into the market now to buy lots of stock at the present low margins, and then want to carry their accounts through after October 1 indefinitely.

Senator GORE. If he substituted in the case you supposed there, it would require a larger margin to carry Y stock than X?

Mr. CORCORAN. Yes, that is true.

Senator GORE. Is that on the general assumption that it is not wise to shift from a more sluggish stock to a stock that is presumed to be more active?

Mr. CORCORAN. No. It is a rule of necessity to prevent evasion of the new margin rules by the device of carrying through securities under the old margin rules and then being allowed to switch indefinitely within the accounts. Otherwise, you could rush into the market right now, anticipating a change in margin rules by October 1, and load up on a 10-percent margin, if the stock exchange would permit you to do so. Then after October 1 you could trade indiscriminately on the theory that you were substituting so long as you provided the fiction that you were dealing with the same account.



Senator BARKLEY. Is there any real difference between the man who in the last year or two or during this crisis was either sold out or had to sell out voluntarily, so as to put him under water, although his account may not be under water he is very much under water, and the man who has been able to hang on all this time with his stock, though it is under water, and would run into the 1st of October and be able to carry that stock on indefinitely, as against the man I referred to first who might now get hold of some money and buy a little stock and want to carry it in the hope that he might recoup the losses that he sustained in his former transactions?

Mr. CORCORAN. Sir, what you are really talking about is the difference between the fellow who carried his margin account with a broker who sold him out and the fellow who carried his margin account with his home-town bank, which, because of its customer relationship to him, carried him through.

Senator BARKLEY. That is by and large.

Mr. CORCORAN. Yes; that is a rough classification. I am not passing on the morals involved in it, sir. I just don't know. I am simply concerned that because of its deflationary effect there should not be any forced liquidation of present underwater accounts between now and October 1.

Senator BARKLEY. You mean by present accounts stocks held at this time?

Mr. CORCORAN. Stocks held at this time in banks.

Senator BARKLEY. You do not mean accounts that fluctuate from day to day, that you can buy today and sell next week?

Mr. CORCORAN. They can fluctuate from day to day, sir, up to October 1. It would be impractical to work a rule that said that all accounts had to be frozen with their present long commitments until October 1.

Senator BARKLEY. Is it your theory that anybody who buys stock now and carries it up till October should then be subject to the new margin requirements?

Mr. CORCORAN. In any changes made after October.

Senator BARKLEY. If he bought stocks now and carried the same stocks on the books up till the first of October he would not thereafter be required to put up more margin?

Mr. CORCORAN. That is true, sir. If there is any seeming inequity in that situation, it is because you just cannot put the law into effect right away, anyway. You have to give a date somewhere in the future to which the market can be adjusted and before which machinery can be set up for the enforcement of the act.

Senator BARKLEY. As to all such accounts the status quo would be maintained?

Mr. CORCORAN. Right, sir.

Senator BARKLEY. If you are going to allow existing accounts to be carried through, would it not be better to make the effective date a good deal earlier than October 1?

Mr. CORCORAN. We all—all who are interested in the recovery effort—do not want to put any damper on the beginnings of an upturn, and we wanted to put the date ahead as far as we could consistently with the act getting into operation.

Senator BARKLEY. If that is your viewpoint about it, is October late enough? The fall has just begun in October.

Mr. CORCORAN. Sir, you have to stop somewhere. You can jiggle this date, October 1, to any date that your good judgment dictates, but sometime there comes a time in the history of every book when it has to be written, and there comes a time in the history of every statute when it goes into effect.

Senator GORE. Senator Barkley wants to be sure the recovery has started.

Mr. PECORA. Mr. Corcoran, you are not using the term "jiggle" in street parlance, are you?

Mr. CORCORAN. Oh, no, sir; I am careful.

Mr. REDMOND. You have talked about this thing as affecting only brokerage accounts in stocks, but of course it would also affect, would it not, loans in banks?

Mr. CORCORAN. Yes.

Mr. REDMOND. So as to prevent substitutions?

Mr. CORCORAN. On the same basis. You could not substitute except pursuant to the new margin requirements after the 1st of October.

Mr. REDMOND. So that if a person who had borrowed money against good bonds thought that it would be advisable, because of developments in a particular industry, to sell some of those bonds and buy other equally good bonds, he would find that that would be impossible unless he put up additional margin?

Mr. CORCORAN. He could not buy as much.

Mr. REDMOND. He would have to pay his loan off?

Mr. CORCORAN. He would have to pay his loan off.

Mr. REDMOND. It would be impossible unless he put up more margin?

Mr. CORCORAN. It would be impossible with the same market value.

Mr. REDMOND. That means payment of part of the loan?

Mr. CORCORAN. Yes, sir; that means payment of part of the loan.

Senator GORE. You apply these same requirements to the banks as well as to the brokers?

Mr. CORCORAN. Yes; you have to apply them to the banks, Senator, for the reason that a great, great part of the margin accounts, that is, the securities carried on borrowed money, are carried through the banks, a much larger proportion right now than are carried through the brokers, and if you are trying to reach the general evil of too much borrowed money in the market, both from the effect upon the general economy and the effect upon individuals you have to reach those accounts in the banks as well as in the brokerage houses.

Another reason why you must reach the banks is that if you did not regulate the amount of margins required on securities accounts in banks, brokers who wanted to evade the requirements that you put upon them would simply arrange for their customers, and you would never be able to catch the practice, loans from the banks on small margin requirements.

Senator GORE. I was asking the question yesterday and the gentleman said somebody else knew more about it. That was on that very point, as to whether or not, if you impose this regulation of higher margin requirements—now I am speaking in the light of our experience under the eighteenth amendment—would there not be some

bootleg broker around the corner who would sell it and buy it, dealing with Tom, Dick, and Harry on a low margin?

Mr. CORCORAN. Well, sir, you always hear the possibility of the bootlegger. But, by and large, the bulk of the business will not be done by the bootlegger. You will not be able to stop all bootlegging. You will be able to stop enough of it so that the purpose that you are trying to reach by cutting down the aggregate amount of borrowed money will be achieved. You will always have some bootleggers, sir.

Senator GORE. What I have in mind, though, is the people that I assume you are trying to protect, Tom, Dick, and Harry, that do not know anything about stocks, do not know anything about the earning capacity or the capital investment or the character of the management of anything else. They buy because stocks have been going up, and they guess they will continue to go up.

Mr. CORCORAN. Sir, you can stop the bootlegger just as much as you stopped the bucket shop. The stock exchange will say you are pushing us back into the era of the bucket shop, which is the form that bootlegging would normally take.

Senator GORE. Yes.

Mr. CORCORAN. That depends upon the extent to which you can enforce the law. The problem of breaking up the bucket shop is no more difficult under this statute than it has ever been under any other statute. You have successfully handled the bucket shop. You have not completely eliminated it, but you have to a great degree reduced the bucket-shop problem. Mr. Pecora himself chased the bucket shops out of New York. You can keep the bucket shops down by effective prosecution under this law, just as you kept them down by effective prosecution under the existing law.

Senator BARKLEY. What effect would this margin requirement have upon people of small means who are not speculators, but who desire to accumulate stocks and pay for them outright upon the installment plan?

Mr. CORCORAN. It would make the amount of stocks which persons of small means could accumulate in that way very much smaller. But the trouble is, Senator Barkley, even if it sounds, as the fixed investment trusts would say, like "permitting the small man to buy an interest in America should be discouraged", that very few of the people who started in buying on margin as a method of buying stocks on the installment plan ever completed the installment. As the stock went up they pyramided or they bought more. The very optimism that led them to think that it was a good time to accumulate stocks because they were cheap led them to try to accumulate more and more and more on margin as the price went up; and the man who started out with the best intentions in the world of paying a quarter down while stocks were low—the man who started out with that very good intention found himself playing a speculative account within 2 or 3 months afterward.

The CHAIRMAN. And about 7 out of 10 lost?

Mr. CORCORAN. More than that I think lost.

Senator BARKLEY. I am speaking more particularly of those who intended to accumulate for investment.

Senator GORE. I have seen the figures that 97 percent lose, 2 percent win, and 1 percent come out even.

Senator BARKLEY. I am speaking of those who deal with banks, who in good faith go to a bank and say, "I would like to have a hundred shares of Steel or American Telephone or L. & N. Railroad, anything, to lay aside", without any education and who never do get into the speculative fever.

Mr. CORCORAN. Very few of those people, sir, really exist. A lot of good intentions start out, but the good intention gets completely wrapped up in the speculative fever as the rise in the stock in anticipation of which the installment movement was made comes about.

Mr. REDMOND. Might I ask Mr. Corcoran: Those last statements of yours are very sweeping in their nature. Might I ask on what authority they are made?

Mr. CORCORAN. You mean that most people lose?

Mr. REDMOND. No; you stated that they practically all lost; that they practically all when they once bought on margin ended up by having nothing but a speculative account in which they never completed their purchase.

Mr. CORCORAN. Mr. Redmond, I haven't the statistics to prove that the majority of people who go into a rising market buying securities on installments end up by running a speculative account on margin. I do not think there are any statistics on that.

Mr. REDMOND. I think there are some, Mr. Corcoran.

Mr. CORCORAN. I simply know that everybody I know who started that way ended up just as I have stated.

Senator GORE. I was looking at an analysis of 500 accounts in the Board of Trade, I believe at Chicago, and 414, I believe, lost, 72 won, and 16 came out even. Now, if that works out, it is approximately that. That was based on an actual analysis, and there were 500 stock accounts dealt with in the same statement. I didn't go through that. Someone told me Henry Clews said—and he was in the market 50 years—he never knew of anybody who dealt on margin and stuck to it but what came out broke, and I think he was pretty conservative.

At the same time, I do not think you can stand between the fool and his folly. I think he is intelligent enough to beat you to it. If you do that, I am for you.

Mr. CORCORAN. You can stand part of the way, Senator.

Senator GORE. Yes.

Mr. CORCORAN. There is one more provision—

The CHAIRMAN (interposing). Before you pass from that, what specific provision and what change would be made in the bill so as to prevent this forced liquidation?

Mr. CORCORAN. Something would have to be added to the bill.

The CHAIRMAN. Section 6?

Mr. CORCORAN. There would have to be a new section. It is the cleanest way to draft the change.

Mr. PECORA. Or a subdivision of 6?

Mr. CORCORAN. Or a subdivision of 6. It might be done by inserting a few words, but it is probably a matter of considerable redrafting.

The CHAIRMAN. Very well. Now, passing on, Mr. Corcoran, to page 14—

To borrow on any security registered on a national securities exchange from any person other than a member bank of the Federal Reserve System

Mr. CORCORAN. Could I come to that in just a minute, sir?

The CHAIRMAN. Yes.

Mr. CORCORAN. I am going to come to that. I would rather handle that together with the other.

The CHAIRMAN. Very well.

Mr. CORCORAN. There are two other things we ought to talk about before we leave this section on margins. One is the answer to a question which Senator Kean asked yesterday: What difference does it make whether a fellow puts up 60 percent margin or 20 percent margin? In any case, when the margin is reached he has lost his money.

The answer is attempted to be given on pages 3 and 4 of this analysis. It is true that as soon as the debit balance—what a trader owes the broker—corresponds with the value of the securities the trader is wiped out; but the deeper the margin the longer it takes for the trader to reach that unfortunate stage, and on the way down he has time to readjust the account by selling a certain number of shares without putting up additional cash, so that he can maintain the margin much further down.

This computation on page 3 shows three cases: One where a trader buys 100 shares of stock at \$100 under the New York Stock Exchange rules and the stock drops to 77 and wipes him out. That is, we are taking the New York Stock Exchange case as the normal.

Then we show two other situations: One where the trader buys the same amount of stock on the Fletcher-Rayburn margin; and one where he buys not the same amount of stock but puts up the same amount of money as margin, and in each case his 60 percent margin gives him time to readjust his account on the way down without putting up more money. So that if the stock drops to the same 77 he is not wiped out. He has lost part of his money, but he still has an account; he still has a chance to come back if there is any come-back, and he still has an equity.

I will not go through that in detail.

Senator KEAN. I would like to point out to you there that if the market goes down so that his margin is impaired by 1, 2, 3 percent at once, why, the broker must notify him either to put up more margin or else he will be wiped out.

Mr. CORCORAN. That is true; but, sir, after that notification comes he has a chance to readjust the account if his margin is wide enough. I am supposing the case of a man who has put up all he has and has no cash left in his pocket when a margin call comes. When the margin call comes if his margin is wide enough he still has a chance by selling a part of the securities to readjust the account without putting up more money.

Senator KEAN. If his margin is 30 percent or 35 percent he still has the same opportunity?

Mr. CORCORAN. No; because, sir, a smaller drop in the market will wipe him out.

Senator KEAN. A smaller drop in the market, of course, will wipe him out.

Mr. CORCORAN. That is what we are talking about.

Senator KEAN. But he still has to liquidate a large part of his stock in order to make his margin good; is that right?

Mr. CORCORAN. Yes.

Senator KEAN. He does not have to liquidate quite so much?

Mr. CORCORAN. That is true.

Senator KEAN. That is true?

Mr. CORCORAN. That is true.

Senator KEAN. And it would be less if he had 75 percent margin?

Mr. CORCORAN. That is true.

Senator KEAN. Or if he had a hundred percent margin?

Mr. CORCORAN. Yes, sir.

Senator KEAN. He would not have to liquidate at all?

Mr. CORCORAN. That is right.

Senator KEAN. But as soon as his margin goes below the point that you are allowed by law to carry you are going to make him either sell out or else put up more margin?

Mr. CORCORAN. That is right. But the point I am trying to make, Senator, is that there is a real protection to the investor in requiring him to put up a bigger margin.

Senator KEAN. It would be better to make it 75?

Mr. CORCORAN. That is true.

Senator KEAN. It would be better at a hundred. Then he would not have to put up any margin.

Mr. CORCORAN. And if you are interested in not having men cleaned out, as a social problem, the deeper margin you make them take the less chance there is they will get cleaned out.

Senator GORE. Have you considered undertaking to fix it so that small purchases, \$1,000 or less, could not be made on margin?

Mr. CORCORAN. I think there is a rule of the New York Stock Exchange now—I do not know; Mr. Redmond can tell you—by which brokers refuse to take accounts under a certain amount, and most brokers as a matter of fact would not handle a small account.

Mr. REDMOND. It is a question of individual decision.

The CHAIRMAN. How is that, Mr. Redmond?

Mr. REDMOND. It is a decision made by each member or firm to either take the account or refuse it, Mr. Chairman. There is no fixed minimum.

Mr. CORCORAN. It might be wise, Senator Gore, to put such a provision in. It would be something additional to the present protection of the bill.

Senator GORE. I have wondered about it a good deal, what the reactions would be and whether it would really prevent people who want to become small investors from buying at all.

Mr. CORCORAN. Most reputable brokers, the people who do the big business, will not take an account of that size. A bank, of course, will take an account for its customer of almost any size.

Senator GORE. I was wondering if it would not be better to force them to go to the bank, where they could at least get the banker's advice—not that it is good advice always.

Mr. CORCORAN. That might be added to the bill, sir. It is a question whether, under the present practices, brokers who are acting as if such a statute were in effect would know where they would get their commissions.

Senator GORE. As it is, he gets his commission whatever happens to the unfortunate trader, but if you eliminate that so far as brokers

are concerned and turn those people to the banks, it might be a sort of a protection, I don't know.

Mr. CORCORAN. There is one more point, and one very serious point, about these provisions for margin. Why should there be any rigid roof beyond which no commission is given discretion to raise the permissible loan value on securities?

A great many people have said—

We agree with the social policy of cutting down the amount of borrowed money in the market, but you should not say 40 percent; you should give some commission power to fix that rate in its discretion.

The answer to that involves a pure problem of practical statesmanship. If you believe that there is a public interest to be served in having the amount of borrowed money and the amount of margin operations in the market curbed—and we drew the bill on the supposition that there was such a public policy—you will have to make a drastic cut in margin trading or you will not have influenced the market sufficiently to have achieved your purpose at all. Secondly, there is one immutable law of political physics, as of all other physics, and that is, when an irresistible body meets a movable object the movable object goes just as far as the irresistible force wants to push it.

Behind low margin requirements is all the vested interest of the brokerage fraternity. Perfectly legitimate—it is bread and butter to them. Any Government commission that is put down here with complete discretion to fix margins at any point that seems desirable is going to be under terrific pressure all the time to push those margins to the limit.

The placing of a bright line beyond which discretion cannot go assures you that you do achieve the maximum of the social policy you are trying to effect. If you are afraid that these margins are too high, it would be far better to move the bright line to a higher loan value, say 60 percent, and stop there, than to take away the bright line and put a commission down here under the terrific pressure that will always be on them to extend their discretion to the limit.

There is one possible exception to that rule. It may be that for normal purposes you will want a bright line at 40% or at 60%. We think 40, because unless you really cut into this margin business, you may just as well not play with it at all. It may be, however, that the line you would want as a norm under usual circumstances may need a little flexing in cases of national emergency. The theory of this bill is that if you catch the market now you will not have another 1929, because you will never get another run-away market. There will not be enough borrowed money to make a run-away market possible.

But if you are thinking of the possibility of a 1929 you might provide something like this: The bright line is 40 percent, but it might be possible to lessen those margin requirements, upon a finding of national emergency and for a definite length of time, not of just one commission in Washington, but of the Federal Reserve Board and the Federal Trade Commission and possibly the Secretary of the Treasury. Then you make discretion something that can be exercised only in really unusual emergencies, and you make it a mighty hard thing to exercise.

Senator GORE. Mr. Corcoran, have you been able to figure out in that connection any way to protect the lambs who want to buy real estate on margin?

Mr. CORCORAN. No. There is no way to protect the lambs.

Senator GORE. That is the worst situation. The stock market buries its dead, and these farmers and home owners who bought on margin; their ghosts are stalking. They are what is giving us trouble. These fellows who lost in the market are dead and buried.

Mr. CORCORAN. I am trying to take care of one species of lamb at a time, Senator. After we take care of the stock-market lamb, as far as we can take care of him, perhaps we can try to take care of the others.

Senator BARKLEY. We are feeding the other lambs out of the Public Treasury in the form of bonds.

Senator GORE. I think suicide is the hardest thing to prevent in the world.

Mr. CORCORAN. Of course, you have two purposes to serve when you are dealing with margins: One is to protect the lamb; another, and probably the more important of the two, although it does not appeal to one's human instincts as completely, is the protection of the national business system from the fluctuations that are induced by fluctuations in the market, which in turn stem back to this very exquisite liquidity you get when you have a lot of borrowed money in the market. That is the point which Dr. Goldenweiser made yesterday. From the sheer unmoral standpoint of public policy it is probably more important to protect the business system from the effects on the market of too much borrowed money than it is to protect the lamb.

Senator GORE. Mr. Corcoran, that is the point which always discourages me. If you can prevent men from buying on a rising market and selling on a falling market, if you can repeal that law of human nature, you can stop this business.

Mr. CORCORAN. You cannot repeal it, sir. You can help it a little by seeing that they do not buy as much and do not sell as much. But that is all.

Senator GORE. I hope you are right.

Senator BARKLEY. There are some stocks that are very volatile, go up and down very rapidly. There are others that are more or less stable over a period of years.

Mr. CORCORAN. Yes.

Senator BARKLEY. Even in depression the fluctuation in value of certain stocks is not very great. Would you give the Stock Exchange or anybody else any discretion to fix margin requirement, depending upon the volatility of the stock?

Mr. CORCORAN. There was an attempt to do that, sir; in this section 6(b), the 80-percent alternative about which we have been doing so much talking. That was an attempt to do that. It does not work out perfectly, as Mr. Redmond showed. It has a general tendency to favor the staple stuff for margin accounts over speculative accounts—

Senator BARKLEY. I was attending another committee and did not hear that testimony.



Senator GORE. Did you consider this point? I assume you did, because you seem to have carefully considered the matter. That is the advisability of placing some sort of limit upon daily fluctuations, like they undertook to do in the Grain Exchange in Chicago, so that it could not fluctuate more than 10 percent of the open price, up or down. My point is that that might help to stop a stampede, just a frenzy of selling or buying.

Mr. CORCORAN. Senator, I am not enough of an economist to know whether such an interference with a free market is a wise thing or not. Those artificial limitations of that kind on the fluctuations of securities tie up with the real problem of the wisdom of permitting short selling and all other activities of a free market. I honestly do not know enough about the economics involved to be able to give you an opinion on that subject, sir.

Senator GORE. Of course, I believe in a free and open market, subject to reasonable limitations.

Mr. CORCORAN. I know that Mr. Redmond would have apoplexy if that sort of thing were put into the bill.

Mr. REDMOND. No; I would not. I think the market would take care of itself very rapidly.

Mr. CORCORAN. In other words, there would not be any market?

Mr. REDMOND. Precisely.

Senator GORE. The grain exchange functions under that limitation.

Mr. CORCORAN. It functioned last summer under it.

Mr. REDMOND. But if you remember, for a number of days, Senator, the grain market went along with very small transactions, immediately dropping down to the permissible limit, so that although there was no volume of activity, grain prices were carried very, very low indeed; and then it turned around and rebounded.

Senator GORE. I watched those stocks drop like a plummet, 30 or 40 points in an hour. It ought to be a reasonable market, so far as can be, where some sort of reason prevails. But you have seen times when reason just took flight and people were seized with frenzy. Sometimes you put an individual in a straight-jacket and in a padded cell to prevent him from doing violence to himself. I want a market place where people can buy and sell, and I only want to guard against those things that are preventable. We do not want to undertake to prevent things that we cannot prevent. Then we would do more harm than good. We would be attacking impossibilities.

Senator KEAN. We have in New York the Bank of Montreal, the Bank of Nova Scotia, and lots of individuals. There is no difficulty in any of them selling their 60-day bills in the open market and then selling their demand and thereby receiving large sums of money to loan on the market. If the market in London is 2½ percent and it is 5 percent in New York, that is a very profitable business.

Mr. CORCORAN. Yes.

Senator KEAN. Why can they not lend on any margin?

Mr. CORCORAN. As long as they do not lend on these securities.

Senator KEAN. I have letters from people who say that they now have their stocks listed on the stock exchange, and if this bill goes

into effect they are going to withdraw their stock from the stock exchange and have it traded in on the curb, in the open market.

Mr. CORCORAN. Of course if it is traded in on the curb, it would still be subject to this bill. That is a problem which I wanted to come to later, but which we might just as well face now. That is the statement that if we put restrictions upon trading in listed stocks, and if we require companies, as a condition of such trading, to furnish adequate information to its stockholders, all of the companies will withdraw their listings and get off the stock exchanges. There is a provision in this bill which empowers the Federal Trade Commission to regulate the over-the-counter market. Just exactly how you are going to regulate that market, no one has yet worked out. Undoubtedly it can be done; so long as you have control over mails and over interstate commerce you can work out a way to handle the over-the-counter market.

There are two other factors in this threat of the flight of securities from the exchanges. Number one is that stockholders for whose benefit all these supposedly onerous requirements of reporting are made, are not going to let their directors pull off the stock exchanges. You remember, about two years ago, the fight that the Stock Exchange had, and it was a very creditable fight with reference to Allied Chemical & Dye Corporation. It was carrying in its accounts a large number of shares of its own stock. It was required to report more fully to the stockholders. The management threatened to get off the exchange. There were other fights going on for other reasons in that situation; but the stockholders prevented the directors from pulling off the exchange. The requirement of supposedly onerous bulletins and reports and publicity put upon listed stocks will not cause the stockholders to permit the directors to pull a corporation off the exchange.

Senator KEAN. I think that is quite right; but I am talking about the onerous part of trade in these stocks.

Mr. CORCORAN. Now, sir; as far as the onerous part of trading in the stocks is concerned, in the first place, you have given listed securities an advantage over unlisted securities in permitting brokers to carry them in accounts while you do not permit unlisted securities to be carried in their accounts. What onerous provisions are there in this bill as to listed companies that are not for the benefit of the stockholders? After all, sir, the stockholders determine whether companies keep their shares listed, not the directors.

Senator KEAN. That is right, and I hope they always will; but there are many provisions in this bill which makes it onerous on the boards of directors and also on the margin accounts—

Mr. CORCORAN. Now, let us take them one by one, sir. Insofar as the onerous requirements on the board of directors are concerned, they are all for the benefit of the stockholder. A stockholder is not going to say, "Pull the stock off the board because my directors cannot deal in that stock and make profits on their inside information and because they don't want to tell me what is going on in the company." So far as any requirement on the director is concerned, it is all for the benefit of the stockholder; and no stockholder is going to force his company to pull off the board because it is doing the right thing by him.

Insofar as restrictions on trading are concerned, you have given listed stocks a premium over unlisted stocks for the purpose of margin accounts.

Senator KEAN. Yes; you have given it to a certain extent; but do you take it that no curb stock can be dealt in by a broker here?

Mr. CORCORAN. Sir, any curb stock that is listed can be dealt in.

Senator KEAN. Listed where?

Mr. CORCORAN. Listed on the curb. There is a problem in connection with the New York Curb, if that is what you are thinking about, as to which you will undoubtedly hear from counsel for the curb exchange. The fact is that a great many stocks that you normally think are listed on stock exchanges are not listed at all. If you have a New York paper here this morning and you look at the report of transactions on the New York Curb Exchange, you will notice that a certain number of stocks quoted have a little star opposite them, which means fully listed on the curb exchange. That is, the issuing company has listed the stock on the exchange, giving the information required for listing on the exchange, and has entered into certain covenants with respect to its activities.

Stock exchanges throughout the country, however, have made a practice of attempting to hold out for trade on the exchange securities that are not listed at all. A broker for instance vouches for a security, not the company. He gives the listing committee a certain amount of information with respect to the security. The issuing company has never listed nor has ever entered into any covenant to observe the requirements upon listing companies. Nevertheless that stock can be traded in. I think Electric Bond & Share is in the category of an unlisted stock right now. The problem of the effect of this legislation on the New York Curb and whether the Curb can force presently unlisted stocks into full listing depends completely on the degree to which you can make listing desirable under the terms of this bill and how you can control the over-the-counter market to which the unlisted securities would run.

That is my opinion, and there is nothing but opinion in this matter. It is my opinion that no shareholder is going to have the liquidity of his shares jeopardized by having his company run off the exchange simply because of rules under which listings can hereafter be had requiring directors to shoot straight with the stockholders and tell the stockholders something about the management of the company.

Senator KEAN. I agree with that; but at the same time, where a man controls the company, or his family controls it, he may object to some of those rules or may not.

Mr. CORCORAN. What you are saying, sir, is that a majority stockholder or a majority of the stockholders may want to take their shares off the exchange. In a case like that, that is a possibility. But most of the cases we are dealing with are cases where we do not have the majority of the stock held so closely.

Senator GORE. When England went off the gold standard, did not the stock exchange close for a day or place certain limitations on short transactions?

Mr. CORCORAN. That is true, sir.

Senator GORE. Did the stock exchange survive?

Mr. CORCORAN. It survived, sir.

Senator GORE. We will have to corroborate that by Mr. Redmond.

Mr. CORCORAN. It is a very live corpse, sir, if it did not.

Senator KEAN. Yesterday we had a discussion on the subject of the London Stock Exchange. Is it not true that in their fortnightly settlements, at one time, about 1926 or somewhere around there, the cash settlement was postponed for 3 or 4 years because they were unable to settle their accounts?

Mr. CORCORAN. I do not know much about the London Stock Exchange, sir.

Senator KEAN. It was brought up here yesterday. As I remember it, when there was a large drop in London—I think it was in 1926 or somewhere thereabouts—London was unable to settle on their regular settlement, and I think it was a year or two before they could complete the settlement.

The CHAIRMAN. That was before our day.

Senator KEAN. No; it was not before your day.

Mr. CORCORAN. Shall we go on, sir, to the next section?

The CHAIRMAN. Yes.

Mr. CORCORAN. As a summary of this margin section, there is no argument of social policy against cutting down margins except what I think is the weak argument that borrowed money is necessary to a liquid market, which we have discussed. On the other hand—

Senator KEAN. Pardon me. Let me interrupt you right there. Is not borrowed money in speculation necessary to make a broad market in close quotations? I mean, that if you take a bond that is dealt in once a month, or something like that, the bid price is 4 or 5 percent or 3 percent different from the offered price, and that is not a satisfactory market, because if you want to buy you have got to sacrifice half a year's interest.

Mr. CORCORAN. That is the problem which I was discussing with Senator Bulkley—whether the much vaunted advantages of liquidity of the market were worth the cost to society of the abuses resulting from the margins believed necessary to make such liquidity possible.

Senator KEAN. One of the reasons is that there has been testimony here as to billions of dollars or hundreds of millions of dollars loaned on the stock exchange, and that they did not lose 1 cent.

Mr. CORCORAN. That is, the broker didn't lose, nor the bank that loaned didn't lose. But how about the fellow that bought stocks on margin? He did lose.

Senator KEAN. Yes.

Mr. CORCORAN. I do not think we need legislation particularly to protect the broker all the time. They normally won't lose.

Senator KEAN. I do not know. If you get a narrow market, they might lose. The liquidity of the market is what they loaned money on.

Mr. CORCORAN. What you are talking about, Senator, is the social desirability of accepting all the perils that have been perfectly evident to us over the last 5 years of excess of borrowed money in the market. You are balancing those perils against the advisability of having quotations that will run an eighth or a quarter of a point instead of 2 or 3 points—

Senator KEAN. What I am saying is this, that the money market in New York has been of continuous benefit to protect banks and

trust companies all over the country so they might have a liquid form of loan which they knew they could give back to their customers and to their depositors at any moment. To illustrate: As I understand it, a bank in New York has so much commercial paper, so much permanent loans, time loans and so much demand loans on the market. They have a debit balance in the clearing house at 9 o'clock in the morning of \$1,000,000, and they want so many brokers' loans. If, on the other hand, they have a credit balance of so much money, they loan so much money in the market and that gives them the opportunity of using the floating money in their bank that may be called out tomorrow. It gives them an opportunity.

Mr. CORCORAN. What the ultimate simplicities of that argument come down to, Senator, are just this, that society should take on all the burdens we have had with margin speculation in the market so that the New York banks will have a place where they can lend liquid funds. That is what it ultimately comes down to.

Senator KEAN. I think you are right in that the margins ought to be sufficient. If you create a margin of 35 or 40 percent, I think that you are doing all you can in this matter to protect the individual. I think if we insist upon that kind of a margin and that becomes the law, that margin will be so great that it will protect the public from losing their money the way they have on many occasions.

Mr. CORCORAN. To summarize, we have on the one hand the argument of social policy against margin money in the market, both from the point of view of its effect upon business and upon the social fabric which was described to you yesterday, and from the point of view of loss to the individual investor.

Against that we balance the advantages of liquidity in the market from the standpoint of having a place where banks can lend liquid funds and where investors can realize on securities. I am not trying to make that balance. For me there would be no choice. If I had to sacrifice liquidity of the market in the sense that sales had to be within a quarter of a point rather than within two points to prevent 1929 from occurring again, the decision would be easy for me; but that is a question of policy. If you do, as a matter of policy, decide that you want to limit margins, then you are up against the propositions that to effect that policy you must limit margins in banks as well as in brokers' loans and that you must make a real limitation of margins, if you are going to have any effect upon the market big enough to carry out the purposes of your social policy. And to be able to make the margin limitation effective, you must have a bright, rigid line with any discretion removed or made as difficult of application as possible.

Mr. REDMOND. Do I then understand that this bill really carries out the social principles of the persons who drafted it?

Mr. CORCORAN. No; not the social principles of the persons who drafted it, any more than the social principles of Mr. Goldenweiser who talked here yesterday. It embodies the philosophy that too much borrowed money in the market is a dangerous thing for the economic structure of the country as well as for the people who go into the market on borrowed money. To the extent that it embodies

that philosophy, it does embody not only the philosophy of most of the people who drafted it, but of a lot of other people as well.

Senator GORE. You stated earlier in your statement who did draft the bill. I was not here.

Mr. CORCORAN. It was drafted as the result of cooperation between two groups. Senator Fletcher asked Mr. Landis of the Federal Trade Commission to cooperate with Mr. Pecora, who is counsel for the investigating committee and counsel for this committee, now. He asked Mr. Landis and Mr. Pecora to cooperate in the drafting of a bill. Mr. Landis asked several persons to help him. I was one of those. Mr. Pecora had several members of his investigating staff helping him; and the two groups cooperated in the drafting of the bill.

Senator GORE. Do you know who Mr. Pecora's assistants were?

Mr. CORCORAN. Mr. Pecora is here himself, sir; he can tell you.

Senator GORE. I thought maybe you knew. He is not a witness. I would be glad to have it in the record, however.

The CHAIRMAN. I do not see that it makes any difference at all. Is not the conception really that the purpose of reducing these loans and reducing the amount of money flowing into speculation is to leave some funds for agriculture, commerce, and industry throughout the country?

Mr. CORCORAN. That is true to a certain degree, sir. To be perfectly fair, as Dr. Goldenweiser pointed out yesterday, the stock market does not really divert funds from industry; it merely redistributes funds as between agriculture and industry. But the fact is that it did take money from agricultural communities and put it into securities of large corporations, and it took money that normally would have gone to the financing and developing of small corporations and routed it into the coffers of large corporations.

Senator GORE. Do you not think it acted as sort of a suction drawing funds from all parts of the country into New York?

Mr. CORCORAN. That is true, sir; but to be perfectly fair, that money, it went into the purchase of securities and hence into the coffers of the corporations offering those securities or it went out in the expenditures of persons who made profits on the securities and eventually got back into the channels of trade somewhere.

Senator GORE. But in consequence of that, the concerns floating the stock took advantage of the opportunity to get this money which might otherwise have remained in the interior parts of the country devoted to carrying on legitimate business; so that the crash, when it came, might have found a real cushion instead of a more or less artificial one?

Mr. CORCORAN. That is true, sir.

Senator GORE. It not only withdrew money from my part of the country, but from Europe as well. Europe sent immense funds over here.

The CHAIRMAN. Proceed.

Mr. CORCORAN. Section 7. We have talked about margins in the sense of getting credit into the market through the borrowings of persons operating in the market. Section 7 deals with an attempt to control the amount of credit that goes into the market by restricting borrowings of brokers. You will notice in section 7 that it provides [reading]:

It shall be unlawful for any member of a national securities exchange or person who transacts a business in securities through the medium of such member, directly or indirectly—

That language should be amended to make it certain that it does not cover banks. [Continuing reading:]

(a) To borrow on any security registered on a national securities exchange from any person other than a member bank of the Federal Reserve System.

New legislation puts in the Federal Reserve Board the power to limit the loans which a member bank makes upon securities. The purpose of canalization through the Federal Reserve bank of borrowings going into the market through banks to brokers is to make it practicable to exercise the control over money going into securities which the Glass-Steagall bill attempts to give to the Federal Reserve Board.

There is another provision which should go in at this point. It comes in from page 23. You will notice on page 23 that any issuing company, as a condition of registration, must agree, if it is not a Federal Reserve member bank, not to lend to carry securities. On page 23 it is provided [reading]:

The rules and regulations of the Commission in regard to registration shall require—

(1) An undertaking by the issuer to comply with and so far as is within its power to enforce compliance by its officers, directors, and stockholders with the provisions of this act and any amendments thereto and with the rules and regulations made or to be made by the Commission thereunder and, unless the issuer is a member bank of the Federal Reserve System, not to lend any funds in the money market of any exchange or to any member thereof or to any person who transacts a business in securities through the medium of any such member except in accordance with such rules and regulations as the Commission may prescribe

That is to control these outside corporation loans which you were discussing yesterday.

Section 7, then so far as we have gone in connection with this other provision, limits the borrowings of brokers, first, from Federal Reserve member banks; secondly, from outside lenders under such rules and regulations as the administrative commission may prescribe.

Senator KEAN. I do not think that would interfere in any way with a company lending to its directors and officers money to purchase their own stock; do you?

Mr. CORCORAN. No, sir. The internal corporation laws ought to require that. A New York corporation cannot lend to its shareholders.

Senator KEAN. Most of the companies give to their employees an option to acquire so much stock a year.

Mr. CORCORAN. You see the lending is simply made subject to any rules and regulations of the Commission; and if there were any question of that kind, undoubtedly the rule would except such a situation. [Continuing reading:]

(b) To permit the aggregate indebtedness of such member or person to all other persons, including customers' deposits, to exceed such percentage of the net current assets owned by the borrower and employed in the business not exceeding 1,000 per centum as the Commission may by rules and regulations prescribe

Roughly, what that says is that a broker cannot borrow more than 10 times his capital to lend to his customers. I understand from

Mr. Whitney's statement that that does not constitute a burden on New York Stock Exchange members at the present time. I understand that there has been some objection from smaller exchanges that their members simply cannot carry on their accustomed volume of business if they can only borrow from the banks 10 times the amount they have invested as capital.

This is a provision to make certain that brokers do not operate on a shoestring and that there is a capital cushion for their customers. I understand that some brokers during the crash—Mr. Redmond can check me on this—were permitted to borrow up to 50 times their capital.

Mr. REDMOND. Not that I know of. It may have happened in a particular case where a firm was being reorganized, or something like that.

But what is the definition of the term "net current assets owned by the borrower and employed in the business"?

Mr. CORCORAN. It is substantially as you put it in your brief.

Mr. REDMOND. Is not that a very vague term?

Mr. CORCORAN. No.

Mr. REDMOND. "Net current assets"?

Mr. CORCORAN. No. It is his current assets after you deduct his liabilities. You know what we are after. If you can suggest a better way to phrase it I should be very glad to accept your language. I do not care how you define it.

Mr. REDMOND. That term "net current assets" would normally be the difference between your current assets and your current liabilities. That is quite different from capital.

Mr. CORCORAN. No, but it does represent the cushion of protection immediately available for the protection of your customers.

Mr. REDMOND. I think not.

Mr. CORCORAN. Mr. Redmond, as long as you and I know what we are after, I will be perfectly willing to accept any suggestions you have for the redefinition of that term.

Mr. REDMOND. I am simply raising the question that the term at present is not accurately defined; and being a point on which criminal liability would turn, I think it should be very definitely defined.

Mr. CORCORAN. I agree.

Mr. REDMOND. Is there going to be any provision made for those cases that are bound to arise where a man, no matter what good faith he may have exercised, would fall below the fixed ratio?

Mr. CORCORAN. No; because there, again, Mr. Redmond, you are up against what I call the irresistible force and the movable object. You have got to fix a limit somewhere. This provision fixes 1,000 percent as the top. The Commission can require that brokers actually borrow on a smaller ratio of borrowing. Somewhere there has to be a top. Below that the commission can adjust. But you must not have an administrative commission in the position where it is certain to be under pressure all the time.

Mr. REDMOND. I have greater faith than you have, apparently; in the ability of the commission to resist pressure.

Mr. CORCORAN. I have been trying to resist it for 2 years. It is much harder than you think.

Mr. REDMOND. The last 2 years may have been exceptional.



Mr. CORCORAN. All pressure always finds exceptional circumstances, sir.

Mr. REDMOND. The Reconstruction Finance Corporation was rather inviting pressure, was it not?

Mr. CORCORAN. I am not going to talk about that—

The CHAIRMAN. You say, it is 10 times the capital?

Mr. CORCORAN. Yes, sir. That is the ratio on which a bank normally takes deposits.

The CHAIRMAN. Would it improve it any to specify 10 times the capital, inasmuch as this is 1,000 percent?

Mr. CORCORAN. Mr. Redmond thinks that the term "net current assets" is ambiguous and should be redefined. I think we agree generally on the figure we are trying to reach as a basis, and that can be straightened out as a matter of language.

Mr. REDMOND. Do not take anything I say as an agreement. I am raising points to clarify the situation.

Mr. PECORA. In other words, he wants to find out how far you will agree, and then he will not agree.

Mr. CORCORAN (reading from the bill):

(c) To use, if a broker, the capital employed in the business to carry or finance the carrying of securities for himself or for others than bona fide customers excluding any partner or employee of such broker

That proceeds on the proposition that a broker should have a fund or capital as a cushion against losses and that he should not employ that cushion in trading for his own account

The two biggest failures we had during the 1929 debacle, and one in 1930, arose not because the brokers' loans were unsafe, because as a matter of fact brokers' accounts for their customers are usually very safe. They arose rather because the capital of the house became involved in positions for its own account.

(Reading further from the bill:)

(d) To hypothecate or arrange for the hypothecation of more of any securities carried for the account of a customer than is fair and reasonable in view of the indebtedness of such customer

And (e) should be considered with it [reading]:

(e) To hypothecate or arrange for the hypothecation of any securities carried for the account of a customer under circumstances that will permit the commingling of the securities of one customer with those of any other person, without the written consent of such customer

A broker, to lend you money, must borrow money on the same securities on which you borrow from him.

Senator KEAN. Do you mean you have to separate each customer?

Mr. CORCORAN. Unless you get the customer's consent.

Senator KEAN. You always do get the customer's consent?

Mr. CORCORAN. You normally do in operations on the New York Stock Exchange or in operations under the statutes of the State of New York, from which these subsections are practically excerpts. You always do get the customer's consent. But that is not always the case in other States nor under the rules of other exchanges than the New York Exchange. So we simply put it in here to make very sure that the rule becomes general throughout the country.

Mr. REDMOND. May we for one moment go back to (c)? The definition of the term "to carry or finance the carrying of securi-

ties"—would that go so far as to exclude a man who had a business capitalized by, let us say, Liberty bonds?

Mr. CORCORAN. You mean, it is the old problem of whether you have to have cash capital?

Mr. REDMOND. Precisely.

Mr. CORCORAN. I should say you would, under this, have to have cash capital.

Mr. REDMOND. That would mean that not only would the man engaged in that business have cash capital employed in that business, but could not carry any securities for his own account.

Mr. CORCORAN. No; he would have to segregate a certain amount of his capital for that business. I am perfectly willing to agree with you that possibly there should be investment in Government bonds or anything else that is comparatively safe for the capital of the broker. As the section now reads, it requires cash capital.

Mr. REDMOND. You would not draw any distinction between the man who was borrowing money so as to acquire securities and the man who owns the securities and contributed them as capital?

Mr. CORCORAN. No, sir. There has to be a certain capital cushion in the business.

Mr. REDMOND. There would be a capital cushion. If I have securities and put them in as capital, the capital is there.

Mr. CORCORAN. Not unless they are perfectly safe securities. The customer takes a risk on the value of them. Again, it is a question of degree. It is a sheer question of degree as to the safety of the security. I say that, as the section now reads, the broker has to have cash capital which is a cushion for his customers. You say, "Why should he not be allowed to have Government bonds? They are just as safe as cash." Then, when I say, "All right," you push me one more and say, "Why should he not be able to invest it in Atcheson bonds?" And I say, "All right," and you push me one more. Pretty soon you will have me assenting to investment in securities on the Produce Exchange. It was intended that there should be a safe cushion of capital in the business.

Mr. REDMOND. The reason I asked it was that I did not understand the principle of it. I should think it would have said simply that the capital to be employed in the business of a broker shall be contributed and maintained in cash. That is the thought, then?

Mr. CORCORAN. As the language now reads, that is the thought. I have no objection to a concession as to Government bonds. But the difficulty with going any further is that you reach a degree when you start on the toboggan chute and never know when you are going to land at the bottom.

(Reading further from the bill:)

(f) To lend or arrange for the lending of securities pledged by or carried for the account of any customer without the consent of such customer and without crediting the interest received on account of such lending to the account of the customer

That deals with a broker's lending his customer's security in connection with request made upon him by other brokers for the loan of securities to cover their short accounts. The stock exchange has criticised that language with respect to the interest provision, and it is absolutely right. The language is badly drafted. When

a broker lends stock to another broker he normally gets back as a deposit the market value of that stock in cash. No interest is usually paid on this deposit.

The theory of the section is this: After all, there is no reason why a broker should have the privilege of lending his customer's stock to cover the short accounts of other brokers, unless he pays for that privilege; and even if he does not receive any interest on the deposit himself, he must, during the time that the stock is loaned out to another broker, credit his customer with an amount of interest at some given rate on the market value of the securities while they are out.

I understand perfectly that there is difficulty in allocating such interest as between customers; but it is something that can be worked out, and certainly as a matter of fairness between the broker and his customer there is no reason why the broker should use the customer's securities to lend to another broker who has to cover a short sale, and not pay something for the privilege. And if you do not believe in encouraging short selling, and believe in putting at least some discouraging minor obstacles in the way of it, this would be one of those obstacles.

Mr. REDMOND. Is it not true, if you have looked into the question, that attempting accurately to credit interest on this theoretical basis which you have described, to the customers of a large firm, would be so impossible that no lending could in fact take place?

Mr. CORCORAN. Not impossible; rather difficult. But again, as I say perfectly frankly, this is intended to put a minor obstacle in the way of short selling.

Mr. REDMOND. And if it should develop to be a major obstacle and simply prohibit the lending of securities, that would be deemed to be socially good, too, I take it?

Mr. CORCORAN. If, and I am not one of the persons who goes along with that idea, you think short selling is bad.

Mr. REDMOND. What would you do in the case, which is very common, of a man who orders securities sold when he is out of town? Let us say a broker in Texas orders securities sold. For the days during which those securities would be in transit from Texas to New York for delivery, securities have got to be borrowed to be delivered on the New York contract.

Mr. CORCORAN. That is not a short sale for profit. That is a short sale by reason of the physical unavailability of the securities.

Mr. REDMOND. But what I am pointing out is that that would require the borrowing of securities and the out-of-town seller would therefore have to pay this extra premium.

Mr. CORCORAN. That is quite true, and perhaps that particular provision for interest, the accounting difficulties of which I perfectly well realize, ought to be changed to make some allowance for that kind of a situation. But as I say, whether you will eliminate it entirely depends upon your attitude toward the advisability of short selling.

Senator GORE. That, however, involves, as a rule, a long sale.

Mr. REDMOND. Yes; but you nevertheless have to borrow.

Mr. CORCORAN. It is a sale against the box.

Mr. REDMOND. A sale against securities in transit.

Mr. CORCORAN. Yes.

Senator KEAN. There are a great many women that order you to sell some bonds, and then they do not come down for 2 or 3 days, but you are forced to deliver them.

Mr. CORCORAN. Sir, I cannot pretend in this statute to govern the vagaries of women customers.

The CHAIRMAN. The committee will take a recess at this time until 2:15.

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

AFTERNOON SESSION

The committee resumed at 2:15 p.m. on the expiration of the recess.

The CHAIRMAN. The committee will resume, please.

**STATEMENT OF THOMAS GARDINER CORCORAN—Resumed**

The CHAIRMAN. Mr. Corcoran, you may resume where you left off, which I believe was section 7.

Mr. PECORA. Mr. Chairman, we had just finished with section 7 of the bill.

The CHAIRMAN. All right. You may proceed, Mr. Corcoran.

Mr. CORCORAN. We are through, then, with the provisions relating to the control of the amount of borrowed money that gets into the stock market.

We can now begin with section 8, the provisions to protect the investor from evils in the present set-up of the market machinery.

The CHAIRMAN. All right.

Mr. CORCORAN. If we may now begin with section 8, Senator Fletcher, those provisions have been drafted from suggestions of your counsel in charge of the work of investigating stock-exchange practices. In other words, most of them have been evolved as a result of the investigation that has been carried on before your committee for the last year and a half.

I will begin now by reading section 8:

Sec 8 (a) It shall be unlawful for any person, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange—

(1) To effect any fictitious transaction in any security registered on a national securities exchange, or any transaction which purports to be a sale of any such security but involves no change in the beneficial ownership thereof

That was intended to prohibit wash sales. A wash sale is a transaction designed to create the illusion of activity in a stock. A trader orders one broker to sell a security at a certain price, and orders another broker to buy the same security at the same price. The stock exchange quite agrees that wash sales should be prohibited, but raises the point that possibly subsection (1)—no, it is on the next point that the stock exchange makes objection—

Mr. REDMOND (interposing). Mr. Corcoran, might I ask you a question right there?

Mr. CORCORAN. Yes.

Mr. REDMOND. Would there be any reason why that provision should not be extended to any security, whether registered on an exchange or not?

Mr. CORCORAN. That immediately raises a constitutional point.

Mr. REDMOND. Does it? I thought it was limited to transactions through the mails or by means of interstate transportation.

Mr. CORCORAN. Yes. But it raises the same point of constitutionality that has been raised as to the over-the-counter market provision.

Mr. REDMOND. Precisely.

Mr. CORCORAN. I do not see why it could not be done if, in the committee's judgment, it thinks it desirable that it should be done.

Mr. REDMOND. Of course it is the law of the State of New York, and the rule of the New York Stock Exchange as well, that fictitious transactions should not take place. But it just struck me that the constitutional question exists as to many other provisions of the bill, and that at least you might go as far as striking out the words "registered on any securities exchange."

Mr. CORCORAN. It might seem proper to the committee to go that far.

Now we go to subparagraph (2) :

(2) To effect, or to authorize another or others to effect for such person's account, transactions for the purchase and sale of any security registered on a national securities exchange at substantially the same time at substantially the same price, whether such transactions of purchase and sale be with the same or with different parties, except transactions made on the exchange as a matter of record only and appropriately recorded and reported as an "arranged transaction"

That provision is intended to catch match orders, where by prearrangement a buy order and a sell order at a given price go into the exchange together to create the illusion that there is activity in the stock, or to create a quotation on the stock for the purpose of helping salesmen distribute the stock.

The CHAIRMAN. Mr. Redmond, would you suggest that the words "registered on a national securities exchange" be stricken out there?

Mr. REDMOND. I think it might be well to strike that out. Of course, Mr. Chairman, the possibility of matched orders except upon an organized exchange is very remote. But I think it might be just as well to strike those words out there if they are going to be stricken out in the first instance.

The CHAIRMAN. The committee will consider that.

Mr. REDMOND. Mr. Corcoran, isn't the language of subsection (2) capable of a much broader meaning than just a prohibition of matched orders

Mr. CORCORAN. I do not think so. But I have noted the objection you have made to it, on page 14 of your brief, and if the committee will permit me, I would suggest to Senator Fletcher that possibly some clarification of it, to prevent the section being given an interpretation which will prevent a man, in the course of a single day, buying and selling the same security, might be considered.

Mr. REDMOND. The essence of the difference being what you yourself stated a minute ago, and that is, that by prearrangement orders are sent in to buy and to sell at the same time.

Mr. CORCORAN. And the exception would just be restricted to bona fide buying and selling on the same day, without any intention to create the illusion of activity or to make a quotation on the stock.

The CHAIRMAN. You may proceed, Mr. Corcoran.

Mr. CORCORAN. We now take up subparagraph (3) :

(3) To effect, either alone or in concert with one or more other persons, transactions for the purchase and sale of any security or securities registered on any national securities exchange for the purpose of raising or depressing the price of such security or securities or for the purpose of creating or with the expectation that there will be created a false or misleading appearance of active trading in such security or securities, or a false or misleading appearance in respect of the market for such security or securities

The stock exchange would prefer that this prohibition should be confined to cases where there is an intentional effort to unfairly influence the price of securities for the purpose of making a profit. The difficulty with such a restriction is that once you accept a word that leaves so much leeway as "intentional" and is susceptible of so many difficulties of proof, or a word like "unfairly" that has the same difficulties about it, you really have emasculated your provision. To prove that a man intentionally operated a pool to unfairly influence the price of a security is a refinement that is impossible of practical administration.

Mr. REDMOND. Well, don't we then fall on the other horn of the dilemma. Nobody buys a security with the idea that his purchase is going to leave the market price entirely unaffected, and, therefore, under this bill if it is given the broadest possible interpretation every purchase or sale of securities would be for the purpose of raising or depressing the price, and hence every buyer and seller would be a criminal.

Mr. CORCORAN. No; I do not think so. I do not think language relating to transactions which take place for the purpose of raising or depressing the price of securities brings within the normal meaning of that language the inevitable effect upon the market of any transaction in securities. What you are saying is that since any transaction in securities must in some way influence the price of the security, even by reason of the very existence of the transaction, therefore if a statute says that you must not carry out a purposeful transaction for the purpose of raising or depressing the price of securities, the mere fact of buying and selling securities without any ulterior purpose except the buying or selling of the security is within that language.

Mr. REDMOND. Exactly.

Mr. CORCORAN. Oh, no. I respectfully disagree.

Mr. REDMOND. What, then, is going to be the norm by which people might guide themselves?

Mr. CORCORAN. There cannot be any norm, Mr. Redmond, in the interpretation of language like that, any more than there can be in any case where you are working with standards and questions of degree.

Mr. REDMOND. But we are dealing with a criminal statute here.

Mr. CORCORAN. We are, that is true.

Mr. REDMOND. And isn't it generally true that crime requires intent, and it is the criminal intent that distinguishes a crime from many acts which otherwise would not be punishable in any form?

Mr. CORCORAN. No. I do not believe that is any longer a norm of the criminal law. I think it was a norm of the old criminal law, and I still think that so far as more serious offenses are concerned the criminal law requires intent to be proved, but in modern society there are many things you have to make crimes which are sheer matters of negligence. As you know, there are many statutory crimes, such as those in connection with driving an automobile, where intent is not required.

Mr. REDMOND. Do you mean as to the speed statute?

Mr. CORCORAN. No. If you drive an automobile when drunk, it is not necessary to prove an intention to become drunk, or to drive an automobile when drunk. You can still be put in jail for it, whether intent is proved or not.

Mr. PECORA. That is, *mala prohibita*.

Mr. REDMOND. But even so, Mr. Corcoran, in your automobile case if by reason of speed while intoxicated you run down a man normally you can be tried for manslaughter but not for murder.

Mr. CORCORAN. But manslaughter is a crime. And this is not murder.

Mr. PECORA. That is because of the statutory definition of that crime.

Mr. CORCORAN. What you are saying to me, Mr. Redmond, is that you have to have intent in order to hold a man for crime. I say that no matter whether you are tried for manslaughter or for murder under the automobile case manslaughter is a crime, just as murder is a crime. So for the purpose of settling the point as to whether the modern criminal law requires intent, you must concede that manslaughter, without any requirement of specific intent, is a crime just the same as murder.

Mr. REDMOND. Not necessarily, because manslaughter ties in with the requirement that the man must be conscious of what he is doing.

Mr. CORCORAN. Not necessarily.

Mr. REDMOND. Let me finish my sentence. Here, ordinarily, a man is engaged in the ordinary process of buying or selling securities, or of buying or selling property, and suddenly you say to him: If you do this for the purpose of raising or depressing prices—and we give here no indication beyond that as to what distinguishes a legitimate commercial transaction from a criminal act—you are doing a criminal act? How are people going to know how to guide themselves?

Mr. CORCORAN. Mr. Redmond, I may agree with you that if you are trying to skin corners as closely as you can, you cannot tell at exactly what stage a kitten becomes a cat in determining whether a man bought or sold on the market for the purpose of raising or depressing the price of securities. But for practical purposes, the language is adequate. You cannot be able to decide ahead of time just where the line falls. That is the question present in every problem that a law court has to decide.

Mr. REDMOND. I should just like you to give me some instance in the criminal law in which a man may become a criminal when doing ordinary commercial work, doing a perfectly ordinary commercial transaction.

Mr. CORCORAN. Mr. Redmond, you do not need any precedents in the commercial law for that. Once you establish the principle

of law that intent is not necessary for every crime, we can establish a new crime here within that principle without the necessity of having other precedents in the commercial law. Now, Mr. Redmond, are you arguing with me on the question of policy?

Mr. REDMOND. No.

Mr. CORCORAN. Or are you arguing with me on the question of law?

Mr. REDMOND. I am arguing with you on the question, that this provision gives no means by which the average citizen can tell when he is going to fall within the scope of the criminal provision or not.

The CHAIRMAN. Well, it says it must be done for the purpose of raising or depressing the price.

Mr. REDMOND. But every purchase might be so termed.

Mr. CORCORAN. That is not a fair interpretation of the language at all.

Mr. PECORA. Oh, no. Perchance it might be in fact as an incident to the act, but where the act is done for the specific purpose set forth in the statute, then the statute is violated.

Mr. REDMOND. But that specific purpose may be assumed the case of a large insurance company which holds half a million dollars of a certain issue of bonds, and they go and buy \$50,000 more, and this purchase actually increases the price of that security.

Mr. PECORA. But they purchase not for the purpose of increasing the price.

Mr. REDMOND. Yes; but even then.

Mr. PECORA. This has to do with avowed market operations, where a specific purpose is sought to be effectuated by the operation.

Mr. REDMOND. Well, then, shouldn't we have the clause in the bill clearly describe that, if that is to be the intention of the statute?

Mr. PECORA. I think it does insofar as it specifies what the purpose shall be in the case of an unlawful act. Under that purpose the act done may be unlawful, or is to be declared unlawful.

Mr. REDMOND. Mr. Pecora, you yourself a minute ago said this section had to do with an avowed market transaction. Couldn't we find some language which would show clearly what this clause is intended to cover? Otherwise I fear people will not know whether they are on the verge or on the edge of the criminal law or not.

Mr. PECORA. I think the language of the section as it now stands is clear enough.

Mr. REDMOND. Well, I have raised my point.

Mr. PECORA. Excluding from its scope an act that is not done with any ulterior motives or purposes, as set forth in the act.

Mr. REDMOND. Aren't you then treating "purposes" the same as "intent", which Mr. Corcoran objected to?

Mr. CORCORAN. I did not object to it.

Mr. PECORA. You might regard them as synonymous terms.

The CHAIRMAN. But you have to prove the purpose, which is practically the same thing as proving the intent.

Mr. PECORA. Yes. You may treat them as synonymous terms, Mr. Redmond.

Mr. REDMOND. All right

The CHAIRMAN. You may proceed, Mr. Corcoran.



Mr. CORCORAN. Subparagraph (4) provides:

(4) If a dealer, broker, or member or a person in the employ of a dealer, broker, or member, to circulate or disseminate in the ordinary course of business information to the effect that the price of any security or securities registered on a national securities exchange will or is likely to rise or fall partly or wholly because of the market activity of any one or more persons, if the person disseminating such information has reason to believe that the circulation or dissemination of such information on his part may induce the purchase or sale of any such security in the expectation of such market activity;

That section deals with dissemination of rumors of pools. As Mr. Redmond points out in his brief, such acts are already prohibited by the rules of the New York Stock Exchange.

Mr. REDMOND. Simply for the purpose of the record, Mr. Corcoran, that is Mr. Whitney's brief.

Mr. CORCORAN. All right. And it is not your brief?

Mr. REDMOND. I was merely setting you right on that.

Mr. CORCORAN. Now we will take up subparagraph (5):

(5) To circulate or disseminate information regarding any security registered on a national securities exchange which statement is, in the light of the circumstances under which it was made, false or misleading in respect of any matter sufficiently important to influence the judgment of an average investor, if the person disseminating such information has reason to believe that the circulation or dissemination of such information on his part may induce the purchase or sale of such security, and does not prove that he acted in good faith and in the exercise of reasonable care had no ground to believe that the statement was false or misleading

I would suggest, Mr. Chairman, if I may be permitted, that the language of that subparagraph should be amended a little to make it clear that the statement must be made for the purpose of inducing the purchase or sale of the security. Not because I do not think the subparagraph is perfectly clear now, but there has been some apprehension on the part of perfectly legitimate houses dealing in investment information, like the publishers of standard manuals, and investment counsel, and trustees administering estates, that they might be unwittingly caught by that provision even though they acted with the best intentions in the world. I would suggest that the amendment proposed in Mr. Whitney's brief, on page 15 thereof, be considered.

Mr. REDMOND. Might I say one word right there, because I think there again it might be wise to strike out the limitation as to securities registered on national securities exchanges, so as to prevent a false statement in regard to unlisted securities.

Mr. CORCORAN. I will next take up subparagraph (6):

(6) To pay or cause to be paid directly or indirectly any consideration or anything of value to any person to circulate, disseminate, or finance the cost of circulating and disseminating, information to the effect that the price of any security or securities registered on a national securities exchange will or is likely to rise or fall partly or wholly because of the market activity of any one or more persons;

That relates to the financing of tips of pools. I do not think there is any substantial objection to a provision of that kind, is there, Mr. Redmond?

Mr. REDMOND. None. And I think we would like to see it go further so as to prevent the activities of tipster sheets, which, as I

read subparagraph (6), does not do, because it is limited to the statement in regard to the market activity of one or more persons.

Mr. PECORA. Tipster sheets might be covered by subdivision (5).

Mr. CORCORAN. With respect to new securities at least they are covered by the present provisions of the Securities Act.

Mr. REDMOND. Yes; in regard to new issues of securities.

Mr. PECORA. Tipster sheets certainly ought to be brought within the provisions of this bill, and if the language of the bill in its present form is not certain to do that, it ought to be clarified and strengthened accordingly.

Mr. REDMOND. I think certainly within the scope of one of these two sections that result could be accomplished.

Mr. PECORA. Yes.

Mr. CORCORAN. I will now take up subparagraph (7), and from now on the entente cordiale disappears. [Laughter:]

(7) To engage in any series of transactions or in any operation for the purchase and sale of any security registered on a national securities exchange which has the purpose or effect of pegging, fixing, or stabilizing the price of such security without having prior thereto reported to the exchange authorities and to the Commission such information regarding the purpose and nature of such transactions or operations, the details thereof, and the person or persons interested therein as the Commission by rules and regulations may prescribe as appropriate or necessary in the public interest or for the protection of investors

With this section we enter upon the whole problem of the advisability of artificial price operations in the market. The theory of this subparagraph is simply this: There is so much discussion of good pools and bad pools to stabilize and to fix prices that the safe thing to do is to say: "Let us not absolutely prohibit them, but let them be carried on only under such rules and regulations as the Commission may devise and after they have first been reported to the Commission."

Mr. REDMOND. Of course, we all recognize that there are perfectly proper transactions in the matter of stabilizing prices. Our own Government, in fact, has used that method very largely in the flotation of its own issues of securities. I personally very much question the wisdom of putting in a criminal provision and requiring every such transaction to be reported to the commission, because I think you are going to flood the regulatory commission with a whole set of details which it might well exclude by general regulation. I think it has been the experience already of the Federal Trade Commission under the Securities Act that there are certain types of transactions that they would like very much to exempt from the provisions of that act, because they recognize that they are small in amount or of a nature which does not require registration. Now, if you should vest this power in the regulatory commission rather than make it mandatory and a crime, unless the commission is notified in advance, you will have accomplished all of the same possibilities of regulation without in any way hampering ordinary and legitimate business transactions.

Mr. CORCORAN. Well, doesn't that objection, Mr. Redmond, go to the amount of information which would be piled in upon the commission, and couldn't the commission by its own rules and regulations prescribe, if necessary or if thought advisable, limits to the amount of such information—Perhaps it would only be necessary

to state the fact that a pool was to operate in a certain stock with the purpose of stabilizing it within certain limits—and then there wouldn't be any administrative burden upon the commission? Even the mere fact of the prior filing of information would warn the commission that such an operation was to take place, so that if it wanted to make an investigation to see whether it desired further information, it would have at least a warning that something was up of which it should possibly take cognizance.

Mr. REDMOND. That is true, but remember that there is another aspect of this problem. The records of the commission are public documents, and, therefore, if you should form a group to stabilize the price of a security, and announce it to the public, you open a new door to fraud that might be more vicious even than what you are striking at.

Mr. CORCORAN. Why shouldn't the public know that an artificial operation is being carried on in a stock? And in that connection should be considered the broad question of the social advisability, the wisdom from an economic standpoint, of having secret operations in a stock taking place while the public in complete ignorance of the situation is buying and selling in the market on the faith of the quotation going out on the ticker.

Mr. REDMOND. But you cannot make these things binding. For instance, let me give you an example that I have in mind. Suppose a group of people announce to the Federal Trade Commission that they are going to stabilize the price of a certain security at a point between 45 and 50, and that they had formed a group for that purpose with resources of a million dollars or of 5 million dollars. That might lead many people to believe that that security would remain within the range at which the group was stabilizing the price, and that group might refuse to buy or sell a single share, and the price might go down to 30 or up to 60.

Mr. CORCORAN. Well, the commission at the time it makes the details of the intended operation public might clearly warn the public. This subsection requires merely a filing of a statement of intention. The process is just like the taking out of a marriage license. We warn you that nobody knows whether the pool operators are going through with the operation or not.

Mr. REDMOND. Isn't the answer to that, that the information given to the public is of no value?

Mr. PECORA. In other words, it defeats the purpose.

Mr. REDMOND. Yes; completely.

Mr. CORCORAN. The public knows that there is an intention to carry on pool operations.

Mr. REDMOND. And the public will rely on that published intention and may be misled.

Mr. CORCORAN. But if the public is warned at the time that possibly the pool operators will not carry out their filed intention, the public does not need to be misled. It is only a question of how accurate is the information given to the public.

Mr. REDMOND. I think, Mr. Chairman, I have expressed the doubt that exists in my mind as to the value of this provision as a mandatory provision, and that really is the point that I was trying to make. Whether it might not be better to treat it as a permissive one.

Mr. CORCORAN. There is one other point raised by the Exchange in connection with this subparagraph (7), and that relates to arbitrage. An arbitrage transaction, of course, is one intended to keep in line on different exchanges, the respective quotations for some security, or to maintain the relative prices of securities within a given relation to each other. With your permission I should like to say I do not believe that arbitrage transactions, which merely adjust prices of securities one to another, come within the provisions of subsection (7). If they do, then possibly the committee would like to consider whether it wants to exclude or include arbitrage transactions, or, if they are not in there, whether the committee wants to include them.

Now we come to subparagraph (8) :

(8) To acquire substantial control of the floating supply of any security registered on a national securities exchange for the purpose of causing the price of such security to rise on the exchange because of such control of the floating supply ;

That relates to cornering a security. I do not believe there is any substantial objection to that.

Mr. REDMOND. None except the vagueness of the definition of floating supply, which I think should be, as this seems to be a criminal statute, made definite and certain.

Mr. CORCORAN. I will now take up subparagraph (9). It shall be unlawful—

To effect by use of the facility of any national securities exchange—

The CHAIRMAN (interposing). Before you pass from that, Mr. Corcoran, what do you mean by floating supply?

Mr. CORCORAN. The supply that is in the market. That again is a market term. Of the outstanding shares of stock a certain amount is always held by more or less permanent investors, while a certain other amount of the stock is sold back and forth on the exchanges, usually represented by substantially the same certificates. That floating supply is the stock which figures on the market and in the quotations, and it is that floating supply which, if cornered, puts anybody else who comes into the market at tremendous disadvantage as against the person who has cornered that floating supply of stock.

Mr. PECORA. Mr. Redmond, do you seriously think that the term "floating supply" is one that needs elaboration in the bill?

Mr. REDMOND. I do, and I think that under the definition which is given by Mr. Corcoran, it would be impossible, under this provision, to proceed against those who actually cornered the market, because even when there is a corner there is always a residual amount of stock that is in the hands of brokers that could be said to be floating supply. A corner is, of course, a perfectly definite thing.

Mr. PECORA. You easily see the principle underlying this particular provision, do you not?

Mr. REDMOND. Yes; and we have it in our constitution.

Mr. PECORA. But you mean the effectuation of that principle by a suitable provision in the bill.

Mr. REDMOND. Yes. And we go one step farther and suggest that it be not a criminal provision but effective control by giving the regulatory body power to fix the settlement price. I will say that the exchange adopted that rule in 1925, in its constitution, and there has been no approximation of a corner since then.

Mr. PECORA. If you do that you might put the culprit into the position of holding on to a part of his loot if he is detected.

Mr. REDMOND. Wouldn't he be permitted to do this under that provision—

Mr. PECORA (interposing). He might take the chance, but the penal arrangement would cause him not to take the chance. For instance, a pickpocket might not be deterred if he gave up half of his loot in event of detection, but if the penalty is a penal arrangement it might deter him.

Mr. REDMOND. Suppose you were to make it so the pickpocket could not profit at all?

Mr. PECORA. That is just the plan, to set up a more effective deterrent.

Mr. REDMOND. It is a question of method, then.

Mr. PECORA. We are agreed that the principle should be inserted in the bill, are we not?

Mr. REDMOND. Entirely, and I think the New York Stock Exchange was the first institution that adopted such a plan.

Mr. PECORA. All right.

Mr. CORCORAN. Next we have subparagraph (9) that it shall be unlawful:

To effect by use of the facility of any national securities exchange—

(i) Any transaction in any security whereby any party to such transaction acquires any put, call, straddle, or other option or privilege of buying a security from or selling a security to another party to the transaction without being bound to do so; or

(ii) Any transaction in any security with relation to which he has, directly or indirectly, any interest in such put, call, straddle, option, or privilege, or

(iii) Any transaction in any security for account of any person who, he has reason to believe, has, directly or indirectly, any interest in any such put, call, straddle, option, or privilege with relation to such security; or if a member, directly or indirectly, to have or guarantee any interest in any put, call, straddle, option, or privilege in relation to any security registered on a national securities exchange

The puts, calls, straddles, mentioned specifically in this subparagraph are particular kinds of options. A put is a right to sell to a given person at a given price within a definite time. A call is the right to buy from a given person at a given price within a given time. And a straddle is a combination of the two.

This subparagraph raises the whole problem of what Congress thinks should be the policy of regulation in respect of options. The exchange argues in its brief that there are good option transactions as well as bad option transactions. The theory upon which this subparagraph was drafted is that there is no satisfactory way of distinguishing good options from bad options, or of knowing when an option originally taken for a good purpose turns into a bad option, and therefore, faced with the inability to distinguish between kittens and cats, it is better on the balance of convenience to prohibit options altogether.

Now, shall I go on, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. REDMOND. I think Mr. Whitney's brief states the fundamental objection, and that is that you are destroying completely a perfectly legitimate form of contract, purely because it is capable of abuse. But that, of course, is true of every single form of business in the

whole world. Abuses can exist. But that does not mean that business should stop.

Mr. PECORA. I have not seen the exchange's brief yet, Mr. Redmond.

Mr. REDMOND. It was Mr. Whitney's statement made before the House committee that Mr. Corcoran is referring to, I think.

The CHAIRMAN. Does the exchange approve of puts and calls?

Mr. REDMOND. The exchange does not permit trading in puts and calls on the floor, and it does not recognize them as exchange contracts until notice of their exercise has been served. Foreign exchanges, particularly the London market, not only recognizes option contracts but permits dealing in them exactly as if they were dealing in securities. That is also true of the Paris Bourse and the Berlin Boerse. That is practically true the world over.

Mr. PECORA. Give us an illustration of that.

Mr. REDMOND. We will assume a corporation has a large block of securities to distribute. It may give an option to a dealer so that that dealer may go out and distribute them in a perfectly proper way.

Mr. PECORA. It also dangles before the dealer the temptation to resort to market operations.

Mr. REDMOND. Well, temptations exist in everything.

Mr. PECORA. All of the evidence before this committee in regard to options that has been presented up to the present time consist of instances where options have been prostituted to ulterior uses and purposes.

Mr. REDMOND. Well, isn't it true that your investigators have had access to the files of the committee on business conduct of the New York Stock Exchange, where all options have been reported since, I think, the first of August 1933?

Mr. PECORA. We haven't had the time nor the facilities for investigating all of those options or the activities of the persons holding those options.

Mr. REDMOND. It does not necessarily follow just because the evidence which has been presented to this committee, a very limited number of cases, did involve operations in the market in connection with options, that all options must be connected with market operations.

Mr. PECORA. Well, I think a generalization to that effect may be said to have been made by members of the exchange who have operated under options. They have frankly said what their purpose was.

Mr. REDMOND. In some instances that is true, but I think—

Mr. PECORA (interposing). I think in some instances members of the exchange who have been examined here have testified that that was the general purpose for obtaining such options.

Mr. REDMOND. But they were members of the exchange, if I remember correctly, who were primarily floor men. I think you are referring to the testimony of Mr. Wright.

Mr. PECORA. And he was not the only one.

Mr. REDMOND. And that of Mr. Mason Day?

Mr. PECORA. Those two, and this committee has heard testimony of dealers and investment bankers generally along similar lines.

Mr. REDMOND. But I do not want, of course, to go into an argument on the basis of the evidence, because I am not here to give

evidence. But it is I think true, and I think the committee should consider the possibility that option contracts in large quantity entirely for legitimate purposes, do exist.

The CHAIRMAN. Very well, Mr. Corcoran, you may proceed.

Mr. CORCORAN. I next take up subsection (b) of paragraph (9), and I might explain that the next three sections which I shall read give a civil right to an individual—

Mr. PECORA (interposing). May I interrupt you for just a moment?

Mr. CORCORAN. Certainly.

Mr. PECORA. This bill insofar as it prohibits options prohibits the use of them through the facilities of exchanges, don't they, Mr. Redmond?

Mr. REDMOND. That is true. But the facilities of an exchange—

Mr. PECORA (continuing). And therefore would not cover an option given by a corporation to distribute a part of its stock through means other than the facilities afforded by an exchange.

Mr. REDMOND. But the facilities of an exchange are defined in such broad language that it might easily sweep in the entire securities business of the country. For instance, section 3, subsection (2), provides:

The phrase "facility of an exchange" includes its premises, tangible or intangible property, whether on the premises or not, any right to the use of such premises or property or any service thereof, including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange, and any right of the exchange to the use of any property or service

Therefore if a person used a ticker to see what the quotations were in connection with a dealer's operation he might be said to be using a facility of the exchange.

Mr. CORCORAN. If I may be permitted to suggest, Senator Fletcher, it may be possible to except from the provisions of this section, warrants or options that are registered on an exchange, except that that raises again the whole problem of whether warrants or options should be registered.

Mr. REDMOND. What would you do with rights to subscribe?

Mr. CORCORAN. On a great many exchanges they are listed, aren't they?

Mr. REDMOND. Yes.

Mr. CORCORAN. I would say in a case like that that you might make an exception for those warrants and options that it is advisable to have listed on an exchange.

Mr. REDMOND. I think the section deserves, and this is the only point I wish to make, further consideration before a useful and normal commercial practice is made criminal.

The CHAIRMAN. We will consider that, Mr. Redmond.

Mr. REDMOND. All right.

Mr. CORCORAN. Now, going on with the next three paragraphs, (b), (c), and (d), these give to any individual injured by reason of having been induced, by reason of any practices forbidden by the preceding sections, to buy or to sell securities at the price at which he did buy or sell them, the right of civil action for damages for the amount of the injury done him.

The criticism the Exchange made of these sections is that they do not confine the measure of recovery to the actual damage suffered by a person who has actually sold or bought securities after the first transaction which he was induced to make by these manipulative practices. That is, the bill as now drafted does not limit civil liability to actual damage which can be proved to have resulted from a violation of the preceding paragraphs of this section, as it can be proved, in the case of the man who buys on the faith of a pool tip and actually sells out, or of the man who sells short on a pool tip and then actually buys in and covers, so that you know what the exact damage is.

I would suggest that possibly the section should be amended to make certain where you can prove actual damage, that that be the limit of the damage. The sections as they are now drafted—but perhaps I had better read them:

(b) Any person who participates in any act or transaction in violation of subsection (a) of this section shall be liable to any person who shall purchase any security, the price of which may have been effected by such act or transaction, and the person so injured may sue in law or equity in any court of competent jurisdiction to recover the difference between the price he paid for such security and the lowest price for which such security shall have sold on the exchange during the 90 days preceding and the 90 days following such purchase, and such additional damages, if any, as the person suing may prove that he sustained as a result of any such transaction

The theory of the section is that if a pool is operating, or if a tip is circulated that a pool is operating, a person might buy a security at a price at which he might not otherwise have bought it. Then if you cannot prove actual damage to him by reason of reliance upon the pool tip, you will give him the difference between the very high price at which he did buy and the low price during the 90 days before and after the transaction, which in a very, very rough way measures the price at which he might have bought if it had not been for the pool tip that induced him to buy at the particular time that he did.

The principle of civil liability for the damage, with which I do not think the exchange agrees, is moreover not only a matter of justice to the person injured but is also the surest way of guaranteeing that there will be some compliance with the section. In other words, there is no policeman so effective as the one whose pocketbook is affected by the degree to which he enforces the law.

Now, the Exchange will reply to that, that it opens the law up to a great many strike suits. That is the objection you hear in connection with other sections of this bill, and it has to be looked in the eye right now. It is the same objection made to the liabilities under the Securities Act. It is the bugaboo that there will be a great many unjustified strike suits by which unscrupulous lawyers will hunt up clients with whom they may make up cases to shake down defendants.

I might say that the strike-suit bugaboo has been talked about so much in connection with the Securities Act that, so far as purely informational purposes go, there is hardly need to talk about it here. Some lawyers, whose judgment is probably as good as that of others, will tell you that ordinarily a strike-suit lawyer won't take on a case unless there really is a pretty good case, for other-



wise he won't be paid. And that, as a matter of fact, about the only effective weapon there is for keeping certain big financial operators in line and within some semblance of the law is the fear that the strike suiter might be just around the corner. Furthermore, there are a great many people who think that the strike suit is a weapon of social utility not to be discouraged rather than something to be shouted about as a species of unfortunate blackmail.

As a matter of fact, I think I have a strike suit right here that was approved by the Supreme Court of the United States the other day in the National Radiator Co. reorganization.

Mr. REDMOND. Was it a strike suit? I didn't know it.

Mr. CORCORAN. Why, you know, Mr. Redmond, that the three plaintiffs in that case must have been called the name that you and I are familiar with all over the street for months and months.

Mr. REDMOND. Well, Mr. Corcoran, I do not think it is profitable to discuss a particular case, but I would like to point out what I understand to be the result of that decision and see whether its social utility is so great. I believe some 95 percent of the bondholders agreed on a plan of reorganization. Five percent did not agree. The company having been in a bad way, the reorganization was a drastic one. The company has had further reverses, and I understand that as a result the 5 percent who recover under that decision will take the entire property which belongs to the 95 percent. I question very much whether the strike suit which has a result like that is to the benefit of the public as a whole.

Mr. CORCORAN. Well, Mr. Redmond, here is the decision of the Supreme Court of the United States.

Mr. PECORA. Mr. Corcoran, that was a unanimous decision.

Mr. CORCORAN. It was a 9-judge decision, and the nine judges seemed to think that the reorganization had been pretty bad, not only for the 5 percent who did not consent to it but also for the 95 percent, probably 60 percent of whom did not know what they were doing when they consented to it.

Mr. REDMOND. I do not know anything about what they had in their minds when they consented to it, nor do I question the soundness of the decision, because the decision was predicated upon a very technical point, and that was that an equity receivership was used in a case which ought to have fallen within the provisions of the bankruptcy law. I think I am stating the legal principle correctly.

Mr. CORCORAN. I am afraid the court, whether by way of dicta or otherwise, certainly went much further than that in the language it used in the case.

Mr. REDMOND. It may have; but I think probably we are consuming the time of the committee with a technical legal discussion.

Mr. CORCORAN. I am just, sir, trying to find an accolade of justification for a strike suit, and I cannot think of anything better than a decision of the Supreme Court of the United States on the matter. All strike suits are not bad.

The CHAIRMAN. What case was that?

Mr. CORCORAN. First National Bank of Cincinnati against Fler-shem & Co., handed down by the Supreme Court on January 8 of this year.

We come now to section 9, on the regulation of manipulative devices.

It shall be unlawful for any person, directly or indirectly, by use of any means or instrumentality of interstate commerce or of the mails or of any facility of any national securities exchange—

(a) To effect the sale of any security registered on a national securities exchange, which at the time of such sale was not owned by such person or his principal except in accordance with such rules and regulations as the Commission may prescribe as appropriate or necessary in the public interest or for the protection of investors,

(b) To use or employ or to execute or accept for execution any stop-loss order in connection with the purchase or sale of any security registered on a national securities exchange except in accordance with such rules and regulations as the Commission shall prescribe as appropriate or necessary in the public interest or for the protection of investors

What that comes down to is this, that it shall be unlawful to sell short or to use stop-loss orders except under such rules and regulations as the Commission may prescribe. That avoids a decision as to the utility and advisability of short selling and stop-loss orders by putting it up to the administrative commission to permit their use under such regulations as it shall deem advisable.

In connection with the short selling it is interesting to notice that in this morning's Herald Tribune—no, it is the Tribune of the 21st—there is a quotation from another report of the Twentieth Century Fund on short selling, which to a slight degree disagrees with the position of the Exchange that short selling is a very valuable factor in cushioning a falling market. This is from the report of Mr. Evans Clark:

Whatever influence short selling does have on general price movements is to accelerate the downward trend of prices during the early and middle phases of a decline, and either to check the price trend in the lower phase or accelerate the recovery after prices have turned upward

Then outside the quotation from the Herald Tribune:

According to figures gathered by the Fund, short selling does not have any appreciable effect on limiting the extremes to which prices may rise

I am simply calling the attention of the committee to that report, because in considering what the policy should be in respect of short sales that report may be very useful to the committee.

The CHAIRMAN. Do you understand the provisions of the bill now prohibit or prevent stop orders?

Mr. CORCORAN. It prohibits stop-loss orders except in accordance with such rules and regulations as the commission shall prescribe.

The CHAIRMAN. What line and page is that?

Mr. CORCORAN. It is on page 20, sir.

The CHAIRMAN. I have had some criticism to that effect, that they ought not to be absolutely prohibited.

Mr. CORCORAN. They are not, sir, as the bill is now drawn.

The CHAIRMAN. Yes. I did not think it was, myself.

Mr. CORCORAN. Now, if we may go on to the next section, on the segregation and limitation of the functions of broker, specialist, and dealer. Possibly we would better first read the section (reading):

It shall be unlawful for any member of a national securities exchange or any person who as a broker transacts a business in securities through the medium of any such member to act as a dealer in or underwriter of securities, whether or not registered on any national securities exchange It shall be

unlawful for any member of a national securities exchange to act as a specialist unless registered as such with the exchange, subject to such rules and regulations as the Commission may prescribe, and it shall be unlawful for any specialist on a national securities exchange (a) to effect on the exchange any transaction except on fixed-price orders or (b) to disclose to any other person information in regard to orders placed with him which is not available to all members of the exchange. An exchange may provide that officers or employees of the exchange may perform the functions of specialist subject to such rules and regulations as the Commission may prescribe.

I shall not attempt to go into that section too much in detail, because, sir, you will probably hear more about that section from other witnesses before this committee than about any other section of the bill.

The situation which that section meets in a certain way—and there may be other proposals for ways to meet it—is simply this: At the present time there are operating as part of the machinery through which the public buys securities underwriters who underwrite and distribute a security, and for the sake of their own reputation, as well as out of a sense of duty to their customers, attempt to maintain a good market in that security after it has been distributed.

There are on the other hand brokers who act theoretically as agents for customers who send in to them orders to buy or sell securities on exchanges.

As I told you before, a good deal of the business done on exchanges, although all actual orders on an exchange are executed by brokers who are members of such exchange, originates with brokers who are not members of the exchange but who clear their transactions through an exchange broker.

Intermediate between the underwriter, who has a very special interest in sponsoring and maintaining the market for a particular stock or security, and the broker who acts only as a commission agent to execute an order to buy or sell for a commission, there is a group of dealers who, as merchants, buy and sell securities for their own account and resell them to the public.

Very often a stock exchange house will be a broker, it will also be an underwriter, and it will also have a dealer's department in which it peddles out stocks or bonds that are bought on the exchange. And you have two evils that arise out of that duality or triplicity of function.

First of all, if a broker is also an underwriter, or to a less extent if he is a dealer, and a customer comes to him, he acts as a practical matter not only as the commission agent to execute the transaction on the exchange but also as the customer's investment lawyer and gives the usually bewildered customer advice as to what to buy. The broker thus may be in a very tempting position—a little too much for ordinary humankind. A customer comes to him and says: "I want to buy some stock. What shall I buy?" And thus, in connection with every broker's office there is an informal investment service going on. If the broker unconsciously has real faith in a security because, as an underwriter he promoted it, or if he is not quite that honest and wants to get as many orders as possible into the market to hold up the price of the security that he has floated, he is in a very tempting position to advise the customer to put in an order to buy that security in which he is personally interested.

The other difficulty is that the capital in the brokerage business becomes involved in the operations of the broker in his capacity as dealer or underwriter.

As we said this morning, the four biggest failures in the Street, Prince & Whitely, Pynchon & Co., West & Co., and Bauer, Payne, Pond & Vivian, were cases where insofar as their brokerage accounts were concerned the houses were perfectly solvent. But their assets were involved in positions in securities which they had sponsored or in which they were interested, and when they were wiped out in their positions in such securities the bankruptcy pulled the brokerage clients down with them.

On the other side of the picture you have the fact that at the present time both in New York City and throughout the country there is a great deal of actual combining of all these functions. You will hear argument before you from other witnesses that if you drive a person to choose, as this bill would do, between being a broker on a stock exchange and a dealer or an underwriter or a broker off the stock exchange, you will make it very, very difficult for many houses to continue in business at all.

You must remember that one of the advantages to a dealer in being a member of the stock exchange is that he does not have to pay regular stock-exchange commissions, and that a good many dealers operate on a spread which at the present time would not permit them to stay in business if they are to pay a full broker's commission.

You have another complication in the situation arising out of the position of the so-called "odd-lot dealer." The New York Stock Exchange does not deal in lots of less than 100 shares. If a small investor wants to buy less than 100 shares the order he gives to his broker is not met by the offer of another broker on a stock exchange as a brokerage transaction. The broker really buys 10 shares from an odd-lot dealer who has purchased those shares and taken a position under an arrangement with the exchange whereby he agrees that he will sell odd lots at any time within a given fraction of a point, one quarter or three eighths, or a half, of the last transaction in the security.

Mr. REDMOND. Mr. Corcoran, for the sake of the record, that differential is one eighth.

Mr. CORCORAN. That is on the New York Stock Exchange?

Mr. REDMOND. Yes.

Mr. CORCORAN. How about the odd-lot dealers in securities on other exchanges? The Curb is higher than that.

Mr. REDMOND. There is no organized odd-lot dealer, as I remember it, on the curb. The specialists do the odd-lott business. But on the New York Stock Exchange the differential is one eighth on the active stocks.

Mr. CORCORAN. The problem before you is, how are you going to handle the situation where it is undoubtedly very much to the advantage of an investor that he should be dealing with a broker who has nothing to sell him but is willing to act as a completely unbiased agent, and with a broker who is not going to imperil the customer's position by investing his capital in positions of his own as a dealer or an underwriter? How are you going to reconcile that with the fact that the brokerage, investment, and dealing business is in many cases today organized as a unit?

The underwriting business is not profitable today. The underwriting business is a feast and famine business. The backlog of many of the houses that in better times carried on the bulk of the underwriting business is brokerage commissions at the present time.

It is very clear that one exception should be made to the provisions of the section as now drawn, and if I might suggest, Senator, I would like to recommend that in the case of the odd-lot dealer who really has to clip his spread very close to serve the public which wants to buy odd-lot securities, some exception should be made to the rule expressed in this section, which demands that nobody can be a member of the exchange except a broker.

I should like to suggest, if I might, that the provisions of this section that only brokers can be members of exchanges might be modified to permit odd-lot dealers also to be members of the exchange and to have the advantage of not having to pay full brokerage commissions, under such rules and regulations as the Commission may prescribe.

Now, as for the treatment of the rest of them: As this section is drawn it says the exchange has no justification in the economic system except as a market place in which the orders of the investing public can be executed. Therefore, no one can be a member of the exchange except a broker.

A suggestion has been made that if, as a matter of fact, the hardship that will be worked on houses doing a combination business at the present time is too great, if because they choose to do a dealer or an underwriting business, they would under this rule have to withdraw from the exchange as brokers, some arrangement might be worked out to enable them to operate for a limited period, say 1 or 2 years, off the exchange, but with the privilege of splitting commissions under very careful rules and regulations with members of the exchange. That is, a house that had been a member of the exchange but wanted to concentrate in a dealer or underwriting business would withdraw from the exchange but would be permitted to have an arrangement under which it could split commissions for a time on the brokerage business that came into it with a broker on the exchange, so that it would not have to pay full brokerage commissions during the period of transition.

That would, you see, permit a house to do a brokerage business off the exchange as well as act as a dealer or underwriter, but it would not have a broker's privilege of going on the floor of the exchange, nor would it, except for this transition period, be able to do business at ordinary stock exchange member rates or without incurring any commission at all. It would only be able to do business through another broker on the exchange but at a very much reduced rate.

The further suggestion has been made that if that sort of a compromise is worked out some arrangement should be made to insure that the capital of such a house which continues to stay off the exchange in the brokerage business, and in the dealer business, the underwriting business should be divided and segregated so that a certain portion of it would be definitely allocated to the brokerage business and a certain portion of it definitely to the dealing and

underwriting business. The result would be that if there should be a crash in the house, for reasons connected with its dealer business or its underwriter business, that crash would not involve the safety of the customers who were trading with it as a broker. [Addressing Mr. Redmond.] Do you want to step in here?

Mr. REDMOND. No; unless you are through.

Mr. CORCORAN. Now, the next point relates to the specialists. You will undoubtedly hear a great deal about specialists from the witnesses who will follow. Your committee has, of course, heard a great deal about specialists in the investigations that have been held before you. We may read section 10 again with respect to specialists. It provides [reading]:

It shall be unlawful for any member of a national securities exchange to act as a specialist unless registered as such with the exchange, subject to such rules and regulations as the Commission may prescribe.

There is no objection to the language so far.

It shall be unlawful for any specialist on a national securities exchange (a) to effect on the exchange any transaction except on fixed price orders or (b) to disclose to any other person information in regard to orders placed with him which is not available to all members of the exchange. An exchange may provide that officers or employees of the exchange may perform the functions of specialists subject to such rules and regulations as the Commission may prescribe.

The specialist—and as an amateur I hesitate to talk about such an intricate subject—the specialist is a combination of a clerk who keeps the books for orders, and also a kind of dealer who trades for his account to make a market in a security between the extremes of the orders that are on his books. If there are orders to buy at 90 and to sell at 93, the theory of the function of the specialist is to keep the buying orders on his books until they meet selling orders, or himself to buy and sell at some point in between the difference between the bids and offers, so that a market may be maintained at the time when no natural juxtaposition of the buy and sell orders occurs and there is no natural market for the security.

Now, the abuses that have arisen out of the specialist system: The specialist, of course, always knows what is on the books and has, so long as he is trading for his own account, an inside look at the cards of a poker game. The difficulties of the specialist system have been completely brought out in investigations before your committee.

There is in the brief of the stock exchange a long argument for the specialist system as it is at present set up. Without attempting to decide between them, I think it might be a good thing if I should read to you a slightly different attitude toward the specialist, which was reported this morning by the Twentieth Century Fund, the report of the 30 experts who, acting completely independently of any pros and cons toward this stock exchange bill and under the auspices of a very trustworthy board of directors, have reported on several phases of market regulation. There is a report given this morning on collusion of specialists with pools. May I be permitted to read it for the record?

The CHAIRMAN. Yes.

Mr. CORCORAN (reading):

The testimony of members of the New York Stock Exchange given before the Senate Committee on Banking and Currency tends to confirm the common knowledge of "the Street" that collusion with specialists has been a method of price manipulation used by pools. This practice is almost impossible to prove, but enough evidence has been cited in the survey to establish a reasonable presumption that it exists.

The key position of the specialist in the operation of the market is clearly revealed in a special statistical study of original source material included in this survey. This covers a detailed examination of the actual books of 69 floor members in 151 typical active, semiactive, and inactive issues made available for this purpose by those concerned for 4 periods of 1 week each in 1933, representing periods of slow and rapid advances and declines of prices. The records show that about one half of all the transactions in the New York Stock Exchange go through the specialist's hands. While the specialist is prohibited by the Stock Exchange rules from divulging the orders on his "book", he himself has at all times a clear picture of the buying and selling orders which would become effective at various price levels. The specialist acts not only as a broker, but also can trade on his own account—except that he is forbidden to act as broker and dealer in the same transaction.

The specialist is expected to "make the market" in his stock. To enable him to carry out this duty he is permitted to buy or sell for his own account shares of the stock in which he is the specialist. When he acts as a commission broker he is an agent, but when he buys or sells for his own account he acts as principal. It is through his personal transactions that he may influence market prices.

It appears that the influence of the purchase and sales of the specialist will vary because of certain conditions prevailing at the time. In a dull market a comparatively small percentage of trades, if made on one side of the market, will probably produce as definite a reaction as a larger proportion in a more active market. The condition of his "book" will materially affect the influence of his transactions and alter the percentage of total sales required to produce a specific result. That the specialist, by the very nature of his relationship to the market, is in a position whereby his influence may be readily converted into a price factor of major importance, and may even become the price determinant, is scarcely open to question.

The records included in this survey show that the personal trading of specialists for their own account bulks large in the day-to-day operations of the New York Stock Exchange. About 15 percent of all transactions are of this nature. While this personal trading of the specialist is justified by defenders of the practice as making a continuous market, the facts show that this trading constitutes a larger proportion of total transactions in the active stocks which would have a continuous market without his personal trading than in the less active stocks.

Furthermore, there is serious doubt as to whether the specialists' personal activities exert a stabilizing effect on the market. The records of their trading for their own account does not disclose any pronounced tendency to trade either with or against the trend of the market, but they show that the specialists' activities are of the in-and-out variety and that their profits and losses are based largely on price changes within each trading session.

That is the report of about as expert a group as you could have.

It is very interesting—I think I have the report here—in connection with this subject to see what the Twentieth Century Fund did recommend as to the segregation of brokers and other operators on the exchanges. This is section 6 of the filing committee's report read on February 9. I am reading from the New York Times report:

No individual or firm doing a commission business in securities should be permitted to act as a dealer in securities or to trade in securities, either on margin or otherwise, for his or its own account.

The difference between the provisions of this bill and the Twentieth Century report is that this bill refuses to allow a dealer to be on the floor at all.

And with respect to specialists:

Specialists, as well as other exchange members, should be permitted to function either as traders or as brokers but not as both.

There is one other operator on the exchanges who operates solely for his own account whom the bill would prohibit being a member of the stock exchange, and that is the so-called "floor trader." I understand that of the 1,300-and-odd members of the New York Stock Exchange there are at the present time approximately 100 members who, though entitled as members of the exchange to carry on any of the operations on the floor of the exchange, including brokerage, simply trade on the floor for their own account. Those are the so-called "floor traders."

Under the terms of this bill a floor trader could not be a member of the exchange. Only brokers could be members of the exchange.

It has been argued for the floor trader that his constant operations in and out of the market make for a more even and constant market. The argument is because of the floor traders as well as the specialist, who is a species of floor trader, in not quite so concentrated a form, the differences between sales are a quarter or an eighth of a point instead of being two or three points.

That, again, is one of those arguments for liquidity in the market, in which the advantages of liquidity may be well weighed against the disadvantages of having on the floor of the exchange a body of men who have no function with relation to the public but whose activities on their own behalf are supposed, without any intention on their part, to operate to the benefit of the public.

Floor traders may cut down the spread between sales from sale to sale, but they do not in any way cushion the market over the day, because the floor trader, who knows and senses the trend of the market better than any individual broker, knows where it is going much better than the people on the outside who have to buy from the ticker, naturally follows the trend.

Most floor traders actually unload in the course of a day. This bill would drive the floor trader from the floor.

Just before we finish on this segregation section and I turn it over to Mr. Redmond, there is one argument being made in connection with permitting brokers, dealers, and underwriters to continue in a unified business that really from the side of the economic structure deserves some of your attention.

It is argued; the underwriting business at the present time is unprofitable; if you do not allow the present underwriting houses to have a bread and butter commission business they will have to go out of business, and then what will happen to the necessary national machinery for distributing securities?

In all fairness, and I think I have fairly stated and recognized the practical problem of immediacy in divorcing these three-in-one businesses, it might not be such a bad thing if a lot of the underwriting outlets did have to go out of business. One of the difficulties with the market of 1928 and 1929 and with the kind of security that was put out in that underwriting market of 1928 and 1929 was that



the securities-distribution machinery had been built up to the point where there were so many outlets, so many men, and such an investment in the business that securities had to be found at any cost to keep that machine going. Matters had reached a point where the maintenance of the mechanism had become more important than the quality of the merchandise that the mechanism had to sell. Dr. Goldenweiser told you yesterday that we reached a point where issues advertised by underwriting syndicates were sold and snapped up before anyone really knew what the issue was about.

We had a very much overbuilt underwriting and distributing mechanism in 1928 and 1929. In the opinion of many well-informed people, it was not a good thing for the country to have such an overbuilt mechanism. And it might be well in considering the validity of the argument that these three-in-one businesses must be left so that there will be an outlet for the underwriting of securities when underwriting again becomes possible, to consider that it might not be such a bad thing if we did not have quite so much underwriting machinery, with a temptation which the size of that machinery entails to sacrifice the quality of securities.

The CHAIRMAN. Was that responsible to some extent for the over-issue of securities?

Mr. CORCORAN. Yes; very definitely so, Senator.

Mr. REDMOND. Mr. Chairman, you undoubtedly will have many witnesses more qualified than I to discuss the complicated questions that are touched on by this section. The only thing I would like to point out is that this section carries out certain theories, which have been based upon certain conclusions drawn from the evidence before this committee or upon the study made by the twentieth century fund, and makes mandatory these separations.

Senator GOLDSBOROUGH. May I ask you what section you are dealing with?

Mr. REDMOND. Section 10, page 21.

Mr. Whitney, in his statement to the House committee, merely had this to say in describing the powers which might be vested in the stock-exchange authority:

That this authority should also have power to study and, if necessary, to adopt rules in regard to those cases where the exercise of the function of broker and dealer by the same person is not compatible with fair dealing.

That I take it is the position of the exchange; that instead of a mandatory provision this question of the segregation of the functions of broker and dealer should be studied and only those prohibited that are incompatible with fair dealing.

The CHAIRMAN. Is your membership now, Mr. Redmond, limited to brokers?

Mr. REDMOND. I did not get the question.

The CHAIRMAN. Is your membership limited to brokers?

Mr. REDMOND. No, Mr. Chairman. A member of the exchange can act, as Mr. Corcoran said, as a broker or as a dealer or as a floor trader.

The CHAIRMAN. Yes; but is anybody eligible for membership in the exchange except the brokers?

Mr. REDMOND. Yes; any person who is a citizen of the United States, more than 21 years of age, as I remember the constitutional provision.

The CHAIRMAN. So you would not like to have the membership limited to brokers as this bill provides?

Mr. REDMOND. As this bill provides, Mr. Chairman, that would prevent entirely many of the dealing functions which are now and have been for many years a normal part of the market.

Mr. PECORA. That is, you would prohibit those functions being exercised by persons who also exercise the functions of a broker?

Mr. REDMOND. Insofar as that, after study, was found to be incompatible with fair dealing.

The CHAIRMAN. You agree, though, that no man ought to be in position to serve two masters at one time?

Mr. REDMOND. I would not quite make that generalization, Mr. Chairman. I think in many things that we do, we serve two masters.

Mr. PECORA. Well, if two masters include self, do you think that principle should be followed?

Mr. REDMOND. I think it is perfectly possible. It is done in all lines of business, isn't it, Mr. Pecora?

Mr. PECORA. I think it has come under the ban of our courts quite extensively.

Mr. REDMOND. I think the court of appeals in a case not long ago took the position that, while dealing as a broker and as a principal raised a question that required investigation, there was nothing in that relationship which in and of itself was unlawful.

Mr. PECORA. Apart from the question of legality, how do you deal with it on the basis of morals? Do you think a man should be put in a position where he may have to make a decision that would involve consideration on the one hand of his own interests and on the other hand the interest of his customer or client?

Mr. REDMOND. I think that we are faced in life every day by questions of just that kind, and that that is why we have ethical standards. Some people cannot stand the temptation, but the vast majority of honest people can. It goes without saying as Senator Gore said this morning, that you cannot legislate temptation out of the way.

Mr. PECORA. You may not legislate it entirely out of the way, but when you legislate against a situation which creates the temptation or accentuates it, it might be a good thing to do.

Mr. REDMOND. That is what we did in the prohibition law, isn't it, Mr. Pecora?

Mr. PECORA. This is not a sumptuary law like the prohibition law. You are not using a fair analogy, in my opinion.

Mr. CORCORAN. Section 11, registration requirements for securities: This is the section on which you have heard perhaps the loudest thunder from the exchanges, and this is the section which the exchange has advised all corporations in the United States puts them completely under the domination of the Federal Trade Commission. I think it might be a good thing, at the expense of boring you a little, to read the section through before we start to talk about it.

SEC 11 (a) It shall be unlawful for any person to effect any transaction in any security on a national securities exchange unless a registration is effective

as to such security in accordance with the provisions of this act and the rules and regulations made by the Commission thereunder and unless such security has been issued.

The rest of this section in effect permits the Federal Trade Commission more or less to dictate within certain limitations the listing requirements for securities on stock exchanges. When a security is fully listed for trading on a stock exchange it is required to meet certain requirements before it is admitted to listing. To be listed on the New York Stock Exchange security has to be seasoned 2 or 3 years to make certain that it is well distributed; and, furthermore, to make certain that it has a certain quality. Otherwise, the New York Stock Exchange will not deal with it. To a lesser degree similar requirements are made of securities listed on all exchanges.

This section in effect says the Federal Trade Commission will have something to say about the listing requirements in the event that the listing requirements imposed by the exchanges are not stiff enough to meet what the Federal Trade Commission thinks is decent protection of the public in buying that security.

Now, the very fact that the stock exchanges universally require the filing of certain information, the making of certain reports to the stockholders and the observance of certain covenants as to practices by listed companies, shows that listing requirements for the securities and the enforcing of compliance with certain decent standards of operation is a normal part of the function of a securities exchange or of any other securities market.

With that background, let us go on and read section (b) :

A security may be registered with a national securities exchange upon application by the issuer, by filing with such exchange and with the Commission such undertakings, information, and documents as the Commission may by its rules and regulations require in the public interest and for the protection of investors, together with such additional undertakings, information, and documents as the exchange may require

Now, it is upon an interpretation of the breadth of that language that the exchange, outside of reliance upon the power of the Commission to enforce uniform accounts, depends for its charge that this bill puts all American business under the heel of the Federal Trade Commission: The specific language is that a security may be registered, that is, it may be listed, only upon the "filing with the exchange and with the Commission of such undertakings, information and documents as the Commission may by its rules and regulations require in the public interest for the protection of investors."

The language is "such undertakings as the Commission may by its rules and regulations require" but notice the qualifying phrase that comes afterwards—"in the public interest and for the protection of investors." The exchange has put an interpretation upon that language that says there is no limit to the kind of undertaking which the Commission may demand as a condition of listing; that the Commission will be in a position where, if it just does not like a further investment in a particular industry during a year, it may say, "No more capital goes into that industry. We just arbitrarily refuse to let you list, because in our judgment industry does not need this particular issue."

Now, I am facing this thing squarely and hammering on the language because I think that when you read the rest of the section

in the light of which that allegedly too loose language has to be interpreted, you will see by the kind of things asked for in the specific parts of the section that it is an unfair interpretation of the language to say that there is any intent to set up a capital issues committee in the Federal Trade Commission, seeking under the guise of prescribing listing—

Mr. REDMOND. Might I interrupt you there, simply because you have said that it is an unfair interpretation, and I take full responsibility for interpreting the legal aspects of this bill to the exchange. You are aware, are you not, Mr. Corcoran, that in another and later provision the findings of the Federal Trade Commission as to the facts are made conclusive?

Mr. CORCORAN. That is a provision that is a prerogative of every administrative commission. It is one of the first principles of administrative law that an administrative body, when appeal is taken from its decision to a court, is in the position that its findings as to facts, unless absolutely unsupported by the evidence, are conclusive.

Mr. REDMOND. But you will admit, will you not, that that power given in this provision—that these regulations be such as the Commission will require in the public interest and for the protection of investors—allows the Federal Trade Commission, whenever it thinks that a thing is in the public interest and for the protection of investors, to demand it?

Mr. CORCORAN. Yes; but I say, however, that the general language at the beginning of this section has to be read in connection with the specific illustrations of the kind of things the Commission is expected to require in the succeeding pages of the section.

Mr. REDMOND. Then, I will wait for further discussion.

Mr. CORCORAN. Let us jump (b), which sets forth the mechanical provisions of registration, and go to subsection (c) on page 23.

Mr. REDMOND. Do you want to discuss the 30-day provision, which I think is provided for in the balance of (b)?

Mr. CORCORAN. I will let you pick it up. I have not much time.

Under subsection (c)—and this is an illustration of the specific thing that the Commission is entitled to require—it is provided [reading]:

(c) The rules and regulations of the Commission in regard to registration shall require—

(I) An undertaking by the issuer to comply with and so far as is within its power to enforce compliance by its officers, directors, and stockholders with the provisions of this act and any amendments thereto and with the rules and regulations made or to be made by the Commission thereunder and, unless the issuer is a member bank of the Federal Reserve System, not to lend any funds in the money market of any exchange or to any member thereof or to any person who transacts a business in securities through the medium of any such member except in accordance with such rules and regulations as the Commission may prescribe.

Certainly so far innocent enough.

(II) Such information as to the issuer and affiliates in respect of—

As we enumerate these things, let us see if there is anything which you could not fairly say a corporation should disclose in its registration statement and in its listing application to a stock exchange for

the information of its stockholders and those who are expected to buy that stock in the open market [reading]:

- (1) The organization, financial structure, and nature of the business
  - (2) Particulars regarding the terms, position, rights, and privileges of the different classes of securities outstanding.
  - (3) Particulars regarding terms on which securities have been or are to be offered to the public
  - (4) Particulars regarding the directors, officers, and principal security-holders and underwriters, their remuneration and their interests in the securities of and material contracts with the issuer and affiliates.
  - (5) Particulars regarding remuneration to others than directors and officers exceeding \$20,000 per annum.
  - (6) Particulars regarding bonus and profit-sharing arrangements.
  - (7) Particulars regarding management and service contracts.
  - (8) Particulars of options in respect of securities existing or to be created.
  - (9) Particulars regarding material contracts not made in the ordinary course of business, and material patents.
  - (10) Balance sheets for preceding years certified by independent public accountants.
  - (11) Profit and loss statements for preceding years certified by independent public accountants; and such other information as the Commission may by rules and regulations require as necessary and appropriate in the public interest or for the protection of investors
- (III) Copies of articles of incorporation, bylaws, trust indentures, or corresponding documents, whatever the names, underwriting arrangements, and other documents of the issuer and affiliates which the commission by rules and regulations may require as necessary in the public interest or for the protection of investors

Now, Mr. Chairman, if I may, to make sure that there can be no charge that this earlier language goes so far as to set up a capital issues committee dominating American industry, I should like to suggest that, in the light of the specific provisions in this long section, the general language, which, of course, takes its color from the kind of thing specifically asked for, no fair construction such as that which is put upon it as a bugaboo by the Stock Exchange. But to make absolutely sure that there cannot be any charge of any such intent on which industry can be rallied against this bill, I would suggest that you do change the language in section (b) where it says: such undertakings, information, and documents as the Commission may by its rules and regulations require in the public interests—

The CHAIRMAN. What line?

Mr. CORCORAN. It is line 12, page 22. Change it to read in such a way that there will be no question that the rules and regulations which the Commission may make are only those to insure fair protection to investors and honest dealing in the securities. Then I think the bugaboo vanishes.

Another indication of the way in which that general language should be interpreted is obtained after you read section 12, which indicates the kinds of documents which the Commission should require. Let us read section 12. It relates to the reports which the Commission can require every listed company to file with it and with the exchange for the information of its stockholders. And while we are on this, just remember again that as part of stock exchange practice in relation to the corporations whose securities are listed with them, the stock exchanges, as Mr. Whitney's brief says, have always sought for more publicity on the part of the companies whose securities are listed with them and have considered that every advance they

could make in that direction was something very much to their credit as exchanges and something very much in the line of their duty to the public as an exchange [reading]:

SEC 12 (a) Every issuer of a security registered on a national securities exchange shall file with the exchange and with the Commission, in accordance with the rules and regulations to be prescribed by the Commission and in such form and in such detail as the Commission may by rules and regulations prescribe in the public interest and for the protection of investors—

(1) Such information and documents as the Commission may require to keep reasonably current the information and documents filed pursuant to section 11,

That is the section that we have just read. [Reading further from the bill:]

(2) Annual and quarterly reports, including, among other things, a balance sheet and profit-and-loss statement certified by an independent public accountant

Senator KEAN. Do you not think that to require quarterly reports is putting a pretty big task on them?

Mr. CORCORAN. I will discuss that in just a second, sir [reading]:

(3) Monthly reports—

worse than quarterly ones—

including, among other things, a statement of sales or gross income

Now, there are two objections made to those reports. One of them is in connection with other provisions, that you are requiring the corporations to report too frequently. The second one is that even if you are not requiring them to report too frequently, you are making it too expensive because of the cost of certified public accountants.

A further objection is made that you are putting the Federal Trade Commission in a position where it can prescribe uniform accounting rules for particular industries. The problem about uniform accounting arose before the House committee the other day, and as Chairman Rayburn pointed out, if accounts are going to mean anything they have to be compiled in accordance with some uniform accounting principles; and the awful situation that the Exchange points out of some Government commission being in a position to prescribe uniform accounting rules for particular kinds of businesses has been a fact for many years with the railroads through the Interstate Commerce Commission apparently to the benefit of all concerned, and nobody has died yet.

Senator KEAN. Except the railroads.

Mr. CORCORAN. No; they have not died either. They are probably in a little better shape than they were before, sir.

The second point, with reference to the cost of auditing accounts. Mr. Whitney stated before the House committee that a corporation with a capitalization of \$5,000,000 would probably have to pay—and check me if my figures are incorrect—from \$500,000 to \$1,000,000 a year to have its accounts audited monthly and quarterly. My humble judgment, and the judgment of a great many other people is that if that is so, accounting is a great business to get into. I just don't believe that is so. Furthermore, I don't believe that if you had business accustomed to keep accounts on the basis of uni-

form rules prescribed by the Commission, the accountant's job would be anywhere near so hard as it is now or justify any such fees.

Then we get to the last point—whether you are asking too much of industry to give these annual and quarterly reports and these interim monthly reports that show at least gross sales and gross income.

If I might I would like to read into the record at this point a statement which appeared in the New York Times on the eighteenth and which is in substance a paraphrase of testimony before the House committee of a Mr. Fred Y. Presley who is the manager of a very large investment trust in New York, a professional investor in the securities market who makes it his business, as I understand, since the information offered him in published reports is so inadequate, to go around himself and see what he can learn by consultation with the managers of companies. If I might just read this at the present time [reading]:

“It has been stated in connection with the bill that the quarterly reporting of pertinent facts would cause companies to divulge trade secrets that would lay domestic companies open to foreign competition”, Mr Presley said. “I know of no ‘trade secrets’, or other significant facts concerning the operation of leading companies that are not already in the possession of concerns, domestic or foreign, that are worthy of being regarded as competitors. Therefore, quarterly reporting would not place such secrets in the hands of competitors”

Parenthetically, every one who has ever dealt with industrial engineers knows that the system of commercial espionage that exists at the present time in the United States is so perfect that normally the directors of a corporation know much more about their competitors' business than they do even about their own; that any competent engineer for a manufacturing concern, for example, who knows the location of that plant, the prevailing rates of wages for labor, the cost of raw materials, railroad rates to the nearest market and other costs of transportation, all now on almost a uniform basis, can, according to one of the best engineers I know who sat with me the other night, compute the cost of production and the cost of selling of any competitor's product down to  $1\frac{1}{4}$  percent.

But to go on with Mr. Presley [reading]:

If by the terms “trade secrets”, opponents of this measure mean excessive margins of profit, which would be revealed only by the publication of earnings against sales, then these critics have cited the best reason for publication of the figures

If margins of profit are too wide and prices are too high, the consuming public should be afforded the protection of open competition and investors should be apprised that the margins are so wide as to become untenable through competition

Some directors and executives of corporations have failed to keep pace with the progressive transfer of control from private groups to the public. The directors today are merely employees working in the interest of the investing public. The latter never intended to place the directors in a preferential position with regard to information concerning the company's earnings, but this situation exists in hundreds of companies today.

Pool operations in recent years have been concentrated largely in stocks of companies which report annually and which thus preserve secrecy and mystery concerning their earnings for months at a time.

A study of hundreds of companies in the last 7 years has convinced me that the units which do not report adequately on their operations and financial status have either been losing ground competitively, have been pursuing policies which they do not care to have exposed, have been operating on margins

of profit which are clearly excessive, or have been influenced in their public relations by private groups, which have not yet recognized the shifting of ownership of great corporations to the public and are not sensitive to the fiduciary responsibilities of directors and officers.

The reporting of large corporations has improved in recent years, partly as a result of the leadership of the New York Stock Exchange and because of the increasing recognition of the rights of the smaller investor, which has been produced by the recent depression.

If the corporate form of organization is to endure, millions of investors must be protected by legislation that will ensure that the small stockholder and the large one will be treated on a basis of equality.

The major problem of investors and investment trusts is the appraising of values. Whenever the financial community has gotten too far away from values and loses its perspective, as in 1929 and the summer of 1933, there has been trouble.

The problem of appraising values depends on three factors. General business conditions, on which Government agencies, such as the Federal Reserve Board and the Department of Commerce, present full information; the condition of the industry in which one is seeking to invest funds; and the financial record of the individual companies. The success of the investor in ascertaining facts regarding industries and individual companies is dependent largely on the policy of companies as to issuing adequate and frequent reports.

All that the investing public wants is a quarterly statement, audited by public accountants, showing what has actually transpired in the way of earnings and sales and containing the financial position of the company. It does not seek to learn future plans, disclosure of which might prejudice the company's competitive position.

I do not believe that any company would have the effrontery to seek to evade the reporting requirements of this bill by withdrawing its shares from listing on any exchange in this country.

The CHAIRMAN. I think there is some ground for a complaint he has made. I have numerous letters from people who say that under this bill they would have to have auditors and accountants in their establishments practically continuously, at enormous expense. That is one thing. Then, take a corporation engaged in manufacturing products, say, only 3 months in the year. The rest of the time they are doing nothing. Their plant is practically idle. What is the use of requiring that sort of a concern to make monthly reports or even quarterly reports?

Mr. CORCORAN. Senator, insofar as the first problem is concerned, as soon as you do work out uniform accounting principles on which companies can keep their books (and if you want to know what the importance of that means in corporate reporting, there is an article on the subject in Harper's for this month just come out which is well worth studying)—after you get uniform accounting principles set up, it will not be so hard for auditors to make reports on companies nor for companies to keep their own books in such shape that they know what is going on. Until that point is reached, what you are weighing is the cost to the company of keeping its books in such shape that an auditor can go over the books pretty easily, against the cost to the stockholders of not knowing what is going on and against the cost to the stock exchange of having pools operated on mysteries when no one really knows what the position of the corporation is.

As to your second point, that business is cyclical with a great many corporations, that is true. But the annual reports or quarterly reports would not necessarily fall on January 1 or April 1. Different businesses have their cyclical quarters at different times, and there would be no objection if the quarterly reports for different businesses should come out at different times. As for the objection that many



businesses do all the work they do during 3 months of the year, the answer is that the auditing job would be a snap for the rest of the year.

Senator KEAN. Yes; but they would have to pay for it just the same.

Mr. CORCORAN. They do not have to pay very much for it, sir.

The CHAIRMAN. I quite agree that there ought to be reports, but I do not know about monthly reports.

Mr. CORCORAN. The monthly report does not have to be audited by a certified public accountant. That is required only for the annual and quarterly statements.

Senator KEAN. If it was every 6 months that would be all right.

Mr. CORCORAN. That leaves 6 months of mystery in there in which a pool can operate. I do not pretend to be an expert on corporate reporting, but I have read into the record the testimony in reference to whether a quarterly or semiannual statement is adequate of a man who is.

Senator KEAN. I believe they should make monthly reports; I believe they should make quarterly reports, but I do not think you ought to ask them to have expert accountants do it.

Mr. CORCORAN. The Twentieth Century Fund report suggested since this sort of thing was done for the protection of stockholders, that just as in English practice the stockholders pay one director who acts as their inspector for their particular and separate benefit, the stockholders might pay for the report. But I do not see why the expense should not be on the company. I do not see why, in the first place, the cost of auditing reports cannot be brought down with a universal practice like this, with the prescription of a uniform accounting method; and I do not see why it is not the duty of proper management to let the investor know what he is buying.

Senator KEAN. I think you ought to have a uniform system; I agree with that.

Mr. CORCORAN. But you object to the cost of the report.

Senator KEAN. The cost of the report.

Mr. CORCORAN. There is one more point which I would like to talk about before I finish this section.

Senator WALCOTT. Let me ask you a question. What do you mean by a quarterly report that has to be audited? Do you mean a physical inventory or a book inventory?

Mr. CORCORAN. I should say a book inventory, sir.

Senator WALCOTT. Suppose the Federal Trade Commission requires, as it may—it has the authority to require such a thing—a physical inventory quarterly, and suppose you are running a gross of, say, 30 or 40 or 50 million dollars. Have you ever been connected with a large business yourself?

Mr. CORCORAN. Yes; I know what the problem of physical inventory is.

Senator WALCOTT. Have you been associated with a large business?

Mr. CORCORAN. Only as a lawyer.

Senator WALCOTT. You have never been through that, then.

Mr. CORCORAN. You will have to depend to some degree, and I think you can reasonably depend, upon the Commission's being a little reasonable in that respect.

Senator WALCOTT. I don't know about that.

Mr. CORCORAN. You are not setting up any God-given group of men completely removed from public criticism when you give this Commission that power.

Senator WALCOTT. It is too great a power, because they could easily require a physical inventory which would be almost a physical impossibility. They would barely take one physical inventory when they would be starting on the next one.

Mr. CORCORAN. That is true. I completely agree with you on that.

Senator WALCOTT. I think it ought to be hedged about in some way to show exactly what is meant.

Mr. CORCORAN. Possibly, SIR, that should be done.

There is one more idea that should be ventilated before we finish with this section, and that is the suggestion of the New York Stock Exchange that all this publicity required of corporations, together with the standard of fidelity to the corporation required of officers and directors is the matter of a Federal corporation law. Such matters do not belong in any stock-exchange bill, they say.

There are two answers to that: First of all, if you were to have a Federal incorporation law, the same provisions that we have here would have to go into it.

The second thing is that, looking matters right square in the face, talking about a Federal incorporation law is just a dilatory plea, as a lawyer would put it. It is a red herring to put action off. The legislative course of a Federal corporation law is going to be a lot longer than anybody thinks now. There are a great many people who believe in this bill and in the principles of stock-exchange regulation who think there are serious objections to a Federal corporation law. Furthermore, to say that decent accounting of corporations to their stockholders should be put off until there happens to be put through Congress a law which deprives all States of their present powers over their corporations is to put off until the millennium. A Federal incorporation law, granting that it is desirable, is something so far in the future that to avoid putting provisions in a stock-exchange bill because it would be much more artistic in a Federal incorporation law, looked at candidly, means a 4- or 5-year postponement.

Mr. REDMOND. I do not want to take time to discuss the particulars that you have taken up, because I am sure witnesses will be here before this committee who are much more competent than I to give information—based on actual facts and experience and not purely upon hearsay—as to the expense of these audits, if not as to the actual impossibility of corporations complying with these requirements of the bill. I would like, however, to say just two things, first of all, because you originally said that my interpretation of this act was an unfair interpretation, and that there might be some amendment. I think an amendment along the lines that you suggested, if it was clear, would go a long way toward removing my objection. My opinion was based upon this bill as it was drawn; and I pointed out to you that the powers given to the Commission were unlimited when read in relation to the other provision of the law which makes the findings of the Commission as to facts conclusive.

I also want to point out that these broad powers run right straight through the bill.

Mr. CORCORAN. Yes.

Mr. REDMOND. It was not just in subdivision (b) of section 11 that I found unlimited powers given to the Commission. You read a list of the specific things which had to be filed as a condition of registration; but if you will notice the final part of subparagraph 11, it reads [reading]—

and such other information as the Commission may by rules and regulations require as necessary and appropriate in the public interest or for the protection of investors

Again a repetition of the language which I pointed out to you was the equivalent of unlimited power.

Mr. CORCORAN. And again to be read in the light of the specific language contained in the same section—

Mr. REDMOND. Let me continue. If you will turn to subdivision (4) of section 12, you will find this language [reading]:

Such other reports and at such time as the Commission may by rules and regulations prescribe in the public interest or for the protection of investors or with a view to insuring that the security holders' interests shall not be prejudiced by the use of information for the advantage of any special group or interest

Again unlimited power.

Mr. CORCORAN. And again in a section in which you have some indication of what specific things are expected.

Mr. REDMOND. Well, let us not rely too much on that, because when you turn to subdivision (b) of section 18, where specifically it is provided [reading]:

The authority above given the Commission shall include, among other things authority to prescribe the form or forms in which required information shall be set forth—

Mr. CORCORAN. That is the uniform accounting.

Mr. REDMOND (continuing reading):

The items or details to be shown in the balance sheet and earnings statement and the methods to be followed in the preparation of accounts, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and nonrecurring income, in the differentiation of investment and operating income, and in the preparation, where the Commission deems it necessary or desirable, of consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer

Mr. CORCORAN. But that again comes down to uniform accounting methods, which we have just discussed, and nothing more.

Mr. REDMOND. That, as I see it, deprives management of the right to determine—

Mr. CORCORAN. No more than railroad managements are now deprived of their right to determine how they want to carry depreciation and depletion, and differentiate recurring and nonrecurring income.

Mr. REDMOND. Remember that our railroads have been under regulation for many years, and those accounting rules have been developed from many years of practice and experience.

Mr. CORCORAN. As these will have to be developed, because no one expects them to come full fledged from the head of Jove on October 1.

Mr. REDMOND. Let me finish my statement about the railroads. The railroads are all engaged in one particular type of business, where the Interstate Commerce Commission has power to regulate their rates, and likewise largely to regulate their expenditures.

Mr. CORCORAN. Yes.

Mr. REDMOND. We all feel that the railroads are under the domination of the Interstate Commerce Commission, and I do not think it is too much to say, reading these provisions, that all commerce and industry registering on these national exchanges would likewise be under the domination of the Federal Trade Commission. That is my opinion, and I am prepared to stand by it.

Mr. CORCORAN. Will you go along, now, if we make the kind of a suggestion we have suggested for the first paragraph?

Mr. REDMOND. If it be clarified to carry out what you say, and it runs right through the bill, not only will we go along, but I say it is the New York Stock Exchange which is responsible for the fact that American corporations do give current information.

Mr. CORCORAN. That is absolutely correct.

Mr. REDMOND. The New York Stock Exchange established the idea of quarterly reports.

Mr. CORCORAN. And this is just along the line you have been working for yourself for many years, and we are helping you get what you have wanted for a long time.

Mr. REDMOND. There is the old expression, Mr. Corcoran, "God save us from our friends." Sometimes it is more than true. This time our friends have pushed it beyond the limit of common sense.

Might I say one final thing? You used the expression "a red herring" in regard to the suggestion that these corporate provisions properly belong in a national incorporation law. That is not a red herring. That has been the position of the exchange for years. It is not put forward at this time to delay or otherwise prevent any act regulating the exchanges.

Mr. CORCORAN. But, frankly, you do not expect the passage of a Federal corporation law for a long time, do you?

Mr. REDMOND. We do not know whether it can or cannot be done, but we do say that it is the sound way, the right way, and the only way in which corporate practice in this country can be regulated. We should not regulate simply the corporations that are listed upon an exchange.

Mr. PECORA. Mr. Redmond, is there any legal authority now which would restrain the governing authorities of the New York Stock Exchange from imposing any requirements that, in their judgment, they saw fit to impose as a condition to listing a stock?

Mr. REDMOND. Legally, no; but practically—

Mr. PECORA. Then they exercise their judgment, which is untrammelled or unrestricted by law.

Mr. REDMOND. But practically there is a limit which is stronger than any legal control.

Mr. PECORA. That is common sense.

Mr. REDMOND. If we put on false or undue listing requirements, corporations simply would not list.

Mr. PECORA. That is based upon the principle of common sense.

Mr. REDMOND. And freedom of contract.

Mr. PECORA. And it is just as fair to assume that the Federal Trade Commission would exercise that same degree of common sense as the governing authorities of the New York Stock Exchange may be expected to exercise.

Mr. REDMOND. No, Mr. Pecora. The issue is different. It is not a question of common sense. It is a question of freedom of contract. There is no action the New York Stock Exchange can take to compel a corporation to list, whereas under this bill penalties are put upon unlisted securities. Attempts are going to be made to drive them into these national securities exchanges, and then to submit themselves to such regulations as the Federal Trade Commission may see fit to adopt.

Mr. PECORA. Do they not now submit themselves to regulation by the Stock Exchange, within its requirements?

Mr. REDMOND. Only when they are willing to do so. That is freedom of contract, and there is no freedom of contract, as we see it, in this bill.

The CHAIRMAN. The Stock Exchange has to keep in mind the thought of competition, does it not?

Mr. REDMOND. Competition? Barely, Mr. Chairman. The corporations that want listing on the Stock Exchange want it because they feel that they have the size or the number of stockholders to warrant it. They could get listing on easier terms on other exchanges, but still they come to the New York Stock Exchange, because they are willing to give their investors the degree of information that the exchange requires.

Senator KEAN. They also receive a larger market.

Mr. REDMOND. A larger market, naturally.

Mr. CORCORAN. And that advantage of the larger market is such an advantage that it will compensate for a great deal stiffer requirements for giving information before a company will actually withdraw from listing.

Senator KEAN. In that connection I would like to show you that letter [handing a paper to Mr. Corcoran].

Mr. CORCORAN (after examining paper). That is typical.

Senator KEAN. I would like to have it go into the record. You have read the letter?

Mr. CORCORAN. Yes.

Senator KEAN. I offer for the record a letter from a man who says he would withdraw his securities from the New York Stock Exchange if this bill went through.

The CHAIRMAN. You want to offer the letter?

Senator KEAN. I have offered the letter. May it be received?

The CHAIRMAN. Yes.

Mr. PECORA. May the letter be read?

(Senator Kean hands paper to Mr. Pecora.)

Senator KEAN. I do not know the man. He is a stranger to me.

The CHAIRMAN. We have filled up a good many pages of this record with letters. I got a letter from a man the other day who said that his children were without shoes, and he did not have any money.

Senator KEAN. I have lots of those.

The CHAIRMAN. He wants us to bring suit against the three concerns for \$15,000, which he has lost through buying worthless stock.

and still he protests against this bill and says he wants to be free to buy some more.

(The letter referred to is as follows:)

MONSANTO CHEMICAL Co,  
GENERAL OFFICES,  
St Louis, February 21, 1934

Hon HAMILTON F. KEAN,  
*United States Senate, Washington D C*

MY DEAR SENATOR. My father devoted his lifetime to building up this company I have spent my entire career since the war in it and have been its president since 1928 Our common stock is listed on the New York Stock Exchange Neither my father nor myself has ever speculated in the stock of this company There have been no pools and neither of us has ever sold a share short Although I cannot speak for the other officers and directors, I am confident in my own heart the same applies to them

The Fletcher-Rayburn Bill now pending before Congress to regulate the Stock Exchanges of the country would have a most disastrous effect on the community at large and upon our stockholders I say without hesitation that should this bill become law we would remove our stock from listing on the New York Stock Exchange, thereby denying the benefit which our several thousand stockholders, the great majority of whom are small investors, now have in a ready market for the sale of their securities and a definite loaning value at the banks

Although I have never issued and never will issue any misleading statements or accounts regarding our corporate affairs, this company cannot afford to pay me and other officers' salaries which would be commensurate with the risks we would take under the liability provisions of the act The provisions of the act would place our company at a decided disadvantage with those of our competitors, whose securities are not listed, to have our monthly sales and profits, and any other information which the Federal Trade Commission demand of us a matter of public information and available to our domestic and foreign competitors

There are many other provisions of the bill which are extremely impracticable and objectionable both to corporations and the Exchanges

I believe it would not accomplish its lofty purpose It would result in bootlegging of securities, the loss of an orderly market in which investors can go to buy or sell, and deprive corporations of the means of securing necessary working capital from time to time

It would be a severe blow to the recovery which is now being evidenced and shatter the confidence of corporation executives throughout the country, who, after all, must be relied upon by the United States Government to maintain employment in their own and heavy construction industries, as the Government cannot do so indefinitely Not only would their confidence be shattered, but their wherewithal to make the necessary investments would be denied to them.

I am very sincerely in hopes you will oppose the passage of this bill in its present form, or that it be so materially amended that it would have practically no resemblance to the present measure

Sincerely yours,

(Signed) EDGAR M. QUEENY, *President*

Senator WALCOTT. What is the alternative, Mr. Corcoran, if a concern is not satisfied with the operation of this bill and the excessive powers given to the Federal Trade Commission, and wants, therefore, to withdraw from the exchange? What can a man do to still operate his company?

Mr. CORCORAN. In a very few cases possibly there would be withdrawals from the stock exchange, except that there always hangs over the head of those companies that are withdrawing from the stock exchange they will still be subject to the possibility of working out a control over the over-the-counter market, such as is provided for in here. You were not here when I was discussing with Senator Kean this morning the suggestion that since practically all these requirements are for the purpose of making information available

to stockholders, insofar as there is an interest in the stockholders in having the shares listed on the stock exchange, the shareholders just simply will not permit the companies to be withdrawn from the stock exchange because of these requirements.

Senator WALCOTT. Of course, there are thousands of companies, many of them of large size, that prefer not to have their securities listed on any exchange.

Mr. CORCORAN. Yes, sir.

Senator WALCOTT. Would you deny them the right to operate those corporations?

Mr. CORCORAN. No.

Senator WALCOTT. They are not interested, necessarily, in the public buying any securities, or selling securities.

Mr. CORCORAN. No.

Senator WALCOTT. There is nothing in this bill to curtail their operations?

Mr. CORCORAN. No. There is a provision in here, on page 27, section 14, with regard to over-the-counter markets, which would put the Commission in a position where it might prescribe rules and regulations for companies, the securities of which are sold through the mails or in interstate commerce. Just how that will be worked out, nobody knows. Neither the Dickinson report, nor the Twentieth Century Fund, nor this bill has any specific ideas as to how you would reach the over-the-counter market, but certainly there is some way it can be reached.

Senator KEAN. Suppose the company is not offering any securities?

Mr. CORCORAN. You are talking about new securities now?

Senator KEAN. Yes.

Mr. CORCORAN. This deals only with securities that are listed on an exchange. New securities do not normally reach an exchange until a year or so after they are issued and have been distributed.

Senator KEAN. Suppose you have a company that has, say, \$5,000,000 capital or \$10,000,000 capital, and they do not offer their securities. Their securities are out. They have no interest in whether there is any market for them or not.

Mr. CORCORAN. Is there an over-the-counter market for the securities?

Senator KEAN. Yes.

Mr. CORCORAN. The regulations which the Commission would try to impose in that case, where there was very little of a public investor, interest would, I should think, be very, very slight, if any at all.

Senator KEAN. They can say, "Here, it is of no interest to us. We do not care whether anybody buys these securities or not. We have got the money. We are doing the business. We do not want anybody to buy our securities."

Mr. CORCORAN. It might be difficult to reach them.

Senator WALCOTT. Why would you want to reach them?

Mr. CORCORAN. You would not want to reach them, unless there were a real public interest in the securities, and some public turning over of the securities.

The CHAIRMAN. The committee will now take a recess until 10 o'clock tomorrow morning.

(Whereupon, at 4:45 p.m., Tuesday, Feb. 27, 1934, an adjournment was taken until tomorrow, Wednesday, Feb. 28, 1934, at 10 a.m.)





# STOCK EXCHANGE PRACTICES

WEDNESDAY, FEBRUARY 28, 1934

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

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

Present: Senators Fletcher (chairman), Barkley, Bulkley, Gore, Reynolds, Byrnes, Bankhead, McAdoo, Adams, Carey, and Kean.

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; also Roland L. Redmond, counsel to the New York Stock Exchange.

The CHAIRMAN. The committee will come to order. We will further hear Mr. Corcoran.

## STATEMENT OF THOMAS GARDINER CORCORAN, IN THE OFFICE OF COUNSEL FOR THE RECONSTRUCTION FINANCE CORPORATION, WASHINGTON, D.C.—Resumed

The CHAIRMAN. Now, Mr. Corcoran, I believe you were dealing with section 11 when the committee adjourned yesterday afternoon. Will you please take up the subject where you left off, and continue?

Mr. CORCORAN. Mr. Chairman, we had finished section 12, as I remember it, sir.

The CHAIRMAN. All right.

Mr. CORCORAN. Now, Mr. Chairman, I shall go along as fast as possible so I won't cut into Mr. Whitney's time any more than I can possibly help.

The CHAIRMAN. All right.

Senator CAREY. Did you say you had finished with section 12 of the bill?

Mr. CORCORAN. We had finished with section 12, and I am now going to section 13 (a). This section relates to proxies. The purpose of the provisions is to require that when a management solicits stockholders for proxies, or when any committee solicits stockholders for proxies, the management or the committee so soliciting proxies shall reveal the purpose of such solicitation of proxies (which under the laws of even the most advanced States at the present time is not required to be made too definite) and just how much ownership interest they have in the corporation.

May I now read the section—

Sec 13 (a) It shall be unlawful for any person by the use of the mails or of any means or instrumentality of transportation or communication in interstate

commerce or of any facility of any national securities exchange or otherwise to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security registered on any national securities exchange unless at such time prior to such solicitation as the Commission shall, by rule or regulation, prescribe the persons named to exercise such proxy, consent, or authorization shall file with the Commission a statement, which shall be included as a part of every such solicitation, setting forth the purposes of the proxy, consent, or authorization, the persons to exercise it—

And then this is important :

their relations to and interest in the security, the names and addresses of the persons from whom similar proxies, consents, or authorizations are being solicited, and such further information, and in such form and detail as the Commission may by rules and regulations prescribe in the public interest or for the protection of investors

Now, the New York Stock Exchange is completely correct in its criticism of the present drafting of that section insofar as the section as now drafted would require the names and addresses of the persons from whom similar proxies are being solicited, to be sent out with each request for a proxy. The section, Mr. Chairman, according to the suggestion made, is in that respect imperfect. The request for the proxy should contain everything except the names and addresses of all other persons solicited, and those names and addresses should be required to be filed only with the regulatory commission.

The CHAIRMAN. What page and line do you now refer to, Mr. Corcoran?

Mr. CORCORAN. Line 2 on page 27. I might say that the purpose of requiring the filing of the names and addresses of other persons solicited is perfectly obvious. It is almost impossible for stockholders who are herded together like sheep under present proxy practices to get together or to get up courage enough to assert their rights unless they have some opportunity of knowing who their fellows in interest are. Although under the laws of a great many States at the present time stockholders' lists are open to the inspection of stockholders, there are some States in which that is not true; and, besides, there are many States where the management might be able as a practical matter to obstruct the obtaining of the information.

Now I will take up subsection (b) :

(b) It shall be unlawful for any member of a national securities exchange or any person who transacts a business in securities through such member to give a proxy, consent, or authorization in respect of any security registered on a national securities exchange and carried for the account of a customer without a specific written authorization from such customer

The evil which that section is intended to reach is that brokers very often hold large amounts of customers' securities. In all cases where securities are carried on margin the stock is of record in the name of the broker or in a "Street" name, so that the stockholder actually entitled as a matter of record to vote at the meeting or give a proxy, is the broker, and sometimes unscrupulous proxy committees as a result of this situation have been able to pick up huge batches of votes through such brokers, although the beneficial owner of the stock does not give his consent to the proxy at all.

Now I will take up section 14 of the bill—

Senator KEAN (interposing). Mr. Corcoran, in regard to the section you are leaving, don't you think that the section as is practically perpetuates every management? In other words, do you think it goes far enough, or that it gives a fair chance to the outsider?

Mr. CORCORAN. It gives a fairer chance than the outsider now has.

Senator KEAN. Well, at the present time I do not think there are many brokers who would give a proxy without the consent of the owner of the stock, but—

Mr. CORCORAN (interposing). That is quite true.

Senator KEAN (continuing). I think nearly all people having stock in their names, say: "Oh, yes. I will ask the principal, and if he consents, why, then I will give the proxy." But otherwise they do not give the proxy.

Mr. CORCORAN. Yes. Subsection (b) as now written says if the broker gets such authorization, then all right.

Senator KEAN. Yes; that is all right. But as to the other part of it, why, it seems to me it might be drawn a little more in favor of the stockholder who wishes to protest against the management of the company, rather than the way it is now drawn.

Mr. CORCORAN. Well, Senator Kean, you will notice that there is a flexible clause at the end of the first subsection, on lines 4, 5 and 6, page 27, which requires that the proxy and the solicitation shall be in the form and contain such details as the Commission may by rules and regulations prescribe in the public interest or for the protection of investors.

Senator KEAN. That puts it all back again, to the matter of simply blanket authority to the commission.

Mr. CORCORAN. Senator Kean, I am very certain, and I respectfully suggest that nobody in the committee would object, that if it is possible to work out a more thorough-going protection for the stockholder in the use of proxies, every one would be very grateful for a more effective means of protecting him.

Senator CAREY. Is this done now enough to warrant legislation at the hands of Congress?

Mr. CORCORAN. Yes.

Senator GORE. This means, I take it, that stockholders' meetings at the present time are more or less perfunctory. Somebody simply gets proxies and holds the meeting, and that gives rise to this proposed legislation.

Mr. CORCORAN. Yes; that is true.

Senator McADOO. There is no doubt that there has been great abuse of the use of proxies.

Mr. CORCORAN. Yes, sir.

Senator McADOO. And more adequate provision for the protection of stockholders should be made.

Mr. CORCORAN. Yes, sir.

Senator McADOO. And I think this section pretty well meets that situation.

Mr. CORCORAN. I think so too.

Senator KEAN. The question in my mind is whether it gives sufficient protection.

Mr. CORCORAN. Well, that might very well be considered.

Senator GORE. This would seem to me to contemplate what ought to be done. I am not certain that it contemplates what will be done, that is, whether this will energize stockholders enough to get any practical results. I doubt that, Mr. Corcoran.

Mr. CORCORAN. Well, Senator Gore, I do not know of anything that can be done to stir stockholders from their inertia.

Senator McADOO. No; you cannot energize them, I fear.

Senator GORE. Certainly a lot of things go on that ought not to go on, but can you enact a law that will properly meet that situation?

Mr. CORCORAN. We fully realize that stockholders will not give the time for, nor incur the expense of acting alone. But if you let a stockholder know who are the other stockholders of similar interest who might go along with him, by letting him look at a list filed with the Commission, then, having the information by which he can get in touch with them and possibly persuade them to go along with him, and share the expense, he may act, whereas he would not act blindly and alone.

Senator GORE. I think, perhaps, the vice of the situation is the inertia of the stockholder, and if we could overcome that inertia we might accomplish something. It seems to me one of the worst evils in the situation is due to the divorcement between the management of corporations and the owners of corporations.

Mr. CORCORAN. That always happens when things get too big.

Senator GORE. Yes; and I suppose this proposed legislation is directed more or less to that. Take, for instance, this bonus matter, the paying of a million dollars to the president of a concern—and in that connection we have just had a report from the Federal Trade Commission which I think shows the abuse, and I do not think that thing would happen if you could get stockholders themselves to act, if you could get the stockholders themselves to act to protect themselves against such an imposition.

Senator McADOO. All that we can do, I think, is to provide a means by which stockholders can protect themselves if they want to do it, or if they have the enterprise or the energy to do it. If they have not the required enterprise or energy, then of course you cannot enact any law that will cover the situation.

Senator GORE. Yes; that is true, but—

Senator CAREY (interposing). Why wouldn't it be proper for the corporation to furnish each stockholder with a list of its stockholders?

Senator KEAN. They are obliged to do it now under the laws of most States.

Mr. CORCORAN. That is only a matter of local corporation law.

Senator CAREY. I mean if the shares are being traded in in interstate commerce, couldn't that requirement be put into this law?

Mr. CORCORAN. We have reached it in another way, by saying that no one can use the mails or any other means of interstate communication through the facilities of a stock exchange, which is a little more artistic way of saying it for the purpose of this bill.

Senator KEAN. Well, I think this clause ought to be studied a little bit, and rewritten.

Mr. CORCORAN. Oh, I am quite willing to agree with you on that.

Senator KEAN. I have no objection to subsection (b).

The CHAIRMAN. You may proceed with your statement, Mr. Corcoran.

Mr. CORCORAN. Section 14 relates to over-the-counter markets. An over-the-counter market is an irregular market, although in some cases fairly well organized, for securities not listed on regular exchanges. There must be some potentiality of control of the over-the-counter market in the Federal Trade Commission or the regulatory body to whom you entrust the working out of your law or the securities listed on exchanges will be subjected to unfair competition from the over-the-counter market.

You will appreciate that there has been some talk of the possibility that corporations would withdraw their securities from exchanges, and from listing, because the provisions of this bill are too onerous. As we have tried to point out, the only provisions of the bill that are in any way onerous on present management are for the benefit of stockholders by giving them information and protecting them from inside trading by officials and directors. So that it is hardly likely stockholders will permit their corporations to withdraw shares from listing simply because the bill makes it necessary for directors, while the shares are listed, to give adequate information to stockholders.

Undoubtedly the regulatory commission will have to have some potentiality of control over the over-the-counter markets, and this provision was drawn as broadly as possible to enable the Commission to take whatever action to regulate over-the-counter markets a study might show feasible.

May I read that section :

#### OVER-COUNTER MARKETS

SEC 14 It shall be unlawful for any person, singly or in concert with others, to make use of the mails or of any means or instrumentality of communication or transportation in interstate commerce for the purpose of making or creating, or enabling another to make or create, a market for any security, whether or not registered on a national securities exchange, without complying with such rules and regulations as the Commission may prescribe as appropriate in the public interest or for the protection of investors

It is almost impossible at the present time to draw any section more specific on the regulation of the over-the-counter securities.

Senator KEAN. Mr. Witness, if you will take the bond market, let us say that 10 bonds are traded in on the exchange and 500,000 bonds are traded in outside. I mean to say that the exchange business in bonds as compared with the outside market in bonds, does not amount to anything.

Mr. CORCORAN. No.

Senator KEAN. So that all trading in bonds, or at least a large part of the trading in bonds, is done entirely outside of any exchange.

Mr. CORCORAN. But there is no reason why it could not be done on an exchange, is there, Senator Kean?

Senator KEAN. Yes; there are a good many reasons.

Senator GORE. Are there any abuses connected with that matter under the present scheme of things that this would correct?

Senator KEAN. I do not think so.

Senator GORE. Then why include it?

Senator KEAN. That is what I want to know.

Senator CAREY. Mr. Corcoran, let us presume that a man has a small corporation whose stock is not listed on any stock exchange; if he should desire to write to a number of his friends and say that he had that stock and would like to have them take a certain amount of it, would he be precluded under this section from so doing unless the Commission first passed upon it?

Mr. CORCORAN. Yes; unless the Commission had worked out general rules and regulations covering it. But the way the bill will be handled administratively, of course, will be that within the 6 or 7 months before the act goes into effect the Commission will give general permission to carry on the business of selling in the usual way pending such a time as the matter can be worked out.

Senator KEAN. And it may not work the matter out to cover Senator Carey's objection.

Senator CAREY. Let us say that there is a small corporation with a capital of \$10,000, a more or less private affair; would that mean that the man who was interested in the corporation—I mean a corporation of that kind—could not do business with anyone without having it registered here in Washington?

Mr. CORCORAN. He could not do business buying and selling its securities through the mails or through interstate commerce except under the regulations of the Commission.

Senator CAREY. Do you mean that he could not even write to a friend in another State about it?

Mr. CORCORAN. Well, that sort of transaction would be at least subject to such rules and regulations as the Commission would prescribe, and an intelligent commission would not prescribe any rules and regulations that would cover such a case. But the law has to stretch that far because it is impossible to draw logical differentiations between classes, to fit this case and the next bigger case, and then the next bigger case. The administrative commission has to be intelligent and not interfere in a small case like that.

Senator GORE. Well, we seem to have had such good luck under the eighteenth amendment in the matter of discriminations that we now want to prohibit ordinary transactions in stocks.

Senator CAREY. Well, Mr. Corcoran, how are you going to get such a matter straightened out?

Mr. CORCORAN. This matter would be covered by general rules and regulations as soon as the commission began to organize to administer the act.

Senator BARKLEY. In view of the requirements of the Securities Act providing that all stock shall be registered with the Federal Trade Commission, is there really any need for any further supervision over the sale of stock by new corporations that might be created?

Mr. CORCORAN. This applies to securities that have already been issued. The Securities Act applies only to new issues of securities.

Senator BARKLEY. Well, this would apply to stock that may be issued from time to time.

Mr. CORCORAN. This applies to stock that may be issued from time to time; yes. In other words, this applies in the first place to stock that has been issued without having had to comply with the Securities Act, because it was issued before the Securities Act came into existence; and then it applies, of course, to trading in that stock after it has been registered with the Federal Trade Commission under the Securities Act.

Senator BARKLEY. Yes; and it would apply to all future issues.

Mr. CORCORAN. You see, Senator Barkley, the Securities Act as now drawn does not provide any continuous supervision over sales. It relates only to the original public offering.

Senator BARKLEY. Well, they have pretty broad powers to follow up the transaction.

Mr. CORCORAN. Not very much, sir. That is unfortunate.

Senator BARKLEY. I am wondering whether there is a sufficient amount of abuse in over-the-counter transactions to make it necessary to apply to the ordinary processes of organization of a small company in the sale of its stock, where, we will say, some man wants to write to a relative that he is going to organize a little real-estate company, or a little oil company, or a little coal company, and prevent him from writing a letter and getting any of his friends or relatives to take stock in such a company without first coming up here to Washington and getting the permission of the Federal Trade Commission.

Mr. CORCORAN. Well, you see, Senator Barkley, you are putting a case up to me which is way down at the small end of the scale. On the other hand, there are very big transactions on the over-the-counter markets which it is very essential the Commission should be able to reach, particularly for the protection of the markets of the exchanges. Now, the matter of differentiating between these big over-the-counter transactions, which must be reached in order to prevent unfair competition with the exchanges, and the small transactions, which, as you say, are so small that there is really no public interest in regulating them, can be dealt with by means of differentiation between cases in the rules and regulations of the Commission.

Senator KEAN. Well, it seems to me they ought to be dealt with in the law.

Mr. CORCORAN. All right, if you can find any logical place to draw a line in the law.

Senator CAREY. As I read this bill this seems to me to be the situation: If I had a block of stock in a corporation and that stock was not listed on a stock exchange, and if I had to sell that stock and I knew some man in another State whom I thought might purchase it, and I wrote a letter to him and asked him if he would buy that stock, then I would be violating this law.

Mr. CORCORAN. Not in the case of a single transaction like that.

Senator CAREY. Why not?

Mr. CORCORAN. Because this says:

For the purpose of making or creating, or enabling another to make or create, a market for any security

Senator CAREY. Well, in such a case wouldn't that man be creating a market for the security?

Mr. CORCORAN. Hardly in the case of that one transaction, or hardly in the case even of 10 or 12 transactions. But if you are maintaining a regular mechanism through which bids and asks are matched, as maintained by the over-the-counter market dealer, then such mechanism would be within the scope of this bill. But I hardly think that the mere solicitation of four or five friends to buy stock in a small company would be considered an attempt to create a market for that stock within the meaning of this section.

Senator CAREY. As I read that section, it seems to me to mean that, if a stock is not listed on an exchange, a man is precluded from selling such stock through the mails.

Mr. CORCORAN. The purpose of the section was to catch what is called in the market over-the-counter transactions.

Senator CAREY. I understand that perfectly, but I also want to know where this little man will find himself.

Mr. CORCORAN. If you are afraid that the language is too broad, that it will prevent any solicitation, even without an attempt to set up a market for the stock, I would suggest that amendments to that section are in order.

Senator BARKLEY. How would it do instead of saying—

It shall be unlawful for any person, singly or in concert with others, to make use of the mails or of any means or instrumentality of communication or transportation in interstate commerce for the purpose of making or creating, or enabling another to make or create, a market for any security—

to so clarify the language as to distinguish these transactions. I do not see how you can distinguish, under this bill, between making a market for 100 shares and making a market for 100,000 shares. An effort to sell the shares is an effort to create a market for them. Why wouldn't it do to simply authorize the Commission, in general terms, to fix rules and regulations under which transactions of that sort might be carried on without starting out to make it unlawful for anybody to do that unless he complies with rules and regulations providing that it must be done. The Commission cannot make separate regulations, I imagine, for each class of transaction unless they can fix some line of demarcation dependent upon the amount of stock or the value of it or something of that kind. If they attempt to make general rules and regulations which will cover large transactions in the over-the-counter market, they are bound to include the smaller transactions.

Mr. CORCORAN. You see, Senator Barkley, the purpose of the section is to reach the situation where a dealer sits at a telephone or writes letters and says, "I am maintaining a market in this unlisted stock. I solicit bids and offers." And he does that as a business. Now, as a matter of degree it is very difficult to draw a line separating different kinds of solicitations, to find one point where you will not permit solicitation and another where you do not want to interfere with it. If it is possible to make any such differentiation in the section, however, and if it is possible to cut off the application of the section at the point where the Congress does not think there is any public policy in following the thing up, so much the better.

Senator BULKLEY. Is it your conception that the Commission will make such differentiation by regulation?

Mr. CORCORAN. I should certainly think so.



Senator BULKLEY. Well, if we do not happen to get on the Commission smarter men than any of us it would just be too bad.

Mr. CORCORAN. Senator Bulkley, as to the matter of smarter men than any of you, I would hardly dare comment.

Senator BULKLEY. Well, I am really serious in my statement.

Senator GORE. Yes; or if you could get somebody on the Commission who would attend to the matter himself and not leave it to somebody else, then there would be a different situation.

Senator BULKLEY. And if the Commission can make such differentiation, Mr. Corcoran, why not write it into the law.

Mr. CORCORAN. Because when you are dealing with a provision that, as you yourselves know, is to cover the situation all the way from the market in New York bank stocks in New York City, and the over-the-counter market in insurance stocks and bonds, down to a case where you have a trader on his own with a one-room office in a small town making a market in a local stock, you have so many differentiations all the way down that you would need a 500-page law in order to cover them all.

Senator BULKLEY. Well, do you think they will be able to cover it by regulations?

Mr. CORCORAN. That is what this bill proposes they do.

Senator BULKLEY. Why don't you think they will meet the same difficulties?

Mr. CORCORAN. Because they will have a chance to study the problem and change their rules and regulations as they go along if they find their rules and regulations do not work out.

Senator BULKLEY. Yes, but they are subject to very direct pressure while in our case the pressure is more remote.

Mr. CORCORAN. That is true; but at the same time the Commissioners will have a professional job to study and know all the varieties of conditions. It is the same problem you always run up against when you have to give an administrative commission the power to meet a number of situations as they arise, especially when you face a problem on which no one is completely sure of the details. You will notice that in the Dickinson report and in the Twentieth Century report, as well as in this bill, the general conclusion is that something must be done about this problem, but at exactly what point or degree control should cease no one yet knows. And since it can only be decided after a great deal of study and a great deal of experimentation, any statutory provision should be as flexible as possible.

Senator GORE. On that point let me remind you that liquor has always been regarded as outlaw commerce. Our effort to prevent the sale of contrabands of that sort has not been a very pleasant success, and it is now being abandoned with a great deal of parade and flourish of trumpets. On the other hand, here we are going to the extent of almost universal prohibition, not in the matter of contrabands of commerce, but in the matter of stocks and bonds, legitimate subjects of commerce. Do you think the policies are at all inconsistent? I think it was Fortescue who said, "Excessive good laws produce excessive mischief", and I think that is true if you attempt to tell people when to go to bed and when to get up. They are liable to disregard your advice. I think we should have a minimum instead of a maximum.

**Mr. CORCORAN.** And that is the attitude any intelligent commission will take. But, Senator Gore, the difference between the prohibition law and this regulatory law is that in the one case you were trying to prohibit something on possibly moral grounds, which raised a great deal of resentment among many people, while here—

**Senator GORE** (interposing). But at least it had a great deal of moral sentiment behind it, and there were the religious organizations strongly backing it.

**Mr. CORCORAN.** That is true, but the difference between the two situations is this: In the one case you were prohibiting absolutely the use of liquor, and in this case you are merely regulating means and methods of trading in securities.

**Senator BULKLEY.** But if we had left it to the discretion of a commission as to who would have been allowed to buy liquor, it would have been all right, would it?

**Mr. CORCORAN.** It might have been. [Laughter.]

**Senator GORE.** Don't you think that here we have a case of meddling with people's daily concerns, and that you should leave something to the individual to do for himself?

**Mr. CORCORAN.** This is true. And this bill leaves a great deal for the individual to do for himself. As a matter of fact, this leaves the stock-trading business fundamentally in the position of going on as it has always gone on, subject to certain requirements and control. In other words, the business will be fundamentally free to go along, subject only to certain rules and regulations covering certain well-known abuses. There is no social philosophy behind this bill as Mr. Redmond tried to make me say the other day. This is not at all a moral proposal for abolishing stock trading. This is the result of the economic judgment of the community.

**Senator GORE.** If you limit it to preventable abuses that would be one philosophy, but when you go on and on, that is another thing.

**The CHAIRMAN.** I cannot see any difficulty in that section. The purpose is to prevent the creating and establishing of a market in one instance, and in the case Senator Carey mentioned here it is simply a fellow trying to sell his stock and to realize on it, not for the purpose of making a market or of creating a market.

**Senator GORE.** Well, one of your little agricultural corporations that he was talking about this morning would have to run down to Washington and ask somebody's permission.

**Senator CAREY.** Well, if you intend to have a \$10,000 livestock corporation man come down here to Washington and take the matter up with the Federal Trade Commission, it would cost more money perhaps than the corporation is worth.

**Senator GORE.** Oh, well, he could come down here and borrow money from the Government for that. So that would not matter so much.

**Senator BANKHEAD.** How comprehensive is the matter of making and creating a market?

**Mr. CORCORAN.** I told you a while ago of the typical case it was intended to catch.

**Senator BANKHEAD.** Would the matter of a newspaper advertisement mean the making of a market?

Mr. CORCORAN. If it were in connection with the general course of conduct of soliciting bids and offers that could be matched by the dealer; yes.

Senator BARKLEY. It might depend upon what the courts would decide, might it not?

Mr. CORCORAN. It could also be worked out by the rules and regulations of the Commission which are finally to give form to the language in the bill.

Senator BANKHEAD. As I get the meaning of this section, it is to create what one might call a Federal blue-sky law for all stock transactions that move in interstate commerce in any way.

Mr. CORCORAN. Not a Federal blue-sky law in the sense that the Commission will in any way pass upon the merit of a security.

Senator BANKHEAD. I did not use the term "Federal blue-sky law" as being objectionable at all, but you know what is generally mentioned in that connection.

Mr. CORCORAN. There are three or four kinds of blue-sky laws. I wanted to be sure that you understood it was not the kind in which a commission passes upon the matter of the merit of a security and practically blesses it for sale in the State. As I say, the typical situation this bill is intended to catch is the situation of the dealer in securities who uses the mails or the interstate telephone to make a market. He tries to find people who want to sell to him and tries to find people who will buy from him, and he tries to pay a little less for what he buys than he sells for, with the idea of making a profit in between the two prices. In other words, he makes it his business to trade in securities. Now, that is the typical case.

Senator BANKHEAD. Let me ask you right there: Is that the sort of trading that means the making of a market?

Mr. CORCORAN. Yes; that is making a market.

Senator BARKLEY. Let us suppose that I have 2,000 shares of stock in some small corporation, and that stock is not listed on a stock exchange, and I have in mind 20 friends who might buy 100 shares apiece, and I call them up on the telephone, or write letters to them—which of course have to go through the mails—soliciting the purchase of that stock. Of course I am trying to make a market for my stock because I want to sell it. Now, what is the difference between doing that and my calling up one man who might be able to buy all of the 2,000 shares?

Mr. CORCORAN. I am not absolutely sure that even your first case would be making a market for the stock, in the sense that you were carrying on, or trying to carry on, a continuous series of buying and selling transactions. You are trying to distribute stock, in which operation you do all the selling and the other people do all the buying. You are not soliciting buyers and sellers to trade through you. I will not say that could not be within the provisions of this section, because I do not know. The difference, certainly, between your 20-buyer case and 1-buyer case is a question of degree.

Senator BARKLEY. As I indicated a while ago, the meaning of this language here, "to create a market" ultimately depends upon what the courts are going to say it means.

Mr. CORCORAN. That is true.

Senator BARKLEY. If they should say it means any sort of effort to create a market for any quantity of stock, then the transaction I mentioned would be covered.

Mr. CORCORAN. Yes; except, sir, that the rules and regulations of the Commission could exempt that transaction at the very beginning of the administration of the law.

Senator KEAN. It could, but probably would not.

Mr. CORCORAN. No; I think it probably would, because if there is anything that is going to get the Commission into trouble, it is this over-the-counter market section, and the first thing the Commission would do would be to see that while it was working out other sections in the law, it did not get itself snarled up with this one.

Senator KEAN. Under this bill, suppose you have a bank with \$100,000 capital in a town, and some man owns 100 shares, and he dies. Then his executors have to create a market by soliciting the other directors and the other people in the town, and selling that stock, and they would have to come under this law.

Mr. CORCORAN. No; I do not believe they would be under the law just for 100 shares of stock

Senator CAREY. They would, the way that reads

Mr. CORCORAN. No. It is a matter of degree.

Senator CAREY. You have not any degree in this.

Mr. CORCORAN. If I sell you 100 shares of stock out in the corridor, have I created a market within the meaning of this bill?

Senator KEAN. I think so.

Mr. CORCORAN. I just do not think so, Senator, but that is a matter of judgment.

Senator BARKLEY. That might depend upon how many others you had asked to buy it beforehand.

Senator KEAN. There is nobody that can buy 100 shares, and it has to be split up into 10-share lots. How are the executors of that estate going to part with that stock and get the cash to pay the Government taxes?

Mr. CORCORAN. They will have to sell the stock. Let us sum the thing up in three steps. First of all, I am quite sure that the phrase "creating a market" does not relate to a single isolated transaction, even though that sale is made in installments, as in your 100-share case, or as in the case of Senator Barkley's 20 purchases. If I am wrong on that, then the Commission is given discretionary power to exempt those transactions by rules and regulations. If I am wrong in supposing that the Commission will be intelligent in so doing, then, Senator, I certainly will agree with you that if better language can be worked out to cover the kind of transaction we all agree should be subject to regulation, at the same time excluding the type of situation you have been describing, it would be a desirable thing to do.

Senator BANKHEAD. Do you not think the public would be protected if that were limited to dealers in stock?

Mr. CORCORAN. Then, you get into the problem of the definition of a dealer. All bodies which have studied this problem, sir, feel that there has to be some regulation of the over-the-counter market. The Commission established by Mr. Roper, which reported in the Dickinson report, and the Twentieth Century Fund, feel that there must be some regulation of the over-the-counter market. The over-the-

counter market is not concentrated on one or more kinds of technique. Therefore, it is a subject on which you will have to leave complete discretion to some commission to study and work out reasonable rules.

Senator BANKHEAD. As I gather, the people you are trying to protect the public from are these professional dealers.

Mr. CORCORAN. That is true—who scalp.

Senator BANKHEAD. If you limit it to dealers, you would exclude all this controversy about the individual having a right to find a buyer for his own stock. You are just after people who are engaged professionally in skinning the public, so to speak.

Mr. CORCORAN. Not always skinning, sir; unconsciously skinning, perhaps.

Senator BANKHEAD. Otherwise that would not be injurious.

Mr. CORCORAN. But even though you know that the problem of the dealer is the present problem which concretely suggests itself to your mind, you are just simply not sure enough that there may not be others than dealers whom you would like to reach, that you would like to close the door at this time.

I think you will find, sir, that the representatives of the exchanges will say that if the exchanges are to be regulated, they would prefer that the Commission be given pretty complete discretion to control the over-the-counter market, without too rigid limitations on that discretion by the statute.

Senator BANKHEAD. I am not considering the exchanges at all.

Senator KEAN. We are not trying to speak for the exchanges. We are trying to speak for the little fellow at home.

Mr. CORCORAN. The issue is this: Whether you would limit control of the over-the-counter market to that portion of trading in unlisted securities which you can definitely trace to somebody you can call a dealer, or whether you will leave control more flexible, with the possibility that some other persons might come into the net.

The CHAIRMAN. Let us go on to section 15.

Mr. CORCORAN. Section 15, "Transactions by directors, officers, and principal stockholders." This is one of the most important provisions in the act in that it provides for the protection of the stockholder from the so-called "corporate insider." Someone has called it the anti-Wiggin provision of the bill. There is a mistake in the drafting. I would suggest that the language of the first lines of section 15 (a) seem to confine the application of the section only to those directors and officers who own more than 5 percent of any class of securities. I would suggest, Mr. Chairman, if I might, that the language should be corrected so that the section applied to every director and every officer, irrespective of how much stock he owns; and also to every owner of more than 5 percent of any class of securities—that is, to every director, to every officer, and to every influential stockholder, who by reason of his office, and to every influential stockholder, who by reason of his position—and 5 percent is a lot of stock in a modern corporation—is on the inside of the circle. Section 15 (a) reads as follows [reading]:

Sec 15 (a) Every director, officer, or owner of securities, owning as of record and/or beneficially more than five per centum of any class of securities of any issuer any security of which is registered on a national securities exchange, shall file with the exchange and with the Commission at the time

of the registration of such security or at the time he becomes such a director, officer, or owner of securities the amounts of all securities of such issuer of which he is the record and/or beneficial owner, and within ten days after the close of each calendar month, if there has been an change in his record or beneficial ownership during such month, shall file with the exchange and the Commission a statement indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month

That is, stockholders shall know whether the directors are selling or buying the stock of the company. There has been very little criticism of that provision. Essentially the same provisions are contained in the Twentieth Century Fund report, and, as I remember, something to the same effect is in the Dickinson report.

Senator KEAN. Suppose a man is not a director at all and does not want to be a director, and he happens to own 5 percent or buy 5 percent. Do you think you are going to get him to file with the exchange all the time just the number of shares he has?

Mr. CORCORAN. I think so, sir.

Senator KEAN. I think then he is not going to take it in his own name.

Mr. CORCORAN. It says: "As of record and/or beneficially", so that if he does not take it in his own name, you catch him just the same.

Senator KEAN. I do not think you will catch him.

Mr. CORCORAN. That is a problem always.

Senator CAREY. Is "beneficial owner" the proper term there?

Mr. CORCORAN. It is the broadest term you can have.

Senator KEAN. I think it is all right to apply it to a director or officer, but I think to require the ordinary investor—

Mr. CORCORAN. Five percent is a lot in a modern corporation. Many corporations are controlled by 5 percent or 10 percent.

Senator KEAN. They may own it or they may sell it. This applies to all corporations, and you are getting down to the point where you are interfering with the individual a good deal there. I agree with you with respect to the officers and directors.

Mr. CORCORAN. A stockholder owning 5 percent is as much an insider as an officer or director. Whether he is a titular director or not, he normally is, as a practical matter of fact, a director.

Senator KEAN. He might not be.

The CHAIRMAN. If you do not have this provision, you will have the directors putting in dummies. We have had cases where dummies were used.

Senator KEAN. They are all going to be dummies in the future.

Mr. CORCORAN. There is a provision in the bill to catch that, if they use dummies. I will come to that later.

Senator KEAN. I mean to say that if a man owns 5 percent, and then simply refuses to become a director, they do not elect a dummy. They elect some other fellow.

Senator BARKLEY. We tried to prevent dummies in the securities act.

Mr. CORCORAN. The same provision is in this act.

Senator BARKLEY. They are stirring up a lot of trouble about it.

Mr. CORCORAN. Subsection (b) reads as follows [reading]:

(b) It shall be unlawful for any director, officer, or owner of securities, owning as of record and/or beneficially more than five per centum of any class of stock of any issuer, any security of which is registered on a national securities exchange—

(1) To purchase any such registered security with the intention or expectation of selling the same security within 6 months, and any profit made by such person on any transaction in such a registered security extending over a period of less than 6 months shall inure to and be recoverable by the issuer, irrespective of any intention or expectation on his part in entering into such transaction of holding the security purchased for a period exceeding 6 months

That is to prevent directors receiving the benefits of short-term speculative swings on the securities of their own companies, because of inside information. The profit on such transaction under the bill would go to the corporation. You hold the director, irrespective of any intention or expectation to sell the security within 6 months after, because it will be absolutely impossible to prove the existence of such intention or expectation, and you have to have this crude rule of thumb, because you cannot undertake the burden of having to prove that the director intended, at the time he bought, to get out on a short swing.

Senator GORE. You infer the intent from the fact.

Mr. CORCORAN. From the fact.

Senator KEAN. Suppose he got stuck in something else, and he had to sell?

Senator BARKLEY. All he would get would be what he put into it. He would get his original investment.

Mr. CORCORAN. He would get his money out, but the profit goes to the corporation.

Senator KEAN. Suppose he had to sell.

Mr. CORCORAN. Let him get out what he put in, but give the corporation the profit. [Continuing reading:]

Such suit may be instituted in law or in equity in any court of competent jurisdiction by the issuer or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer shall fail or refuse to bring such suit within 60 days after request, or shall fail diligently to prosecute the same thereafter. For the purposes of this subsection, the profit shall be calculated on the sale or sales by such person of such security made at the highest price or prices and on the purchase or purchases made by such person of such security at the lowest price or prices during the 6 months' period, irrespective of the certificates for such security received or delivered by such person during such period.

That is in case he said, "Well, I sold within 6 months after I bought some stock, but the stock I sold was not the stock I bought within a 6 months' period. It was stock I bought a year before."

Senator BULKLEY. Do you provide for the converse of that, where a man might sell for a short term with the intention of repurchasing?

Mr. CORCORAN. No; it should have been provided for. No; I do not think you need to, sir, because the next section prevents selling short.

Senator BULKLEY. It would not be selling short. He might be a large stockholder, and sell his own stock with the intention of repurchasing.

Mr. CORCORAN. The bill does not cover that case. I do not know whether it should or not.

Senator BULKLEY. Is that not just as reprehensible as to take a short turn on the up side?

Mr. CORCORAN. You see, the next provision prevents either short selling, or selling against the box.

Senator BULKLEY. It would not be a short sale.

Mr. CORCORAN. Or selling against the box.

Senator BULKLEY. It would not be against the box. It would be his own stock.

Mr. CORCORAN. You mean a case where he sold the stock, and within 6 months bought it back at a lower price?

Senator BULKLEY. Yes. A man having a large amount of stock might know that his company was going to pass a dividend, and then sell it with the intention of purchasing after the news was out.

Mr. CORCORAN. Possibly a provision to catch that should go into the statute. That does not happen as often as the other case.

Senator CAREY. If something happened so that he had to raise some money, he would be penalized by the difference between his high and his low price.

Mr. CORCORAN. Yes. You have to have a general rule. In particular transactions it might work a hardship, but those transactions that are a hardship represent the sacrifice to the necessity of having a general rule.

Senator CAREY. Suppose this stock passed to an estate, and the estate had to raise money?

Mr. CORCORAN. I do not think, in that case, sir, the statute would apply.

Senator KEAN. Why not?

Senator CAREY. The estate is the beneficiary.

Mr. CORCORAN. I do not believe it would. Certainly the intention was that it should not apply to that sort of a situation.

Senator GORE. Would this prevent him from confederating with someone else, if he were willing to forfeit the profit? His friends on the outside would take the profit resulting from the influence he exercised on the market, and then split the pot with him.

Mr. CORCORAN. There is an attempt in the next section to catch that.

Senator CAREY. Would it be possible for a man to have several people purchase this stock for him?

Mr. CORCORAN. There are provisions later to catch his wife and children, as well as trustees for him. There is also a provision in the next section to catch those whom he tips off, and who probably buy for his account, and split the profit, insofar as they can be caught. Usually men are not as ready to sell a stock with the expectation of picking it up on the down grade as they are to buy a stock on what they think is going to be a rise in the market.

Senator BULKLEY. A director would be in a position to know bad things about the company in advance of the public, the same as he would know good things.

Mr. CORCORAN. That is absolutely true.

Senator GORE. Does this rule apply to insiders as well as to the layman on the outside?

Mr. CORCORAN. This is all about insiders.

Senator GORE. Your rule might apply to laymen, but I do not think it would apply to insiders. They know what is going to happen.

Senator BARKLEY. Suppose a man buys 100 shares at \$10, and 100 shares at \$12, and 100 shares at \$15. The lowest price, of course, is 10. Suppose he sells it for 20, 22, and 25. The highest price is 25.



As I understand this language, the profit on the total amount of stock is the difference between 10 and 25.

Mr. CORCORAN. Oh, no. He buys 10 shares at three different prices. If he sold 10 shares, the profit would be the biggest spread between the lowest price at which he bought 10 shares and the highest price at which he sold 10 shares. But if he sold 30 shares, you would take, for the first 10 shares, the biggest spread of profit, for the next 10 shares the next biggest spread of profit, and for the third 10 shares, the next biggest spread of profit. But you would not establish a given spread of profit for all three sales on the widest spread between the lowest price and the highest sale.

Senator BARKLEY. All these transactions are a matter of record. It seems to me the simple way would be to charge him with the actual profit.

Mr. CORCORAN. You are talking now about the sentence that begins at line 11 on page 29. That is intended to apply only to the situation where a director who has a large block of stock, or a stockholder who owns 5 percent of the stock, which he has accumulated over a period, says when he is charged with selling within 6 months, "Oh, this is not a 6 months' swing, because the particular shares I sold within this 6 months I picked up 2 years ago."

It is the same provision you have in the income-tax law. Unless you can prove the actual relationship between certificates, you take the highest price sold and the lowest price bought.

The Stock Exchange comment on this section is very interesting. You will notice it says [reading]:

The New York Stock Exchange has long been aware of these evils, and despairing of effective prosecutions under the laws of all States, we have urged that this situation be cured by the passage of a Federal law governing the incorporation of companies

The only objection the Stock Exchange has to these provisions is that they put a heavier burden on listed companies, because the directors of such companies cannot cheat their stockholders, than it does on unlisted companies, which will still be in the position where their directors can cheat their stockholders.

I hardly think that is a reason why we should not protect what stockholders the law can protect.

Senator BARKLEY. I am not concerned as much about the stock-exchange reaction to this section as I am about the effect on the average man.

Senator GORE. This is aimed at the general evil of officers and directors rigging their stock up and down, and squeezing out their own stockholders.

Mr. CORCORAN. Yes.

Senator GORE. I think the objective is desirable.

Mr. CORCORAN. Before we discuss it in general, may we go on to the next paragraph of the same section, subsection (2) [reading]:

(2) To sell any such registered security, if the person selling does not own the security sold or if the person selling owns the security but does not deliver it against such sale within 5 days

That is to prevent the same director, officer, or principal stockholder from selling short or from selling against the box.

Senator GORE. That is absolute, is it?

Mr. CORCORAN. Yes; it is absolute.

Senator GORE. An officer or director cannot sell the stock of his own concern?

Mr. CORCORAN. He cannot sell short, nor can he sell stock which he holds in his own box for delivery against the eventual short covering.

Senator KEAN. In other words, if he happens to be in Europe, he cannot sell his stock.

Mr. CORCORAN. Within 5 days, sir. There is no difficulty about delivery within 5 days. If you were in Europe and sold your stock, the stock would probably be in a strong box in New York, and you would certainly leave the key with someone who was conducting your affairs. Normally you do not go to Europe and put the key to your safe-deposit box in your trousers' pocket.

Senator KEAN. No; but you hide it away.

Mr. CORCORAN. And leave nobody in charge of your affairs?

Senator KEAN. And leave nobody in charge of that box.

Mr. CORCORAN. Probably, sir, the statute should make an exception for such untrusting people who go away with their strong-box key. It might provide for duplicate keys.

Senator BARKLEY. You might require him to take his securities with him.

Senator GORE. Or turn all the keys over to some key commission. [Laughter.]

Mr. CORCORAN. Subparagraph (3) affects the friends to whom these corporation directors and officers and big stockholders pass on a tip that the stock is going up for a short swing, and through whom they may conceal their own operations, since the friend may be simply acting as an agent through whom the director, officer, or principal stockholder effects the transaction for his own benefit. The paragraph reads as follows [reading]:

(3) To disclose, directly or indirectly, any confidential information regarding or affecting any such registered security not necessary or proper to be disclosed as a part of his corporate duties. Any profit made by any person, to whom such unlawful disclosure shall have been made, in respect of any transaction or transactions in such registered security within a period not exceeding 6 months after such disclosure shall inure to and be recoverable by the issuer unless such person shall have had no reasonable ground to believe that the disclosure was confidential or was made not in the performance of corporate duties.

The other provisions are the same. That provision will make the stock market a lot less fun, but it is probably necessary.

Senator CAREY. That would mean that if an oil company expected to bring in a well, and an officer knew of it and imparted that information to a stockholder, it would be contrary to this law.

Mr. CORCORAN. If that were confidential, and if the stockholder to whom the tip was imparted knew it was confidential and should not have been disclosed. You will notice the provision, sir, in lines 5 to 7 on page 30. Then, if there were any profit in the 6 months' swing in the stock, the company would get the profit.

Senator CAREY. Suppose he did not say it was confidential, but said they had a good well coming in tomorrow, and this fellow went out and bought some stock?

Mr. CORCORAN. The person who is being sued by the company, if he can show that he had no reasonable ground to believe that the disclosure was confidential or was made not in the performance of corporate duties, would not be liable.

Senator BARKLEY. How can the digging of an oil well be confidential? Anybody who passes along would see it.

Mr. CORCORAN. I do not know anything about the oil business.

Senator CAREY. The information is not always given out.

Senator GORE. They can tell whether they are going to produce, or whether it is a dry well.

Senator BARKLEY. They cannot tell until they finish.

Senator CAREY. I do not see how you can determine when the information is confidential and when it is not.

Mr. CORCORAN. That would depend, sir, upon the nature of the business of the company and the nature of the information.

Senator CAREY. Suppose he said, "I have a letter here today from our man out in the field, and I am certain from what he says that we are going to have a good well." The man goes out into the market and buys.

Mr. CORCORAN. Whether that is a revelation of confidential information depends upon all the circumstances surrounding the case.

Senator CAREY. I think you are breeding a lot of lawsuits here.

Senator GORE. If he says, "strictly between us two", that would be confidential.

Mr. CORCORAN. May we go on, sir?

The CHAIRMAN. Yes.

Mr. CORCORAN. Section 16 relates to the accounts and records, reports, examinations of exchanges, members, and others [reading]:

SEC 16 Every national securities exchange, every member thereof, every person transacting a business in securities through the medium of such member, every dealer making or creating a market for securities through the mails or the use of any means or instrumentality of interstate commerce, shall make, keep, and preserve such accounts, correspondence, memoranda, papers, books, and other records and make such reports as the Commission by its rules and regulations may prescribe. The accounts, correspondence, memoranda, papers, books, and other records of such persons shall be subject at any time or from time to time to such periodic, special, or other examinations by examiners or other representatives of the Commission as the Commission may deem necessary or appropriate, and the cost of such examinations, including the compensation of the examiners, shall be fixed by the Commission and paid by the person examined.

Senator KEAN. Why paid by the person examined? If they want to examine anything, let them go and examine it, but let them pay for it.

Mr. CORCORAN. This is one of the costs of administration of the act.

Senator KEAN. It may be one of the costs of administration of the act, but it is a great burden and a special tax on the individual.

Mr. CORCORAN. This, of course, applies only to brokers and dealers on exchanges. It does not apply to the companies listed on the exchanges.

Senator CAREY [reading]:

Every person transacting a business in securities.

And so forth.

Mr. CORCORAN. That is a broker who is not a member of the exchange.

Senator CAREY. It does not say a "broker." It says "person."

Mr. CORCORAN. Transacting business in securities.

Senator CAREY. A person who sells securities is transacting business.

Mr. CORCORAN. No; he is not. We had some talk about that the other day when you were not in here, and we are going to clarify that language. I am quite sure that a man who merely bought and sold a security would not be said to be transacting a business in securities.

Senator BARKLEY. Any more than a man who is in the habit of buying a new suit of clothes now and then would be in the business of buying clothes.

Senator KEAN. If he sold it to another fellow, he would come under this act.

Senator GORE. If he sold it to a second-hand man he would be in trouble.

Mr. CORCORAN. Just one suit?

Senator GORE. Yes.

Mr. CORCORAN. Then we should be careful about that.

Senator KEAN. I do not see why, if the commission wants to get any information, they should not employ their own people to get it.

Mr. CORCORAN. Senator, it comes down to this. If you are willing to make an appropriation large enough to cover the costs of examinations, and pay it out of the Treasury, all right.

Senator BULKLEY. How much would that be?

Mr. CORCORAN. I do not know, Senator.

Senator KEAN. The tax is enough at the present time on all these businesses.

Mr. CORCORAN. I think you will find in practically every State law a provision for the examination of persons whose examination has been thought to be in the public interest, and that the person examined pays the cost of the examination.

Senator KEAN. In banks that is true, but not in other businesses.

Mr. CORCORAN. I know; but certainly, sir, the securities business has been important enough in our national economy so that if you are justified in asking banks to pay the cost of their examination, you are justified in asking exchanges and brokers and dealers to pay for theirs.

Senator BULKLEY. With respect to banks, it is usual to have a statutory number of times a year when they are to be examined, and it is not merely held over them as a club, with the threat "if you don't do so and so, we will examine you, and it will cost you so much."

Mr. CORCORAN. It is merely a question of where you want the burden to fall.

Senator BULKLEY. It is more than that. It is a club held over them. In the case of an arbitrary examination at the discretion of the commission, and at the expense of the party to be examined, it is a club held over them.

Senator KEAN. And they can employ a great many men to examine them.

Mr. CORCORAN. In speaking of the periodic examinations that are required of banks, the policy or wisdom of which has been questioned, since we have learned how statements are dressed for the bank examiner these days, you want to remember that the banking business is a more steady and regular business than is the business of the broker, the dealer, or the exchange. Certainly you would not want to cut down the Commission to a periodic examination. The problem, then, arises: If you feel, as a matter of public policy, that you want the Commission in a position where it is not held down to periodic examinations but in a position where it can make examinations whenever it chooses, the problem arises as to where the cost of such examinations should fall. If the Congress is willing to appropriate enough money so that the Commission may feel that it can make examinations when it is in the public interest to do so, that is perfectly all right. We are merely talking now of where the money comes from.

Senator BULKLEY. I do not think that is all that is involved in it at all.

Senator KEAN. No. There is a great deal more than that.

Mr. PECORA. In the case of banks the law authorizes or directs the Comptroller of the Currency to make a minimum number of examinations a year.

Senator BULKLEY. Exactly, and everybody that goes into the banking business knows what he is up against in that respect.

Mr. PECORA. But there is nothing in the law which prevents the Comptroller of the Currency from making more than the minimum number of examinations of the bank.

Senator KEAN. But it is a custom.

Mr. PECORA. There is no record of the Comptroller of the Currency having abused that authority to the prejudice of a bank.

Senator KEAN. The other side is this, that in the income-tax administration they go around and examine your books. In my office I have one pretty nearly all the time, I think.

Senator BARKLEY. You ought not to have so much business.

Mr. PECORA. From some of the evidence this committee has heard, there have not been enough examinations by income-tax agents.

Senator KEAN. I do not pay for that, and I do not expect to pay for that.

Senator BARKLEY. You do if they find anything wrong.

Senator KEAN. Yes.

Mr. CORCORAN. Section 17—

Mr. REDMOND (interposing). Mr. Corcoran, is there not a final sentence to that last section of some importance?

Mr. CORCORAN. It is something that has worried you? It has never worried me. Perhaps you would like to make the argument before the committee.

Mr. REDMOND. I do not think you read it to the committee.

Mr. CORCORAN (reading):

Any representative of the Commission designated by it shall have access to the premises or any part thereof of any national-securities exchange and the right to attend any meeting or proceeding of the exchange or any committee thereof

After all, under the theory of this bill, exchanges and exchange committees are no longer private clubs but are instrumentalities of

the public. Certainly there is no reason I can see why a representative of the Commission should not be permitted, if it is thought desirable, to attend meetings of an exchange.

Mr. REDMOND. It raises simply the question as to whether the exchanges are going to be operated by the Federal Trade Commission, or whether the exchanges are going to be left as independent bodies subject to regulation.

Mr. CORCORAN. Not operated, sir—merely an observer setting at the meeting. This does not say he shall run the meeting.

Mr. REDMOND. No; but every bit of confidential information would be immediately available to that representative, and might be used by him, apparently, for any purpose.

Mr. CORCORAN. Sir, under the circumstances and in view of the need for public regulation of the stock exchanges, is there any strictly stock exchange business that is confidential any more?

Mr. REDMOND. I think there is, Mr. Corcoran.

Mr. CORCORAN. You mean you would like to have it so.

Mr. REDMOND. No. I think it exists, but that is just a different point of view.

Mr. CORCORAN. May we go on to section 17?

The CHAIRMAN. Yes.

Mr. CORCORAN. "Liability for misleading statements." [Reading:]

Sec 17 (a) Any person who shall make or any person, including any director, officer, accountant, or other agent of such person, who shall be responsible for the making of any statement in any application, report, or document filed with the commission, which statement is, in the light of the circumstances under which it was made, false or misleading in respect of any matter sufficiently important to influence the judgment of an average investor shall be liable to any person (not knowing that such statement was false or misleading) who shall have purchased or sold a security the price of which may have been affected by such statement, and the person injured may sue in law or in equity in any court of competent jurisdiction for the damages caused by such statement, unless the person sued shall sustain the burden of proof that he acted in good faith and in the exercise of reasonable care had no ground to believe that such statement was false or misleading.

That is the provision of the Securities Act toned down a little.

Senator KEAN. I think that is all right.

Senator GORE. Who is an "average investor"?

Mr. CORCORAN. I think that is as close as you can come to it. I have heard the criticism that no one knows who the average investor is, but I do not know how otherwise you are going to describe the standard you are trying to uphold.

Subparagraphs (b) and (c) establish a rough rule of damages in the event that the person cannot prove his actual damage. Subparagraphs (b) and (c) need to be redrafted to make certain that if actual damage is provable, the injured person can collect no more than the actual damage. This rule of thumb is substantially that which we have discussed earlier in connection with manipulations and pools.

Mr. REDMOND. To be limited to the actual damage?

Mr. CORCORAN. Yes; if there is any actual damage provable.

Mr. REDMOND. You would not allow them to recover unless there was actual damage, would you, Mr. Corcoran?

Mr. CORCORAN. What we are talking about is a situation where, for instance, an investor has purchased on the basis of a false report

whereas he might not otherwise have purchased and has not sold out. In that case I do not know what the actual damage is.

Senator COSTIGAN. You might allow nominal damages.

Mr. CORCORAN. No; not nominal damages.

Mr. REDMOND. Suppose the stock is selling higher than he purchased it.

Mr. CORCORAN. Then there is no damage.

Mr. REDMOND. There is nothing which would prevent his recovering under the theory you just advanced.

Mr. CORCORAN. As I have just said, we have discussed reworking these sections concerning damages for civil liability, for manipulations.

Section 18—

Senator KEAN. I want to talk about subparagraph (c) of section 17. That I regard as nothing but blackmail.

Mr. CORCORAN. Then subparagraph (b) is blackmail, too.

Senator KEAN. No; because you say "2 years after the discovery." Two years after filing the papers would be all right, but 2 years after discovery means nothing but blackmail.

Mr. CORCORAN. You are talking about subparagraph (e). I thought you said (c). I am very sorry.

Senator KEAN. You are right. I have made a mistake. Subparagraph (e) is nothing but blackmail. I think that the suit should be brought within 2 years after filing the papers.

Mr. CORCORAN. But very often you do not discover—

Senator KEAN. They discover it after the market has gone down, and after something has happened, and they are looking for mistakes, and years afterwards there is a liability that carries to your grandchildren and great-grandchildren.

Mr. CORCORAN. You mean that there should be a cut-off—say 10 years after the basis of suit actually happened?

Senator KEAN. I think it should be 6 years after the thing happened, at most. That is, the legal liability.

Mr. CORCORAN. What you mean to say is that there should be a provision, or statute of limitations, in here to the effect that the action may be maintained at any time within 2 years after the discovery of the violation, but in no event more than 6 years after the actual filing of the false report?

Senator KEAN. I am ready to take that.

Senator CAREY. Do you not think it will be discovered within 2 years?

Senator KEAN. It ought to be. I think it ought to be within 2 years.

Senator CAREY. This says he has to sue within 2 years.

Senator KEAN. After discovery.

Senator CAREY. Would he not have discovered it, if he had bought stock? Would he have to wait 2 years?

Senator KEAN. Suppose he waited 10 years, and some fellow found out that there was a mistake in a paper 10 years afterward.

Senator CAREY. You mean he discovered a fraud was perpetrated?

Senator KEAN. Ten years afterward, or 20 years afterward.

Mr. CORCORAN. There is a provision in the Securities Act which requires you to bring suit within a certain time after the discovery, but there is a cut-off at 10 years. You wish something analogous to that?

Senator KEAN. I think the suit should be brought within 2 years of the filing of the paper.

Mr. CORCORAN. That is pretty short.

Senator KEAN. I do not think so.

The CHAIRMAN. The other suggestion is better.

Mr. PECORA. Within 2 years after discovery, but in any event not more than 6 years after the violation.

Senator KEAN. That is the legal limit, but this only leads to blackmail.

The CHAIRMAN. We will consider that.

Senator BARKLEY. I do not quite understand that blackmail reference.

Senator KEAN. You would if you were in the business.

Senator BARKLEY. If I were in the blackmail business; yes.

Senator KEAN. If you were in the blackmail business you would understand it very well.

Mr. CORCORAN. Section 18 Some of this we discussed yesterday, down to, I should say, paragraph (c). Is it satisfactory to you, Mr. Redmond, if I start at (c)?

Mr. REDMOND. Oh, yes.

Mr. CORCORAN. Jumping over to page 34 of the bill [reading]:

The authority above given the Commission shall include, among other things, authority to prescribe such rules and regulations for national securities exchanges, their members and persons transacting a business in securities through such members, in addition to those specifically provided in this act, as it may deem necessary or appropriate in the public interest or for the protection of investors, and may by its rules and regulations more specifically define the form and procedure to be followed in carrying the provisions of this act into effect. The Commission, among other things, may prescribe the time and method of making settlements, payments, and deliveries—

Which amounts to this, that if an exchange is not doing its job in respect of the rules for operating the exchange, the Commission can step in and prescribe the rules under which the exchange shall operate in practically all particulars affecting the investing public.

Senator KEAN. In other words, it can run the exchange.

Mr. CORCORAN. In a very extreme case, yes; it can run the exchange as an alternative to rescinding its license and putting it out of business altogether, which practically every other proposal for regulating the exchanges provides for. [Reading further:]

The Commission, among other things, may prescribe the time and method of making settlements, payments, and deliveries—

That is with relation to transactions in stocks and bonds—

the time and method of calculating margin requirements, and the time and method of closing out undermargined accounts

Senator KEAN. I think that is very bad. If a fellow is undermargined and will not pay up his margin, I want to sell him out; I want my money.

Mr. CORCORAN. Of course, you represent the broker's attitude, sir; you are a broker. But there may be a certain public desirability that there be a locus penitentiae for the fellow to whom you have given notice at 2 o'clock in the afternoon to "pony up" by 5 in the afternoon.



Senator KEAN. I might get wiped out in the meantime.

Mr. CORCORAN. Very seldom, sir. I think it is pretty well established that brokers very seldom get wiped out through their relationships with their customers.

Senator KEAN. A lot of them have lost a lot of money in the last few years.

Senator BARKLEY. That was not because they did not wipe out their customers in plenty of time.

Senator KEAN. A lot of them have lost a lot of money themselves.

Senator GORE. In dealing on their own account, you mean?

Senator KEAN. No; I did not mean that.

Senator GORE. Maybe they operated on insufficient margin?

Senator KEAN. No; they had plenty of margin to start with, but they were carried too long; the market was not broad enough. This is a question of allowing a political body to tell you when you can sell out and when you can't. The point is that if that political body does not want you to sell out, they can say you cannot sell; and how are you going to protect yourself?

The CHAIRMAN. Where is that, Senator?

Senator KEAN. The first two lines at the top of page 35.

Senator BARKLEY. What are you driving at, near the top of page 35, where you say:

The commission, among other things, may by rules and regulations prescribe rules for the conduct of business on exchanges, for the classification of members—

What do you mean by that?

Mr. CORCORAN. Sometimes on some exchanges you have variations in memberships. On the New York Exchange all members have equal privileges. That is not true of all exchanges. [Reading further:]

The commission, among other things, may by rules and regulations prescribe rules for the conduct of business on exchanges, for the classification of members, for the election of officers and committees to insure a fair representation of the membership, for the suspension, expulsion, or disciplining of members, for the listing or striking from listing of any security with right of appeal by the issuer to the commission, for the reporting of transactions on the exchanges and upon tickers maintained by or with the consent of any exchange, including the method of reporting short sales, sales of securities in default in bankruptcy or receivership, and sales involving other special circumstances. The commission may fix or prescribe the method of fixing uniform rates of commission, interests and other charges, may prescribe minimum units of trading, rules limiting the manner, method, and place of soliciting business, rules for odd-lot purchases and sales, rules regarding minimum deposits on marginal accounts, and rules limiting or prohibiting the registration or trading in any security within a specified period after the issuance or primary distribution thereof—

That is to prevent listing securities on an exchange before they have been sufficiently broadly distributed.

Senator GORE. Are these the general powers of the Commission?

Mr. CORCORAN. Yes, sir.

The CHAIRMAN. Does the bill give the Commission power to fix interest rates on call loans?

Mr. CORCORAN. The word "interest" here relates to charges made to customers for carrying an account. When you buy on margin,

of course you borrow from a broker. He charges you interest on the debit balance.

The CHAIRMAN. I understand that; but is there any provision in the bill reaching that question of interest on call loans?

Mr. CORCORAN. No, sir; but since all call loan borrowing will have to be done through members of the Federal Reserve System, they will have a certain control over that

The Commission has power to—

Prescribe rules governing the carrying of accounts and to prohibit fictitious or numbered accounts and require the disclosure of the real and beneficial owners thereof. The Commission shall have power to fix the hours of trading, and, if the public interest in its opinion so requires, summarily to suspend trading in any registered security upon any registered exchange for a period not exceeding 90 days

(d) The rules and regulations of the Commission shall be effective upon publication in the manner which the Commission shall prescribe

Senator GORE. Right there you suspend trading. Would you not limit the rights—

Mr. CORCORAN. It is suspending a stock from trading because you think there is something wrong in the trading. I think even the Exchange does that. It suspends operations in a stock when it finds there is something wrong going on.

Taking the criticisms of those two sections, let us first deal with a minor criticism of section (d). That section was taken verbatim out of the securities act. Mr. Whitney points out that the rules and regulations go into effect overnight without adequate notice. I would suggest, Mr. Chairman, that, if there is any feeling about that, there is no objection to a provision for adequate and reasonable notice prior to the time the rules and regulations go into effect.

Section (c) raises a frank problem of policy, whether to put the regulatory commission in the position, wherever an exchange does not promulgate adequate rules and regulations for the handling of the public's money on the exchange, to step in and compel the exchange to change its rules and regulations. Understand that at the present time the public's money is subject to rules and regulations drawn up at the absolutely untrammelled discretion of an exchange operated like a private club, and that you are giving the regulatory commission here no more power than the stock exchange itself possesses over the operations of the public's money in the market without any law.

I think Mr. Redmond wants to say something about that.

Mr. REDMOND. No. I think you have summed up the situation. It is the power to operate which is being vested in a Federal administrative body.

Mr. CORCORAN. It is a power to step in in the event the Commission finds the method of operation being undertaken by the exchange unsatisfactory to it

Mr. REDMOND. There is no such limitation to the provision.

Mr. CORCORAN. I admit it comes down to the same thing, but I am just putting it from the other point of view.

Mr. REDMOND. I should, I think, point out that some of these powers go beyond the powers of the governing committee of the Exchange and involve matters that can only be changed by an amendment to the constitution of the exchange.

Mr. CORCORAN. But still completely within the power of the exchange as an exchange.

Mr. REDMOND. If you assume that all the members would vote in a particular way, yes; but if they should vote differently, not even the governing committee nor any other group of members of the exchange could possibly make the change.

Mr. CORCORAN. But the Exchange as a whole could make the change. It is completely within its power

Mr. REDMOND. Yes

Senator KEAN. But you do not think that, given this power, a commission is not going to step in right away, do you?

Mr. CORCORAN. No; I should think that a commission in self-protection—

Senator KEAN. It would step in under any circumstances and exercise the full powers conferred by the law.

Mr. CORCORAN. I do not think that the Commission would. I think a commission with any intelligence would be discreet enough not to try to run the Stock Exchange. But if the Commission is to be in position to revoke the license of and completely suspend an exchange, it certainly should be in a position to do something less than that and change the rules of the exchange or any particular rule of the exchange. Otherwise, you put the Commission in a position where it cannot correct an abuse on an exchange short of suspending the exchange and completely ruining the market for its securities.

Senator GORE. You do not think that would be desirable?

Mr. CORCORAN. I think in some cases it may be necessary, but it certainly is not desirable, sir, to empower the Commission to change bad conditions on an exchange only by abolishing the exchange.

Senator GORE. Let me ask you this, Mr. Corcoran. I suppose you have considered this, but do you think it an impossibility by this act, if those powers were exercised, that it might drive the exchanges to Montreal?

Mr. CORCORAN. We are ready for Montreal, sir; that comes in in section 28.

Senator GORE. You are going to regulate Canadian exchanges? I think that is a good idea. But what I had really in mind was this heavy typewriter or teletype machine. I can sit in this room and write on such a typewriter and it will also operate one in Montreal. Does not the matter involve an element that is hard to reach, appreciating the persistence of the bootlegger in his determination to survive?

Mr. CORCORAN. We have done our best with Montreal.

Senator GORE. If there are some people here who really would like to be excused from your regulation and who want to transact business in Montreal, do you think you ought to pursue them up there?

Mr. CORCORAN. Yes; I think so. I think so, particularly because one of the arguments made against regulation is the threat that if you try to regulate the business of American securities in the United States it will all run over to London or Montreal or Amsterdam.

Senator KEAN. Are they not entitled to?

Mr. CORCORAN. Yes; except that if you are going to regulate the American public's dealing in their own securities you should not let that dealing get out of your jurisdiction.

Senator GORE. You want to pen them up and then regulaate them?

Mr. CORCORAN. We will give the Commission power to prescribe rules and regulations for such cases as seem in the public interest.

Senator KEAN. I would like to state here that when I was a boy I was with a house that was not a member of the exchange. They succeeded in making more money than almost anybody in Wall Street at that time.

Mr. PECORA. That is probably still true of some individuals.

Senator KEAN. They made a great deal of money. They would prepare the mail to go abroad, and I would take that mail to the steamer, putting English stamps on it, and it was delivered to the steamer by hand, which was not interstate commerce, because when I gave it to the purser of the steamer they said it was in the custody of the Queen and it was all right. The law would not cover that.

Senator GORE. Oh, yes.

Senator KEAN. No.

Senator GORE. We have got to take the Queen into this scheme.

Senator KEAN. All foreign mail was delivered by hand to the purser of the steamer.

The CHAIRMAN. A foreign ship?

Senator KEAN. Yes. The mail had English stamps on it.

The CHAIRMAN. Proceed, Mr. Corcoran.

Mr. CORCORAN. We are running short on time, sir. May I just simply say that subsection (e) provides for the power of the Commission to subpoena witnesses in connection with investigations under this bill. The stock exchange objects to the provision in subsection (e). I think that is a little bit unusual, because, as a matter of fact, these are practically the provisions of the Martin act of New York, of which the stock exchange urged the passage so that the attorney general could deal with people whom it did not like. This is just simply turning around the very act which the stock exchange pushed through the Legislature of New York so it may apply to the stock exchange as well.

Mr. REDMOND. I do not know whether it is your youth or not, but the history of the passage of the Martin Act which you have just given is slightly inaccurate.

Mr. CORCORAN. I had my information, sir, from an assistant to the Attorney General of the State of New York, who is in this room.

Mr. REDMOND. I realize that there has been a great deal of information given you and that you have testified from information quite freely; but aside from that, there is a difference, as I understand the language of the two acts. This purports to prevent a witness who is examined from giving any information in regard to the examination to anybody except with the permission of the Commission.

Mr. CORCORAN. That is to protect the market from leakage as to what is going on in the witness room. In the event that an examination is being made which eventually does not end up in the pillorying of the stock, there should not be leakage from the examination room that may affect the market or hurt the stock.

Mr. REDMOND. Then you want to prevent him, as I see it, from giving information of the examination. Surely he ought to be allowed to consult his own counsel as to what transpired in the exam-

inations before the representatives of the Commission. Otherwise we have come to a star-chamber proceeding of a most unique kind.

Mr. PECORA. Do you not recognize the language here as being almost verbatim from the Martin Act?

Mr. REDMOND. I do not, quite frankly; I am not as familiar with it as Mr. Corcoran seems to think I am.

Mr. PECORA. This language was taken verbatim from the Martin Act, and that has been in operation, now, in New York State for fully 10 or 12 years and it has been upheld by the court there.

Mr. REDMOND. This provision?

Mr. PECORA. Yes; it is frequently invoked by the attorney general of the State of New York, practically every week of the year; and I never have heard any criticism of it from the stock exchange. I have heard nothing but encomiums of praise from the stock exchange with respect to the Martin Act.

Senator BULKLEY. What language are you referring to?

Mr. PECORA. The concluding sentence of subdivision (e) on page 37.

Mr. REDMOND. I will be delighted to compare it with the Martin Act and see whether the context is the same, Mr. Pecora.

Mr. PECORA. If you will take the trouble to do that, you will verify my statement.

Mr. REDMOND. But there must be some further limiting language. Certainly it has not been enforced in New York, to my knowledge, to prevent a man from consulting his own counsel.

Mr. PECORA. I am telling you that this is a provision of the Martin Act which has been practically lifted bodily out of the Martin Act and put in this subsection; and it is invoked, I venture to say, practically every business day of the year by the attorney general's office in the State of New York.

Senator CAREY. Does this deny an attorney to a man summoned as a witness?

Mr. PECORA. That construction has never been placed upon it in any court that I know of. The obvious purpose of the section is clear to everybody, I think, and it is just as Mr. Corcoran has indicated. There may be an abuse of power under any kind of statute, regulatory or otherwise; but that is no reason for not enacting laws designed for the public interest.

Senator GORE. This does not give the Commission power to prescribe what a witness shall testify to, does it?

Senator KEAN. Not quite; almost.

Mr. CORCORAN. Section 19, "Liability of controlling persons."

Without reading those paragraphs, the first is taken verbatim from the Securities Act. The purpose is to prevent evasion of the provisions of the section by organizing dummies who will undertake the actual things forbidden by the section.

Subsection (d) has come in for some criticism. That says, in effect, that if the wife of a director sells short the stock of her husband's company, or if his child or parent residing with him sells it short, or if a trustee for him sells it short, he has the burden of proof that the transaction was not done with his approval, nor for the purpose of enabling him to evade the prohibition against his selling the stock short.

Senator KEAN. Do you think that this would prevent a banking house or brokerage house from organizing a separate corporation to buy and deal in securities?

Mr. CORCORAN. If it controlled that separate corporation house that bought and dealt in securities, it would be responsible for the acts of that separate corporation under this bill.

Senator KEAN. You are going to prevent a broker from buying securities for his own account?

Mr. CORCORAN. Under the provisions as they are now drawn, you have to be a broker only; yes.

Senator KEAN. You cannot take customers' accounts?

Mr. CORCORAN. No.

Senator KEAN. The only other way you can do it is by organizing a separate firm, such as some people have done, or organizing a corporation and have the same people own the stock of that corporation.

Mr. CORCORAN. Of course, as the bill is now drawn you cannot do that; but if the bill were amended to provide for that, then the dealing of that separate corporation would not be a violation of the act. The controlling originating house, the house that set up the separate corporation, would not therefore be subject to any liability under the act for doing both kinds of business.

Senator KEAN. Don't you think that ought to be allowed?

Mr. CORCORAN. We went over that ground yesterday, sir. That is away back in section 10.

Senator KEAN. It seems to me, for instance, that a firm that I happen to know something about, which is a large dealer in municipal bonds—they are not listed on the exchange, but do a very large business—suppose we wish to continue to do that business; under this bill, they would have to either get out of the exchange or else give up that business?

Mr. CORCORAN. That is true, sir. That ground we went over, you will remember, Senator, for nearly an hour yesterday.

Section 20 This section gives power to the Commission to enforce the act by injunction, by order. I am jumping to page 40, subsection (ii). Under this paragraph the Commission has power, after appropriate notice and opportunity for hearing, to make an order suspending for a period not exceeding 12 months, or withdrawing altogether, the registration of a national securities exchange if the Commission finds that such exchange has violated any provision of this act or of the rules and regulations promulgated thereunder or has failed to enforce compliance therewith by a member or an issuer of a security registered thereon, or withdrawing altogether the registration of a security the issuer of which has failed to comply with the provisions of this act or the rules and regulations promulgated thereunder.

Senator KEAN. I would like to go back to (d) for a moment on page 38. Would that not prevent a son from being a broker if his father were an underwriter or dealer?

Mr. CORCORAN. Unless he could sustain the burden of showing—of course the son would have to live with the father—unless he could sustain the burden of showing that his brokerage transactions were not carried out with the father's approval nor for the purpose of enabling the father to evade this provision.

Senator BULKLEY. The easiest way would be to acquire separate residence.

Senator CAREY. Why did you not put the mother in there?

Mr. CORCORAN. They are both in.

Senator CAREY. A man might be dealing for his son.

Mr. CORCORAN. The bill says, a child or a parent.

Senator CAREY. The family is not all in.

Mr. CORCORAN. Yes; the whole family is in, sir.

Senator KEAN. That would prevent a son becoming a member of the exchange if his father dealt in securities.

Mr. CORCORAN. Only, sir, if it could be shown that the son was acting as a dummy for the father.

Senator KEAN. I do not know whether it would require a dummy or not.

Mr. CORCORAN. May I go on, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. CORCORAN. We were on subparagraph (ii), on page 40, providing that after appropriate notice and opportunity for hearing the Commission may suspend the registration of a securities exchange; that is, withdraw its license to do business, or it may withdraw the registration of a particular security the issuer of which has failed to comply with the provisions of the act or the rules and regulations made thereunder. That is an enforcing provision to the effect that if an exchange will not comply with the act the Commission may shut up the exchange, or if the issuer of a particular security on the exchange will not comply with the act, the Commission may force the exchange to strike the security from the list, just as the exchange now, for reasons, strikes a security from the list when the issuer will not comply with the regulations of the exchange.

Senator GORE. It is your theory, at least, that most of the evils that proceed from dealing in stocks, and so forth, result from machinations and sinister activities on the part of the stock exchange as such, or from brokers and outsiders and officers and directors who are manipulating their own stock? Who is the chief sinner in this scheme?

Mr. CORCORAN. It is hard to tell who is the chief sinner, sir; there are so many sinners.

Senator GORE. I had figured that the stock exchange itself had not been so guilty.

Mr. CORCORAN. Not the New York Stock Exchange; but there are many others, sir.

Senator GORE. I know there are about 18 that operate more or less, and there are more than that that are inconsequential. Of course, the New York Stock Exchange is the head and front of the whole business. A great many abuses have been perpetrated by officers and directors and brokers and others.

Mr. CORCORAN. Your investigating committee can tell you more of that than I can.

Senator GORE. I am more or less familiar with that. I hesitate to strike with paralysis the exchange itself.

Mr. CORCORAN. Of course, this is the extreme remedy if everything else fails.

Senator GORE. Yes; capital punishment is the extreme limit; that is true.

Mr. CORCORAN. Somewhere abuses have to stop, sir.

Senator CAREY. There is no appeal from any ruling of the Commission, is there?

Mr. CORCORAN. Oh, yes; there is an appeal to the courts. But the findings of fact of the Commission, just as the findings of facts of a jury when you appeal to the upper court, are final.

Senator GORE. Which would be the worse—to “fly to evils that we know not of”—which would have more serious consequences, to allow the stock exchange to continue to function and limit your regulations largely to those who on the outside abuse the privilege afforded by the exchange, or just to close the exchange entirely and say, “We are going to cut this business out; you cannot operate this business; you cannot function at all”?

Mr. CORCORAN. I am one of those who just believe the stock exchanges have a function in the economic system; so you should not kill them.

Senator GORE. Do you underscore the word “just”—that you just believe?

Mr. CORCORAN. I withdraw that word, sir.

Senator GORE. I think it is further proof of your very keen intelligence.

Mr. CORCORAN. No; I believe in stock exchanges. I do not believe you should kill them. I do believe you should regulate them—not because I have any social philosophy in regard to the subject—but because as a sheer matter of economic wisdom they should be regulated. That is the only test of statesmanship. They have cost many millions of dollars; they have cost 12,000,000 men their jobs—

Senator GORE. Oh, yes; but you cannot center that on the stock exchange. The point is, would conditions be worse without any stock exchange at all than they are with it?

Mr. CORCORAN. Are you proposing to eliminate the stock exchanges completely?

Senator GORE. No. I was wondering if you were not; if it came to that.

Mr. CORCORAN. No, sir.

Senator KEAN. Are you not coming pretty near it under this bill?

Mr. CORCORAN. No.

The CHAIRMAN. Proceed, Mr. Corcoran.

Mr. CORCORAN. The next subsection is (iii) which permits the Commission to suspend any member or officer of an exchange who it finds is violating any provision of this act or the rules and regulations made thereunder, or has effected any transaction for any other person whom he has reason to believe is violating in respect of such transaction any provision of this act or the rules or regulations made thereunder. That is giving the Commission as a last resort the power to suspend a member.

Section 21 provides that all hearings by the Commission shall be public. There has been an objection made to that—that possibly trade secrets will be made public to the advantage of foreign competitors. I think we went over some of that ground yesterday—that there were very, very few of those secrets, anyway, and that there



is no reason why anything in a hearing before the Commission should involve such trade secrets; and that even if it did, it is more important to establish the principle of publicity on these things than to have the same sort of star-chamber proceeding which the stock exchange is worried about under the provisions of the Martin Act.

The same comment relates to section 22 with regard to the public character of all information filed with the Commission.

Section 23 has to do with court review of orders. It provides that there may be a review of orders of the Commission by a Federal court, with the proviso which is common in connection with the review of all proceedings of administrative bodies, that the findings of the Commission as to the facts, if supported by evidence, shall be conclusive. That is, the case is not retried over and over again in every appellate court, a provision which is the very essence of the right of appeal in any court system.

Mr. REDMOND. Might I just ask you one question—because a moment ago you made the statement that findings of fact are conclusive here just the same as the findings of a jury are conclusive. That is hardly true, is it? The findings of a jury are conclusive if supported by the weight of the evidence.

Mr. CORCORAN. This says, "If supported by evidence."

Mr. REDMOND. Shall be conclusive?

Mr. CORCORAN. Yes.

Mr. REDMOND. So that means any evidence whatsoever. It is not a question of the weight of the evidence as would be involved in an appeal from a jury.

Mr. CORCORAN. I do not know the difference between weight of evidence and evidence. This says that if the findings of facts are supported by evidence, they shall be conclusive. I do not see what you gain, sir, by putting some more words in.

Mr. REDMOND. Except that we might get the right that court in review could set aside a finding of the commission as being contrary to the evidence; whereas, the way I read it, if the commission has a finding of fact and if there is any evidence of any kind to support it, no court can set aside that finding.

Mr. CORCORAN. I must say I do not really understand the difference. If the finding is supported by evidence, you want to require it further to be supported by the preponderance of the evidence?

Mr. REDMOND. No; it is the same question as you get in an appellate court, setting aside the verdict of a jury.

Mr. CORCORAN. I do not really see what the difficulty is. If there is any worry about it, Mr. Chairman, I would see no objection to making the same provision—

The CHAIRMAN. It is in accordance with the Supreme Court decisions on cases coming up from the Interstate Commerce Commission.

Mr. REDMOND. That is true, Mr. Chairman, because the Interstate Commerce Commission is an administrative commission charged with the administration of a very complicated act, where the evidence in regard to findings might be very difficult of submission to a court of appeal, and, therefore, to facilitate administration, such a provision was included in the Interstate Commerce Act and has been

supported by the Supreme Court of the United States. But here we would be dealing with facts that are very simple, and yet of a very vital nature on which the business life of a member of the exchange would depend, because if the man had violated, or even intended to violate, one of the numerous provisions of this bill, the Commission could expel him or compel his expulsion from the exchange. I see a vast difference between the administrative necessity that makes a provision like that wise in the case of the interstate commerce law, and the present bill.

Mr. CORCORAN. Mr. Redmond, is it not true that just as complicated factual situations can arise under this act as under the Interstate Commerce Act?

Mr. REDMOND. I do not think so.

Mr. CORCORAN. Do you want to try the evidence all over again in the courts? Otherwise—

Mr. REDMOND. Have you ever been in a rate case before the Interstate Commerce Commission? Because I know of nothing more complicated.

Mr. CORCORAN. No.

Mr. REDMOND. And it was proceedings of that character that the courts were not felt competent to pass upon and review the evidence.

Mr. CORCORAN. Suppose you had a very complicated case here and were trying to prove an indirect participation in a pool; is that not almost as complicated?

Mr. REDMOND. There may be complications; but then the court, from the evidence, can determine whether the findings are justified or not.

Mr. CORCORAN. But we are talking now, if I get the distinction, about the difference between being supported by evidence and being supported by the weight of evidence. Is that it?

Mr. REDMOND. It is a question as to whether a court can set aside a determination of a jury as contrary to the weight of the evidence.

The CHAIRMAN. We will consider that and take the matter up in detail. It is a question of whether we want the court to try the whole case over again on the facts and the law, or let the facts stand as found.

Mr. CORCORAN. Is there anything further you want to take up, Mr. Redmond?

Mr. REDMOND. No.

Mr. CORCORAN. Section 24 relates to penalties. [Reading:]

Any person who wilfully violates any provision of this act or any rule or regulation made thereunder, or any person who shall make, or any person, including a director, officer, accountant, or agent thereof who wilfully is responsible for any statement in any application, report, or document filed with the Commission, which statement is, in the light of the circumstances under which it was made, false or misleading in any matter sufficiently important to influence the judgment of an average investor, shall upon conviction be fined not more than \$25,000 or imprisoned not more than ten years, or both except that when that such person is an exchange, a fine not exceeding \$500,000 may be imposed

I think that section speaks for itself.

Senator GORE. The courts require penal sections to be pretty explicit in defining what constitutes a crime. I am wondering whether "to influence the judgment of an average investor" would be sufficiently definite.

Mr. CORCORAN. It is as definite, sir, as you can make the proposition.

Senator GORE. That may be true. But courts sometimes hold that when you do your best you have not done enough; and I was wondering whether, in your judgment, that defines anything at all of a penal nature.

Mr. CORCORAN. That, sir, is for final determination by the court. To say whether you can make this a crime or not—I should certainly think that the evil you are trying to reach, and the practical limitations of language in such circumstances are factors which have to be taken into consideration in applying a philosophy of what can be put in a criminal statute.

Senator GORE. That is the point. You would have to prove what an average investor was, and the facts proven would have to be in addition to that what were calculated to influence the average investor's mind. Of course there is no such thing as an average man. I remember that the clerk of the parish in which the University of Oxford is located reported that for 20 years the crop was below the average. It is pretty hard to picture averages.

Mr. CORCORAN. Section 25 relates to the jurisdiction of offenses and suits. These provisions have been taken practically verbatim out of the Securities Act and are merely provisions for the jurisdiction of the courts for violation of the act.

Section 26 covers the effect on existing law and provides [reading]:

The rights and remedies provided by this act shall be in addition to any and all other rights and remedies that may exist at law or in equity, except that this act shall supersede such laws of any state as are inconsistent with the provisions or purposes of this act and such laws of any state as provide for the supervision or regulation of the administration or conduct of business on any exchange which is licensed by the Commission

An objection has been made to that, that the superseding of State law by a national law in this case is unconstitutional. I understand, Senator, that the committee is permitting a brief to be submitted on the constitutionality of the act, rather than endure the rather doubtfully valuable process of arguing it out orally. Of course, this problem will be taken up with all the other constitutional questions.

Senator CAREY. Has there been any law that has been passed with that provision in it?

Mr. CORCORAN. That effect is true of any Federal statute in which the national power invades a field which, prior to the time the national power was exercised, was permitted to—

Senator CAREY. Does that mean that any law of New York State affecting the New York Stock Exchange would become inoperative after this law became effective?

Mr. CORCORAN. Insofar as it was inconsistent with this law.

Senator GORE. The bankruptcy law, for instance?

Mr. CORCORAN. Like the Federal bankruptcy laws superseding State insolvency laws, the national law drives out all systems in so far as they are inconsistent. That is a situation you always have. A State can legislate additionally to the Federal law, but it cannot legislate inconsistently with it.

There is, therefore, a flexible discretion left to the Commission in this provision to take care of American securities already listed on foreign exchanges, or to permit the Commission to take care of the problem of foreign arbitrage mentioned in Mr. Whitney's brief.

Subsection (b) of section 26 provides that [reading]—

Nothing in this act shall be construed to modify existing law with regard to the binding effect on any member of any exchange of any action taken by the authorities of such exchange to settle disputes between members or with regard to the binding effect of such action on any person who has agreed to be bound thereby or with regard to the binding effect on any member of any disciplinary action taken by the authorities of the Exchange as a result of violation of any rule of the Exchange, insofar as the action taken is not inconsistent with the provisions of this act or the rules and regulations of the Commission thereunder

That leaves the jurisdiction of the exchanges over their members intact except insofar as it is exercised in a way inconsistent with the act or the rules and regulations of the Commission under the act.

Section 27 covers the validity of contracts [reading]:

Any condition, stipulation, or provision binding any person to waive compliance with any provision of this act or of any regulation promulgated pursuant thereto, or of any rule required by such regulation shall be void

That is taken verbatim out of the Securities Act.

Subsection (b) provides as follows [reading]:

Every contract made in violation of, or the performance of which involves the violation of, any provision of this act or of any rule or regulation thereunder shall be void as regards any cause of action arising after the effective date of such provision, regardless of whether the contract is made before or after such effective date

There again, the Federal power simply steps in. There is no contract clause binding the Federal Government.

Now, Montreal—this is to prevent the flight of American securities from American exchanges to foreign exchanges. [Reading:]

It shall be unlawful for any broker or dealer, directly or indirectly, to make use of the mails or of any means or instrumentality of transportation or communication in interstate commerce for the purpose of effecting on an exchange situated in a place not subject to the jurisdiction of the United States any transaction in any security the issuer of which is a resident of, or is organized under the laws of, or has its principal place of business in, a place subject to the jurisdiction of the United States except in accordance with such rules and regulations as the Commission may prescribe

There is, therefore, a flexible discretion left to the Commission in this provision to take care of American securities already listed on foreign exchanges, or to permit the Commission to take care of the problem of foreign arbitrage mentioned in Mr. Whitney's brief.

SEC 29 Registration Fees Every national securities exchange—

Senator GORE (interposing). Pardon me just a moment. That would embrace, you think, these typewriters?

Mr. CORCORAN. Teletype? Certainly, sir. That is an instrumentality of communication in interstate commerce.

Senator CAREY. Could a broker established in Montreal do business in this country?

Mr. CORCORAN. As long as he did not keep communication with this country in connection with the business through the mails.

Senator CAREY. He could not have customers in this country deal on that exchange?

Mr. CORCORAN. Not if he had to use the mails or instrumentalities of interstate commerce to keep contact with their business on that exchange.

Senator CAREY. How could you prosecute a broker in Montreal who did establish? You could bar him from the mails. You could not prosecute him.

Mr. CORCORAN. No; you could not. You could bar him from the mails, but you could not prosecute him unless you could catch him.

Senator GORE. Let me ask you this: There is a little town up there on the border about 35 miles from Montreal. He could concentrate these orders and messages and so on and run over to Montreal and get them. Would that be embraced in this?

Mr. CORCORAN. If he operated completely within Montreal?

Senator GORE. How is that?

Mr. CORCORAN. If he operated completely in Montreal?

Senator GORE. I mean if on this side of the line he concentrated his messages and ordered and got them, say, by 7 or 8 o'clock in the morning, then motored up to Montreal by the time the exchange opened. Would he be included?

Mr. CORCORAN. I do not know, sir. He certainly used the mails. It is true that the mails stop short at the Canadian border, but I certainly would say that in that case he was using the mails for the purpose of carrying on a business in American securities in Montreal.

#### SEC 29 Registration fees

Senator KEAN. Excuse me, but if he went to the steamer and deposited his letters on British ground, then he would not be, because it would not be the American mails?

Mr. CORCORAN. That is true—and put the Queen's stamps on the letters.

Senator KEAN. Yes.

Senator GORE. They could get out to sea a mile or two and radio it across. Suppose they addressed somebody on the ships, and when they got out 3 miles they radioed it across?

Mr. CORCORAN. That is an instrumentality of communication in foreign commerce which you can reach just as easily, which you do reach under the definition.

Senator GORE. Would it reach it under the circumstances described?

Mr. CORCORAN. That is, the radio?

Senator GORE. No; leaving it on the ship, which is the soil of England, mailed on the boat to John Doe, who is a sort of generalissimo on the boat in a transaction of this sort. He could open up the mail as soon as he got out 3 miles. These are inspired by the fertility of the bootleggers that we had under this other prohibition act.

Senator CAREY. How about delivering orders by plane?

Mr. CORCORAN. You could have a British ship come into this country to get orders and go beyond a 3-mile limit and maintain a stock exchange upon it, if you want to think of fantastic possibilities.

Senator GORE. You know, these bootleggers get pretty fantastic.

The CHAIRMAN. Proceed, Mr. Corcoran.

Mr. CORCORAN. Section 29 provides that an exchange shall pay a registration fee for the privilege of doing business as a securities exchange during each calendar year. That is a very common and

normal provision. A dealer registering under the blue-sky laws of a State pays a registration fee for a license to act as a dealer. Even his salesmen pay a registration fee.

Senator GORE. There would not be any point about that.

Senator KEAN. Yes; but here is a pretty big tax, and ought not that to cover all examinations and everything else, when you put on that tax?

Mr. CORCORAN. If it is enough, sir.

Senator KEAN. It is surely enough.

The CHAIRMAN. It is not a very heavy tax, one five-hundredth of 1 percent.

Senator KEAN. Yes; but that is pretty big. That runs into a lot of money.

Mr. CORCORAN. The fee is one five-hundredth of 1 percent of the aggregate dollar amount of transactions. I understand in the case of the New York Stock Exchange it might run between \$500,000 and \$1,000,000 for a year.

Senator KEAN. Ought that not to pay for the examination?

Mr. CORCORAN. I do not know, sir. It is a sheer matter of arithmetic—how much the examinations are going to cost, whether the Federal Government wants to pay for them by appropriation or whether it thinks this fee is enough to swing the load, or whether there should be an additional assessment of the cost of examination to the persons examined.

The CHAIRMAN. We can work that out after a little experience.

Mr. CORCORAN (reading):

#### SEC 30 Employees of Federal Trade Commission

For the purposes of this act and of the Securities Act of 1933, the Federal Trade Commission may select, employ, and fix the compensation of such employees, attorneys, and agents as shall be necessary for the transaction of the business of the Commission with respect to such acts without regard to the provisions of other laws applicable to the employment and compensation of officers or employees of the United States

That simply says that within the appropriation made available the Federal Trade Commission for the execution of these two acts during any given year the Trade Commission may use that money to hire expert employees without regard to the civil-service classifications.

Senator CAREY. All employees?

Mr. CORCORAN. Yes. That provision has been taken practically verbatim out of the Reconstruction Finance Corporation Act.

The CHAIRMAN. It has been suggested there ought to be some provision in this act to prevent employees of the Federal Trade Commission from participating in the sale and purchase of securities.

Mr. CORCORAN. Possibly that should be done, sir.

Section 31 is the common separability provision, and section 32 provides that the act shall become effective on October 1, 1934, except that applications for necessary registrations may be made to the Commission at any time on or after July 1, 1934, and that section 30, which permits the Commission to build up its organization, shall become effective immediately upon the enactment of this act. So that immediately after the act was enacted the Federal Trade Commission could go about organizing its force. From July

1 on it could begin to register securities in anticipation of the effective date, and on October 1 the act would go completely into effect.

That finishes the act, sir.

The CHAIRMAN Are there questions by any member of the committee, now?

Senator KEAN. I have one that I would just like to add to the definition. On page 5, section 5, the term "dealer"—do you think that is a sufficient definition?

Mr. CORCORAN. In what way, sir?

Senator KEAN. Suppose that a man buys or sells stocks for his own account.

Mr. CORCORAN. Engages in a business of buying and selling stock for his own account?

Senator KEAN. Yes; but I mean, do you think that is sufficient?

Mr. CORCORAN. I should think so, sir; but if there is any question whether that brings within the term "dealer" a man who invests his own money—

Senator KEAN (interposing). Suppose a customer, for instance, comes in and buys stocks, and the next day he comes in and buys some more; the next day he sells some, and back and forth. Under that term would he not be a dealer?

Mr. CORCORAN. I do not think so. I think "engaged in a business of buying and selling securities for his own account"——

Senator KEAN. That is what he is doing.

Mr. CORCORAN. No.

Senator KEAN. Yes; he is buying and selling securities for his own account.

Mr. CORCORAN. He is buying and selling securities for his own account, but within the normal interpretation of that language he is not engaged in the business of buying and selling securities for his own account.

Senator KEAN. Suppose that is the only business he has? Suppose he is a retired man?

Mr. CORCORAN. If, Senator, that language worries you, I should quite agree with you that it should be amended to a point where it does not cover a man who is simply investing his own money.

Senator KEAN. Yes.

Mr. CORCORAN. And not engaging in a business of buying and selling securities to pay them on to others.

Senator KEAN. I just wanted to bring that out.

The CHAIRMAN. Are there any other questions? That is all then, Mr. Corcoran. We are much obliged to you. It has been a very interesting statement.

Now, Mr. Whitney, would you like to go on now or wait 'till 2 o'clock?

Mr. WHITNEY. I would prefer, if it is the same to you and the committee, sir, to wait 'till 2.

The CHAIRMAN. Very well; we will take a recess now until 2 o'clock.

Mr. WHITNEY. Thank you.

(Accordingly, at 12:45 p.m., a recess was taken until 2 p.m., of the same day.)

## AFTERNOON SESSION

The committee resumed at 2 p.m., on the expiration of the recess. The CHAIRMAN. The committee will come to order, please. Mr. Whitney, we will be glad to hear you on the bill. Please state your name, place of residence, and business.

**STATEMENT OF RICHARD WHITNEY, PRESIDENT OF THE NEW YORK STOCK EXCHANGE**

The CHAIRMAN. Mr. Whitney, are you familiar with the bill the committee has under consideration, S. 2693, and, if so, we will be very glad to have you discuss the bill.

Mr. WHITNEY. Mr. Chairman, with your permission I should like to make a brief statement with regard to the general purposes of this bill and thereafter at your pleasure go on with any questions or remarks in more particular and minute detail as may be desired.

The CHAIRMAN. All right. Proceed in your own way, Mr. Whitney.

Mr. WHITNEY. Thank you, sir.

Now, Mr. Chairman and gentlemen of the committee: I appear before you in opposition to Senate Bill No 2693 entitled "A bill to provide for the registration of national securities exchanges operating in interstate and foreign commerce and through the mails and to prevent inequitable and unfair practices on such exchanges, and for other purposes."

On the occasion of my appearance before the Committee on Interstate and Foreign Commerce of the House of Representatives I took up in detail the sections of the identical bill pending before that committee. This discussion is now in print and I shall make copies of it available to you for the record.

It is not my desire at this time to discuss the bill in detail but to make clear beyond any possibility of misunderstanding the position of the New York Stock Exchange with regard to Federal regulation.

The pending bill, as I read it, has three main purposes. First, it establishes rigid laws to govern exchanges and vests in the Federal Trade Commission the power not only to regulate but actually to administer their business. Second, it seeks to restrict and control the credit system. Third, it seeks to vest in the Federal Trade Commission the control of corporations regardless of whether or not they are engaged in interstate commerce. If the stock of a corporation is listed, the corporation is subject to the regulations of the bill and the potential control of the Federal Trade Commission. If a corporation's stock is not listed, its value is impaired by its ineligibility as collateral in any loan by a member of an exchange or by any institution which transacts a business in securities through a member of an exchange.

Any attempt to regulate by statute and in minute detail the operation of security markets is impossible of accomplishment. Rules of law effective today would be worse than useless tomorrow and the harm that would be done before the Congress could assemble and amend them would be beyond repair. The purpose of Federal regulation should be to establish supervisory powers with authority to prevent abuses as time and circumstances require.



The power given to the Federal Trade Commission over stock exchanges by this bill is not the power to regulate, but is, in fact, and in great detail an absolute power to manage and to operate them. Under its provisions there is no function of a stock exchange from the admission of its members to their expulsion which is not subject to the control of the Federal Trade Commission. The election of officers of exchanges and the appointment of their committees can be regulated and representatives of the Commission have the right to attend every meeting of every committee of all exchanges. Such a power carries with it a corresponding duty and the Federal Government will be responsible for the operation of every security exchange in the country.

Under the bill the Federal Trade Commission is given broad power to control credit for the alleged purpose of preventing excessive speculation. The Federal Trade Commission was originally established to administer legislation dealing with restraints of trade and dishonest practices in commerce among the States. There is nothing in the purposes for which it was founded or its history or in the experience of its personnel to suggest that it is fitted to regulate security exchanges or to control credit by fixing the amount that brokers and banks may lend upon securities.

The authority of the Federal Trade Commission to deal with credit is in conflict with the control already vested by law in the Federal Reserve System and its member banks, and the vesting of control of individual credit in the hands of a single administrative body does violence to the principle on which our entire banking system is founded.

The power over credit granted to the Federal Trade Commission is not absolute but is limited by inflexible margin requirements which will be low in times of stable or declining prices and in periods of rising prices they will be so high as to prevent the flow of capital into business.

The immediate effect of these margin provisions will be the liquidation of a substantial part of the debit balances now carried for customers by members of exchanges. There is no assurance that markets subject to the restrictions contained in the bill could absorb the volume of this liquidation. Furthermore, if the bill should be construed to apply to loans made by banks on security collateral, the volume of liquidation may freeze our security markets. No good that can be anticipated from these provisions will compensate for the harm they are certain to cause.

The power given by the bill to the Federal Trade Commission to control accounting practices, to dictate the form of financial statements and the information of all kinds which must be submitted whenever required, vests in the Federal Trade Commission the ability to dominate the management of all companies whose securities may be listed on exchanges. The apparent purpose of these provisions is to correct the abuses in corporate procedure which exist today because of the inadequacy of State laws. The remedy for this situation is a national incorporation law applicable to all companies doing business in interstate commerce. This should be accomplished by direct Federal legislation. It should not be dealt with indirectly by delegating the regulatory power to an administrative

commission, whose regulations will apply only to corporations which list their securities on exchanges.

Under the provisions of the bill the securities of corporations cannot be dealt in on national exchanges unless they are not only listed upon such exchanges but also registered with the Federal Trade Commission. In connection with such registration the Federal Trade Commission may, in its discretion, impose such conditions as it may deem necessary in the public interest. It thus appears that under the guise of establishing sound corporate practices, the Federal Trade Commission will be vested with absolute power to take over the management of all corporations whose shares are listed on exchanges, regardless of whether or not they are engaged in interstate commerce. These provisions are not a necessary or proper part of a law regulating stock exchanges. The mere fact that they have been included suggests that the bill may have been intended to establish indirectly a form of nationalization of business and industry which has hitherto been alien to the American theory of Federal Government.

The bill is predicated upon allegations that the facilities of security exchanges have been abused. But the scope of the bill is not limited to the correction of these abuses. They do not warrant the Federal Government in taking over the security exchanges. They do not warrant placing the control of credit in the hands of the Federal Trade Commission. They do not justify the Federal Government in using its power over interstate commerce and the mails as a lever to regulate security exchanges, and through the control of exchanges to regulate corporations which are not engaged in interstate commerce. I do not believe that the liberalism of today is predicated on the conception of a national as opposed to a Federal Government. I do not believe that this liberalism requires the Federal Government to operate our exchanges, to control our credit and to regulate our corporations. Reform should be limited to the correction of abuses and should not retard recovery by unwise restrictions upon individual initiative.

It is the purpose of the New York Stock Exchange to assist in every possible way in the prevention of fraudulent practices affecting stock-exchange transactions, excessive speculation and manipulation of security prices. We should be glad to see a regulatory body, constituted under Federal law, supervise the solution of these grave problems. We suggest in principle, and subject to the requirements of law and the constitutional power of Congress, an authority or board to consist of 7 members, 2 of whom are to be appointed by the President; 2 to be Cabinet officers, who may well be the Secretary of the Treasury and the Secretary of Commerce; and 1 to be appointed by the open-market committee of the Federal Reserve System; the 2 remaining members will be representative of stock exchanges, 1 to be designated by the New York Stock Exchange and the other to be elected by members of exchanges in the United States, other than the New York Stock Exchange. Such a body would bring together a personnel which would be properly coordinated with the banking system and in other respects qualified to administer the broad supervisory power which our proposal would give. We suggest the inclusion in the power given to this body of authority to regulate the

amount of margin which members of exchanges must require and maintain on customers' accounts; authority to require stock exchanges to adopt rules and regulations designed to prevent dishonest practices and all other practices which unfairly influence the prices of securities or unduly stimulate speculation; authority to fix requirements for listing of securities; authority to control pools, syndicates, and joint accounts and options intended or used to unfairly influence market prices; authority to penalize the circulation of rumors or statements calculated to induce speculative activity; and to control the use of advertising and the employment of customers' men or other employees of brokers who solicit business. This body should also have the power to study and if need be to adopt rules governing those instances where the exercise of the function of broker and dealer by the same person may not be compatible with fair dealing, as well as the power to adopt rules in regard to short selling, if the supervisory body should become convinced that such regulation is necessary.

We believe that these regulatory measures will prevent abuses affecting transactions on exchanges and will, at the same time, not interfere with the maintenance of free and open markets for securities.

This proposal represents the considered view of the New York Stock Exchange adopted by its governing committee, which has given me authority to present it to you. I say to you confidently that the exchange will cooperate fully and by all the means in its power to assist in the prevention of unwise or excessive speculation and abuses or bad practices affecting the stock market.

Now, Mr. Chairman, if I may have your permission, I should like to request that Mr. Thomas B. Gay, of Hunton, Williams, Anderson, Gay & Moore, of Richmond, Va., speak to you, and at a later time present a brief on the constitutionality of this pending bill.

The CHAIRMAN. Have you the brief that you are ready to submit now?

Mr. WHITNEY. Not at the moment. I do not think Mr. Gay's presentation will take too much of your time, and believe it will be quite interesting to you.

The CHAIRMAN. I was trying to avoid both an oral argument and a brief. In other words, if the brief will cover all of the points, I should like to avoid the oral argument.

Mr. WHITNEY. The brief has not as yet been prepared.

The CHAIRMAN. Very well. We will hear Mr. Gay now.

Senator GORE. Mr. Whitney, you will subject yourself to questioning later, I take it?

Mr. WHITNEY. Oh, yes, sir.

Senator GORE. I was not here when the committee resumed and I did not know what the arrangement was.

Mr. WHITNEY. I shall be glad to submit myself to questioning at the pleasure of the committee.

Senator CAREY. Have you any bill to present drawn along your own lines?

Mr. WHITNEY. No, sir. We thought it would be presumptuous on our part to do that, but if there is any help we can give you we stand ready in every way to do so.

Senator GORE. Mr. Whitney, I should like for you to submit sometime, and perhaps it would be better in written form than by

way of oral statement, a schedule of the abuses you referred to on the stock exchange, I mean that could be connected with it or resorted to under its activities. If you would make up a schedule of those, with their definitions as you understand them, together with any suggestions that you think would remedy them, it would be helpful. There are a lot of technical terms which are not understood by the public generally, or by members of this committee for that matter, because we are laymen, and I should like to have a succinct statement of those things, such as wash sales, short sales, pools, and all those things, just a succinct statement of what they are.

Mr. WHITNEY. Very good.

Senator GORE. If you will prepare it I should like to have it.

The CHAIRMAN. I understand that now, Mr. Whitney, you wish to interrupt your own statement by introducing Mr. Gay who will speak on the constitutionality of the bill.

Mr. WHITNEY. Yes, sir; if I may.

The CHAIRMAN. Very well.

Mr. PECORA. May I ask Mr. Whitney a question, Mr. Chairman?

The CHAIRMAN. Certainly.

Mr. PECORA. Mr. Whitney says in his prepared statement that it was not his desire at this time to discuss the bill in detail. Is it your desire to discuss the bill in detail at some future time, before this committee?

Mr. WHITNEY. After Mr. Gay has finished, any points in the bill I will be glad to discuss. I propose to present to the committee the prepared statement, with our objections incorporated in it, as to the bill. Some of these objections have been more or less agreed to, some of them I say, by Mr. Corcoran in his appearance of the last two days.

Senator GORE. Mr. Whitney, there is no subtle implication, is there, in the fact that you have a man named Gay to discuss the constitutionality of this question? [Laughter.]

Mr. WHITNEY. No, sir.

(Mr. Whitney stood aside for the time being.)

The CHAIRMAN. Very well, Mr. Gay, you may come forward to the committee table.

#### **STATEMENT OF THOMAS B. GAY, ESQ., OF THE LAW FIRM OF HUNTON, WILLIAMS, ANDERSON, GAY & MOORE, RICHMOND, VA.**

The CHAIRMAN. Mr. Gay, if you have a brief on this subject it will be unnecessary to deal at great length in an oral argument on the constitutionality of the bill, I take it.

Mr. GAY. As Mr. Whitney has stated, we should like to have leave to file a brief, which we will do very promptly.

The CHAIRMAN. All right.

Mr. GAY. For the purpose of the record I will state that my name is Thomas B. Gay. I am a practicing attorney in Richmond, Va., and a member of the law firm of Hunton, Williams, Anderson, Gay & Moore.

The constitutional aspects of this bill are so serious and far-reaching that Mr. Whitney has asked me to present in behalf of the New York Stock Exchange some of the reasons which in our opinion justify the belief that there is at least the gravest doubt of the

existence in the Constitution of any delegation of power for its enactment by the Congress.

May I preface what I shall have to say by a reference to the Tenth Amendment to our Federal Constitution, which provides that—"The powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively and to the people."

Because of this constitutional provision we have a dual system of government, dual in the sense that some powers are delegated to and exercised by the Federal Government, and those not so delegated are administered by the States through the voice of the people.

Ours is not a national government. It is a Federal Government. It is not national in the sense that it possesses inherent power. It is Federal in the sense that it exercises only delegated power, powers which must be expressly found in the instrument or necessarily implied for the purpose of exercising those expressly conferred.

The importance of keeping in mind these constitutional principles is quite necessary it seems to me in view of Mr. Corcoran's explanation of the objects of this bill. He summarized them, as I heard him on yesterday, as embodying four main purposes:

First. The control of credit that gets into the stock market.

Second. The protection of investors from stock market evils that are possible under existing set-ups.

Third. The protection of investors from ignorance and exploitation by large inside operators.

Fourth. Regulation of over-the-counter markets, with resulting protection to securities listed on registered exchanges.

While Mr. Corcoran discussed at some length the social problems which he thought the accomplishment of those objects would solve, he advanced no reasons that I heard for thinking that the conditions which he described are proper objects of Federal regulation, nor did he suggest that there was in fact any Federal power to legislate in respect of them in the manner proposed in this bill.

Broadly speaking, the bill is designed to accomplish the objects which Mr. Corcoran has discussed, in two ways:

First. The use of the mails or any instrument of interstate communication or transportation in interstate commerce for the purpose of using the facility of a stock exchange, is prohibited unless that exchange is registered under this act.

Second. The use of the same facilities, that is, the mails or any instrument of communication or transportation in interstate commerce, for the purpose of making or creating a market in other than listed securities, is also prohibited except under such rules and regulations as the Federal Trade Commission may prescribe as appropriate in the public interest or for the protection of investors.

Both means, if I may be permitted to say so, of accomplishing the desired object are therefore predicated upon the power of Congress either to control the mails or to control interstate commerce.

Now, may I ask whether either power may be invoked to accomplish the objects proposed?

The committee was told on yesterday that this bill was the result of the efforts of Commissioner Landis of the Federal Trade Commission, and of Mr. Pecora and his associates. I mean from the standpoint of draftsmanship. Now, Mr. Landis has testified before

the House Committee on Interstate Commerce, and at the beginning of his testimony he made this very frank and candid statement:

At the threshold of this question there seems to me to lie the question of national power over exchanges. I think this committee has to meet that and to face that before it can go any further. The question is not free from doubt.

Because, therefore, Mr. Chairman and gentlemen of the committee, of the existence of this doubt in the minds of those primarily responsible for the existence of this measure, and because of the conviction in our minds that there exists no power in the Congress to control exchanges in the manner proposed in this bill, do we respectfully but most earnestly submit that the legislation as proposed is not constitutional.

Now, the title of the bill states that it seeks—

To provide for the registration of national securities exchanges operating in interstate and foreign commerce and through the mails and to prevent inequitable and unfair practices on such exchanges, and for other purposes

The first section embodies its title.

The second section is entitled:

Regulation of exchanges using the channels of interstate commerce and the mails necessary in the public interest

This paragraph embodies what Mr. Landis stated to the House Committee on Interstate Commerce was an argument for the enactment of this bill. It is quite a long paragraph, and I shall not detain you to read it but will merely say that it contains recitals of fact which Mr. Landis suggested, and with which suggestion I entirely agree, would be very persuasive before any court in justifying in point of fact the existence of a need for congressional action. It also embodies, however, conclusions of law which all of us know would be binding upon no court and could not be relied upon to support the constitutionality of the act.

I do want to read, with your indulgence, just two or three sentences which embody in my opinion pure conclusions of law and, therefore, constitute no argument for the enactment of the proposed bill. The first sentence of section 2 says:

Transactions in securities as commonly conducted upon securities exchanges by means of the mails or instrumentalities of transportation or communication in interstate commerce are affected with a national public interest

I respectfully submit that that statement begs the question, which is whether transactions in securities through the mails or instrumentalities of transportation is interstate commerce. And our view of the matter, and in the light of decisions which we think relevant and pertinent, such is not the fact.

Later on in the paragraph—

Senator GORE (interposing). Right there, Mr. Gay, Congress cannot, by merely reciting a thing as a fact, make it a fact.

Mr. GAY. Of course not, Senator Gore.

Senator GORE. In other words, the Congress, by enacting a law that any industry or enterprise is affected with public interest, does not make it so unless it is so.

Mr. GAY. Of course, Senator Gore, that is the case.

Senator GORE. The Supreme Court has held that in some Louisiana case; I believe, some sugar-refining case.

Mr. GAY It is because of that fact that I am stressing to the committee the impertinence of these recitals when they are founded upon what we think are "facts" that are not facts. In other words, to say that transactions in securities by means of the mails or instrumentalities of transportation or communication is interstate commerce is, as I stated a moment ago, to beg the question, which is whether or not transactions in securities through the mails and by means of interstate communications is interstate commerce. And we expect to show you, very briefly, that such is not the fact.

The CHAIRMAN. Suppose we were to write the word "emergency" in the bill?

Mr. GAY In answer to your question, Mr. Chairman, I should like to use the same statement that Senator Gore just used: The recital of an emergency does not establish the fact. It expresses the opinion of Congress, but I do not believe it would be conclusive upon a court.

Senator WAGNER. It is very persuasive, however.

Mr. GAY. Undoubtedly, Senator Wagner.

Mr. PECORA. The courts have frequently so stated in upholding the constitutionality of enactments of the Congress.

Senator GORE. Do you think that the Congress can allege an emergency and then legislate certain powers to meet the emergency, and thereby invest itself with powers it would not otherwise possess?

Mr. GAY. I certainly do not, Senator Gore.

Senator GORE. In the case of the Federal Government it used to be a matter of delegated powers. It cannot add to its own powers by a mere declaration.

Mr. GAY. That is the whole thesis of my argument, Senator Gore.

The CHAIRMAN. You may proceed, Mr. Gay.

Mr. GAY. The next sentence of this paragraph to which I invite your attention is to be found on page 3, in the middle of the page: "Such unreasonable fluctuations—"

Referring to those that arise out of so-called "manipulations" upon exchanges—"constitute an obstruction to and a burden upon interstate commerce."

In what way? Only if the use of the mails or instrumentalities of communication and transportation in trading in securities constitute interstate commerce, which, again, is begging the question.

The sentence continues: "Transactions in securities upon exchanges create a flow of securities in interstate commerce to and from the places where such exchanges are located"

Again you have an assumption of fact which we think the law does not sustain, and that is that trading in securities by means of the mails or interstate communications does not constitute interstate commerce.

Now, before addressing myself to what may be called the legalistic aspects of this matter, it seems to me important to state briefly what the nature of the stock-exchange business is, as well as that of members who trade upon its floor. I am not undertaking, of course, to discuss the technical operations of exchanges but merely those physical conditions which are really a matter of common knowledge, which, however, constitute those basic facts upon which legislation must operate if it be an instrument of interstate commerce.

The New York Stock Exchange is, of course, located on Wall Street. The buying and selling of securities on that exchange is done by its members on the floor of the exchange. The securities themselves which are so bought and sold are required to be delivered and paid for through the Stock Securities Corporation, a subsidiary of the exchange, or at the offices of members of the exchange within the immediate neighborhood. The business, in other words, is in the nature of its transaction peculiarly local. I may also say that every bond listed on the exchange and traded in by its members under the rules of the exchange must be payable as to principal and interest in the city of New York; and that every share of stock traded in by its members must be capable of transfer and registration in the city of New York.

Now, having regard to those physical conditions, it seems to me there are transactions of three general characters that flow from their use:

First. Those that are purely local in their nature. By that I mean that a citizen of New York City or of New York State gives to a broker trading on the exchange an order to sell 100 shares of United States Steel. That broker executes the order by selling the stock to another broker who is buying for the account of a citizen of New York, and the transaction is closed.

Now, whether that is a marginal transaction or one for investment, both transactions are so essentially local in their nature that it seems to me to be beyond question that they do not lie within the power of Federal regulation if there be anything left under the Constitution for the States to control.

The next character of transaction we will say originates from Richmond, Va., where a citizen gives an order to a local broker or to the agent of a New York broker to sell 100 shares of United States Steel on the New York Stock Exchange. That sale is executed through a broker who buys for the account of a citizen of Boston.

Now, that transaction may have been for investment or it may have been of a marginal nature, which is said to give rise to so much of the abuse complained of and which justifies the enactment of a law for the protection of speculators.

I call the committee's attention particularly to the provisions defining interstate commerce as used in this bill and which appear as a part of section 17, on page 8. It is as follows:

For the purpose of this act (but not in anywise limiting the definition of interstate commerce) a transaction in respect of any security shall be considered to be in interstate commerce if such transaction is part of that current of commerce usual in a security transaction whereby an order to purchase or to sell a security originates from a person in one State with the expectation that it will or may be consummated by the receipt on an exchange of an order to sell or purchase the same security originating from another person in another State—

Now, let us stop there for a moment. Is that anything more than the communication of thought? Is it anything more than the transmission of intelligence, whether the mails be used or whether the telephone or the telegraph be employed?

Senator GORE. Or the radio.

Mr. GAY. Or the radio, or airships. But you could not carry an idea by airship, although they do move pretty fast.



Now, that definition, it seems to me, is predicated upon the assumption that interstate communication is interstate commerce, and you are seeking to give character to a business not by its essential nature but by the mere fact that it uses the mails or the telephone or the telegraph for its transaction.

Now, as I will show you in a few moments, the Supreme Court has oftentimes stated that that is not enough to make a business, which is not by virtue of its nature interstate, interstate in fact.

In *New York Life Insurance Co. versus Deer Lodge County*, reported in 231 U.S. 495, dealing with insurance contracts—and I shall have more to say on this case in another connection—the Court said:

Nor, again, does the use of the mails determine anything

The court is addressing itself now to the contention of the insurance company that its business was interstate because its agents were communicating with it in the city of New York from all over the country for the purpose of conducting that business. Yet the court says:

Nor, again, does the use of the mails determine anything. Certainly not that which takes place before and after the transaction between the plaintiff and its agents in secret or in regulation of their relations. But put agents to one side and suppose the insurance company and the applicant negotiating or consummating a contract. That they may live in different States, and hence use the mails for their communications, does not give character to what they do; cannot make a personal contract the transportation of commodities from one State to another.

And then the court cites a long line of decisions, beginning with *Paul versus Virginia*.

Senator GORE. Will you read that again from the word "give"?

Mr. GAY. The court says:

Cannot make a personal contract the transportation of commodities from one State to another

In other words, where I have communicated through my broker in Richmond, Va., to sell securities on the New York Stock Exchange, and that order has been executed by a subsequent sale to a citizen of Boston, that personal contract on my part, says the court, cannot be made an interstate transaction merely because interstate communication has been used in its consummation.

In the same volume, 231 U.S. 314, the court, in the case of *Fidelity Co. versus Kentucky*, upheld the license-tax statute of that State upon commercial agencies and made this very broad statement of law:

The circumstance that in a substantial number of cases, even if in the greater number, there is correspondence by letter or otherwise from State to State, which might perhaps have an effect upon the conduct of other parties about entering or not entering the transaction in interstate commerce, is not controlling.

So I say, Mr. Chairman and gentlemen of the committee, that this definition contained in paragraph 16 of section 3 of the act seeking to define interstate commerce as a transaction in—

That current of commerce usual in a security transaction whereby an order to purchase or to sell a security originates from a person in one State with the

expectation that it will or may be consummated by the receipt on an exchange of an order to sell or purchase the same security originating from another person in another State—

is in the teeth of the decisions of the Supreme Court of the United States, which say that such communications do not constitute those transactions interstate commerce.

There is a third transaction which involves the movement of securities from one State to another. I sell 100 shares of steel through my broker in Richmond, or through an agent of a New York broker. It goes on through a broker on the floor of the exchange, and is sold to a citizen of Boston. I send the certificate on to the New York broker. He in turn delivers it to the broker who made the purchase, and it passes to the customer in Boston.

Let me emphasize here, if I may, the distinction which the Supreme Court has always in mind in discussing such matters, that the movement of that evidence of right in the form of a certificate is a mere incident to the transaction, and does not necessarily contemplate it. In point of fact, I think the evidence would show that in most transactions through the New York Stock Exchange the delivery is made of a certificate then in New York, and not of a certificate in the foreign State, where the local broker simply holds it for the account of the New York broker, and the New York broker delivers out of his own box a security to fulfill the transaction.

But let us assume that there is, in fact, a movement of securities from one State to another. Are they of such a nature as to constitute elements or subjects of interstate commerce? The closest analogy that may be drawn, it seems to me—it is not perfect, but it affords a reasonable basis for argument, and I think sound reasoning—are the insurance cases. This decision of New York Life Insurance Co. against Deer Lodge County, to which I have referred, involved that question, and crystallized the law in the Supreme Court over a long line of decisions, that the business of insurance, though it resulted in the issuance of contracts to indemnify people against death, through contracts that had to move from the company in New York to the insured, wherever he might be, did not constitute interstate commerce.

That those decisions are very pertinent or persuasive in sustaining the view that the movement of securities in such manner would likewise not constitute interstate commerce, is evidenced by a communication which I want to read in part to the committee, with leave to file an original photostatic copy in the record. This is from Commissioner Landis, now Federal Trade Commissioner. It was written by him on the 22d of February 1932, to Messrs. Carter, Ledyard, and Milburn, New York counsel for the New York Stock Exchange. This letter was written expressing the opinion of Mr. Landis, who was then a professor at the law school of Harvard University at Cambridge, upon the question of the constitutionality of the LaGuardia bill, and the reasons which he gives in this letter are so convincing to my mind that they answer completely the argument, if any can be advanced, why this bill is constitutional.

In the covering letter by which he transmitted this opinion—I think, in fairness to Mr. Landis, I should read this paragraph, because certainly we have no disposition to do anything more than bring this letter to the attention of the committee as the opinion of one of

the draftsmen of this bill, one of those certainly most qualified to defend its constitutionality. From that letter I believe the conclusion is inescapable that when divorced from his interest in the matter, and his purpose to advocate its passage, his sound judgment was that the measure is unconstitutional.

This covering letter, as I have said, contains this paragraph [reading]:

I have confined myself to the consideration of the constitutionality of the LaGuardia bill, for I am as yet unconvinced that a bill could not be drafted to regulate security transactions on stock exchanges which would be constitutional. The LaGuardia bill, however, bottoms itself upon a theory and conception of interstate commerce that I am not prepared to accept

It is my purpose to show that the conception of this bill is not distinguishable, in fact, from the conception of the LaGuardia bill, and to use Mr. Landis' opinion in support of that view.

Mr. PECORA. Do you deny to Mr. Landis the right to change his opinion, which often is exercised by the judges of our courts?

Mr. GAY. Certainly not, Mr. Pecora. It is simply an evidence of the infallibility of human judgment, but where that opinion is fortified by reason—

Mr. PECORA. You mean evidence of the fallibility of human judgment?

Mr. GAY. Yes.

Mr. PECORA. Applying to everybody.

Mr. GAY. But where the reasons which are advanced in support of a view seem so controlling and convincing, as we think the reasons advanced in this letter by Mr. Landis are, in support of the view that the LaGuardia bill was unconstitutional, we think it is a matter for you gentlemen to decide which view to accept.

I want to return to the letter for the purpose of reading that part of it in which Mr. Landis discusses the pertinency of the decision of the Supreme Court in the insurance cases, that is, the decision in New York Life Insurance Co. against Deer Lodge County, to which I have just referred, in support of the view that the conception upon which the LaGuardia bill was drawn was shown to be unconstitutional [reading]:

No additional warrant—

Says Mr. Landis—

Senator GORE. Could you, just in a sentence, give us the conception that was embodied in the LaGuardia bill?

Mr. GAY. That was that because corporations were engaged in interstate commerce, Congress might control them through the control of their securities, and Mr. Landis was of the opinion that that relationship was too remote to justify the exercise of Federal power to control interstate commerce. Do I make myself clear, Senator?

Senator GORE. I think so.

Mr. GAY. Mr. Landis says [reading]:

No additional warrant for congressional power is to be gathered from the fact that stock exchanges make use of such instrumentalities of interstate commerce as the telegraph, telephone, and the mails for the transaction of their business. Such an argument was pressed upon the court in the insurance cases but without effect.

Then he makes this quotation [reading]

To accomplish the purpose there is necessarily a great and frequent use of the mails, and this is elaborately dwelt on by the insurance company in its pleading and argument, it being contended that this and the transmission of premiums and the amounts of the policies constitute a "current of commerce among the States" This use of the mails is necessary, it may be, to the centralization of the control and supervision of the details of the business, it is not essential to its character (*New York Life Insurance Co v Deer Lodge County*, 231 U S 495)

That is another way of saying, as I said a moment ago, that mere interstate communication is not interstate commerce, and the character of a business is not changed and converted from intrastate to interstate merely because it uses the mails and instruments of interstate communication to carry on that business.

There are a great many other decisions which I shall not detain you to read from that support that view. They will be recited and relied upon in the brief which we expect to file.

I pass to my further point, which is this. Let me say, before leaving that, that bonds and stocks are not property. Stocks are mere evidence of ownership in property. Bonds are evidence of debt. They are both, however, subject to barter and trade. But do they, in the opinion of the Supreme Court, constitute commodities or objects of such a nature as to be capable of passing between the States within the constitutional conception of interstate commerce? That they are not seems to me clearly demonstrated by the Courts' decisions in a number of cases upholding the validity of regulations by States of exchanges, upholding the power of States to tax trading in them, and various other exertions of the State power to legislate.

Mr. PECORA. Mr. Gay, would you pardon an interruption?

Mr. GAY. Certainly.

Mr. PECORA. You say that bonds and stocks are not property. Are there any laws in the State of Virginia which make the stealing of bonds and stocks larceny?

Mr. GAY. I say they are not property, Mr. Pecora, with the qualification which I made, that is, that they evidence property. Of course, they represent property in the sense that they may be the subject of larceny, of course.

Mr. PECORA. Presumably because they are property, or a thing of value.

Mr. GAY. Yes; that might be quite true; but that still does not give them a character such as is necessary to constitute the subject of interstate commerce.

Mr. PECORA. There have been many persons who thought they owned property when they owned stocks and bonds in recent years, but afterwards found out they were wrong.

Mr. GAY. I do not see how that could affect the constitutional question.

Mr. PECORA. You were making the assertion that stocks and bonds are not property.

Mr. GAY. It may be a fact. Personally, I expect a great many people, motivated as they are in passing this bill, are in that category, and it may be that their enthusiasm and zeal arises from that fact.

Mr. PECORA. From what fact?

Mr. GAY. That they suffered the sort of loss that you visualized.

Mr. PECORA. If you are leveling that remark at me, let me say you are entirely mistaken.

Mr. GAY. I was not leveling it at you.

Mr. PECORA. Because no broker ever executed an order on any securities for me or any member of my family.

Mr. GAY. To refer briefly to the decisions which, in our opinion, support the view, the Supreme Court's view, that securities, bonds, and stocks, lack the commodity nature that an article must possess in order to be a part of interstate commerce, I want to refer briefly to this.

In *Hatch v. Beardon* (204 U.S. 152), the Supreme Court upheld an act of the State of New York imposing a stamp tax of 2 cents on \$100 of face value of shares of stock when sold in New York by a resident of Connecticut to a resident of the latter State doing business in New York, as not a burden on interstate commerce. The Court said [reading]

The facts that the property sold is outside of the State and the seller and buyer foreigners are not enough to make a sale commerce with foreign nations or among the several States, and that is all there is here

Again, in *Moore v. New York Cotton Exchange* (270 U.S.), the Supreme Court upheld, as not violative of the Federal antitrust laws, which were, of course, designed to regulate abuses in interstate commerce, a contract between the New York Cotton Exchange and the Western Union Telegraph Co for the exclusive sale of quotations in the sale of cotton on such exchange. The Court said [reading]:

Such agreements do not provide for, nor does it appear that they contemplate the shipment of cotton from one State to another. If interstate shipments are actually made, it is not because of any contractual obligation to that effect

That is, if I may repeat, the basis of the argument that the sale of a security on the New York Stock Exchange is not interstate commerce, because there is nothing inherent in the transaction which necessitates the flow of stocks and bonds from a foreign state. [Continuing reading]

But it is a chance happening which cannot have the effect of converting these purely local agreements, or the transactions to which they relate, into subjects of interstate commerce

Citing *Ware & Leland versus Mobile County*, which said [reading]:

The most that can be said is that the agreements are likely to give rise to interstate shipments. That is not enough.

I shall not multiply decisions on that point. They support, we think, the view that the sale of securities on an exchange does not, in and of itself, as a contract of barter and sale, necessitate the movement of securities in interstate commerce, and that is the test.

Senator CAREY. May I ask you a question, Mr. Gay.

Mr. GAY. Certainly.

Senator CAREY. Are you acquainted with the Packers and Stockyards Act?

Mr. GAY. I am coming to that in just a moment, quite fully. I am happy to say, Senator Carey, that I am just at that point now.

The proponents of this bill—I say the proponents of it. I should confine myself more strictly to Commissioner Landis, basing my

statement upon his evidence before the House Committee on Interstate Commerce—the proponents of this bill bottomed their argument that this act is constitutional upon the so-called “stockyard cases and grain futures cases” decided recently by the Supreme Court of the United States. I just want to read a paragraph from Commissioner Landis’ testimony, in which he says, speaking of these cases, the latter being Chicago Board of Trade versus Olsen, which is reported in 262 United States, page 1 [reading]:

I think that upon the basis of conceptions of that type, that the constitutionality of legislation such as is proposed here in H R 7852 must be sustained.

What were the conceptions of that type to which Mr. Landis referred? Briefly, they were these, addressing myself for the moment to this grain-futures case:

Chicago, through the medium of the Chicago Board of Trade, afforded a means through which grain grown in the West moved eastward, through means of interstate commerce—I mean the instrumentalities of interstate commerce, the railroads—was sold, and passed on to the consumer in the East. In other words, the exchange had a relation both to the industry and the commodity, which constituted the nature of the business, and the railroads, which were interested in the transportation of that commodity, which, in the opinion of the Supreme Court, justified Federal regulation and control. Now, unless it can be admitted, or unless it is conceded that securities are indistinguishable from commodities, these decisions obviously have no pertinency. In this same letter from Mr. Landis to which I have referred, he makes this most persuasive, if not convincing, statement upon that subject.

Senator GORE. Which is this? Is this his letter when he was a professor at Harvard University or his testimony before the House?

Mr. GAY. This is his letter when he was a professor at Harvard University, written to Carter, Ledyard & Milburn, New York counsel for the New York Stock Exchange, upon the question of the constitutionality of the LaGuardia bill [reading]:

This consideration is emphatically brought out by Chief Justice Taft in the *Board of Trade case*

Then he quotes [reading]:

The sales on the Chicago Board of Trade are just as indispensable to the continuity of the flow of wheat from the West to the mills and distributing points of the East and Europe as are the Chicago sales of cattle to the flow of stock toward the feeding places and slaughter and packing houses of the East.

Then he continues [reading]:

The recognition that this is the basic principle underlying congressional control over sales for future delivery and other practices on commodity exchanges, in my opinion, distinguishes these exchanges from stock exchanges. In the former type of exchange, the thing that is bought and sold is a commodity moving in interstate commerce. The fact that for the moment, when the transaction upon the exchange actually takes place, the commodity is at rest and that no interstate delivery is required as between buyer and seller, has been regarded by the court as immaterial in the light that at bottom there is a current of interstate commerce in the commodity moving through and beyond the exchange. The stock exchange, however, presents no such aspect. Other than a physical certificate representing a chose in action, no commodity is to move in interstate commerce as a consequence of a sale on the stock exchange. Dealings upon that market will effect no additions to the cost of

moving these certificates from State to State. Indeed, the parallel between a commodity exchange and a stock exchange is so absent that I cannot regard these decisions as governing the stock-exchange situation nor as establishing a principle applicable to transactions upon stock exchanges.

I could make no better statement of the differences in the two lines of decisions, or advance any more forcible argument why the commodity aspect of those decisions affords no precedent for contending that stock exchanges dealing in securities may be subject to Federal regulation and control because they are engaged in interstate commerce.

We therefore respectfully but most earnestly submit, Mr. Chairman and members of the committee, that the first means whereby the evils which this bill is designed to correct, and which Mr. Corcoran has outlined, I may say with considerable eloquence, rests upon the assumption that there exists in the Congress a power which the courts have said does not lie there; and that there is no power in the Congress, through its control over interstate commerce, to prohibit the use of the mails or means of interstate communication for the purposes of trading upon a stock exchange unless that exchange has been registered upon the assumption that it is an instrument of interstate commerce.

There is another aspect of Federal power, and that is the use of the mails. I am speaking now of the power of Congress.

Senator GORE. Did you cite the stockyard case?

Mr. GAY. Two hundred and Sixty-two United States Reports, page 1. I gave that, I think, Senator.

Senator GORE. I thought that was the board of trade.

Mr. GAY. The stockyard case is cited and quoted from at considerable length in the *Board of Trade case*, Senator. They both are predicated upon the same process of reasoning—the flow of a commodity, which necessarily is the subject and object, and capable of being a part of interstate commerce, the very commerce itself, as distinguished from the instruments through which that commerce is carried on, to wit, the railroads.

I have discussed this question thus far—that is, the use of the mails or instrumentalities of interstate communication—in its relation to the control of Congress over interstate commerce, and I have endeavored to point out that the mere fact that a business makes use of those instrumentalities does not characterize that business as interstate in its nature.

There is another conception, however, upon which this bill is predicated, and that is what may be said to be the very general control of the Congress over the use of the mails. The power to create post offices and post roads has, of course, long been recognized by the courts as conferring upon Congress the power to control the use of the mails, and by its power to say what may be carried, it has been regarded as possessing the power to say what may be excluded.

This power, however, as was so well said by the Supreme Court in *Ex parte Jackson* (96 U.S. 727), must be exercised by the Congress with due regard to the existence and the preservation of other rights guaranteed by the Constitution and Bill of Rights, which embody the first 10 amendments to the Constitution.

In this case to which I have just referred, the Supreme Court said [reading]:

The right to designate what shall be carried necessarily involves the right to determine what shall be excluded. The difficulty attending the subject arises, not from the want of power in Congress to prescribe regulations as to what shall constitute mail matter, but from the necessity of enforcing them consistently with rights reserved to the people, of far greater importance than the transportation of the mail.

Bottoming my argument upon that constitutional conception, I would like to inquire what basis there is for the exertion of Federal power in the manner proposed in section 14 of this act, dealing with over-the-counter markets, so as to make it unlawful for anyone to use the mails to make or create a market for unlisted securities without complying with such rules and regulations as the Federal Trade Commission may prescribe as in the public interest for the protection of investors.

I was very much interested in Mr. Corcoran's statement, in reading that paragraph, that it was so indefinite in its object and purpose as not to permit the present statement of how it would be enforced. It is capable of enforcement in so extreme a manner, as Senator Carey illustrated this morning in questioning Mr. Corcoran, as to make it manifest that any effective use of it would destroy those rights which the court said have been by the Constitution reserved to the people, and are of far greater importance than the transportation of the mails.

So far as I know this power has not been exerted, or thus far exercised by the Congress, except in reference to activities of the postal system, or except in excluding from the mails, or preventing their use in respect to matters that might be said to be *malum in se* or *malum prohibitum* within some power of Congress. There is no such limitation upon the broad powers of the Federal Trade Commission as conferred in this section, and its embodiment in this law would, in our opinion, destroy rights more fundamental, more essential and more important to the transaction of private business than any public good which would arise by the enactment of this law.

Therefore, not to detain unduly in a legalistic discussion, but reserving the right to elaborate it in our brief, we respectfully submit that the two means whereby the social problems which Mr. Corcoran described, and which he stated this bill was designed to correct, are sought to be corrected, involve the exertion by the Congress of power, to wit, the power to control interstate commerce, and its power over the mails, that may not be constitutionally exercised in respect to the exchanges or the business of their members, for the reason that it is not interstate in its character and cannot be made so by legislative definition. In its relation to the over-the-counter business, it would transcend those conceptions of constitutional law which our court has read into our jurisprudence, and which, it is said, are of far more importance to the public and the private citizen in the transaction of private business than any public good that might be obtained by the enactment of this law.

Senator GORE. Is there any analogy between the lottery cases and those that you have pointed out?

Mr. GAY. The Jackson case, I should say, Senator, was the lottery decision.



Senator GORE. That is what I thought.

Mr. GAY. Yes, sir. That was predicated on the assumption, of course, that the lottery was an activity detrimental to the public welfare, inimical to the public good, and because of that fact should be regulated through the use of the mails.

There may be—and do not misunderstand my argument—the unquestioned power in the Congress to prohibit the use of the mails for certain purposes, and I hope I shall not leave this table without making that perfectly clear. Congress may define, as it did in the lottery case by a specific application of its power, what in its opinion is inimical to the public welfare. This bill, in section 14, does not contain any such enactment, but leaves it to the discretion of the Federal Trade Commission to determine what shall be in the public interest, or inimical to the public welfare, and leaves within its power the right to control all private business merely because it uses the mails in its transaction.

Mr. PECORA. Mr. Gay, on page 5 of the printed statement that was read this afternoon by Mr. Whitney you find the following statement [reading]:

It is the purpose of the New York Stock Exchange to assist in every possible way in the prevention of fraudulent practices affecting stock exchange transactions, excessive speculation, and manipulation of security prices. We should be glad to see a regulatory body, constituted under Federal law, supervise the solution of these grave problems. We suggest in principle, and subject to the requirements of law and the constitutional power of Congress, an authority or board to consist of seven members—

And so forth.

Do you think such an enactment as suggested there by Mr. Whitney for the purpose of preventing the abuses that he referred to would be in violation of the constitutional power of Congress to enact?

Mr. GAY. I do.

Mr. PECORA. Then, you would accept a retainer from anybody to argue against the constitutionality of the substitute that Mr. Whitney in behalf of the stock exchange, proposes, would you?

Mr. GAY. No; I am not arguing against that, Mr. Pecora, and I want to make perfectly plain to the committee that this proposal, qualified as it is by Mr. Whitney's statement, subject to the requirements of law and the Constitution, is made in the utmost good faith, in the recognition that it is of doubtful constitutional right, but as evidence of a willingness on the part of the exchange, notwithstanding that doubt, notwithstanding that limitation, to go along in an effort to regulate what may be regarded as a public evil.

Mr. PECORA. There is a recognition of those evils in Mr. Whitney's statement, if I correctly interpret it. You are advanced here, as I understand your appearance, to make an argument against the constitutionality of the measure that has been introduced in Congress, the Fletcher-Rayburn bill.

Mr. GAY. Yes, sir.

Mr. PECORA. You say in substance, and in fact, that the very substitute which is recommended or suggested by Mr. Whitney for the Fletcher-Rayburn bill would be subject to the same objections that you are now advancing against the constitutionality of the Fletcher-Rayburn bill.

Mr. GAY. But that fact—

Mr. PECORA. I am not questioning the good faith of anybody. I merely wanted to get from you your own opinion about that.

Mr. GAY. I gave it to you as frankly as I could, Mr. Pecora, and that is, that it would be predicated upon the existence of the same sort of power that is sought to be exerted through the enactment of this bill.

I also want to say, as Mr. Whitney has said, that the proposal, notwithstanding its constitutional objections, is put forward in the best of faith, and with the purpose and expectation that if the suggestions of the exchange are adopted, it will live up to them in the best of faith.

Mr. PECORA. Which would not prevent any individual broker from bringing an action to declare the enactment unconstitutional.

Mr. GAY. That statement seems to me to answer itself. Of course not.

Mr. PECORA. It is axiomatic.

The CHAIRMAN. Very well. We will receive the brief you want to submit.

(Mr. Gay's brief will be found on p. 6647.)

Mr. GAY. Thank you, Mr. Chairman.

(Mr. Gay submitted for the record the following letter, dated Feb. 22, 1932, from J. M. Landis to Carter, Ledyard & Milburn, 41 Broad Street, New York City. This letter will be found on p. 6647.)

#### STATEMENT OF RICHARD WHITNEY, PRESIDENT NEW YORK STOCK EXCHANGE—Resumed

Mr. WHITNEY. Mr. Chairman, I believe the clerk of the committee has received copies of the printed statement with regard to the bill presented by me before the House committee last week. As these bills are identical, I have asked him to give to you gentlemen of the committee a copy of this statement, and I will proceed just as you may desire, either in the way of answering specific questions arising on particular sections of the bill, or I will read this entire statement to you if that is your desire.

The CHAIRMAN. Of course, we can place the statement in the record without you reading it, but, at the same time, we will leave it to you as to whether you wish to read this or make your own statement. We will put the statement in the record anyway, and you can do just as you like about that.

(The statement referred to is printed at the conclusion of today's proceedings.)

Mr. WHITNEY. I think, Mr. Chairman, that I do not want to take too much of the time of the committee. I presume there may be various questions with regard to the bill and with regard to the statements I have made in that relation, that the committee would like to question me about.

The CHAIRMAN. You seem to have dealt with it section by section in the House.

Mr. WHITNEY. Yes, sir.

The CHAIRMAN. How would it do to take it up in the same way here, without necessarily reading all you said there, but in your own way, now, saying what you would like to say with reference to the different sections?

Senator GORE. You might at least state the more salient points that are elaborated in this printed document.

Mr. WHITNEY. I think the first parts of the bill, up to section 6, deal with definitions, the explanation of its constitutionality, and various matters that do not specifically—except generally—touch upon matters that are at present practices of the New York Stock Exchange and of other exchanges.

Section 6 of the bill refers, among other things, particularly to the question of margins. If it is not your desire for me to state specifically what I have said in this statement, may I make this broad observation—that the margin requirement set forth in this bill is not a margin requirement at all? One hundred and fifty percent margin, in my private opinion, totally prohibits what is commonly known as “margin trading”, and will have the effect, as I see it, of eliminating all speculation from security markets. If we are to be faced with the elimination of all speculation from security markets, then there follows from that, in my opinion, the result that security markets will cease to exist; and if that is the desire, as expressed by Mr. Corcoran, in the social interest or the social philosophy, that certainly will be accomplished by the passage of this bill with section 6 existing as it now reads.

Mr. PECORA. Mr. Chairman, I do not recall Mr. Corcoran expressing that as the desire of his bill.

Mr. WHITNEY. Mr. Corcoran, I think—without attempting, Mr. Pecora, to quote him exactly—granted that the trading on margin would materially decrease.

Mr. PECORA. Decreasing it, and entirely stopping it are two different things.

Mr. WHITNEY. And I claim that it will stop it.

The CHAIRMAN. Where do you get your 150 percent margin?

Mr. PECORA. That is the broker's formula, or term.

Mr. WHITNEY. I think that was granted by Mr. Corcoran, too.

Mr. PECORA. Yes; but it is not commonly understood by the public,

Mr. Whitney. Do you think it is?

Mr. WHITNEY. Those who trade in the market understand it.

Mr. PECORA. The whole public is interested in this bill, I imagine.

Mr. WHITNEY. I think it is very easy of explanation. If I may refer you to page 7 of my statement, the last paragraph on the page reads as follows [reading]:

This subdivision might in certain circumstances permit securities to be carried on a 25-percent margin which is less than the New York Stock Exchange now requires its members to demand and maintain. If, however, we imagine a different set of circumstances, the provisions of the bill will have not an over-liberal but an almost prohibitive result. For example, if a security like General Motors, which has within 3 years sold at \$7 a share and is today selling at approximately \$40 per share, should be presented to a broker as margin after the effective date of the proposed act, the broker could only lend \$16 per share upon this stock because the 80-percent provision would be rendered nugatory by the low price which General Motors reached at the worst period of the depression. In this case, the broker would have 150-percent margin, i. e., he would advance \$16 against a stock selling at \$40, and the difference between these two, or \$24, would represent one and one half times the amount owed him by his customer. It is obvious that margins of 150 percent are not necessary for the purpose of insuring the safety of a customer's account, and that should be the sole purpose of a margin provision.

How it works out, Mr. Chairman, in view of the depressed condition of prices a year ago, is that there are few stocks on the list where at the present time a 150-percent margin would not be made necessary under the terms of the pending bill.

Therefore, as I have stated, in my personal opinion that would eliminate entirely margin trading.

Mr. PECORA. Mr. Whitney, what you refer to as the 150 percent margin requirement is referred to in the bill as the 60-percent margin provided for?

Mr. WHITNEY. Yes, sir. The 60 percent is what the customer has to put up in the case of General Motors selling at \$40—\$24—and the 40-percent margin stated by the bill is what the broker is allowed to loan to the customer, or \$16 in the case of General Motors selling at \$40.

Mr. PECORA. The only reason I asked was for the purpose of making it clear that when you referred to 150-percent margin you were referring to the provision of the bill which would require a customer to put up 60 percent of the purchase price.

Mr. WHITNEY. I am referring, sir, yes, to the practical working out of the law—

Mr. PECORA. In the terminology of the broker, not the terminology of the law.

Mr. WHITNEY. In the terminology of the broker and in all endeavors or instances that I have any knowledge of the margin is reckoned from the amount owed—the ratio of how the amount owed stands to the current guaranteed price of the securities in the loan.

The CHAIRMAN. What is the New York Stock Exchange rule on margins?

Mr. WHITNEY. At the present time on accounts of \$5,000 or less, 50 percent, and on accounts above that amount, 30 percent of the debit balance, which is the amount that is owed by the customer to the broker.

The CHAIRMAN. That would be 50 percent instead of 150?

Mr. WHITNEY. In the usual case, 30 percent against the 150 as written in the bill.

The CHAIRMAN. Do you believe there ought to be any fixed margin in the law at all?

Mr. WHITNEY. I believe that a minimum should be provided subject to flexibility. Our own rule is flexible. The 30 percent that we now impose is based on active listed securities as collateral. For unlisted securities or for listed securities that are extremely volatile and that fluctuate violently, if they are included as collateral higher margins are demanded; the basis of that rule being that the collateral presented or carried by the customer in his account must be sufficient when banked, when used as collateral in a bank loan, to meet the debit balance owed by the customer to his broker. That is the basis that has to be fulfilled by all accounts.

Mr. PECORA. During the first 6 months of 1929 there was a tremendous activity in the trading in securities on the exchange, was there not?

Mr. WHITNEY. Yes; and the last 6 months too.

Mr. PECORA. And it was attended by higher and ever-increasing levels of security prices?

Mr. WHITNEY. In the main; yes, sir.

Mr. PECORA. During the first 6 months of 1929 was it ever ascertained by the stock exchange what margins were required of customers?

Mr. WHITNEY. As a whole, Mr. Pecora, by inquiry as to all of our members?

Mr. PECORA. Yes.

Mr. WHITNEY. Not that I remember. I do not want to state this as a definite fact, but if my memory serves me, at or about that time, the requirement of the stock exchange, although not published—the requirement of the business conduct committee was raised from 20 to 25 percent, but we had knowledge that a great majority of brokers increased their margins individually, and we were also on knowledge that certain stocks selling at very high prices had their loan values marked down by the banks, and therefore the brokers had to take those prices for the basis of their loan values; had to pass that on to their customers; our rule existing then, as today, that the collateral in each account must be sufficient to bank it.

Mr. PECORA. Let me read something from a speech delivered by your predecessor, president of the New York Stock Exchange, Mr. Simmons, on January 25, 1930. I have a printed copy of that speech which was furnished to me by your institution. The speech was delivered before the Transportation Club of the Pennsylvania Railroad, in Philadelphia. Among other things, he said [reading]:

Statistics taken off by the stock exchange from its members' questionnaires over the first 6 months of 1929 show margins in customers' accounts averaged 40 percent of the market value of long stocks which they were carrying and 65 percent on their debit balances with the brokers. I need scarcely point out how enormous these margins were. Never had margins in the New York brokerage business averaged anything like such high figures.

I presume it is fair to say that the reason those margin requirements at that time were stepped up to the highest figures theretofore known in the history of the exchange was because of the very commendable desire on the part of those responsible to put some limitation, to put some stop to the feverish speculation that was going on at the time; and yet we know from events of 1929 that those high margins—40 percent of the market price, which at that time was very, very high, and 65 percent of debit balances—did not have the effect of sufficiently breaking the speculative movement. Is not that so?

Mr. WHITNEY. I think that is so, Mr. Pecora; I have never granted, nor do I ever expect to grant, that the elimination even of all speculation will prevent booms and panics and what takes place before them and after them. We have seen that, certainly, in other places, perhaps, than in the stock market. There is nothing to prevent the individual investor buying at the highest price at which a security sells outright.

Senator GORE. They had some of those explosions even before there were stock markets.

Mr. WHITNEY. Yes, sir.

Mr. PECORA. That in itself would be a brake.

Mr. WHITNEY. The high margin?

Mr. PECORA. They could not buy as much as they could if they had bought on margins, where they bought outright.

Mr. WHITNEY. Perhaps an individual could not, but there are other individuals or other corporations that might be in position to buy. I do not think, sir, that the elimination of speculation or the curtailment of it by high margins is any guarantee whatsoever that we will not have panics and booms and depressions in the future.

Mr. PECORA. That may be, but we can trade upon the experience of the past, knowing that excessive speculation has led to panics, and it was a very great contributing factor to the stock-market panic of 1929 which unquestionably made a very substantial contribution to the present depression—perhaps the economic evil that Mr. Corcoran had in mind and which he referred to as a social evil. It is an economic evil.

Mr. WHITNEY. We have contended for years, Mr. Pecora, that the control of credit should be used in that regard; and that control rests with the Federal Reserve System under the law. There were many persons in 1929 who urged most emphatically the use of that power and the curtailment of credit for that purpose.

Mr. PECORA. The brokers had that power. They could have refused to accept orders on margin.

Mr. WHITNEY. I believe many brokers used their best endeavors to curtail.

Mr. PECORA. There was still a wave of speculation.

Mr. WHITNEY. By the elimination of speculation you do not eliminate booms and panics and what results therefrom.

Mr. PECORA. But we eliminate one of the main contributing factors to panics.

Senator GORE. Is there any way to arrive at the source of the mania and to eradicate this particular disposition on the part of human beings to bet when they think they are going to win?

Mr. WHITNEY. I know of none, sir, any more than that a human being can be prevented from taking a drink when he so desires, as you said this morning.

Senator GORE. We did that for about 12 years.

Mr. WHITNEY. I think this bill is almost a full brother to the other one.

Senator GORE. I would like to get at the root of the evil, but I am thoroughly perplexed as to how to do it. When people buy stocks selling 60 times their earning power, without knowing a thing on earth about the stocks, I do not know how you can handle that sort of people.

Mr. WHITNEY. May I present to you what I think I have stated before to the committee, that the intent is really the important factor that determines speculation? It is just as possible for an individual to buy on margin intending to speculate as it is also possible for him to buy outright and have the intent of speculation.

Senator GORE. Yes. I would think it was speculation in either case. They do it in real estate, for that matter.

Mr. WHITNEY. Yes.

Senator GORE. We had the South Sea Bubble and the Mississippi Bubble and the Tulip mania.

Senator KEAN. We had a little speculation down in Florida, also.

Senator GORE. I am willing to go as far as anybody to stop this evil at the source.

The CHAIRMAN. I think perhaps a hundred million dollars would cover the entire outlay in Florida. There was a depression here of 29 billions on the 29th of October 1929.

Senator KEAN. How much depreciation in Florida?

The CHAIRMAN. A lot of these people came to Florida and started that boom. It was not Florida people that started it.

Senator KEAN. No; I know.

The CHAIRMAN. A lot of them came there and made a lot of money and took their money and went away with it.

Senator GORE. That is a good alibi, Senator.

Senator KEAN. If you had invested at their prices, would it not have been billions of dollars?

The CHAIRMAN. A hundred million, I think, all told. But that was a small performance compared with what took place on the stock exchange in 1929.

Senator KEAN. And we could not stop that

The CHAIRMAN. It stopped itself finally.

Senator KEAN. I would like to ask you this, Mr. Whitney. Banks in 1929 raised the requirements on all their loans, did they not?

Mr. WHITNEY. In a great many instances, yes, they did.

Mr. PECORA. You have gone on record, have you not, in public addresses that you have delivered, subscribing to the opinion that the speculation mania receded in October 1929 and led to great inflation of securities prices?

Mr. WHITNEY. Yes, sir.

Mr. PECORA. And that is an evil that ought to be eliminated?

Mr. WHITNEY. If it can be; yes.

Mr. PECORA. Do you recognize that as one of the evils that the Fletcher-Rayburn bill attempts to check?

Mr. WHITNEY. I recognize that that may be the desire, sir.

Mr. PECORA. Well, do you think that that evil can be checked by State action only and not by Federal action?

Mr. WHITNEY. I think it goes beyond both, Mr. Pecora. I think you are trying to deal with human nature.

Mr. PECORA. We may not be able, at any time short of the millennium, to reform human nature in its entirety, but that should not deter us from efforts to check and prevent such abuses as we become cognizant of currently. You do not disagree with that, do you?

Mr. WHITNEY. No. We agree, and we will work to our full extent of our endeavor to attempt to check such abuses; but I would like to point out that the wealth of this country at times is valued at three or four hundred billions. Of that wealth, I believe that some one-hundred-odd-billions are in listed securities. I think there is a very serious element, as I have stated in this statement and elsewhere, of doing away with the liquidity of our security markets if this bill is passed. With the tremendous volume of wealth existing in securities held by millions of persons in the United States, must we not be exceedingly careful not to upset the market upon which those people rely for the liquidation of their securities? It is the one market that I know of that has maintained its liquidity during the last few years of the depression.

Mr. PECORA. It has been maintained in liquidity in the sense that there was a market place where persons could buy and sell their

securities outright or on margin; but it has also been a market place where the economic security of the country has been imperiled by the nature of the transactions conducted there under rules heretofore observed. I think we can point to the experience of 1929 and the time that has elapsed since then as proof of that. You yourself have recognized that in your public addresses. Your predecessor, however, during 1928, when this period of excessive speculation was in the process of making, apparently thought that the speculation that had obtained up to that time was not an evil. I have before me a copy of a speech that he delivered on January 30, 1928, before the Engineers Society of western Pennsylvania, in which he said among other things, as follows: [Reading:]

It is, therefore, perhaps inevitable that there is present in this country a feeling of doubt concerning the permanence of prosperity and of our present abundance of wealth and capital. I may be accused, in referring to this situation, of philosophizing about a process that is not yet completed and not yet analyzed. I realize that even our profoundest economic thinkers usually explain economic processes only when they have reached almost their full flower; and yet I cannot help but raise a dissenting voice to the statement we are hearing today that we are simply living in a fool's paradise.

Senator KEAN. He was evidently mistaken, was he not?

Senator GORE. That was before the new era.

Mr. WHITNEY. That was hind sight, Mr. Pecora. There are lots of us that can do that.

Mr. PECORA. We are profiting by that hind sight; and let us see if we cannot adopt measures that will prevent a recurrence of these things in the future. That is what this bill essentially aims to do.

Mr. WHITNEY. We agree with the general purposes of the bill, as I have stated, but with its methods I do not agree.

Mr. PECORA. In that position you present eminent counsel who makes a legalistic argument, and very capably, against the constitutionality of the bill. He also says that the substitute measure that he proposes would be subject to the same objections as to its constitutionality; and your own economist, Mr. Meeker, I believe, has stated in a report to the exchange that State action would be ineffectual to correct these evils.

Mr. WHITNEY. I think you are attributing bad faith to the exchange in your suggestion.

Mr. PECORA. Not bad faith, Mr. Whitney. I genuinely want to assure you that I am not charging bad faith, but I do see an inconsistency.

Mr. WHITNEY. I do not. We are suggesting something which we would back up.

Mr. PECORA. You advance an objection now before Congress based upon the alleged unconstitutionality of the bill. You propose at the same session of this committee a substitute measure, and your counsel tells the committee frankly that that measure, in his opinion, would be just as unconstitutional.

Mr. WHITNEY. But the New York Stock Exchange would abide by such a bill.

Mr. PECORA. But you cannot control the action of any individual member.

Mr. WHITNEY. We cannot; nor the public as a whole.



Mr. PECORA. And as Mr. Gay very frankly admitted, the way would be open, despite any action taken by your exchange or any member of it or any individual not a member, as far as that is concerned, to present in court a case designed to overthrow the statute on the ground of unconstitutionality.

Mr. WHITNEY. Shall I proceed, Mr. Chairman?

The CHAIRMAN. May I suggest this, Mr. Whitney, in that connection. I gather the impression that the New York Stock Exchange concedes that there are some abuses and some practices that it would like to correct, but it goes a little further and says that it has not the power to do the things that it would like to do. I get that impression.

Mr. WHITNEY. I think we are talking here, sir, about all stock exchange practices. They are not by any manner of means uniform. On the other hand, the New York Stock Exchange puts itself on no pedestal, but we are perfectly ready to sit down and endeavor, with anybody of authority, to try to improve conditions and to prevent abuses.

The CHAIRMAN. I understand that, but I am saying that I get the impression that the New York Stock Exchange recognizes its limitations, that there are things it would like to do that it cannot do, and for that reason it is in need of some power such as we may be able to give it by this bill.

Mr. WHITNEY. I claim, however, that that power cannot be given to it or cannot be exercised by the regulation of stock exchanges; that many, if not all, of these abuses may be done outside of any control of stock exchanges as such. That is the difficulty.

Senator GORE. We can get a line of demarcation marking off the abuses committed by brokers and dealers. Some of your members may be properly punished by the exchange; perhaps some by law. Then, on the other hand, on the other side of the line, are abuses that are committed by the stock exchange which the stock exchange can correct, and those which it requires legislation, either State or Federal, to correct. If we can get into the zone of abuses that the Federal Government has power to regulate and prohibit, that would simplify it, because I think everybody wants to prohibit all the abuses we have the power to prohibit, without doing more harm than good.

Senator COSTIGAN. In line with Senator Gore's suggestion, is it your contention that the New York Stock Exchange has corrected all the abuses over which it has the power of correction?

Mr. WHITNEY. I would hate to say that, Senator. I think the whole evolution of stock exchange rules and regulations is one of education within and without, and we are certainly only too ready, as we always have been, if we see things being done that we can correct by our own regulation, to take such action. I do not mean to quibble, but, frankly, it would be impossible to say there was not further progress that we might find it possible to make. I am sure there will be as time develops.

Senator COSTIGAN. Will you be good enough to list again the evils which in your judgment should be corrected?

Mr. WHITNEY. I mentioned those. We suggest the inclusion of the power given to this body to regulate the amount of margin which members of exchanges must require and maintain—

Senator COSTIGAN. Will you indicate as you proceed whether the New York Stock Exchange has acted in respect to each particular evil that you now are proceeding to specify?

Mr. WHITNEY. We have on that one. Authority to require stock exchanges to adopt rules designed to prevent dishonest practices—

Senator COSTIGAN. "Rules and regulations", to use your exact language.

Mr. WHITNEY. Rules and regulations, yes; to prevent dishonest practices and all other practices which unfairly influence the price of securities or unduly stimulate speculation. To the best of our ability I believe we have passed such rules and regulations insofar as they affect our members. I do not wish to imply, however, that we may not see further ways in that direction.

Senator COSTIGAN. When were those rules and regulations adopted by the New York Stock Exchange?

Mr. WHITNEY. They have been adopted, sir, over a period of years. The latest, as I remember, was on February 13. I am not sure about during the autumn—

Senator COSTIGAN. Of what year?

Mr. WHITNEY. 1934. There have been some changes to our rules and regulations.

Senator COSTIGAN. Have those changes been presented to the committee, or is it possible for you to submit to the committee all rules and regulations adopted since October 1929?

Mr. PECORA. Senator Costigan, we have, in answers to a questionnaire submitted to the stock exchange, considerable data which it has submitted to us, and if it has not already been made a part of the record it will be made a part of the record.

Senator COSTIGAN. Including the regulations made in February of this year, Mr. Pecora?

Mr. PECORA. I do not recall that those were included in the copy furnished to us. Mr. Redmond can answer that readily, perhaps.

Mr. REDMOND. I think the copy that was furnished to you was asked for in January.

Mr. PECORA. Yes; so it would not include these changes made in February—I think it was February 14.

Mr. REDMOND. February 13.

Mr. WHITNEY. Proposed on the 8th and passed on the 13th.

Senator COSTIGAN. I think it might be well to read it at this moment, unless it is too long.

Mr. WHITNEY (reading):

Section 15, chapter 14. No member of the exchange or firm registered thereon and no general or special partner of any such registered firm shall, directly or indirectly, participate or have any interest in the profits of a manipulative operation. No such members, firm, or partner shall manage or finance a manipulative operation.

For the purpose of this rule (1) any pool, syndicate, or joint account, whether in corporate form or otherwise organized or used intentionally for the purpose of unfairly influencing the market price of any security by means of options or otherwise, and for the purpose of making a profit thereby, shall be deemed to be a manipulative operation.

(2) The soliciting of subscriptions to any such pool, syndicate, or joint account, or the accepting of discretionary orders from any such pool, syndicate, or joint account, shall be deemed to be managing a manipulative operation

(3) Carrying on margin or over a long or short position any securities for or the advancing of credit through loans of moneys or securities to any such pool, syndicate, or joint account shall be deemed to be financing a manipulative operation

Senator COSTIGAN. What was the evil that the rule which you have read was designed to correct?

Mr. WHITNEY. A matter about which we had had discussion for a period of years; and that was the participation of our members, their firms or partners, in pool operations—a financial participation.

Senator COSTIGAN. Were those activities obvious as long ago as 1929, during the height of the speculative era?

Mr. WHITNEY. I think, Senator, if I understand your question, pool operations have existed for many years; yes.

Senator COSTIGAN. I had more particularly in mind what you call manipulative operations. Do you restrict those to pool operations?

Mr. WHITNEY. A manipulative operation might occur without its being a pool operation.

Senator COSTIGAN. In other words, your rule covers a wider scope?

Mr. WHITNEY. It seeks to cover all participation in manipulative operations that may be indulged in by members or their partners.

Mr. PECORA. That rule that was passed 2 weeks ago yesterday was the result of years of consideration?

Mr. WHITNEY. Yes, sir.

Senator COSTIGAN. I was just going to ask why the New York Stock Exchange waited so long before adopting a rule or regulation of that character.

Mr. WHITNEY. Many of our rules and regulations and many parts of our constitution are the result of long years or months of discussion and research into the facts as best we can find them, in order to get a basis upon which to place our judgment.

Senator BULKLEY. What was the argument against this rule?

Mr. WHITNEY. This particular one?

Senator BULKLEY. Yes.

Mr. WHITNEY. I do not suppose, Senator Bulkley, that there was any argument.

Senator BULKLEY. It took several years. I thought there must be some argument advanced against it.

Mr. WHITNEY. No; I do not think there was any argument.

Senator COSTIGAN. Is it one result of the stock-exchange investigation, Mr. Whitney?

Mr. WHITNEY. It might be so construed.

Mr. PECORA. Was it a mere coincidence that this rule was adopted 2 weeks ago yesterday, on the very eve of the presentation of evidence to this committee with regard to manipulative practices in the so-called "alcohol stocks" last summer?

Mr. WHITNEY. I do not understand that those manipulative activities were attributed to our brokers, sir, or members. It was a coincidence.

Mr. PECORA. Is Mr. Ben Smith a member of the exchange?

Mr. WHITNEY. Yes, sir.

Mr. PECORA. And Mr. Ruloff Cutten?

Mr. WHITNEY. He is a member; yes. But your question does not include the full subject, as I see it.

Mr. PECORA. He testified about options that were held covering a period of 8 months.

Mr. WHITNEY. We do not prohibit our firms having options, sir. We prohibit them from using them in manipulative operations unfairly to influence the market.

Mr. PECORA. But he testified that under those options he traded on both sides of the market, buying and selling, with a view of distributing the stock covered by the options, which I recall was an aggregate of 65,000 shares, at a profit.

Mr. WHITNEY. And then what did the stock do?

Mr. PECORA. I think you can give me more information on it than I can give you.

Mr. WHITNEY. You have the record, sir. I have not read it.

Mr. PECORA. The stock went up, went down, then it went up, and then it went down.

Mr. REDMOND. Are you referring to American Commercial Alcohol, Mr. Pecora?

Mr. PECORA. Yes.

Mr. WHITNEY. I do not think, however, that that necessarily indicates that the use of that option and the endeavors of the pool were unfairly to influence the market or that anything was done to the detriment of the public.

Mr. PECORA. They may not have succeeded in accomplishing all that might have been intended by that, but Mr. Cutten was very frank to say before this committee, under oath, that the market operations that he conducted under that option were both on the buying and selling side and were conducted for the purpose essentially of enabling him to make a distribution of the shares covered by the option at profit to himself, which meant a distribution at prices higher than the option price. The options covered a period of 8 months—

Mr. REDMOND. Mr. Pecora, check me if I am wrong, because I have only read the record rather hastily; but as I remember it, Mr. Cutten's option ran out on May 12, 1933.

Mr. PECORA. That is my recollection.

Mr. REDMOND. And it had been granted, therefore, presumably—

Mr. PECORA. In the preceding August or September.

Mr. REDMOND. Let us say in September. In September 1932 the price of American Commercial Alcohol, which had been fairly stable through the latter part of August, was at that time about \$20 per share. On May 10 it was slightly under \$20 a share, 197/8.

Mr. PECORA. My last statement, Mr. Redmond, was that Mr. Cutten might not have succeeded in accomplishing all that he set out to do, but he did say frankly what the object was of acquiring this option on the stock, which included both buying and selling. The fact that the public did not nibble does not in any way affect the purpose for which that option was obtained; and as to the purpose of trading under the option, he said frankly, as I recall his testimony before this committee, that the purpose he had in acquiring that option was to distribute the stock at a profit, which meant selling it at prices exceeding the option price. It covered a period of 8 months and embraced 65,000 shares.

Mr. REDMOND. I think it is also true, is it not, Mr. Pecora, that in that same testimony Mr. Cutten said that he made an examination of the company and that he thought the stock was worth that price and was willing to attempt a distribution of it?

Mr. PECORA. Yes. I am glad you referred to that, because it brings to my mind another little bit of evidence that was given about that operation under those options, and that is that in the report which he said he had made, the report of a survey of the company in whose stock he was trading, the enterprise was referred to as a speculative one. And there was further evidence presented to the committee while Mr. Cutten was on the stand, that during the 8-month period of those options the firm with which Mr. Cutten was connected as a partner recommended that stock to its customers in its market letters, but not as a speculative operation.

Mr. REDMOND. Is it not also true, Mr. Pecora, that the evidence showed that neither Mr. Cutten's partner nor his firm had any interest in those options? Is not that true as a part of the record?

Mr. PECORA. They did all the trading and got commissions.

Mr. REDMOND. But they had no financial interest in the operation at all, did they?

Mr. PECORA. They did. There was a corporation that Mr. Cutten was interested in—

Mr. REDMOND. I think he denied it.

Mr. PECORA. I am pretty sure he did not deny it. I can give you the name of the corporation that he mentioned. The Cutten Trading Co., Ltd. It is a Canadian corporation, by the way, that Mr. Arthur W. Cutten referred to in his testimony before this committee last fall.

Mr. REDMOND. We are talking, I think, about a minor point, and I think we can easily check the record.

Mr. PECORA. He also referred to another as being a corporation, the name of which for the moment escapes me. That was the property of the trading company, one of the partners of the firm—

Mr. REDMOND. I believe he mentioned that one of the partners of the firm had an interest in a corporation which had a small participation. But Mr. Cutten, I think, did state affirmatively that neither he personally nor his firm had any interest in it. I may be wrong. I only read the record once.

Mr. WHITNEY. He had no interest in the Cutten corporation.

Mr. PECORA. Is Mr. Charles Wright a member of the exchange?

Mr. WHITNEY. Yes, sir.

Mr. PECORA. I presume you are familiar with his testimony that he gave before this committee?

Mr. WHITNEY. Fairly familiar.

Mr. PECORA. And you know he executed orders—

Mr. WHITNEY (interposing). As I understand you, Mr. Pecora, you are denying the right of any distribution of securities if there is any inherent worth in the securities. American Commercial Alcohol, in Mr. Wright's instance, if I remember it correctly, sold at around a price of \$35 a share, and then went up to above \$70 a share, well above it, and then dropped down, but is now maintaining a price well in excess of the \$35 a share. I may be incorrect, but the record shows, I think, that it is well in excess of the price of \$35 a share average at which that stock was distributed.

Mr. PECORA. How about the option for 25,000 shares at \$18 a share given last May to Mr. Bragg by officers of the corporation?

Mr. WHITNEY. Mr. Bragg is not a member of the exchange.

Mr. PECORA. And carried on the account of W. E. Hutton Co as account no. 296, which they traded as Mr. Ben Smith's account; Mr. Smith being a member of the exchange. That was the option, Mr. Whitney, you perhaps will recall which a partner of W. E. Hutton & Co. told your investigator was not a pool account.

We had another partner of that firm on the stand here week before last who readily admitted that it had all the indicia of a pool operation.

Mr. WHITNEY. Will you allow me to state that in a letter to you we gave the information that we were still investigating that particular account in W. E. Hutton Co., and at a later date we gave you all the information that was available to us and to our accountants.

Mr. PECORA. You undertook that investigation, as I recall it, last August?

Mr. WHITNEY. At your suggestion.

Mr. PECORA. At my suggestion; and you very readily complied with the suggestion. You gave us the fruits of your investigation about October 16?

Mr. WHITNEY. Yes. Some 8 accountants out of our 20 worked perfectly steadily on that one job.

Mr. PECORA. And among the documents that you transmitted to us as a part of the report of your investigation was a letter by the head of your accounting division, a Mr. Dassau?

Mr. WHITNEY. Yes, sir.

Mr. PECORA. In which he said—and I think I can quote his exact language—that there were no materially deliberate improprieties.

Mr. WHITNEY. There was a specific paragraph. I think the only proper thing, as I see it, is to have the letter read into the record.

Mr. PECORA. That letter is part of the record already.

Mr. WHITNEY. There was a very specific paragraph.

Mr. PECORA. That whole letter was read into the record, as I remember it.

Mr. REDMOND. The letter is here.

Senator BULKLEY. Can we not have that paragraph read?

Mr. WHITNEY. I would like to have it, very much.

Mr. PECORA. I have a copy of the letter before me, Mr. Whitney. I will read it. It is dated October 1, 1933, addressed to the "Committee on Business Conduct, New York Stock Exchange"[reading]:

GENTLEMEN. In accordance with instructions, I have had examinations and inquiries made in connection with trading operations during the period May 15, 1933 to June 24, 1933 in the following stocks: American Commercial Alcohol, Commercial Solvents, Libbey-Owens-Ford Glass, National Distillers Products Corporation, Owens-Illinois Glass, U. S. Industrial Alcohol

Particular attention was directed toward the endeavor to ascertain whether or not operations of a manipulative nature had occurred, especially the accumulation of large long positions by pools or syndicates, causing a rise in price and subsequent operations which might be construed as unloading by such pools or syndicates.

The examinations were based on information supplied by the Stock Clearing Corporation as to firms having any substantial balances to receive or deliver the above stocks. Information as to the clearance by other firms was sought, and records of the firms in question were inspected in sufficient detail

to satisfy the examiner that all transactions for the period were exhibited in each case

With the exception of the situations disclosed at Lehman Bros and Redmond & Co, which situations also are reflected in a minor way in other firms used as their brokers, and the possible exception of the situation of W. E. Hutton & Co which is still under investigation, no material situation appears

While the limitations of time available for these examinations precluded a detailed examination and tie-up of every transaction, it is my opinion that there were no material deliberate improprieties in connection with transactions in these securities. Although the repeal situation appears to have created a public interest in these stocks great enough to account for their activity, your examiner was directed to watch out for any evidence of wash sales or of other activities which might have stimulated improperly the activity of these stocks. Yet none were reported. However, that you may have the facts in detail, I have prepared a separate report on the examination made of each of the firms shown, and list hereof is respectfully submitted

And this is a letter signed by John Dassow, accountant.

Mr. WHITNEY. And he called to our attention, which was given to you with regard to the exception in the W. E. Hutton & Co. case.

Mr. PECORA. And there was also read into the record before this committee within the past 2 weeks this letter addressed to the Committee on Business Conduct by Mr. B. J. Harriman, of your accounting department. When I say, "your accounting department", I mean the accounting department of the exchange. It is dated September 21, 1933, about 10 days prior to the letter of Mr. Dassow [reading]:

GENTLEMEN. At your request a visit was made to the New York office of Messrs W. E. Hutton & Co to determine the account which contained material transactions during the period from May 15, 1933, to July 24, 1933, in the following stocks: American Commercial Alcohol—

And five others, the same as I have heretofore alluded to.

Inspection of the security record and sale take-off of trades disclosed transactions in American Commercial Alcohol for B. E. Smith no. 296 account, schedule of which is annexed hereto. I was informed that this account is in reality the account of T. E. Bragg and associates, as follows

Then follow the names of eight of the participants in that account, all of whom have been identified here in testimony before this committee.

From May 3, 1933, to July 24, 1933, approximately 29,000 shares of American Commercial Alcohol stock were purchased and approximately 24,000 shares sold for the B. E. Smith no. 296 account; 25,794 shares of this stock were taken down from the following—

Then follows an enumeration of the various brokers' offices from which the stock was taken down.

I was informed that these shares had been acquired from several of the largest stockholders of the company.

To that he might have added that those larger stockholders were all of them officers, directors, and executive officers of the company.

Additional transactions in American Commercial Alcohol follow—

And then are enumerated some transactions under the name of no. 130 account, B. E. Smith, a member of the New York Stock Exchange.

No other accounts were noted which contained material transactions in the stocks under review.

And this is the part I want to emphasize :

Mr. J. C. Duncan, a partner—

That is, of W. E. Hutton & Co.—

stated that during the period under review the firm did not have any pool or syndicate accounts on its books containing transactions in the stocks above mentioned, nor did they hold or issue any options for their own or the account of customers

That is the report of Mr. Harriman of your accounting department. And yet Mr. Foster, another partner of W. E. Hutton & Co., who testified before this committee, admitted very frankly from the records produced from his own office, among other things, that the operation under this 296 account was a pool or syndicate operation; and they have in their files a letter from Mr. Smith—two letters in fact, as I remember it were put in evidence—authorizing distribution of profits from that pool or syndicate account to designated persons, presumably the participants. And in the face of those records Mr. Duncan told your examiner there were no pool accounts on their books operating in these stocks.

Now, I am not questioning the good faith of your accounting department. I think they made every effort that they felt they were called upon to make or should have made. But the fact of the matter is that the investigation which they made did not reveal the facts with regard to the existence of pool accounts which the examining staff of this committee revealed as a result of their investigation, which was made in a much shorter period of time than your accounting department had available to it and with far less facilities than your accounting department enjoyed.

Mr. WHITNEY. I do not know, Mr. Pecora, what is the purpose of this questioning. I thought I was here on a bill. I am perfectly willing to answer questions insofar as my memory serves me. Not having had a knowledge of what these questions are going to be, I could not refresh my memory or get the records.

Mr. PECORA. What led up to this discussion were the questions that Senator Costigan asked concerning the immediate need for the enactment of this rule which was adopted by the governing board of the exchange on February 13 last. You said it was the result of several years of consideration.

Mr. WHITNEY. The general question of the pool; yes.

Mr. PECORA. Then I asked you if it was merely a coincidence.

Mr. WHITNEY. And I said no.

Mr. PECORA. And it was adopted on the very eve of the introduction of evidence in regard to the existence of this pool account operated by members of the exchange.

Mr. WHITNEY. I had no knowledge there was going to be any introduction of such evidence. You never told me.

Mr. PECORA. The newspapers were full of it, Mr. Whitney.

Mr. WHITNEY. As to what it was going to be?

Mr. PECORA. Yes.

Mr. WHITNEY. I did not see that.

Mr. PECORA. The newspapers were full of reference to the fact that we were going to present to the committee evidences of pool operations in the alcohol stocks.



Mr. WHITNEY. Well, the newspapers are more lucky than we. We did not have that information. It was purely incidental. I have granted to Senator Costigan that such rules may have been well the result of the investigation one place or another.

The CHAIRMAN. Suppose we proceed along the line you were following there, Mr. Whitney.

Senator COSTIGAN. Mr. Whitney, you were helpfully listing the stock-exchange abuses which you think should be corrected when your testimony suffered this extended interruption.

Mr. WHITNEY. Yes, sir.

Senator COSTIGAN. Will you be good enough to proceed and comment separately on action taken by the stock exchange with regard to other abuses?

Mr. WHITNEY. I do not want you to get a false impression, Senator, that these are necessarily all abuses. They may be abuses, but they are also matters that we believe should have the authority of this particular suggested authority.

And under that category the next suggestion of ours very exactly fits authority to fix requirements for listing of securities. In that regard we have been passing requirements and rules for years. I do not doubt the committee on stock list has under consideration various further matters that may be the basis for further requirements. I am hoping tomorrow, or whenever time serves, to have Mr. Altschul, chairman of that committee, go over the various phases of their work and what they have done chronologically.

Senator COSTIGAN. What have you in mind with respect to the listing of securities? What improvement can be indicated illustratively?

Mr. WHITNEY. Well, the most recent one that I remember is the requirement with regard to reacquisition of company stock by listed corporations, that they may not be allowed—they are not allowed to, if they have so acquired the stock—to place it again on the market without a supplemental application to the committee on stock list so that that information will become public.

Senator COSTIGAN. You mean they should not be allowed?

Mr. WHITNEY. They are not allowed, without permission, without that becoming public knowledge.

There have been many and numerous changes in the requirements of the committee on stock list in one regard or another over a period of years.

I think it is a fair thing to say that our listing requirements are the most stringent of any exchange. The other exchanges throughout the country and throughout the world differ in many respects. Some of them are almost exactly the same, but others differ in many respects.

Senator GORE. Do you know of any publication that compares and contrasts the requirements on the New York Stock Exchange and others in other countries?

Mr. WHITNEY. No, sir. [After conferring with an associate.] So far as we know, Senator Gore, there is no single publication that contrasts the two.

The next authority is to control pool, syndicate, and joint accounts and options intended to unfairly influence market prices. That is the matter that we have just been discussing.

Senator COSTIGAN. Have you in your testimony at any time drawn a line, which might be useful to this committee, between what are unfair and what are fair attempts to influence the market?

Mr. WHITNEY. I don't think I have.

Senator COSTIGAN. Could you be helpful to this committee at this moment by making suggestions?

Mr. WHITNEY. I would prefer, so as to make it more coherent, to try to present those after looking into the matter and having some real basis that might be clear and informative.

Senator COSTIGAN. Doubtlessly you should be afforded that opportunity, Mr. Whitney, but there have been repeated references to efforts to influence unfairly market prices.

Mr. WHITNEY. Yes.

Senator COSTIGAN. You must have in mind some examples of that sort which you might mention at this moment, reserving your fuller statement, let us say, to a subsequent time.

Mr. WHITNEY. I think the operation which we term now "manipulative" referred to by Mr. Pecora, where there is an endeavor to get great activity in the market by buying and selling, but through proper change of ownership, that that may well unfairly influence the market.

I do think, however, that practically each and every case must rest on its own bottom. It is perfectly possible for an individual or a joint account or a pool who believes that a security is selling below the level at which it should sell to buy that security in volume up to a point where they think the level is a proper one, and in doing so they are going to unquestionably influence the market, but in my opinion not unfairly.

Senator COSTIGAN. If every case rests strictly on its own bottom, then it is impossible in advance to deal by rule with unfair influence on the market?

Mr. WHITNEY. Except, sir, insofar as perhaps the way—if a understand, not being a lawyer—the way common law was written. If certain practices are deemed by the controlling committee to be improper that will be done.

Senator COSTIGAN. In advance or after?

Mr. WHITNEY. As decisions have been made, then they will be in advance of further operations. In advance of them it would be impossible to say.

Senator COSTIGAN. Is it your impression that rules of this sort must wait as long as the common law of England to be effective?

Mr. WHITNEY. No; I think we work faster than that.

Senator COSTIGAN. What has the New York Stock Exchange done, if I may ask you, up to this time to correct efforts unfairly to manipulate the market? Have you rules dealing with the subject outside of the rule you read this afternoon?

Mr. WHITNEY. Yes, sir; we have.

Senator COSTIGAN. When were they adopted?

Mr. WHITNEY. Oh, years ago. Page 44—this is the constitution, sir, article XVII, section 4, and, I believe, passed in 1925:

Purchases or sales of securities or offers to purchase or sell securities, made for the purpose of upsetting the equilibrium of the market and bringing about a condition of demoralization in which prices will not fairly reflect the market values, are forbidden, and any member who makes or assists in making any

such purchases or sales or offers to purchase or sell, with knowledge of the purpose thereof, or who, with such knowledge, shall be a party to or assist in carrying out any plan or scheme for the making of such purchases or sales or offers to purchase or sell, shall be deemed to be guilty of an act inconsistent with just and equitable principles of trade.

Senator COSTIGAN. In view of what happened after 1925, are you not inclined to regard that rule as rather an ethical declaration than a regulation of unfair practices?

Mr. WHITNEY. That is a difficult thing to answer.

Senator COSTIGAN. The question is, Was that rule effective from 1925 on in preventing unfair practices?

Mr. WHITNEY. I am afraid the only way I can answer that, sir, unless a specific instance is given me, is to refer you to what we all know: that there was a terrific public speculation and participation in the market at that time. If there were specific instances where improper uses of the market were made, coming under that section of the Constitution, and we did not act on them and had knowledge of them, then I will grant that we should have. But if such instances did take place without the specific question, I do not think I can possibly answer.

Senator COSTIGAN. Does not a large part of your testimony this afternoon point in the direction of the continuance of the unfair practices this rule was intended to prevent? You yourself have just read a statement made by the governing committee of the New York Stock Exchange in which this sort of practice is specified as something which should be corrected. If that were not true, would the New York Stock Exchange now be directing the attention of this committee to such practices?

Mr. WHITNEY. I do not think I know how to answer you, because, without the specific case in mind, I do not see how one can say that it was an unfair practice or that it unfairly influenced the market.

Senator COSTIGAN. Well, have you in mind no instances of that?

Mr. WHITNEY. I think in this very case that Mr. Pecora brings up, if I remember rightly, the average price at which these securities on option were sold to the public was 35, and thereafter the particular stock rose to eighty-odd dollars per share.

Mr. PECORA. Eighty-nine and seven eighths.

Mr. WHITNEY. Eighty-nine and seven eighth dollars per share; then fell to around \$32 a share, and since that time has maintained a level between \$40 and \$70 per share.

Senator COSTIGAN. Has the governing committee of the stock exchange made any effort to determine whether there was an attempt in that instance unfairly to influence the market?

Mr. WHITNEY. Without being able to answer absolutely one way or the other, it is my belief they did.

Mr. COSTIGAN. Do you know what the conclusion was?

Mr. WHITNEY. That it was not an unfair influencing of the market.

The CHAIRMAN. And yet the stock fell from 89 to something about 29 $\frac{1}{8}$  in 3 days. It went to 29 $\frac{1}{8}$ .

Mr. WHITNEY. Yes, sir; that was when all stocks came down in July.

Mr. PECORA. Did they all come down in the same proportion or anything like the proportion? My recollection is from the evidence

here that American Commercial Alcohol stock went from a high of 89 $\frac{7}{8}$  on July 18 to a low of 29 and a fraction on July 21.

Mr. WHITNEY. I don't think that can be attributed to the instances that you are citing. I do not see where that had anything to do with it.

Mr. PECORA. No; but—

Mr. WHITNEY (interposing). In fact, I think Mr. Wright told you that he tried to prevent that stock selling down, with great loss to himself.

Mr. PECORA. Yes; Mr. Wright went so far as to say that in his functions as a specialist seeking to protect the spread on July 18 in that stock, he was "murdered"—I am using his own language—and yet we found out a few questions after that that the "murdering" process netted him something like \$138,000 profit in 3 months' time.

Mr. WHITNEY. Nevertheless, that does not detract from Mr. Wright's efforts in trying to support the price of that stock when it fell. He did not have to do that. He did it of his own free will and volition.

Mr. PECORA. To a limited extent, Mr. Whitney. He did not follow the stock down.

Mr. WHITNEY. Some 10,000 shares I do not call limited.

Mr. PECORA. To a limited extent; not enough to wipe out profits that he had made in this 3 months' period of trading in that very stock.

Mr. WHITNEY. He could not gage, Mr. Pecora, how far that stock might sell, however.

Mr. PECORA. But he did not protect the stock all the way down.

The CHAIRMAN. How many rules or regulations did you make in 1933, Mr. Whitney; do you remember?

Mr. WHITNEY. No, Mr. Chairman, I haven't those before me. I did not know that was what was going to be asked here today.

The CHAIRMAN. I think you had one in August, one revision in August.

Mr. WHITNEY. Three or four or five, I believe in August; yes, sir.

Mr. PECORA. That was with regard to margins and requiring members to report options.

Mr. WHITNEY. Yes, sir.

Mr. PECORA. Do you recall those rules were adopted after I made a suggestion to you that some such rules be adopted?

Mr. WHITNEY. In all honesty, I cannot remember that; no. If you say it is so, I am perfectly glad to admit it.

Mr. PECORA. That is my very clear recollection. I suggested that the exchange, in view of the collapse of securities values that occurred in mid-July, might do something to check what apparently was visible at that time.

Mr. WHITNEY. When did you say this to me?

Mr. PECORA. I think it was during the first week of August.

Mr. WHITNEY. Yes; but these were put in effect on August 2, so that would not quite work.

Mr. PECORA. Then I was down there before that, because I recall distinctly that the announcement of these rules followed my visit to you by a very few days.

Mr. WHITNEY. I do not deny it, Mr. Pecora, that you may have suggested this. If you say so, that you did, of course you did. But

I can frankly state that the rules adopted on August 2 were under very acute consideration in the latter part of March 1933 and before.

Mr. PECORA. Now, you recognize, don't you, that the rules and regulations adopted by the stock exchange for the correction of these evils and abuses cannot be enforced by the exchange against nonmembers?

Mr. WHITNEY. I have always so claimed.

Mr. PECORA. And do you also recognize that those abuses are available to nonmembers, the operation of these abuses is available to nonmembers?

Mr. WHITNEY. There is a possibility that they can abuse the facilities of the exchange.

Mr. PECORA. Yes.

Mr. WHITNEY. Yes, sir.

Mr. PECORA. So that no amount of rules and regulations adopted by the exchange could possibly extend to control and restrain the action of nonmembers of the exchange in operating in a manner that produces these abuses? That is so, isn't it, Mr. Whitney?

Mr. WHITNEY. Nor can any law, sir.

Mr. PECORA. Well, at least the law can punish those who violate it, and insofar as the fear of punishment is a deterrent—and I think everyone recognizes it to have some potency in that respect—it might bring about a diminution of those abuses by nonmembers of the exchange.

Mr. WHITNEY. It did not with prohibition.

Mr. PECORA. That is a sumptuary law that I do not believe you yourself would consider a fair analogy to this proposed legislation.

Mr. WHITNEY. I do not agree with you, Mr. Pecora. This is a prohibitory law.

Mr. PECORA. So is every penal statute which defines an act to be a crime and provides a penalty for its violation.

Mr. WHITNEY. That does not take away from me the right to an opinion.

Mr. PECORA. If you are going to use that as a test, Mr. Whitney, why, then every penal statute, because it does not absolutely prevent the commission of a crime, is just a waste of time.

Senator GORE. There is a fundamental distinction, I think, there. Any crime where both parties desire the thing to happen, as in the purchase and sale of liquor, perhaps in the purchase and sale of stocks, in separate offenses, it is almost impossible to prohibit. That is the difference. If two people are participants in a murder and the man that murders the other and the one that gets murdered both wanted the murder to happen, it would be almost impossible to prevent that.

Now, Mr. Whitney, do you think a substantial percentage of the abuses are due to others than brokers? Mr. Pecora just asked you the question. You said that you could not regulate those; that the stock exchange itself could not regulate the abuses committed by the nonmembers. Do they account for a good deal of the abuse of the facilities of the exchange?

Mr. WHITNEY. Senator Gore, I think that they account for a large proportion of the so-called "abuses" that have been put at the threshold of the New York Stock Exchange; yes.

Senator GORE. That is what I was trying to get at, and I was wondering this in reference to Senator Costigan's question: It has been a historical race, and a rather dramatic race, between the burglar and the improvement of burglars' tools or "jimmies" on the one hand, and the improvement and invention of burglar-proof safes on the other hand, and when some new safety device has been invented these burglars put their wits to work and invent some new device to overcome it that could hardly have been anticipated. And so the race goes on.

Senator COSTIGAN. Have you in mind the analogy of the stock exchange in that illustration?

Senator GORE. Well, not entirely, because I was referring to the nonmembers. It may apply to the members themselves, but I distinguish the members—even the members—from the exchange as an institution, treated as a market place where people who want to buy and sell can have the right to do so when they get ready. I think we all want to preserve that. And that leads me to the question I was coming to, Senator.

Now, I think it divides itself into this, Mr. Whitney: If you are not prepared, I want you to think it over and give us your views—there are several distinct groups that are responsible for these abuses and the catastrophes that follow, and they are unspeakable tragedies; the one in 1929 was.

Now, let us begin here: Buying is, of course—persistent buying—a bull factor, and it puts prices up or tends to put them up, on the one hand. On the other hand, selling—persistent selling—is a bearish factor, and it puts prices down or tends to.

Now, in this frenzy market of '29—and it is a contagion and a frenzy—in that market nearly everybody, at least all classes, the janitor and the judge and the waitress and heiress—everybody—were buying stock, buying on margin, buying stock without any reference to the company's assets or its management or its success or its earnings or its future—buying today hoping to sell tomorrow for more than they paid just a bit.

That is one group, and that is where the rivers rise, and they are the ones, they are the victims in the long run. They create the evil largely, or help to. Then they are the victims of their own mistakes.

Is there any way that you could limit the amount or fix a minimum below which nobody should trade at all; that they could not buy less than a thousand dollars worth or \$2,000 worth or a dozen shares? Of course, the answer will be made: That will prevent persons who want to invest and buy a few stocks. Could you limit that class of people who buy in utter ignorance and help to create the Frankenstein that destroys them? Could you by some rule or regulation or law remit them to the banks, where the banks would make loans on a financial statement and perhaps give them some advice and curb those people from rushing into this whirlpool? Would that do more harm than good?

Mr. WHITNEY. I think it is an open question. I do think, Senator Gore, that you would have to divide between speculation and investment, and if I may—

Senator GORE (interposing). If you could.

Mr. WHITNEY. If we could. If I may take the second, the investment, it would seem pretty harsh on the small fellow who wanted

to invest to deny him the ability to buy his securities that might be listed on the New York Stock Exchange, or any other exchange, and force him out of having the advantage of those securities.

Senator GORE. Yes. Now, that is the point. Could he go to the bank—and in all reasonable cases where credit is desired and purchases ought to be allowed to be made by a prospective buyer, and have his wants served by the banks and keep him out of the hands of the dealers or brokers who have no concern except perhaps the profit or commission they get? Would that do that character of participant any serious harm, or would it afford him protection?

Mr. WHITNEY. Well now, if you will allow me, we are still talking about the small investor?

Senator GORE. Yes; I want to start with him, because he is the fellow about which we seem to be concerned most.

Mr. WHITNEY. I believe, again without drawing any odious comparison, that there are thousands of dealers throughout this country in securities—thousands of them—that are righteous, upstanding men, and they are not necessarily members of the New York Stock Exchange, who will give their best advice to the small or to the large investor.

And now, as to my desire not to make an odious comparison, I truly and honestly believe that those men are more fitted to give proper advice to the investor than are the banks throughout this country.

Senator GORE. On that point, Mr. Whitney, let us admit all that you say on that point. That still was not sufficient to safeguard these people in 1929. They rushed in and were devoured in the maelstrom. So that system does not meet the occasion nor prevent the evil. Would the evil be minimized if you, reverting to my other suggestion, sent those people to the banks, where they would have to submit a financial statement and be denied credit where they were not entitled to credit and could not carry on and protect themselves in a break?

Mr. WHITNEY. Senator, they are not asking for credit, if we are still talking about the investor. He has the money, and therefore he does not have to seek any credit. All he seeks from the banker is advice.

Senator GORE. The investor does not come in this category of margin dealers. Anybody that has a small amount of money and wants to invest in a stock can buy and pay outright. So that category is protected.

Now, it is the investor who wants to just overbid his hand, wants to buy a little more than he can pay for, wants to buy on margin. There is where he begins to get in the quicksand. Whether it would be a protection to him to send him to the bank and keep him out of the hands—he might fall into the hands of a good dealer or broker and he might not. Some brokers look at the commissions. Perhaps some look at the welfare of their customers. But I am just feeling my way now to see if there are abuses that we could correct and evils that we can safeguard these victims against.

Mr. WHITNEY. May I approach that side of the question which deals with the little speculator?

Senator GORE. Yes.

Mr. WHITNEY. If he is prevented—and I see no way of getting toward this point without a rule of the exchange or of the law preventing his buying on margin through a firm or member of a securities exchange.

Senator GORE. I did not quite get that point, Mr. Whitney.

Mr. WHITNEY. I do not see any way of preventing his participation in speculation except through a rule of the exchange or exchanges or a rule under the law.

Senator GORE. Yes.

Mr. WHITNEY. It has been suggested that a man not be allowed to speculate unless he starts with an equity in his account of a thousand dollars or two thousand dollars or three thousand dollars.

I am trying to give you the pros and cons. If such a limit, such an initial fee is put up against him before he can enter this "club of speculation", then perhaps we can prevent his getting into the exchange or dealing through the members of exchanges in that regard. But he goes somewhere if the urge of speculation is on him.

Senator GORE. Yes.

Mr. WHITNEY. Now, he may go to his bank, and I think it would be made more difficult for him to do it through his bank. But he can go other places.

Senator GORE. Could he go around the corner and strike a bootlegger who established a business?

Mr. WHITNEY. He could go around the corner and meet the very bootlegger—and we call him a bucket shop. Mr. Corcoran, either this morning or yesterday, passed over the bucket shop rather glibly, but it just so happens that in the recent past bucket shops have developed in various parts of the country.

Senator COSTIGAN. How recently, Mr. Whitney?

Mr. WHITNEY. I beg pardon?

Senator COSTIGAN. How recently?

Mr. WHITNEY. Very; within the last week or two, and I think within 3 weeks some 10 or more of them have been raided in New York City alone.

Senator COSTIGAN. That is since Mr. Pecora assisted in suppressing them?

Mr. WHITNEY. Yes, sir; and since, I think, we tried to help Mr. Pecora.

Senator GORE. Mr. Whitney, frankly, I do not know that it can be done. I have always doubted it. I am feeling out the situation to see if we can protect the fool against his folly, because this was perfect insanity. It was social insanity that seized the people of this country in 1929. They did not act with any sense at all. Now, I am trying to invent some sort of device because the fool beats you to his folly. He is ingenious in that. I am searching your mind to see if there is any way on earth you can keep him out of trouble. It is an antisuicide serum that I am looking for, to be frank about it.

Mr. WHITNEY. I truly do not know of any antisuicide serum, because it seems to me that the public has indulged in the same suicide in various other fields—in the real-estate field—and I am not referring to Florida. I have too great an interest in Florida myself. But in the farm States there was terrific speculation, and that took place long before 1929.



Senator GORE. Men buying land on margin?

Mr. WHITNEY. On margin; yes, sir—on terrible margin, too.

Senator GORE. Yes; you are right about that.

The CHAIRMAN. What Senator Gore is after, it seems to me, is to endeavor to distinguish between the investor or the speculator, the real speculator, and the gambler.

Mr. WHITNEY. You want to separate gambling from investment?

Senator GORE. Yes; here is what I was driving at: Without bothering the committee, I will just state it and then I will let it go. I wanted to treat the case of the small investor and the small speculator, divide them into groups, and provide safeguards for them. Then, as I see it, as you remarked to Mr. Pecora a while ago, there are dealers who deal through brokers, and I have assumed that they are responsible for a good many of these pools and syndicates and abuses of that type. Now, I do not know to what extent members of the exchange are particeps criminis with them, how much they share the guilt. If I could, I would deal with that group and lay some limit on their activities, if it can be done. Then I would deal with the brokers and the abuses they commit, if I could. And then I would hold the exchange responsible only for the abuses which it commits and for its failure to correct the abuses on the part of others where it could be done.

If you get my line, it is along that line we ought to move some way or other.

Let me ask you this, Mr. Whitney: Are there a good many of these pools and syndicates on the part of other than brokers that you hear of after the crime has been committed, so to speak, that you did not know of at the time? Can you tell by the barber that something is going on below?

Mr. WHITNEY. Not necessarily so. And I do not want to give an impression that our own members have not been—in other words, that the exchange or its members are pure white lilies. We all had the mania, I think ourselves as well as the rest of the country, in 1929, that money grew on trees, and we, just like everybody else, have suffered drastically for that point of view.

Senator GORE. That mania was a contagion.

Mr. WHITNEY. It was tremendously contagious; yes, sir. Where it started the Lord only knows. But I think we agree with your suggestion, if it can be done, that it is a very broad and difficult problem to solve.

Senator GORE. You say you do not know where it started.

Mr. WHITNEY. I am afraid we do not.

Senator GORE. I think you touched the tap root of all of it.

Mr. WHITNEY. I wish we did.

Senator GORE. I think it is a law of psychology that men buy on a rising market. They watch it and buy and buy and buy. And they sell on a falling market, and they sell and sell and sell. If you could stop that you could stop the whole trouble.

The CHAIRMAN. I think we better take a recess now, Mr. Whitney, until 10 o'clock tomorrow morning.

Mr. WHITNEY. Very good, sir.

(Accordingly, at 5 p.m., the committee adjourned until 10 a.m. on the following morning.)

STATEMENT OF RICHARD WHITNEY, PRESIDENT OF THE NEW YORK STOCK EXCHANGE, IN REGARD TO H R 7852—THE SHORT TITLE OF WHICH IS "NATIONAL SECURITIES EXCHANGE ACT OF 1934"

Mr. Chairman and gentlemen of the committee, the New York Stock Exchange is vitally interested in the bill now pending before you which is called the "National Securities Exchange Act of 1934" We have studied the bill with great care and in stating our opposition to it, I shall, with your permission, discuss: First, the general purpose of the bill and, without going into complete detail, show how the provisions will affect all business and industry and all investors as well as stock exchanges and persons dealing in securities. Secondly, I shall take up the particular provisions of the bill which affect most directly stock exchanges and the business of members of exchanges.

We have arranged to have a number of gentlemen, who can speak authoritatively on the different phases of stock exchange members' business, appear to inform you in this regard.

Each one of these gentlemen is thoroughly familiar with his own line of business and I feel sure that they will be prepared to explain to you as fully as you may desire not only the nature of their business but just how it would be affected by the bill pending before you.

I trust you will not believe that our sole purpose in appearing before this committee is to criticize, and I hope you will understand that we are anxious to be helpful by way of explanation and the suggestion of a definite program.

Before taking up the bill section by section, I desire to say a few words on the bill as a whole and its effect upon the business and industry of this country.

H.R. 7852, although it is entitled "A bill to provide for the registration of national securities exchanges operating in interstate and foreign commerce and through the mails and to prevent inequitable and unfair practices on such exchanges, and for other purposes," is far from a bill which deals solely with stock-exchange practices. It affects a far wider field, unrelated in many ways to transactions on stock exchanges.

The provisions of the bill which purport to deal with margin requirements and brokers' credit might affect the entire credit system. This is due to the fact that in an effort to prevent any evasion of the restrictions on margin accounts contained in the bill similar restrictions have been placed on loans made through banks or other persons. In like manner, the provisions of the bill limiting the amount which brokers may borrow and requiring that brokers must borrow only from members of the Federal Reserve System affect credit in a much wider field. Not only will stock exchanges and their members be affected by these provisions but also banks, industry and all investors.

I will not undertake to describe in detail the provisions of the bill affecting banks and banking, as I am advised that the committee has heard, or will hear shortly from persons who are expert on such matters.

The bill also directly affects all companies which may list their securities upon a national exchange. It does so by requiring them to submit registration statements and to furnish information to the Federal Trade Commission, which, under the bill, is charged with the duty of enforcing its provisions. The extent of the power given to the Federal Trade Commission to require listed corporations to furnish it with information and the control over corporate practices, which is likewise given to the Commission, are so great that many of the functions of management are, in effect, transferred to an administrative department of the Government. Certainly provisions having this effect form no part of a bill dealing with the regulation of stock exchanges and stock-exchange practices. I understand that the officers of a number of important companies have asked an opportunity to appear before this committee, and I feel sure that they will point out the various provisions of the bill which affect them and discuss these provisions fully with you.

I would, however, like to say very briefly a word on behalf of the great number of investors scattered throughout the country who may not be represented before this committee. The bill, naturally, contains many provisions which affect members of exchanges and dealers in securities. But I would like to draw your particular attention to the fact that any regulation of stock exchanges necessarily affects all investors. Stock exchanges are organized as public market places for securities, in which are concentrated the supply and demand which arise from the willingness of owners to sell and the desire of others to buy. A public market by concentrating the buying and selling demand creates fairer prices for the benefit of both buyer and seller and, therefore, the

principle function of an exchange is to give the public the facility of selling the securities which they own and of buying others. There are literally millions of our citizens who own or are interested in listed securities. The vast majority of them are investors and not speculators. Among this great number of persons you will find both rich and poor, but whether they are the owners of thousands of shares or the owners of only a few shares of a single company, they are all interested in the maintenance of a public market for securities. Their interest is a real one, because the concentration of supply and demand on exchanges results in creating a market in which securities are daily bought and sold in volume. This gives assurance to the holder of securities that his property can, if it is necessary, be turned promptly into money.

Through the activity of exchanges securities have remained liquid throughout the entire depression. It is true that they have declined tremendously in value, but in spite of declines securities have remained marketable. Real estate, on the other hand, became practically unsalable and at times it was impossible to find a buyer for mortgages or other forms of real-estate investment. Holders of listed securities, however, have been able to sell them whenever it was necessary to raise money. The interest of these security owners in the bill to regulate stock exchanges is, therefore, very direct and real. To the extent that this bill seeks to regulate exchanges to the point where it will destroy the free and open market for securities the liquidity of the one form of investment that has remained liquid throughout the depression will certainly be impaired, if not entirely destroyed. I say, therefore, that this bill affects not only members of stock exchanges and dealers in securities but the entire investing public.

With your permission I will now discuss the bill in detail.

Section 1 of the bill contains simply the title of the act.

Section 2 of the bill consists of a number of statements of fact which I understand are included solely for the purpose of supporting the constitutionality of the bill. I disagree with some of these conclusions and doubt whether they are true. As a layman, I am not competent to discuss questions affecting the constitutionality of the bill. Mr. Gay, of counsel, however, is present and will, if the committee will permit, make a brief exposition in regard to the provisions of the bill, which, in his opinion, are not constitutional. I have asked Mr. Gay to prepare a brief on this subject, which he will submit at a later date.

Section 3 of the bill contains definitions of the terms used in the bill. These definitions are unusually broad and sweeping. I call your attention particularly to the first definition which defines the word "exchange" to include not only the institution itself but also all of its members.

The third definition defines a "member" of an exchange to mean not only those persons who are actually members but also all persons who have a right to use in person any facility of an exchange for the purpose of making purchases or sales thereon. This extension of the meaning of the term "member" produces certain surprising results in some of the later sections of the bill.

The fourth definition reads as follows: "The term 'broker' means any person engaged in a business of effecting transactions in securities for the account of others." As a result our banks, which customarily act as agent for their customers in buying and selling securities, may be subject to many of the provisions which on their face regulate only stock exchanges and stock-exchange practices.

The fifth definition defines the word "dealer" to mean any person engaged in a business of buying or selling securities for his own account, and, therefore, would include persons engaged in the business of buying and selling securities for investment. As in the case of the definition of the term "broker", the arbitrary inclusion of those who buy and sell for investment in the category of dealers, who buy purely for the purpose of resale, makes many of the later provisions of the bill applicable to a large number of persons who are not, in any sense of the term, dealers in securities.

The other definitions, which are likewise broad and general, should be made more definite and specific, especially in view of the heavy criminal penalties imposed by the statute.

Section 4 of the bill prohibits the use of the mails or any means of interstate communication or transportation for the purpose of transacting any business on an exchange which is not registered under the act.

Section 5 of the bill states the terms and conditions under which an exchange may be registered with the Federal Trade Commission.

Subdivision (d), which appears on page 11 of the committee print, makes any violation of a rule or regulation adopted by the Commission a ground for the

suspension or expulsion of a member of the exchange. This provision is in line with the general policy of the bill of vesting in the Federal Trade Commission power not to regulate but also actually to supervise and manage all stock exchanges

Section 6 of the bill deals with margin requirements on long accounts and deserves careful consideration

Subdivision (a) prohibits any member of an exchange or—and I draw your particular attention to this fact—“any person who transacts a business in securities through the medium of any such member, directly or indirectly”, to extend or maintain credit to any customer on securities not registered upon a national exchange

The immediate effect of this provision will be to make all unlisted securities ineligible as collateral in margin accounts While it is true that the most important companies in the United States usually have their securities listed on one or more exchanges, it is likewise true that the securities of thousands, if not hundreds of thousands, of perfectly sound business enterprises are not listed on any exchange Few people realize what a relatively small number of corporations are listed on our most important exchanges For example, there are only 788 American companies which have stocks listed on the New York Stock Exchange The number listed on other exchanges throughout the country is surprisingly small, because only securities issued by corporations of substantial size which have secured a reasonable distribution among investors are commonly dealt in on exchanges Local enterprises, even when they are well established and profitable, do not necessarily list their securities on a stock exchange and, therefore, this prohibition against brokers' extending credit upon unlisted collateral will operate primarily to the detriment of investors in local enterprises throughout the United States It is difficult to understand why their securities should have no value in determining the margin in brokerage accounts

The evident purpose of this provision seems to have been to discriminate between brokers and other lenders of money in the amount of credit which can be advanced upon unlisted securities, but it is capable of another interpretation which would have even more serious consequences As I have pointed out, a person who transacts a business in securities through the medium of a member of an exchange is likewise included in the prohibition of this subsection If banks buying and selling securities for their own account or as agent for their customers should be held to be persons transacting a business in securities, then this prohibition would make all unlisted securities worthless as collateral even in bank loans

There is one other important point in regard to this section which requires clarification The definition of the term “security”, which is contained in section 3, subsection 10 (which appears on page 6 of the committee print) excludes from the definition any “direct obligation guaranteed as to principal or interest by the United States” For the purposes of this bill, therefore, Government bonds are not securities and will not have to be registered on an exchange and, therefore, brokers may extend credit on Government bonds on such margins as they may elect If this interpretation is sound, then section 6 does not prevent brokers extending credit against real property or any form of personal property other than a “security” as defined by the act This is obviously improper because it is well known that real estate and such personal property are not normally as liquid as securities, and should not, therefore, be the basis of this type of credit The New York Stock Exchange has long recognized this fact, and in determining the financial condition of members our committee on business conduct does not place any value upon real-estate holdings, furniture and fixtures, equipment of offices, or even upon stock-exchange memberships We have felt that it was necessary to exclude these items, which, although of undoubted value, are not capable of being turned quickly into cash if we were to be sure that the capital of our member firms was adequate to protect the accounts which they were carrying for their customers

Subdivision (b) of section 6 makes it unlawful for any member of an exchange or person who transacts a business in securities through a member of an exchange to extend or maintain credit to any customer on securities registered on a national exchange in an amount which at any time exceeds (1) 80 percent of the lowest price at which such securities have sold during the preceding 3 years or (2) 40 percent of the current market price, whichever is the higher This subsection further provides that the Federal Trade Com-

mission may fix lower loan values during any stated period of time or in respect of any specified class of securities

The minimum margins established by this subdivision have naturally been one of the features of the bill which has evoked the greatest amount of public discussion. Few people, however, seem to understand how this provision will operate. As I see it, the amount of margin which will become the minimum depends upon the course of prices more than upon the percentages set forth in the bill. For instance, a security selling at \$100, and which has not sold for less than \$100 during the preceding three years, can be carried in a margin account at 80 percent of its current market price, because its current market price and the lowest price reached within 3 years happen to be identical. If a broker advances 80 percent of the current market price of such a security, he will have only 25 percent margin against the actual debit balance. He will be advancing \$80 against every \$100 of value and the leeway or margin between the amount which is owed him and the current value of the collateral will be \$20 or 25 percent of the sum which is owed him. Many people have become confused in discussing this question of margins and it is sometimes said that a margin should represent a certain percentage of the value of the collateral for the loan. This method of computing margins completely disregards the essential nature of a margin. When a person borrows money and pledges securities as collateral he normally computes the amount of the margin as a percentage of the amount owed. For example, if I borrow \$10,000 and give as collateral \$15,000 of Government bonds, I feel, and so does the lender, that he has a margin of safety equal to 50 percent of the amount owed him. In brokerage accounts the amount owed is commonly called the debit balance and, therefore, in determining the amount of a customer's margin, this figure is used as the basic one just as a bank, in determining the margin for a loan uses the face amount of the loan as its basic figure. In either case, a percentage of margin must mean a percentage of the amount owed.

This subdivision might in certain circumstances permit securities to be carried on a 25-percent margin, which is less than the New York Stock Exchange now requires its members to demand and maintain. If, however, we imagine a different set of circumstances, the provisions of the bill will have not an over-liberal but an almost prohibitive result. For example, if a security like General Motors, which has within 3 years sold at \$7 a share and is today selling at approximately \$40 per share, should be presented to a broker as margin after the effective date of the proposed act, the broker could only lend \$16 per share upon this stock because the 80-percent provision would be rendered nugatory by the low price which General Motors reached at the worst period of the depression. In this case, the broker would have 150-percent margin, i.e., he would advance \$16 against a stock selling at \$40 and the difference between these two or \$24 would represent one and one half times the amount owed him by his customer. It is obvious that margins of 150 percent are not necessary for the purpose of insuring the safety of a customer's account and that should be the sole purpose of a margin provision. Such a margin requirement would have the immediate effect of eliminating a great part of the speculative activity on which the stability and useful function of the market depends, to the great detriment, of course, of all investors and stockholders.

The effect on margins of this subdivision will depend upon the course of prices. In periods of stability or of declining prices it will permit over-liberal margins and in periods of rising prices it will fix prohibitively high margins. As a practical matter and because most securities reached very low prices within the last 3 years, the immediate effect of this subsection would be to increase enormously the margins which brokers would have to demand from their customers. At the present time the total debit balances carried by members of the New York Stock Exchange for customers is approximately \$1,390,000,000. It is certain that a large part of this total has been advanced against securities which sold at very low prices within the last 3 years, and, therefore, the margins which existing customers will be called upon to put up if their accounts are to meet the requirements of the bill will, of necessity, be very substantial. I am sure that many customers will find it difficult if not impossible to provide the required amount of margin and will, therefore, be compelled to liquidate a large part of their holdings at a time when no market capable of absorbing such liquidation may exist.

The real difficulty with these proposed margin requirements is that they attempt to set up a rigid formula for a subject which, by its very nature, requires a very flexible rule. The determination of proper margins requires

the exercise of sound discretion. It is impossible to substitute for this discretion a mechanical rule based upon percentages of existing or former values. A sound margin is one which will, in all probable circumstances, protect the lender of money from the danger of loss if security prices should decline. To arrive at a solution of this problem, many factors must be considered. The nature of the security, its activity in the market, the degree to which it is held on margin or as collateral for loans, are all considerations which must be taken into account. In addition, there are special situations which may affect the amount of margin which should be required. There are certain securities which, because they fluctuate rapidly and by substantial amounts, are considered volatile and therefore not entitled to as high a degree of value for collateral purposes as more stable securities. I could cite you many instances in which these special conditions have made prudent lenders refuse to advance even 40 percent of the current market value. In the face of all of these variable factors, it is humanly impossible to adopt any law which will operate fairly in all possible circumstances.

I am convinced that the fixed minimums contained in subdivision (b) of section 6 are utterly unworkable and will certainly operate in a manner which will be detrimental to the public.

In discussing these margin provisions, I have not overlooked the fact that the Federal Trade Commission is given authority to fix lower loan values for any stated period of time or in respect of any specified class of securities. This power, while it would allow the Commission to make higher margins mandatory, does not go far enough to give real flexibility. I have already pointed out how special considerations affect particular securities. There is no power, as I see it, given to the Commission by this section to provide that any one security should have a lower loan value than the rest of its class and yet that is precisely what banks and other lenders of money do in actual practice. For instance, in 1901, at the time of the Northern Pacific panic, the proper loan value for Northern Pacific stock was only a fraction of the price at which it was selling, but that did not mean that railroad securities, in general, had to be written down for loaning purposes by an equal amount. The same was true of Radio stock when it advanced very rapidly in price a few years ago and there have been numerous similar instances in the recent past. If it should be suggested that this objection might be met by giving the Federal Trade Commission power to fix the loan value of any particular security, I think the provision would still be unworkable because of the practical impossibility of any single administrative body being in sufficiently close touch with all of the security markets of the country and sufficiently familiar with the factors affecting the value of each security dealt in on exchanges to determine promptly and soundly the value which should be attached to each stock or bond for margin purposes. In the last analysis, the problem of fixing the loan value of particular securities is a local one which must be dealt with by persons who are thoroughly familiar with local market conditions and who are in constant daily touch with all the factors on which loan values depend.

Subdivision (c) of section 6 makes it unlawful for any person to extend or maintain credit upon any security registered on a national exchange which has been acquired by the borrower within 30 days of the date of the loan, except in an amount not exceeding that which a member of a national exchange may lend to his customer pursuant to the provisions of the bill. In effect this section makes the rigid margin requirements set up by subdivision (b) applicable to all banks, and other lenders, in respect of securities listed on exchanges which have been purchased within 30 days. As I believe the minimum margin requirements, which the bill imposes on brokers' loans, are unsound, I naturally feel that the same provisions are equally unsound if applied to bank and other loans. Furthermore, this provision, while establishing rigid minimums for securities listed upon exchanges, apparently permits all lenders of moneys, except members of exchanges, to advance credit on unlisted securities on such terms as they may think wise. This discrimination against listed securities seems clearly unsound. Stocks and bonds, which are listed on exchanges, and enjoy an active market, have proved to be the best and safest type of collateral for loans. The bill apparently completely disregards the experience of the past in this respect and permits banks, and other lenders of money, to advance more credit on unlisted securities than they can advance upon listed securities which have been purchased within 30 days.

Some of the effects of this provision are anomalous. For example, a security which the issuer proposes to list on an exchange cannot be registered with the Federal Trade Commission until 30 days after the registration statement has been filed. During this waiting period the security cannot be dealt in on an exchange and, therefore, would not be deemed to be a registered security coming within the provisions of the bill. It is possible, therefore, that a security of this kind might be the basis of liberal credit advances by banks until the effective date of the registration, when, automatically, the bank would have to call its customer for additional margin merely because the security had become entitled to a public quotation.

I have already mentioned that the mandatory provisions of the bill in regard to minimum margins would force the liquidation of a substantial part of the \$1,390,000,000 of debit balances currently carried by brokers for their customers. These same mandatory provisions would, likewise, force the liquidation of part of the \$3,500,000,000 of loans which banks have made to their customers against security collateral. The effect on bank loans may be less severe than upon brokerage accounts because many of the securities held as collateral by banks have undoubtedly been held by the borrowers for more than 30 days. On the other hand, there still remains the problem arising from the common practice of persons who have borrowed money from a bank to sell a security held by the bank as collateral and to reinvest the proceeds in another security which is thereupon substituted as collateral for its loan. Such substitutions will be subject to the bill and, therefore, changes of investment by persons who have borrowed from banks may become practically impossible. It is difficult, if not impossible, to forecast precisely what the result will be, but it seems probable that a substantial amount of liquidation of bank loans will be caused by these provisions of the bill.

Subdivision (d) of section 6 gives the Federal Trade Commission power to determine how margins shall be computed; when they shall be paid and what notice shall be given or method employed in closing out accounts. These powers would apparently apply not only to brokers but also to banks and other lenders of money. The length of notice which must be given or the method to be used in closing an account can seriously affect the safety of a loan. Such unlimited powers should not be vested in any administrative body.

Section 7 of the bill deals with restrictions on members' borrowing and contains six subdivisions. The first prohibits any member of an exchange or any person who transacts a business in securities through such a member from borrowing from any person other than a member bank of the Federal Reserve System. The second subdivision prohibits such member or person from incurring indebtedness which, in the aggregate, will exceed 10 times the net current assets owned by the borrower and employed in his business. These two provisions affect primarily the relation between brokers and banks. I understand that the committee will hear from persons who are more expert than I in regard to the effect of these provisions upon our banking system. From the brokers' point of view, the first subdivision seems unnecessary and it will undoubtedly prohibit many small loans which are currently made between brokers. I refer particularly to "odd-lot loans" which involve the borrowing and lending of sums of less than \$100,000.

As far as the limitation upon borrowings by a broker in relation to the amount of his capital is concerned, if the term "net current assets" means the capital of the broker employed in his business, the provision of the bill is less severe than the requirements of the Business Conduct Committee of the New York Stock Exchange. In spite of this fact, I think the provision is a bad one because of its mandatory and inflexible nature. In the experience of our Business Conduct Committee, the capital ratio of members has sometimes fallen below our minimum requirements. In such cases, the Business Conduct Committee insists that additional capital be secured or then that the liabilities of the firm be reduced by transferring customer's accounts to other firms which have the necessary capital. This provision, which makes it unlawful for a person to borrow more than ten times his capital and allows a person who exceeds this arbitrary limit no opportunity to readjust his affairs, will force the insolvency of firms which might otherwise be saved and put again upon a solid foundation. An insolvency is a serious matter for customers even if they are ultimately paid in full because it deprives them, at least temporarily, of the use of their securities and property.

No statutory provision can guarantee the solvency of brokers. Constant care and watchfulness are the best protection against insolvency. The experience

of our Business Conduct Committee throughout the entire depression amply demonstrates the truth of this statement. The questionnaire system, which the exchange established in 1922, and which has from time to time been revised, and extended and the examination of member firms which the Business Conduct Committee currently makes in order to verify the answers to these questionnaires, have been the means by which the exchange has been able to guard against the insolvency of members. There have been a number of insolvencies but the record of the members of the exchange in this regard is certainly an outstanding one and if the committee is interested in these statistics I will submit for the record a tabulation showing in comparative form the number of insolvencies of members of the exchange and of National banks and State banks.

The third subdivision of section 7 prohibits a member of a national exchange or a person engaged in the securities business through such a member from using his capital, if he be acting as a broker, to carry or finance securities for himself or for any partner or employee. It is not quite clear whether this prohibition is intended to prevent a broker from investing his own capital in securities or from contributing capital to his firm in the form of securities. If this subdivision should be given any such broad interpretation, it would operate most unfairly and would, in effect, require a broker to use in his business only cash capital.

In any event, violations of these provisions should not be made criminal offenses, because as soon as such a penalty is attached any person lending money to a broker might find himself involved in a criminal act.

Subdivisions (d) and (e) of section 7, which deal with the hypothecation of customers' securities, are the same as the existing law of the State of New York and the rules of the New York Stock Exchange. Subdivision (f), which deals with the lending of a customer's securities without consent, makes effective another ruling of the New York Stock Exchange. The final part of this paragraph, however, provides that the account of the customer whose securities are loaned must be credited with "the interest received on account of such lending." This provision, quite frankly, is meaningless. The lender of securities does not receive interest but pays interest. It is only when stocks are lending at a premium that the lender of securities receives any direct compensation for the loan. It has frequently been urged that brokers should account to their customers for any premiums so received, but the practical difficulties of doing so are almost insuperable. If the committee is interested in this subject, I can readily give them an example of how impossible it is for a broker who receives a premium on a loan of stock to apportion it among the persons who might theoretically be entitled to a part of it.

Section 8 of the bill deals with certain prohibitions against the manipulation of security prices. Subdivision (a) contains nine specific subsections which I will refer to as briefly as possible.

The first prohibits fictitious transactions which, of course, include "wash" sales. That is already the penal law of the State of New York and is, likewise, prohibited by the rules of the New York Stock Exchange.

Subsection 2 prohibits the purchase and sale on an exchange of a listed security at substantially the same time and substantially the same price, unless the transaction is made only as a matter of record and is reported in a specified manner. It is not quite clear whether this section is intended to prohibit more than "matched orders", which, in effect, are a form of fictitious transaction whereby two or more persons, by prearrangement, enter orders at about the same time to buy and sell a certain security with the intention or design that these orders will meet and be executed one against the other. This practice we consider is a violation of our rule prohibiting transactions which do not involve a real change of ownership. If, on the other hand, this section is given a broader interpretation and will operate to prevent a man in the course of a single day buying and selling the same security at about the same price, it will prevent perfectly legitimate and honest transactions. Many purchases are made with the idea of selling again as soon as market conditions change, and it frequently happens that in the course of a single day a man who has bought in the morning may deem it advisable to sell in the afternoon. There is no good reason why he should not do so.

Subsection 3 deals with transactions made for the purpose of raising or depressing the price of securities, or for the purpose of creating a false or misleading appearance of activity. I think we will all agree that such practices should be forbidden when they involve an intentional effort to unfairly influence the price of securities for the purpose of making a profit. The rule adopted by



the New York Stock Exchange on February 13 not only forbids members from participating in transactions of this kind but, likewise, prevents them from either managing or financing such activities for others.

Subsection 4 deals with the dissemination of rumors as a means of stimulating market activity. Such acts are already prohibited by the rules of the exchange.

Subsection 5 seems to prohibit false or misleading statements, but the definition is so general that it is difficult if not impossible to say what statements would fall within the scope of this prohibition. We all agree. I am sure, that the dissemination of false information to induce the purchase or sale of securities is fraudulent. The difficulty with this subsection, however, is that it may cover perfectly honest statements as well as fraudulent ones. In effect, it may mean that no person—and I ask you to note that it is not only members of exchanges and brokers who are subject to this provision but every citizen of the United States—can make any statement in regard to any listed security unless he shall have first made an investigation and exercised reasonable care to determine that what he says is entirely accurate.

Subsection 6 prohibits any payment being made to any person for the purpose of procuring the dissemination of information to the effect that the price of any security is likely to rise or fall because of the activity in the market of any one or more persons. The New York Stock Exchange has a rule prohibiting its members making any payment to secure inspired publicity. This section, which accomplishes substantially the same result, would simply carry into the criminal law and make general a rule which the Exchange has already put in force in regard to its own members. I hesitate to express any opinion in regard to the feasibility of enforcing this provision.

Subsection 7 prohibits any person engaging in a series of transactions intended to peg or stabilize the price of any listed security, unless the details of such operation shall have first been reported to the Federal Trade Commission and, presumably, approved by it. Transactions aimed at maintaining a certain price or at stabilizing the price of a security have heretofore been considered legitimate when connected with the distribution of securities or the maintenance of a fair market for securities. This subsection would apparently make such operations illegal unless they were first submitted to and approved by the Federal Trade Commission.

In spite of the critical comments that have been made about stabilizing security prices, no one can doubt that such practices have been considered legitimate in the past. They were generally indulged in by our own Government when the Liberty Bonds were being sold during the war and, more recently, it has been the custom of our Federal Reserve Banks to intervene in the Government bond market to maintain and stabilize prices in anticipation of new Treasury issues. The ethical character of such operations cannot, therefore, be questioned.

It is, at least, doubtful whether any restriction should be placed upon purchases and sales made to support a market in connection with the distribution of securities. The maintenance of a price having some reasonable relation to the offering price through the medium of actual purchases and sales in the market, really operates to the benefit of investors in that it allows them to freely buy and sell while the process of distribution is still in progress. Many people believe that when such operations terminate, the market necessarily recedes and that the existence of such stabilizing orders must operate to mislead the public. These people overlook the fact that a distributor of securities, who undertakes to stabilize the market price of the security he is selling, is backing his judgment that the price at which he is offering the security to the public is a fair one. If he is mistaken and the security has been offered at too high a price, the net result of the stabilizing operation will be an accumulation of securities by the issuer and this may, in some instances, result in his repurchasing the entire issue which he has offered to the public. If, on the other hand, his judgment is justified and the public is willing to pay the price at which the security is offered, the only result of the stabilizing operation will be the maintenance of a fair market while distribution is being effected. Certainly, this question is one which deserves greater study before it is condemned by being included among the criminal provisions of the bill.

There is one other normal and useful practice which would seem to be within the scope of this subsection. I refer to arbitrage transactions which frequently play an important part in the market. Arbitrage is possible between different markets and, likewise, between different securities. For example, a security

like the stock of the American Telephone & Telegraph Co is dealt in in Boston as well as in New York. If there should be more buyers than sellers for this stock in the Boston market there would be a tendency for the price of this stock to rise on that exchange. At the same moment, however, there might be more sellers of this stock than buyers on the New York Stock Exchange, so that, in effect, the price of the same stock might be rising in Boston at the very moment that it was declining in New York.

The function of the arbitrageur is to bring the two markets into relation with each other and, in the example which I have cited, he would buy in New York and sell in Boston, with the result that the price in New York would not decline and the price in Boston would not rise. This, as I see it, is a beneficial service which creates a better market for the public on both exchanges. The example which I have cited between two exchanges in this country is commonly called "domestic arbitrage." Similar transactions frequently take place between our markets in this country and the great European financial centers and these international transactions are usually called "foreign arbitrage." Of the two different types, the latter is infinitely more important, because it brings together the supply and demand of international centers and, at the same time, plays a stabilizing role in foreign-exchange rates. I appreciate that this subject is a highly technical one and will not elaborate upon it unless the committee desires me to do so. Foreign arbitrage is, however, generally should bear a very direct relation to the price of the stock in connection with all recognized as a legitimate and useful activity, and even during the last year, when restrictions were placed upon foreign-exchange transactions, every means was used to facilitate the business of foreign arbitrageurs.

Arbitrage takes place not only between markets but also between securities. For instance, a corporation like the American Telephone & Telegraph Co. may offer its stockholders rights to subscribe to additional stock. These rights may be valuable and some stockholders may wish to exercise their rights while others may decide to sell them. It is obvious that the value of the rights which they were issued, but at any given moment there may be more people who wish to sell rights than there are buyers of rights and therefore the price of the rights might decline even if the price of the stock should remain stable. The arbitrageur by buying the rights and selling the stock keeps an equilibrium between these two securities, just as the domestic arbitrageur maintains an equilibrium between markets within this country. This is an important function and there are many instances where arbitrage is necessary to prevent unfair markets. I have used as an example a case involving rights to subscribe, but arbitrage applies also when stock dividends are declared or stocks are split-up, in cases of merger and consolidation and also when part-paid certificates are issued at a time when full-paid certificates are already being traded in.

There is no evidence that the different types of transactions falling under the ban of this subsection 7 have operated to the disadvantage of the public. On the contrary, we know that they have been of real benefit to investors. Certainly, it would be most unwise to outlaw such useful practices.

Subsection 8 prohibits any person acquiring substantial control of the floating supply of any listed security for the purpose of increasing the price by means of such control. There is no definition of what constitutes the "floating supply" of a security. If the real intention of this subsection is to prohibit corners, I would like to point out that the best means of preventing a corner is not to make it a criminal act to provide that contracts in the security which has been cornered may be settled by the payment of a fair cash value rather than by actual delivery of the security. Such a provision makes corners unprofitable and prevents them more effectively than any criminal penalty. The stock exchange adopted such a rule in the general revision of its constitution in 1925.

Subsection 9 prohibits all forms of option contracts. The purpose of including such a sweeping prohibition was undoubtedly the prevalent belief that options have customarily been used as a means of unfairly influencing market prices in connection with manipulative pools. This does not justify, however, an arbitrary prohibition of all forms of option contracts. Options which are used for manipulation might well be prohibited, without preventing the use of options for legitimate and proper purposes.

The balance of section 8, subdivisions (b), (c), (d), and (e), contain provisions imposing severe civil penalties upon persons who violate the specific prohibitions which I have just discussed. I am advised that these civil penalties introduced a new and vicious principle into our law. While the

enforcement of the criminal law has sometimes been made more effective by granting to persons who have been injured by the criminal act a right to recover penal damages, there is not, I am told, any known case in which civil penalties of a punitive nature have been granted to persons who have not suffered direct injury from the criminal act

In substance, these provisions allow any purchaser or seller of a security, the price of which may have been affected by any one of the prohibited transactions, to bring suit to recover the difference between the price at which he bought his security and the lowest price at which the security sells during 90 days before and 90 days after the date of purchase, or, in the case of a sale, the difference between the sales price and the highest price at which the security sells during 90 days preceding and 90 days following the sale. These amounts can apparently be recovered irrespective of whether the person has suffered actual damage or not, and it is obvious that these sections will result in allowing any purchaser or seller of a security, the price of which may have been affected by a prohibited transaction, to recover vastly greater damages than he could have suffered. In fact, it is oven conceivable that a person might buy a security and sell it again at an insignificant loss and then claim, as a buyer, the difference between the lowest price at which the security sold within a 6 months' period and the price that he paid for it, and, as a seller, the difference between the highest price reached within the 6 months' period and the price at which he sold it. An illustration will make this example even clearer. Suppose I should buy 100 shares of Allied Chemical & Dye at 121 and should sell it again at 120, thereby losing \$100; and that within 90 days before and 90 days after my transaction this stock had sold at a low of 105 and a high of 155. If I should discover that somebody had engaged in one of the numerous transactions prohibited by section 8, I could sue him for \$1,600, as the difference between the price at which I bought the stock and the lowest price at which it had sold. I could, likewise, sue him for \$3,500 as the difference between the price at which I sold the stock and the highest price at which it had sold. In the aggregate I could recover \$5,100 as my damages, although, in fact, my actual loss was only \$100.

It is obvious that provisions of this character will be productive of endless litigation and innumerable blackmail or "strike" suits.

Section 9 of the bill contains three subdivisions. Subsection (a) forbids short selling except in accordance with the rules and regulations to be laid down by the Federal Trade Commission. Subdivision (b) prohibits stop-loss orders except in accordance with like rules or regulations, and subdivision (c) allows the Federal Trade Commission to prohibit the employment or the use of any contrivance or device which it shall determine to be detrimental to the public interest.

I have in the last 3 years spoken so often in regard to the necessity and usefulness of short selling that I hesitate to burden you with further statements on this subject. We have consistently maintained that short selling is an essential part of a free and open market in securities. We have collected exhaustive statistics in regard to the short position in all stocks listed on the exchange. These statistics have been widely published and prove conclusively the value and necessity of short selling. In every great crisis covering by short selling has assisted the market to recover. The most recent illustrations of this tendency of short sellers to buy when liquidation is heaviest occurred in February and March 1933, just prior to the banking holiday, and again in July when the market suffered a very severe and rapid decline. In the 2 weeks preceding the 4th of March 1933, the short interest covered 412,000 shares of stock, and it was a notable fact that the stock market remained active and strong right down to the 4th of March, when the closing of all the banks in the country necessitated the closing of the exchange. Last summer a violent break in prices occurred in the latter part of July, and in that month the short interest declined by 445,000 shares. This furnished substantial buying power to the market in a very critical period. In the face of this record, short selling should certainly not be prohibited.

The prohibition of stop-loss orders would, in my opinion, facilitate the work of brokers and particularly the work of specialists on the floor of the exchange. However, I think it would deprive persons who are not in close touch with the market, of a perfectly proper means of having their selling orders executed when certain prices are reached. There is no evidence that the existence of stop-loss orders tends to accelerate a decline or a rise in prices. In any event,

the economic value of stop-loss orders should be carefully weighed, and no change should be made until the matter has been given further consideration.

The final subsection, giving the Federal Trade Commission unlimited power to make unlawful any device or contrivance which it may determine is detrimental to the public interest, is a surprising delegation of power, particularly as any violation of the rules or regulations of the Commission would be a criminal act which might result in heavy fines and imprisonment.

Section 10 of the bill purports to deal with the segregation and limitation, of the functions of broker, specialist, and dealer. In fact it prohibits any member of an exchange and any person who, as a broker, transacts a business in securities through a member of an exchange from acting at all as a dealer in or underwriter of securities. The sweeping character of this prohibition can only be realized when reference is made to the definitions to which I referred when discussing section 3 of the bill. The unusually broad definition given to the words "broker" and "dealer" result, in this instance, in prohibiting a member of an exchange from buying or selling securities for his own account.

Even if some segregation of the functions of members of exchanges may be desirable—and I would like to say parenthetically that the New York Stock Exchange has been studying that problem for nearly 2 years—there is certainly no justification for such an arbitrary prohibition as the one contained in this section.

The consequences of the enactment of this section would be very grave. It would absolutely prohibit the odd-lot business, which today provides a market for all purchasers and sellers of listed stocks in amounts of less than 100 shares. There are literally millions of investors who hold odd lots of securities, and it would be grossly unfair to deprive them of the benefits of a market on the exchange purely for the purpose of separating completely the functions of broker and dealer. Mr. Hetherington will speak to you more in detail in regard to this subject, but I would like to give you certain statistics which prove what an important part of the market consists of the purchases and sales by small investors. In the year 1929, when the total reported sales on the York Stock Exchange amounted to 1,124,000,000, our odd-lot houses bought in odd lots more than 142,000,000 shares and sold in odd lots more than 153,000,000 shares. Together, these small purchases and sales exceeded in that year 300,000,000 shares. The year 1929 was unusual because it included a period of rising prices followed by a panic. This fact, however, did not unduly affect the volume of odd-lot transactions and odd-lot purchases and sales have been as important, if not more important, throughout the entire depression. From April 1 to August 1, 1933, odd-lot sales aggregated nearly 57,000,000 shares and, in the same period, odd-lot purchases were nearly 56,000,000 shares, or a total in odd-lot transactions of nearly 113,000,000 shares in a 4 months' period. During these same months the total sales reported on the New York Stock Exchange were 403,000,000 shares.

This section also makes it unlawful for a specialist to trade for his own account and prohibits him from accepting orders except at a fixed price. Mr. Sprague will explain this particular business. This prohibition will completely destroy the specialist system as we know it today and would have serious consequences for the whole market. This system originated many years ago when a member who had met with an accident was unable to move around the floor. He, therefore, sat in a chair at one post and offered to accept orders from other brokers and execute them as the market permitted. It was soon found that he could render better service in executing orders at limited prices, and that he could also execute market orders more rapidly than the average broker because he was constantly present at the post. Other persons imitated his example and there were soon many specialists. At the present time there are about 325 members of the exchange who act regularly as specialists and there are two or more competing specialists in every important active stock. The existence of the specialist system facilitates trading and is, in my opinion, an essential part of any important market for securities.

The greatest criticism which has been leveled against specialists, and apparently the evil at which this section of the bill is aimed, is that they are allowed to buy and sell for their own account the stocks in which they accept orders from others. Most people believe this allows a specialist to trade against the orders which have been entrusted to him and that, therefore, he is buying and selling to the disadvantage of his customers. This, of course, is not true. For many years the rules of the exchange have prohibited a specialist from

trading against his customers' orders. He is allowed to take stock or to supply stock on orders which have been intrusted to him only when the price is justified by market conditions and when the broker who gave him the order has been sent for and approves the transaction. Furthermore, before executing any such transaction, the specialist is required to bid and offer in the open market at the lowest possible differential away from his order before he can either take or supply stock on orders intrusted to him. This open bidding and offering insure the fact that no better price could be obtained for the customer. It has frequently been suggested that we should prevent specialists from dealing for their own account. We have been unwilling to adopt such a rule because we are convinced that the transactions of specialists make for a closer and better market which, in the last analysis, is greatly in the public interest. It frequently happens, for example, that the best bid and offer, even in well-known stocks, are a point or more apart. At such times a stock may be quoted at 30 bid and 32 offered.

In this situation, if the specialist were not allowed to trade a buying order could not be executed except at 32, and no selling order would realize more than 30. The custom of the specialist is to buy and sell in between the bid and offered prices and, in the example which I have suggested, he would probably make a market at  $30\frac{1}{2}$ — $31\frac{1}{2}$ . In other words, he would be willing to buy stock half a point above the best offer made by others and to sell stock half a point below the price at which others were offering to sell. This would give to the public an advantage of an approximate average price between the bid and the offer. I do not see that this operates unfairly to the persons who have intrusted orders to the specialist, because they themselves have limited the price at which they are willing to buy or sell. I know critics have said that if the specialist did not trade the person who had entrusted his order to him would realize his price and they imply that, from this point of view, the trading of the specialist is a disadvantage to his customer. This may be theoretically true, but this argument entirely overlooks the fact that the advantage which this customer gets is at the expense of some other member of the public. As I pointed out in the example above, if a specialist were not allowed to trade when the market was quoted at 30 bid—32 offered, any person buying would have to pay 32, while any seller would realize only 30. The specialist by trading gives the public a fairer price than would otherwise be realized, and this is of value to all persons who are buying or selling securities.

It is, likewise, commonly believed that specialists by reason of the information which they secure from the orders intrusted to them have a great advantage in trading for their own account. If anything, the contrary is true, because the specialist is bound to execute his customers' orders before he may trade for his own account. As a practical matter, he cannot refuse to accept orders and, therefore, when he trades he runs the risk that he may receive additional orders which will prevent his changing his position until after the market may have moved against him. The best proof that specialists do not have a tremendous advantage over the public and other members, is the fact that the officers of the exchange have, on many occasions, had to persuade members to act as specialists even in important stocks. While it is possible that specialists might take advantage of the information intrusted to them, the chance of their successfully doing so is remote. Their work is necessarily performed on the floor of the exchange under the constant scrutiny of the other members who have intrusted orders to them. These members are naturally interested in seeing that their orders are executed at the best possible price, and they are quick to report to the governors of the exchange any transaction which is in the least degree suspicious. When specialists trade between the bid and offered prices, they have a chance of making a profit out of small differences, but in order to do so they assume very definite risks.

There is another aspect to the work of specialists which is overlooked by critics of the exchange and that is the obligation on the part of a specialist to take full responsibility for any errors or negligence on his part. If a specialist fails to execute an order that has been entrusted to him when he had a reasonable opportunity of doing so, then he must, at the election of his customer, either take the transaction for his own account or cancel it. In other words, when a specialist makes an error the customer has the election to insist that the transaction be carried through if it is to his advantage, or he may, if the market has turned against him, require to the specialist to cancel it.

I would like also to call your attention to the devastating effect which the prohibition against a specialist accepting market orders will have. The function of a specialist is to stand at a particular post on the floor of the exchange and receive from other members such orders to buy or sell as they may elect to send him. Many of the orders so entrusted to a specialist are market orders for immediate execution. They are given to the specialist because the floor members of firms cannot cover the entire floor. Some firms do not even attempt to execute any orders on the floor but give out their entire business to specialists and floor brokers. If no market order could be executed by a specialist, the delay which would occur between the receipt of an order and the time when a broker could be found who would be able to execute it might be great and would operate to the disadvantage of the customer. It is not unusual for a large house to receive market orders in 300 or 400 different issues, all of which are to be executed at the opening of the market. If each such large house had such a volume of orders, the number of brokers required to execute all of them promptly would run into the thousands. The membership of the exchange could not be increased so as to meet this situation because, although the floor of the exchange is one of the largest in downtown New York, it is already overcrowded by the approximately 800 members who are present almost every day. As a practical matter, this prohibition would be so unworkable that the market would be completely disorganized. Specialists make, in a certain sense, a market within the market and the concentration of the buying and selling orders which are entrusted to them makes it possible for all orders to be executed quickly and at the price then prevailing in the market. In ordinary times, an order is executed within a minute or two of the time when it is received on the floor. Any such rapidity of execution would be impossible if specialists were forbidden to accept market orders and this would naturally operate to the disadvantage of investors and the public in general.

This section, likewise, includes a prohibition against specialists disclosing the orders that have been entrusted to them, unless such information is available to all members of the exchange. On February 13, the governing committee of the New York Stock Exchange adopted a rule prohibiting specialists disclosing the information contained in their books to anybody except a member of one of the standing committees of the exchange, acting in an official capacity.

Sections 11, 12, and 13 of the bill deal primarily with questions which affect listed corporations. Section 11 requires, among other things, every corporation listing securities on the exchange to file a registration statement with the Federal Trade Commission. Section 12 specifies the current information which a listed corporation must furnish to the Commission, and section 13 deals with proxies in connection with the securities of any corporation listed on an exchange. I am advised that the officers of a number of corporations have asked for an opportunity to appear before this committee and they will undoubtedly point out to you the burdens which these requirements would place upon listed corporations. I might point out, however, the fantastic result which section 13 would have in the case of a large corporation. This section requires every person soliciting a proxy to file a statement with the Federal Trade Commission which shall include a list of the names and addresses of the persons from whom proxies are being solicited and then requires that a copy of this statement shall be included as a part of every solicitation of a proxy. In effect, therefore, a corporation sending proxies to its stockholders would have to accompany the proxy with a complete stockholders' list. Insofar as these provisions seem to affect the listing requirements of exchanges, Mr. Altschul, chairman of the committee on stock list, is here and will deal fully with these questions.

Section 14 of the bill purports to make it illegal for any person to use the mails or any means of interstate communication or transportation for the purpose of making a market in any security, whether listed on a national exchange or not, without complying with such rules and regulations as the Federal Trade Commission may prescribe. This is an attempt to regulate the "over-the-counter" markets which exist in every financial center of the country. I am advised by counsel that the constitutionality of this section is extremely doubtful. Even if it should be constitutional, "over-the-counter" markets can exist without the use of the mails or of any means of interstate transportation or communication. The bill, therefore, would not effectively regulate the entire security business of the United States, and I am fearful that the penalties which the bill imposes upon brokers and listed corporations would result in

stimulating to an enormous degree the business of the completely unregulated "over-the-counter" markets. In this connection I should, perhaps, remind you that some of the manipulative pool operations, disclosed by the investigation carried on by the Senate Banking and Currency Committee, which received the greatest degree of public criticism, involved securities which were not listed on the exchange, but which were dealt in "over-the-counter." In at least two striking instances these securities had been listed on the stock exchange before the manipulative transactions took place but were removed from listing by formal action of the directors and stockholders of these companies.

Section 15 of the bill deals with transactions by directors, officers, and principal stockholders of corporations whose securities are listed on a national exchange. The provisions of this section affect primarily listed corporations and will undoubtedly be discussed by the company officials who have asked for an opportunity to appear before you. To the extent that these provisions seek to prevent dishonest acts, they are undoubtedly sound, but regulations of this character have no proper place in a bill regulating stock exchanges and stock-exchange practices. They belong in the laws governing the incorporation and management of companies. The New York Stock Exchange has long realized that many of the bad practices connected with the management of corporations have been due to loose provisions of State laws governing the incorporation of companies. It is generally recognized that these laws have in some instances been drafted for the express purpose of making incorporation easy and attractive to large enterprises. In spite of the fact that the dangers inherent in such policies have been publicly discussed for years, no perceptible improvement has resulted. The New York Stock Exchange has long been aware of these evils and, despairing of effective amendments to the laws of all States, we have urged that this situation be cured by the passage of a Federal law governing the incorporation of companies. I am firmly convinced that this step is not only desirable but is really necessary to prevent abuses of the kind referred to. The United States is today the only great commercial country which has no national corporation law. While I appreciate that the provisions of the bill dealing with officers, directors, and principal stockholders of corporations may be a first step toward such a law, I am convinced that they go too far in some directions and do not effect real reforms in many others. Furthermore, the bill attempts to do indirectly what should be done directly, if at all. There is no logical reason for imposing criminal penalties on certain practices when indulged in by officers, directors, and stockholders of corporations listed on a stock exchange and allowing similar practices of officials of unlisted corporations to go unpunished. What is wrong in one instance should be made wrong in another, and unless this is done corporations may hesitate to list their securities on an exchange and thereby subject their officers, directors, and stockholders to penalties both civil and criminal which they would avoid entirely by removing their securities from listing.

Section 16 of the bill requires every member of an exchange and every person transacting business through such a member to keep such accounts, books, and records as the Federal Trade Commission may require. It also gives the Federal Trade Commission unlimited power to examine these records. While we are in hearty sympathy with the requirement that brokers should keep adequate books and records and have, in fact, adopted a rule to that effect, the provisions of this section are objectionable because of the unlimited powers vested in the Federal Trade Commission. Not only may the Federal Trade Commission prescribe the nature of every record which a broker shall keep but it may make such examinations as in its unrestricted discretion it may determine. All expenses of these examinations, including even the compensation of the persons employed by the Commission itself, must be paid by the exchange or the member whose records are examined. There is no requirement limiting the extent of these examinations or their expense to what is reasonable or necessary and, in effect, therefore, the Federal Trade Commission can arbitrarily dictate the extent and scope of these examinations and compel the person examined to pay whatever expense may be incurred. An inquisitorial power of this kind is, of course, capable of abuse, and if abused would be equivalent to a power to destroy.

Included in this section, which purports to deal with reports and examinations, there is a provision giving any representative designated by the Federal Trade Commission the right to attend any meeting or proceeding of an exchange or any committee thereof. As I will point out in a minute, section 18 gives the Federal Trade Commission power to make rules and regulations in

regard to every aspect of exchange management, and also to make such investigations as the Federal Trade Commission may deem necessary or proper. Apparently not satisfied with these powers, it was thought necessary to include this extraordinary provision which would allow any person designated by the Federal Trade Commission as its representative, to actually supervise and, by his personal presence, influence every act taken in the management of exchanges.

Section 17 of the bill deals with the liability of any person who shall make or be responsible for making any statement in any report or document filed with the Federal Trade Commission, which was "in the light of circumstances under which it was made, false or misleading in respect of any matter sufficiently important to influence the judgment of an average investor." The penalties provided for a violation of this vague and indefinite provision are both criminal and civil. The civil penalties permit any person who, without knowledge that the statement was false or misleading, shall buy or sell "a security the price of which may have been affected by such statement" to sue and recover damages which shall be the difference in price between the amount paid and the lowest price at which the security shall have sold during 90 days before and 90 days after the purchase, or, in the case of a sale, the difference between the amount realized and the highest price at which the security shall have sold during 90 days before and 90 days after the sale. The person sued shall be liable unless he can sustain the burden of proof that he acted in good faith and in the exercise of reasonable care had no ground to believe that such statement was false or misleading. In view of the unlimited character of the information which the Federal Trade Commission has the right to require exchanges and persons transacting business in securities, as well as all corporations listed on a national exchange, to file with it, it will be humanly impossible to determine what facts may, in retrospect, be deemed to be sufficiently important to influence the judgment of an average investor. Even supposing the best of good faith and the exercise of all care which would seem reasonable at the time a statement or document is prepared, some subsequent event may make some part of the statement appear to be misleading. We all know that hindsight is easier than foresight. The really objectionable feature of this provision is that the civil penalties may be recovered by persons who have not relied upon the inaccurate or misleading statement, and the amount which can be recovered will not be the actual damage, but a penal sum, which will far exceed any damage which they may have suffered. If any civil penalties are deemed necessary, then they should be limited to the actual damages suffered by persons who have been misled by the false or inaccurate statement. The imposition of a criminal penalty upon mere mistakes of judgment likewise seems indefensible.

Section 18 of the bill grants certain special powers to the Federal Trade Commission. Subdivision (a) of this section grants broad powers to the Commission to adopt rules and regulations, and apparently contemplates that in prescribing the form and contents of registration statements and reports the Federal Trade Commission may discriminate between different classes of exchanges, members, securities, and corporations whose securities may be listed on national exchanges. Subdivision (b) gives the Federal Trade Commission power to prescribe the form of the financial statements which will be submitted to it, and in this connection allows it to specify the items and details which must be shown and the accounting principles which must be applied. Without going into detail, it is sufficient to say that this right to compel corporations to use such methods of accounting as the Federal Trade Commission may arbitrarily select will, in effect, deprive the officers and directors of corporations of the power to manage their companies. A variation in the method of valuing assets or determining depreciation or in the amount of recurring and nonrecurring income and other similar matters may vitally affect the accounts of corporations. In each case matters of this kind essentially involve the exercise of the discretion of management, and while it is proper to require that management should adopt and apply a consistent policy in regard to accounting methods, it is impracticable to vest in one administrative body the power to prescribe rules and regulations of universal application.

Subsection (c) gives the Federal Trade Commission authority to adopt rules and regulations in regard to exchanges, their members and persons transacting a business in securities through such members. This long section, which specifies in detail some of the powers which the Federal Trade Commission may exercise, clearly is not a regulation of stock exchanges and the brokerage business, but, in fact, gives the Federal Trade Commission power to manage



exchanges and dictate brokerage practices. There is no single activity of a stock exchange from the admission of members to their suspension or expulsion that may not be controlled under this subsection. The election of the officers of an exchange and the appointment of its committees are likewise within the control of the Federal Trade Commission. This is not regulation but domination.

Subsection (d) makes the rules and regulations of the Federal Trade Commission effective upon publication, in such manner as the Commission shall prescribe. This, in effect, might result in rules and regulations, the violation of which is a criminal act, becoming effective without any proper notice. It is another instance of the arbitrary character of the powers vested in the Federal Trade Commission by this bill. Subsection (e) gives the Federal Trade Commission broad power of subpoena witnesses and compel the production of books and papers for any investigation which in its opinion is necessary or proper. These investigations can apparently be carried out not only by the Federal Trade Commission or any member of it but also by any officer or officers designated by it and the power to subpoena witnesses and compel the production of books and papers may be exercised by these subordinate officials as they see fit. The final sentence of this subsection makes it a misdemeanor for any office participating in such an inquiry and also for any person examined as a witness to disclose to any person other than a member or officer of the Commission any information obtained upon such inquiry, except as directed by the Federal Trade Commission or one of its officers. The purpose of this extraordinary provision is apparently to make all investigations by the Federal Trade Commission secret proceedings and, in addition, to impose a criminal penalty upon any witness who might disclose, even to his own attorney, what had transpired during such an inquisition.

Section 19 of the bill imposes liability upon persons controlling any other person liable under the provisions of the bill when such control exists through stock ownership, agency, or otherwise, or by any agreement or understanding. These provisions seem to apply more particularly to corporations and officers, directors, and stockholders of corporations than to exchanges or brokers. There is, however, one extraordinary provision which might directly affect brokers. Subdivision (d) provides that the acts of a husband, wife, or child, or parent residing with a person subject to any provision of the bill, or a trustee for such person of property used in the transaction in question, may be imputed to such person unless he shall sustain the burden of showing that the acts were not done with his approval or for the purpose of evading the bill. In view of the numerous provisions of the bill, to which criminal penalties are attached, and the fact that a violation of many of them could occur through inadvertence, this provision, which makes a man responsible not only for his own acts, but for the acts of independent persons, may operate in a grossly unfair manner.

Section 20 of the bill authorizes the Federal Trade Commission to investigate for the purpose of determining whether any person has violated, or is about to violate, any provision of the bill. It further gives to the Federal Trade Commission certain remedies whenever it is satisfied that a person is violating or intends to violate any provision of the bill or any rule or regulation adopted by the Federal Trade Commission. These remedies include, first, the right to secure an injunction; second, the right to suspend any national exchange from registration for a period not exceeding 12 months or to withdraw its registration altogether; and, third, the right to suspend for a period of 12 months or order the expulsion from a national exchange of any member or officer who the Federal Trade Commission finds has violated any provision of the bill or any rule or regulation thereunder, or who has effected any transaction for any other person who he has reason to believe is violating any of the provisions of the bill or any of the rules and regulations adopted pursuant to it. These powers to suspend an exchange or to terminate its registration and to suspend or require the expulsion of a member or officer of an exchange may apparently be exercised whenever the Federal Trade Commission is convinced that the exchange or an officer or member of it has violated any provision of the bill or any of the rules or regulations which the Federal Trade Commission may adopt, irrespective of whether such violation is material or immaterial or willful or inadvertent. The determination of the Federal Trade Commission in such cases is apparently final because the later provision which permits an aggrieved person to review in the courts the orders of the Federal Trade Commission specifically provides

that the findings of the Commission as to facts, if supported by evidence, shall be conclusive. This section, therefore, gives the Federal Trade Commission complete control of exchanges and puts every officer and member of an exchange at the mercy of the Commission.

Sections 21 and 22 of the bill provide that all hearings before the Commission shall be public and that all information received by it shall be public records. The latter provision, which would seem to require that all information which the Federal Trade Commission may receive from corporations must be made available to any person who wishes to examine it, may result in putting American business at a distinct disadvantage in competing with foreign enterprises. We all know that every important business has trade secrets and processes and formulas which have value chiefly because they are not available to competitors. In like manner, many of the statistics in regard to the operations of companies are of little value to stockholders and investors, but of inestimable worth to competitors. These provisions requiring publicity may, therefore have very serious consequences.

Section 23 of the bill provides that any person aggrieved by an order of the Federal Trade Commission may have it reviewed in the courts, but, as I have pointed out, the value of this right of legal review is to all intents and purposes destroyed by the provision that the findings of the Commission as to the facts, if supported by evidence, shall be conclusive. The acts of the Commission would in almost every instance involve a determination of matters of fact rather than of matters of law. This provision gives a semblance of protecting the rights of persons subject to the power of the Federal Trade Commission, but in fact does not in any way restrict the absolute power of the Federal Trade Commission under the bill.

Section 24 of the bill deals with the criminal penalties which may be imposed for any violation of any provision of the bill or of any rule or regulation which the Federal Trade Commission may adopt pursuant to it. The maximum penalties are fixed at a fine of \$25,000 or imprisonment of not more than 10 years, or both, except in the case of an exchange, when a fine of not exceeding \$500,000 may be imposed. These extraordinarily heavy penalties are made applicable to persons who make or are responsible for making any statement in a report or document filed with the Commission, which, in the light of the circumstances under which it was made, was false or misleading in any matter sufficiently important to influence the judgment of an average investor. The vagueness of this definition, on which the criminal liability of citizens may depend, makes the harsh penalties of the bill cruel and unusual. Finally, while these penalties apply only to willful violations of a provision of the bill or of a rule or regulation adopted by the Federal Trade Commission, or to a person who willfully is responsible for a false or misleading statement in a paper filed with the Commission, apparently there is no such protection afforded to a person who makes a statement to the Federal Trade Commission and he will be liable whether his act was willful or not.

Section 25 of the bill vests in the District Courts of the United States and the United States courts of any Territory and the Supreme Court of the District of Columbia jurisdiction of offenses and violations of any provision of the bill, and also of suits brought to enforce any liability or duty created by it.

Section 26 of the bill purports to deal with the effect of the bill on existing law. Subdivision (a) provides that the rights and remedies created by the bill shall be in addition to existing rights and remedies and attempts to declare that any State laws providing for the supervision or regulation of the administration or the conduct of the business of any exchange shall be superseded by the provisions of the bill. I am advised that the constitutionality of any such provision can be questioned.

Section 27 of the bill deals with the validity of contracts, and subsection (a) declares void any contract or condition binding a person to waive compliance with any provision of the bill. Subsection (b) declares void every contract made in violation of any provision of the bill or of any rule or regulation adopted by the Federal Trade Commission, and also attempts to provide that even contracts, which were lawful when entered into, shall likewise be void in respect of any cause of action arising after the effective date of the bill or of any rule or regulation adopted pursuant to it.

Section 28 of the bill attempts to control transactions on foreign exchanges by making it unlawful for any broker or dealer to make use of the mails or of any means of interstate transportation or communication for the purpose of executing a transaction on an exchange outside of the United States, except

in accordance with such rules and regulations as the Federal Trade Commission may prescribe. As in the case of section 14, which attempts to control over-the-counter markets, the validity and effectiveness of this provision are open to grave doubt.

Section 29 of the bill requires every registered exchange to pay as a license fee one five-hundredth of 1 percent of the aggregate dollar amount of transactions taking place on such exchange during the preceding calendar year. This sum is described as a registration fee and is to be paid, not to the Treasury of the United States, but to the Federal Trade Commission itself. In effect, this is not a registration fee but a tax upon the security business, which is already subject to special taxes by Federal and State Governments. There is no means of accurately computing what this tax would amount to in the case of the New York Stock Exchange because there are no statistics showing the aggregate dollar amount of the sales of securities which took place upon it. A rough estimate, however, would indicate that it might approximate somewhere between \$500,000 and \$1,000,000.

Section 30 of the bill authorizes the Federal Trade Commission to employ and fix the compensation of an apparently unlimited number of employees and further exempts all such employees from the provisions of the civil-service act.

Sections 31 and 32 of the bill merely provide for the separability of its provisions in the event that any of them are invalid and make October 1, 1934, the effective date of the bill.

The New York Stock Exchange, as I stated in my opening remarks, has constructive suggestions to make in regard to the pending legislation for the regulation of stock exchanges. These suggestions are naturally subject to the question of the constitutional power of Congress to enact legislation regulating the business of stock exchanges and their members.

The purposes to be accomplished by such legislation are: First, the prevention of fraudulent practices affecting stock exchange transactions, second, the prevention of the use of an excessive amount of credit for security speculation; and third, the elimination of practices which, though not fraudulent, permit the manipulation of security prices.

The most important question in regard to any regulatory legislation is the determination of what body shall exercise the regulatory power. Obviously, this body, whether it be called a commission or an authority, must include persons who are familiar with credit conditions throughout the United States and also persons who are fully conversant with the technical problems connected with the operation of stock exchanges. In addition, a majority of the members of such a body should be outstanding individuals who would represent the public. Having this in mind, we suggest the creation of a stock exchange coordinating authority to consist of seven members.

We suggest that this authority be composed of 2 members appointed by the President; 2 Cabinet officers, who might well be the Secretary of the Treasury and the Secretary of Commerce; 1 person appointed by the Open Market Committee of the Federal Reserve System, and 2 persons representing stock exchanges, 1 to be designated by the New York Stock Exchange and the other to be elected by the members of those exchanges in the United States other than the New York Stock Exchange, that primarily offer a market place for securities. Such an authority would not only represent the interests of the public but would have the benefit of the opinions and advice of two Cabinet officers, and through its connection with the Open Market Committee of the Federal Reserve System would be in close contact with credit conditions throughout the United States. It would also include men who had detailed technical knowledge of exchange operations.

We suggest that this coordinating authority be given plenary power to control the amount of margins which members of exchanges must require and maintain on customers' accounts; and further, that it should have plenary power to require stock exchanges to adopt rules and regulations preventing not only dishonest practices but also all practices which unfairly influence the price of securities or unduly stimulate speculation. Without attempting to define, at this time, the scope of these powers, we believe that they should include the power to fix the requirements for the listing of securities; the control of pools, syndicates, and joint accounts and also options intended or used to influence market prices; the power to control the circulation of rumors or statements calculated to induce speculative activity, the use of advertising and the employment of customers' men or other employees who solicit business; to the end that all practices which may tend to create unfair prices may be eliminated.

This authority should also have power to study, and, if necessary, to adopt rules in regard to those cases where the exercise of the function of broker and dealer by the same person is not compatible with fair dealing and to adopt rules in regard to short selling, if it should become convinced that regulation of this practice is necessary.

These suggestions represent the considered view of the New York Stock Exchange and I have been authorized to present them by the governing committee of the exchange I can say confidently that the exchange will cooperate fully in attempting to prevent unwise or excessive speculation and abuses or bad practices affecting the stock market.

I appreciate the courtesy which the committee has extended to me in affording me this opportunity to state fully the position of the exchange in regard to this bill. I trust that the committee will feel free to ask for any information which it may desire from the exchange or its officials. I can assure you that all of the records of the exchange of every character and nature will be made fully available to you and, in addition, not only the officials of the exchange but all of its technical experts are at your disposal.

Respectfully submitted

RICHARD WHITNEY,  
*President of New York Stock Exchange.*

FEBRUARY 22-23, 1934

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LAW SCHOOL OF HARVARD UNIVERSITY,  
*Cambridge, Mass., February 22, 1932.*

CARTER, LEDYARD & MILBURN,  
*New York, N.Y.*

(Attention: Mr. W. H. Jackson)

DEAR SIR: I am enclosing herewith, in accordance with your request, my opinion on the constitutionality of H R 4, the LaGuardia bill to regulate the short selling of securities on exchanges

I have confined myself to a consideration of the constitutionality of the LaGuardia bill, for I am as yet unconvinced that a bill could not be drafted to regulate security transactions on stock exchanges which would be constitutional. The LaGuardia bill, however, bottoms itself upon a theory and conception of interstate commerce that I am not prepared to accept

Naturally the pressure of time has prevented my giving as thorough a consideration to the subject as I should have liked. I believe, however, that I have considered all the pertinent authorities and given them their due weight. Subsidiary matters I have neglected inasmuch as they fall within the category of details whose validity will hinge upon the central question

Faithfully yours,

J. M. LANDIS

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CAMBRIDGE, MASS., *February 22, 1932.*

CARTER, LEDYARD & MILBURN,  
*41 Broad Street, New York, N.Y.*  
(Attention of Mr. W. H. Jackson.)

DEAR SIR: In reply to your request for my opinion as to the constitutionality of House bill no. 4, a bill to protect banking and commerce against short sales of securities issued by corporations engaged therein, I beg to summarize my conclusions in the following manner:

#### THE NATURE OF THE BILL

The bill deals with the short sales upon stock exchanges of the securities of banks organized under the laws of the United States and/or members of the Federal Reserve System, and of corporations engaged in interstate or foreign Commerce. It acts upon the conception that the practice of short selling is a means of manipulating the market values of such securities, which, by producing arbitrary and abnormal declines, induces their needless liquidation. This manipulation of market values, assumed not to reflect those that would be produced by the normal operation of the law of supply and demand, is considered as a means whereby credit extended upon the face of such securities

is destroyed, thereby imperiling the general credit structure necessary to the adequate functioning of commerce and banking, producing hoarding, and making it more difficult for such corporations whose securities have been depressed by short selling to finance operations pursuant to carrying on interstate commerce and banking. To the end of controlling the practice of short selling, the bill seeks to attach a certain degree of publicity to the making of short sales. Further provisions of the bill seek by drastic methods to enforce these requirements

#### THE CHARACTER OF STOCK EXCHANGE TRANSACTIONS

An understanding of the constitutional problems raised by the bill requires a working conception of the nature of transactions upon stock exchanges. The central fact of a stock exchange is that it is, in essence, a market for a particular thing—the security. Persons desirous of buying and selling securities are here assembled more readily to facilitate their aims. In the modern exchange the number of such persons admitted to the market and privileged actually to buy and sell upon that market is limited to a defined group. These members of the exchange, in the main, act as brokers or agents for other persons. Between themselves, however, they deal as principals. Contracts of sale are made only between members upon the floor of the exchange, and the delivery of the securities, whether or not cleared through some form of clearing house, is made only between members. The fact that many transactions on stock exchanges concern marginal purchases or sales by customers does not alter these essential characteristics. Delivery of the security and transfer of the purchase price follows in either event.

The transactions on the exchange are thus not only geographically limited to the locality where the exchange is located, but they do not concern an article moving in interstate commerce. Such movement in interstate commerce as results from stock exchange transactions occurs from the fact that either subsequently to a purchase of securities by a broker, the securities may actually be delivered to a customer in some other State directly by that broker or through the medium of a corresponding broker, or that preparatory to a sale securities may be forwarded to the broker negotiating such sale. Furthermore, instrumentalities of interstate commerce, such as the telegraph, the telephone, and the mails, are employed by brokers on the exchange in the effectuation of sales and purchases, and in the wide dissemination of market prices of securities in order to inform their own customers or customers of corresponding brokers of the prices at which securities can be bought and sold on the exchange. Such wide dissemination of market quotations is obviously necessary in order that purchasers and sellers may know the prices which securities are commanding on the exchange and thus be induced either to buy or sell securities upon the exchange.

Since the existence of a well-organized market has the economic effect of centering sales and purchases at such a market, the major portion of security buying and selling takes place on stock exchanges. Uniformity in security prices throughout a wide geographical area is thus secured. But the process by which this is achieved is the interchange of securities in a local and limited geographical area.

#### THE THEORY OF THE BILL

The bill (H. R. 4) recognizes the local characteristics of actual exchange transactions. It does not seek to attach to them an interstate character arising from the interstate nature of the devices used to facilitate transactions on the exchange or from the fact that the physical certificates actually bought and sold are thereby transferred from State to State. Instead, it seeks to attach an interstate character to transactions in securities arising out of the fact that such securities represent either obligations of or aliquot shares in businesses engaged in interstate commerce, or incorporated under national banking laws or possessing peculiar privileges as being members of the Federal Reserve System. Dealing in such obligations on exchanges is considered by the bill to be so intimately related to interstate commerce as to permit Congress to regulate it. It thus makes no effort to regulate transactions in securities of corporations not engaged in commerce between the States.

## THE EXTENT OF CONGRESSIONAL POWER OVER INTERSTATE COMMERCE

The essence of Congressional power over interstate commerce, apart from control over instrumentalities of such commerce as the railroads and the telegraph, resides in the control that the Federal power possesses over the free movement of commodities from State to State. To that end direct and substantial interference by the States with interstate Commerce is forbidden, whether through direct regulation or taxation. Also power is possessed by Congress to remove and control obstructions to the free movement of such commodities through the accustomed channels of trade.

The application of these principles is well illustrated by reference to the control exercised by Congress over commodity exchanges. The Packers and Stockyards Act and the Grain Futures Act, whose constitutionality has been upheld, sought to control certain practices in the live stock and grain exchanges. The basis for such control did not rest upon the fact that such transactions of themselves constituted interstate commerce. Instead, the Supreme Court has repeatedly recognized that mere transactions even upon commodity exchanges do not constitute interstate commerce (*Hull v. Wallace*, 259 U. S. 44; *Hopkins v. United States*, 171 U. S. 578). But it is their effect upon the stream of commodities moving in interstate commerce that makes them subject to congressional control (*Stafford v. Wallace*, 258 U. S. 495; *Board of Trade v. Olsen*, 262 U. S. 1; *United States v. Coffee Exchange*, 263 U. S. 611; *Tagg Bros. v. Morehead*, 280 U. S. 420; *United States v. Patten*, 226 U. S. 525; *Chamber of Commerce v. Federal Trade Commission*, 13 F. (2d) 673). This consideration is emphatically brought out by Chief Justice Taft in the *Board of Trade case*:

"The sales on the Chicago Board of Trade are just as indispensable to the continuity of the flow of wheat from the West to the mills and distributing points of the East and Europe as are the Chicago sales of cattle to the flow of stock toward the feeding places and slaughter and packing houses of the East" (*Board of Trade v. Olsen*, supra, at 36).

The recognition that this is the basic principle underlying congressional control over sales for future delivery and other practices on commodity exchanges, in my opinion, distinguishes these exchanges from stock exchanges. In the former type of exchange, the thing that is bought and sold is a commodity moving in interstate commerce. The fact that for the moment, when the transaction upon the exchange actually takes place, the commodity is at rest and that no interstate delivery is required as between buyer and seller, has been regarded by the court as immaterial in the light that at bottom there is a current of interstate commerce in the commodity moving through and beyond the exchange. The stock exchange, however, presents no such aspect. Other than a physical certificate representing a chose in action, no commodity is to move in interstate commerce as a consequence of a sale on the stock exchange. Dealings upon that market will effect no additions to the cost of moving these certificates from State to State. Indeed, the parallel between a commodity exchange and a stock exchange is so absent, that I cannot regard these decisions as governing the stock exchange situation nor as establishing a principle applicable to transactions upon stock exchanges.

Bill H. R. 4 seems implicitly to recognize this distinction. It does not proceed upon any theory that short selling on stock exchanges concerns the movement of commodities in interstate commerce. On the contrary, its restricted application to securities of corporations engaged in interstate commerce regards transactions with reference to such securities as being sufficiently related to the interstate commerce engaged in by the corporations as to enable Congress to deal with the transactions as interstate commerce.

## THE BANKING FEATURES OF THE BILL

The ground for supporting the constitutionality of the instant bill would seem to me to rest primarily upon congressional power under the interstate commerce clause, and not upon the recognized congressional power to charter and operate banks. The power of Congress to charter and operate banks is, in essence, no more than the power of any State to charter a bank. It can, of course, give its banks peculiar powers which it may deny the States to give to their banks, and its banks possess peculiar privileges arising from the fact that they are Federal instrumentalities. It can consequently command the banks that it charters to observe certain regulations with reference to the conduct of the banking

business. (*American Bank & Trust Co v. Federal Reserve Bank of Atlanta*, 262 U S 643; *Rausche v Federal Reserve Bank*, 34 F (2d) 910 ) But under its power to charter banks, it is difficult to see any basis for an insistence that the securities of such banks must not be traded in a particular fashion. To derive such a power from the power to charter banks would imply that the States possessed a like power with reference to banks operating under their charters. It would also imply a like power with reference to corporations chartered by the various States. Such conclusions lead me to the opinion that the basic power upon which the instant bill must be supported is the power of Congress over interstate commerce.

#### RELATIONSHIP TO INTERSTATE COMMERCE AS A BASIS FOR CONTROL

It is a commonplace of constitutional law that a particular activity, though not actually involving the movement of goods or commodities in interstate commerce, may have such an intimate relationship to that movement so that it becomes "interstate commerce" for the purposes of determining whether Congress can exercise control over it. But it is equally true that not every matter which concerns the movement of goods in interstate commerce is to be regarded as subject to congressional control, for otherwise hardly any aspect of mercantile activity would be immune from Federal control. Upon the nature of this relationship, no definite pronouncement can be made. It is, in the last analysis, a question of degree which must be determined in the light of the applicable decisions. With reference to the bill under consideration, the question is thus presented whether the transactions on the exchange to which the bill is applicable have such an intimate relationship to the movement of commodities in interstate commerce by the corporations concerned as to permit such transactions to be regarded as interstate commerce.

That the relationship between the activity in question and the movement of goods in interstate commerce must be of an intimate nature is demonstrated by several decisions involving the applicability of the Sherman Antitrust Act. A restraint placed upon the production of goods which are to move in interstate commerce is of itself insufficient to make such a restraint a restraint of interstate commerce (*United Mine Workers v Coronado Coal Co*, 259 U S 344; *United Leather Workers v. Herbert*, 265 U.S 457; *Konecky v Jewish Press*, 288 Fed. 179). The intent to affect the current of goods moving in interstate commerce is necessary to bring such a restraint within the ambit of congressional control (*Coronado Coal Co. v United Mine Workers*, 268 U S 295). Similarly a combination designed to restrict the placing of advertising matter in a magazine circulating throughout the Nation is not a restraint of interstate commerce (*Blumenstock Bros Advertising Agency v Courts Publishing Co*, 252 U S 436. Compare *Ward Baking Co v Federal Trade Commission*, 264 Fed. 330). These cases are illustrative of the closeness of the nexus that must exist between the activity concerned and the movement of goods in interstate commerce.

Further light upon this relationship is thrown by a series of cases involving the power of the States to regulate and tax activities connected with the movement of goods in interstate commerce. It is, of course, true that such cases do not necessarily, in their assertions that the activity concerned is not interstate commerce deny that the Federal Government under the commerce clause possesses no authority to regulate them. The spheres of State and Federal regulation overlap to a certain extent. But the assertion that such activity is not immune from State regulation on the ground that it is not interstate commerce, inferentially leads to an assumption that it is not subject for congressional regulation on the ground that it is interstate commerce. At an early date the court held valid a license tax imposed by a State upon a broker dealing in foreign bills of exchange, despite the contention that the tax was upon foreign commerce (*Nathan v Louisiana*, 8 How 73 ). The strength of this decision is more fully appreciated when it is realized that had the tax been upon a broker dealing in foreign commodities, it would have been invalid. The principle there involved that the mere fact that certain dealings may subsequently lead to the movement of commodities in interstate or foreign commerce, does not of itself make such dealings interstate commerce, has been repeatedly affirmed by the Court (*Engel v O'Malley*, 219 U S 128; *Williams v Fears*, 179 U S 270; *Hemphill v. Orloff*, 277 U S 537 ). The principle found a distinct application in *Ware & Leland v Mobile County* (209 U S 405), where

the court upheld a State tax on brokers engaged in buying cotton for future delivery on exchanges situated outside the State, despite the contention that the tax was unconstitutional as being on interstate commerce.

Perhaps the most illuminating series of cases are those setting forth the general doctrine that insurance is not interstate commerce (*Paul v Virginia*, 8 Wall 168; *Ducat v Chicago*, 10 Wall. 410; *Liverpool Ins Co. v Massachusetts*, 10 Wall 566; *Philadelphia Fire Ass'n v. New York*, 119 U S 110; *Hooper v California*, 155 U S 648; *Noble v. Mitchell*, 164 U S 367; *New York Life Ins Co v Cravens*, 178 U S 389, *Nutting v. Massachusetts*, 183 U S 553; *New York Life Ins Co v Deer Lodge County*, 231 U S. 495.) The significance of these cases is to be appreciated only after consideration of the enormous significance of insurance to interstate commerce. That it is interwoven with our whole commercial life is not even open to argument. Marine insurance in one form or another serves the purpose of promoting commercial transactions by vastly extending the use of credit. Fire insurance performs the same function. Life insurance even more so, extends out and accumulates the savings of many into large funds aggregating hundreds of millions of dollars to be loaned in turn or used as productive capital. These facts were presented to the court with all the ability that counsel could command in a recent effort to induce the court to overturn its earlier decisions to the effect that insurance did not constitute interstate commerce, but without success (*New York Life Ins Co v. Deer Lodge County, supra*) The considerations leading the court to take a contrary view are important to notice. They were pointedly set forth by Mr. Justice White:

“ \* \* \* the general rule (that insurance is not commerce) and its exceptions are based \* \* \* (upon) the difference between interstate commerce or an instrumentality thereof on one side and the mere incidents which may attend the carrying on of such commerce on the other. This distinction has always been carefully observed, and is clearly defined by the authorities cited. If the power to regulate interstate commerce applied to all the incidents to which such commerce might give rise, and to all contracts which might be made in the course of its transaction that power would embrace the entire sphere of mercantile activity in any way connected with trade between the States, and would exclude State control over many contracts purely domestic in their nature. The business of insurance is not commerce. The contract of insurance is not an instrumentality of commerce. The making of such a contract is a mere incident of commercial intercourse, and in this respect there is no difference whatever between insurance against fire and insurance against ‘the perils of the sea.’” (*Hooper v California, supra*, 655)

These cases, of course, only establish that the business of insurance is not immune from State regulation as being interstate commerce. The corollary that the business of insurance cannot be regulated by the Federal Government on the ground that it is not interstate commerce would seem to follow. The question has, however, never been judicially tested. But a Senate Judiciary Committee unanimously reported that insurance was not interstate commerce so as to permit Federal regulation of it (S Rept No 4406, 59th Cong., 1st sess.)

A further case deserving notice is the decision of the Court holding the Child Labor Act unconstitutional. (*Hammer v Dagenhart*, 247 U S 251.) That like considerations there prevailed with the court is evidenced by the court's language when it stated: “Over interstate transportation, or its incidents, the regulatory power of Congress is ample, but the production of articles, intended for interstate commerce, is a matter of local regulation.” The distinction between such a case and the cases upholding the constitutionality of the Lottery Act (*The Lottery Case*, 188 U S 321), the White Slave Act (*Hoke v United States*, 227 U S 308), and the Pure Food and Drug Act (*Hypolite Egg Co v. United States*, 220 U S 45), seems to reside in a degree of differentiation as to the relationship of the movement of commodities and persons in interstate commerce to the practices sought to be reached by Congress.

The application of the principles here enunciated to the bill in question leaves in my judgment little room for dispute. The relationship between market transactions of securities of corporations engaged in interstate commerce and the actual movement of goods of those corporations in interstate commerce, certainly presents no closer bond than the relationship between means and methods of production and such transportation, nor between insurance and the movement of insured goods in interstate commerce, when insurance as an instrument of credit is practically necessary to secure any such movement.



Indeed, to trace the effect of market manipulations in a security upon the movement of any particular commodity in interstate commerce would require an ingenuity far beyond the average economist. To see that the market value of securities has a bearing and influence upon trade generally is, of course, a matter of common understanding. But the exact effect of the practice of short selling upon the movement of commodities in interstate commerce is not even specified in the bill. Only general allegations that the practice affects banking and commerce are contained in the bill. In the light of such uncertainty as to the effect of such practices, even assuming that the matter was within the congressional power of regulation, doubts as to constitutionality would arise under the fifth amendment.

Thus far the Supreme Court has not regarded as interstate commerce, activity which does not have a clear, definable relation to the movement of particular commodities in interstate commerce. It has consistently refused to take a different attitude although urged to do so. It has declined, as Mr. Justice White stated, to extend the concept of interstate commerce so as to bring within the possible ambit of exclusive Federal control such matters as insurance, banking, means and methods of production, the chartering of manufacturing corporations engaged in interstate commerce, supervision over the issuance of their securities, and the like. But such a trend of thought would be necessary to sustain the constitutionality of the bill in question. The central theory upon which it posits the existence of congressional power, namely the fact that because certain corporations are engaged in interstate commerce Congress can regulate transactions in their securities upon exchanges, seems to extend congressional power over interstate commerce to a point not warranted by the decisions or expressions of the Supreme Court, nor in accord with a likely view, so far as one may judge the immediate future, that the court would entertain.

No additional warrant for congressional power is to be gathered from the fact that stock exchanges make use of such instrumentalities of interstate commerce as the telegraph, telephone, and the mails for the transaction of their business. Such an argument was pressed upon the Court in the insurance cases but without effect.

"To accomplish the purpose there is necessarily a great and frequent use of the mails, and this is elaborately dwelt on by the insurance company in its pleading and argument, it being contended that this and the transmission of premiums and the amounts of the policies constitute a 'current of commerce among the States'. This use of the mails is necessary, it may be, to the centralization of the control and supervision of the details of the business; it is not essential to its character" (*New York Life Insurance Co v Deer Lodge County, supra, 509*).

This is not to say that Congress may not regulate abuses in the use of instrumentalities of commerce by stock exchanges, insurance companies, or any business, but it is a clear recognition of the fact that the mere use of such instrumentalities to effectuate a transaction not otherwise interstate commerce does not make it interstate commerce.

I shall not take occasion here to comment upon other features of the bill. The bill would seem to stand or fall upon the justification for its central theory, and, due to the pressure of time, I have confined myself to a consideration of that theory. Other features contained in the bill of doubtful constitutionality need therefore no particular attention.

Respectfully yours,

J. M. LANDIS.

**BRIEF ON BEHALF OF NEW YORK STOCK EXCHANGE UPON THE CONSTITUTIONALITY OF S 2693 AND H R 7852, SEVENTY-THIRD CONGRESS, SECOND SESSION, ENTITLED "THE NATIONAL SECURITIES EXCHANGE ACT OF 1934", HUNTON, WILLIAMS, ANDERSON, GAY & MOORE, COUNSEL; THOMAS B GAY, OF COUNSEL**

**BEFORE THE CONGRESS OF THE UNITED STATES—IN THE MATTER OF THE CONSTITUTIONALITY OF "THE NATIONAL SECURITIES EXCHANGE ACT OF 1934" (S 2693 AND H R 7852.)**

The apparent purposes of the "National Securities Exchange Act of 1934", now pending before the Congress, are the regulation and control of stock exchanges and the business of their members, the control of credit through restrictions upon the use of securities, and the control of all corporations through

requirements for the listing of their securities on exchanges, or, if not so listed, through limitations upon their use as a basis of credit.

Broadly speaking, these objects are sought to be accomplished in one or both of two ways:

*First:* The use of the mails, or of any means or instrumentality of communication or transportation in interstate commerce, for the purpose of using any facility of any securities exchange is prohibited by Section 4 of the Bill unless such exchange is registered as a National Securities Exchange under the provisions of Section 29 thereof, and the registration fee therein provided for is paid.

*Second:* The use of the mails, or of any means or instrumentality of communication or transportation in interstate commerce, for making or creating a market for any security whether or not listed on any National Securities Exchange is prohibited under the provisions of Section 14 of the Bill unless compliance is had with such rules and regulations as the Federal Trade Commission may prescribe as appropriate in the public interest, or for the protection of investors.

Both means of accomplishing the desired objects are, therefore, predicated upon the power of the Congress over interstate commerce, or its control of the use of the mails. May either power be constitutionally exercised in the manner proposed? The purpose of this brief is to demonstrate that it may not.

In his testimony before the House Committee on Interstate Commerce, the Honorable J. M. Landis, Commissioner of the Federal Trade Commission, and one of the draftsmen of the bill, stated very frankly that:

"At the threshold of this question, there seems to me to be the question of national power over the exchanges. I think this Committee has to meet that and face that before it can go any further. *The question is not free from doubt*" (Tr., pp. 2-3) (Italics supplied)

The need for regulation, in view of many social and economic evils now alleged to arise from and exist by reason of practices indulged in by those engaged in the buying and selling of securities, whether as members of stock exchanges or in the over-the-counter markets, is being pressed upon the Congress as a justification for the enactment of the proposed bill. Public necessity does not, however, give rise to federal power.

The Government of the United States is not a national, but a federal Government. Not national in the sense that it possesses inherent power, but federal in the sense that it possesses only those powers expressly, or by necessary implication, delegated to it by the States. All powers not so delegated are by the Tenth Amendment to the Federal Constitution expressly reserved to the States respectively, or to the people.

#### CONSTITUTIONALITY UNDER THE COMMERCE CLAUSE

Article I, Section 8, of the Constitution of the United States confers upon the Congress power "to regulate commerce with foreign nations and among the several states \* \* \*."

Commissioner Landis, in his testimony before the House Committee on Interstate Commerce, testified in this connection that:

"In order to spell out an appropriate power for Congress to deal with stock exchanges, you have to show the intimate relationship of these transactions on the exchange itself to interstate commerce.

I speak primarily of the interstate commerce power, *because I do not believe that legislation of this type can be based effectively upon any other power than the congressional power over interstate commerce.*" (Tr., p. 4.) (Italics supplied.)

In justification of the attempted exercise of the power of the Congress over interstate commerce, Section 2 of the Bill contains a recital of facts which are declared to make the regulation of exchanges using the channels of interstate commerce necessary in the public interest. To the extent that this section embodies findings of fact it will, of course, go far in satisfying judicial inquiry into the need for such legislation, but to the extent that the section contains mere conclusions of law upon the facts recited therein, it establishes nothing and would have no controlling effect upon the decision of any court that might be called upon to decide whether such conclusions were, in point of law, correct.

The findings of fact in this section that "transactions in securities as commonly conducted upon securities exchanges by means of the mails or

instrumentalities of transportation or communication in interstate commerce, are affected with a national public interest", are predicated upon the conclusion of law that transactions in securities by means of the mails or instrumentalities of transportation or communication *are* interstate commerce. If such is not the case, congressional declaration to the contrary does not make it so as a matter of law.

Again, the section provides that "Transactions in securities upon exchanges create a flow of securities in interstate commerce to and from the places where such exchanges are located". Here, again, is found a conclusion of law that such flow of securities as may in fact result from stock exchange trading, constitutes interstate commerce. If such is not the fact, it isn't made any more so by congressional declaration. Finally, the section provides that "Regulation of transactions in securities conducted upon exchanges by means of instrumentalities of transportation and communication in interstate commerce of the mails is imperative in the public interest for the protection of interstate commerce \* \* \*." The regulation of transactions in securities thus declared as imperative in the public interest, presupposes that the transactions so to be regulated constitute interstate commerce. If they do not, Congress cannot by legislative fiat ascribe to them legal characteristics which they do not otherwise possess.

Putting aside, however, what may be said to be a legislative attempt to give to the business of securities exchanges, and that of their members, factual characteristics which they do not possess, but which are admittedly essential to any lawful exercise of the power of the Congress to control interstate commerce, a general statement of the nature of such businesses is necessary in order to properly determine whether they are in fact so interstate in character as to constitute interstate commerce. That they are not is fairly demonstrable.

#### THE NATURE OF THE BUSINESS SOUGHT TO BE REGULATED

The business of a stock exchange is to centralize the purchase and sale of securities. Sales are made only between members of the exchange and, in the case of the New York Stock Exchange, the transactions occur only in its building in the City of New York. The purchases and sales made by members on the floor of the New York Stock Exchange are completed by actual delivery, either through the place for central delivery maintained by a subsidiary of the Exchange or directly between the offices of the members which, under the rules of the Exchange, must be located in its immediate vicinity. Therefore, the actual contracts of purchase and sale take place only in New York City, and all deliveries of securities and payments of money in connection with the performance of these contracts likewise occur solely in New York City.

The immediate objects of sale are bonds or certificates of stock. In the case of bonds listed on the New York Stock Exchange, not only are the instruments themselves evidences of debt, but, under the rules of the Exchange, the issuing corporations must maintain offices or paying agencies in the City of New York at which both principal and interest are payable. In the case of certificates of stock, they are constituents of title and, under the rules of the Exchange, the issuing companies must maintain transfer agents and registrars in New York City where such certificates may be transferred of record.

In the use of the Exchange's facilities, transactions of three general classes occur

*First Transactions where seller and buyer are both residents of the City and State of New York.* Transactions of this nature are obviously local in character and, therefore, solely within the control and regulation of state laws. *Boothe v. Illinois*, 184 U S 425; *Otis v. Parker*, 187 U S 606; *Hatch v. Reardon*, 204 U S. 152; *Brodnaw v. Missouri*, 219 U S. 285; *House v. Mayes*, 219 U.S. 270.

*Second. Transactions where seller and buyer are residents of different states but no actual shipment of securities occur because payment for the buyer's account is effected through some means of financing requiring the securities to remain in New York.* Marginal transactions are of this character.

In transactions of this nature nothing more than buy and sell orders pass between the states through use of the mails or other instrumentalities of communication, such as telephone or telegraph

This form of interstate *communication* is sought to be made interstate *commerce* by the provisions of Paragraph 16 of Section 3 of the bill defining such commerce as

" \* \* \* transaction in respect of any security shall be considered to be in interstate commerce if such transaction is part of that current of commerce usual in a security transaction whereby an order to purchase or to sell a security originates from a person in one state with expectation that it will or may be consummated by the receipt on an exchange of an order to sell, or purchase the same security originating from another person in another state \* \* \* "

As thus defined, interstate communication would constitute interstate commerce. Indeed, it is declared to exist upon a mere expectation. Such, of course, is not the law. In *United States Fidelity Co v Kentucky*, 231 U S 394, in which the constitutionality of a Kentucky license tax upon commercial agencies was upheld, the court said:

"The circumstance that in a substantial number of cases—even if in the greater number—there is correspondence, by letter or otherwise, from state to state, which may perhaps have an effect upon the conduct of other parties about entering or not entering into transactions of interstate commerce, is not controlling" (P. 398)

In *New York Life Insurance Company v. Deer Lodge County*, 231 U S. 495, the Supreme Court upheld the validity of a Montana statute imposing a tax upon insurance premiums collected in that state, and in disposing of the contention of the insurance company that its business was interstate because conducted in large measure through the use of the mails, it was said at page 509:

"To accomplish the purpose there is necessarily a great and frequent use of the mails, and this is elaborately dwelt on by the insurance company in its pleading and argument, it being contended that this and the transmission of premiums and the amounts of the policies constitute a 'current of commerce among the States.' This use of the mails is necessary, it may be, to the centralization of the control and supervision of the details of the business; *it is not essential to its character.*" (Italics supplied)

In *Graniteville Manufacturing Co v. Query*, 44 Fed. (2d) 64 (affirmed 283 U. S. 376), it is said that the "sending of notes by mail or otherwise from one state to another does not constitute interstate commerce" See also *Blumenstock Bros v Curtis Publishing Co*, 252 U S 436, *Engel v O'Malley*, 219 U S. 128

The above decisions clearly demonstrate that interstate communication is not interstate commerce. It is the character of a business and not the fact that the mails, or other means of communication may be employed in its conduct, that determines whether such business constitutes interstate commerce. The mere use of the mails, or other means of communication, for the purpose of effecting the purchase or sale of securities between citizens of different states through the facilities of the New York Stock Exchange, where no actual shipment of securities takes place is not, therefore, interstate commerce and cannot be made so by mere legislation flat

*Third: Transactions where buyer and seller are residents of different states and the transaction of sale and purchase results in actual shipment of securities between the states* Transactions of this character involve the question whether stocks and bonds are commodities in the sense that they may be the subject of commerce between the states

It is believed that they are not in view of the decisions of the Supreme Court of the United States in respect to substantially similar businesses

A closely related series of cases are those setting forth the doctrine that insurance, in all its forms, is not interstate commerce *Paul v. Virginia*, 8 Wall. 168; *Ducat v. Chicago*, 10 Wall. 410, *Liverpool Ins. Co v Massachusetts*, 10 Wall. 566; *Philadelphia Fire Ass'n v. New York*, 119 U S 110; *Hooper v. California*, 155 U S 648; *Noble v. Mitchell*, 164 U. S 367, *New York Life Ins. Co. v. Oravens*, 178 U S 389; *Nutting v Massachusetts*, 183 U S 553; *New York Life Insurance Co v Deer Lodge County*, 231 U S. 495

In the latter case, it was urged with great ability upon the Supreme Court that the enormous importance of insurance to interstate commerce, particularly its relationship to the interstate shipment of goods, justified the reversal of its earlier decisions holding that insurance was not interstate commerce. The court, however, affirmed the doctrine announced in *Hooper v California*, *supra*, where it was said:

" \* \* \* the general rule (that insurance is not commerce) and its exceptions are based \* \* \* (upon) the difference between interstate commerce or an instrumentality thereof on one side and the mere incidents which may

attend the carrying on of such commerce on the other. This distinction has always been carefully observed, and is clearly defined by the authorities cited. If the power to regulate interstate commerce applied to all the incidents to which such commerce might give rise and to all contracts which might be made in the course of its transaction, that power would embrace the entire sphere of mercantile activity in any way connected with trade between the States, and would exclude state control over many contracts purely domestic in their nature. The business of insurance is not commerce. The contract of insurance is not an instrumentality of commerce. The making of such a contract is a mere incident of commercial intercourse, and in this respect there is no difference whatever between insurance against fire and insurance against 'the perils of the sea'."

These decisions establish that the business of insurance is not immune from state regulation as being interstate commerce. The corollary, that the business of insurance cannot be regulated by the federal government because it is not interstate commerce, would seem to follow. Indeed, a committee on the judiciary of the United States Senate unanimously reported that insurance was not subject to federal regulation as interstate commerce (Senate Report No. 4406, 59th Congress, first Session.)

In *Nathan v Louisiana*, 8 How. 73, it was held that a broker engaged in the use of the mails in buying and selling foreign bills of exchange "is not engaged in commerce, but in supplying an instrument of commerce."

In *Humphill v Orloff*, 277 U S 537, a "Massachusetts trust", doing a business of buying and selling negotiable notes in various states, was held not engaged in interstate commerce in respect to the ownership of notes of a resident of Michigan where it undertook to enforce them without having first complied with local law requiring domestication of corporations. The court said:

"Upon the facts disclosed the court below held the trust was carrying on a business of dealing in negotiable notes within the State of Michigan; and we find no reason for rejecting that conclusion. Such business is not interstate commerce. *Nathan v Louisiana*, 8 How 73, *Paul v Virginia*, 8 Wall 163; *Hatch v Reardon*, 204 U S 152, 162, *Blumenstock Bros v Curtis Publishing Co*, 252 U S 436, 444."

In *Graniteville Manufacturing Co v Query*, 44 Fed (2d) 64, the validity of a South Carolina stamp tax was upheld as not imposing a burden on interstate commerce in respect of a series of notes executed by the plaintiff over a period of years—between 1923 and 1930—and sent by it to banks outside of the state for discount. The District Court of the Eastern District of South Carolina, said.

"The plaintiff contends also that the laying of the tax in question is a burden upon interstate commerce. But under the decisions of the Supreme Court it is plain that the notes in question did not constitute interstate commerce. They are mere personal contracts. The making of such a contract is a mere incident of commercial intercourse, and sending the notes by mail or otherwise from one state to another does not constitute interstate commerce. See *New York Life Ins Co v Deer Lodge County*, 231 U S 495, 34 S Ct 167, 58 L Ed. 332, where the subject is fully discussed and the decisions reviewed."

The foregoing decision was affirmed in 238 U S. 376

The authorities determine that the negotiation of insurance contracts, the buying and selling of foreign bills of exchange and of negotiable notes through the medium of the mails, or other means of interstate communication, is not interstate commerce, and it would seem to follow by analogy that the buying and selling of securities in similar manner is likewise not interstate commerce, and, therefore, not subject to federal regulation or control.

The basis of congressional control over interstate commerce, as distinguished from its control over the instrumentalities of commerce such as railroads, telegraph, telephone, etc., arises from the power which the federal government possesses to insure the free movement of commodities, or subjects of such commerce, between the states. To this extent direct and substantial interference by the states is prohibited.

These principles have found application in the Packers and Stock Yards Act and the Grain Futures Act, the constitutionality of which have been upheld, exercising federal control over certain practices on live stock and grain exchanges. The transactions made the subject of federal regulation by these acts were not themselves regarded as interstate commerce, although the live stock or grain to which they related necessarily moved in interstate commerce. In fact, the Supreme Court has repeatedly held that transactions upon commodity

exchanges do not constitute interstate commerce. *Hopkins v. United States*, 171 U.S. 578; *Hull v. Wallace*, 259 U.S. 44; *Moore v. New York Cotton Exchange*, 270 U.S. 593. It is the effect of such transactions upon the *stream of commodities* moving in interstate commerce that makes them subject to federal regulation. *Swift & Co. v. United States*, 196 U.S. 375; *United States v. Patton*, 226 U.S. 525; *Stafford v. Wallace*, 258 U.S. 495; *Board of Trade v. Olsen*, 262 U.S. 1; *United States v. Coffee Exchange*, 263 U.S. 611; *Tagg Bros and Marshall v. United States*, 280 U.S. 520. This is made manifest by the statement of Chief Justice Taft in *Board of Trade v. Olsen*, *supra*, when he said:

"The sales on the Chicago Board of Trade are just as indispensable to the continuity of the flow of wheat from the West to the mills and distributing points of the East and Europe as are the Chicago sales of cattle to the flow of stock toward the feeding places and slaughter and packing houses of the East"

In the foregoing cases Congress undertook the regulation of transactions in commodities raised or produced with the *expectation* that they would move through instruments of commerce, the railroads, and become a part of the flow of such commerce between the states. Consumption of such commodities within the state of their origin, except to a very limited extent would be impossible. Their production, marketing and sale to the ultimate consumer necessarily constitutes an interstate business. It is constant in its relation to the law of supply and demand and any interruption of that relationship through transactions of the character prohibited by the acts referred to, would necessarily constitute an interruption of and burden upon interstate commerce. The transportation and terminal facilities of the railroads are likewise dependent upon continuity in the flow of such commodities in interstate commerce.

None of these conditions obtain in respect to the business of buying and selling securities. There are no circumstances *requiring* securities to move from state to state in order to be dealt with in stock exchange transactions. They may find a ready market on exchanges, or in over-the-counter trading, in the state of their issue. Nor are the facilities of the railroads in any sense dependent upon the movement of securities between the states.

In a letter of February 22nd, 1932, from Commissioner Landis, then a professor in the Law School of Harvard University, to Messrs Carter, Ledyard & Milburn, counsel for New York Stock Exchange, a copy of which letter has been made a part of the record in the hearings upon this bill before the Senate Committee on Banking and Currency and the House Committee on Interstate Commerce, Mr. Landis says:

"The recognition that this is the basic principle underlying Congressional control over sales for future delivery and other practices on commodity exchanges in my opinion distinguishes these exchanges from stock exchanges. In the former type of exchange, the thing that is bought and sold is a commodity moving in interstate commerce. \* \* \* The stock exchange, however, presents no such aspect. Other than a physical certificate representing a chose in action, no commodity is to move in interstate commerce as a consequence of a sale on the stock exchange. Dealings upon that market will effect no additions to the cost of moving these certificates from state to state. *Indeed, the parallel between a commodity exchange and a stock exchange is so absent, that I cannot regard these decisions as governing the stock exchange situation nor as establishing a principle applicable to transactions upon stock exchanges.*" (Italics supplied.)

This reasoning is logical and sound. Coming from one of the persons largely responsible for the drafting of the Fletcher-Rayburn bill it should be highly persuasive in support of the view that the decisions of the Supreme Court in the Stock Yard and Grain Futures cases constitute no authority for the contention that the buying and selling of securities through the medium of stock exchanges constitute interstate commerce.

The fact that dealing in securities through the medium of the New York Stock Exchange, or in over-the-counter trading, may consist of purely local transactions where both buyer and seller are residents of the same state, or involve transactions between residents of different states, either with or without the actual shipment of securities from state to state, demonstrates that such transactions of purchase and sale do not provide for, nor do they necessarily contemplate, the shipment of securities between the states. If interstate shipments are actually made, it is not because of anything growing out of the making of the contract of purchase and sale on the New York Stock Exchange. The necessity for any such shipment is not implicit in the transaction. Under such

circumstances the Supreme Court has repeatedly held that trading, even upon commodity exchanges, does not constitute interstate commerce.

In *Hopkins v. United States*, 171 U.S. 578, transactions on the Kansas City Live Stock Exchange, an unincorporated association, having to do with the purchase and sale of cattle, hogs and other live stock, were held not interstate, the court saying:

*"The selling of an article at its destination, which has been sent from another state, while it may be regarded as an interstate sale and one which the importer was entitled to make, yet the services of the individual employed at the place where the article is sold are not so connected with the subject sold as to make them a portion of interstate commerce, and a combination in regard to the amount to be charged for such service is not, therefore, a combination in restraint of that trade or commerce."* (Italics supplied.)

In *Hatch v. Reardon*, 204 U.S. 152, an Act of the state of New York imposing a stamp tax of two cents on the \$100 of face value of shares of stock, when sold in New York by a resident of Connecticut to a resident of the latter state doing business in New York, was held not a burden on interstate commerce, the court saying:

*"The fact that the property sold is outside of the state and the seller and buyer foreigners are not enough to make a sale commerce with foreign nations or among the several states, and that is all that there is here"*

In *Ware & Leland v. Mobile County*, 209 U.S. 405, a statute of Alabama imposing a license tax on stock and cotton exchanges and the persons trading thereon for the purpose of buying and selling futures, was held not a regulation of interstate commerce although such purchases or sales were executed through the medium of an agent in Mobile, Alabama, on the New York or New Orleans Cotton Exchanges. The court said:

*"The appellants are brokers who take orders and transmit them to other states for the purchase and sale of grain or cotton upon speculation. They are, in no just sense, common carriers of messages, as are the telegraph companies. For that part of the transactions, merely speculative and followed by no actual delivery, it cannot be fairly contended that such contracts are the subject of interstate commerce; and concerning such of the contracts for purchases for future delivery, as result in actual delivery of the grain or cotton, the stipulated facts show that when the orders transmitted are received in the foreign state the property is bought in that state and there held for the purchaser. The transaction was thus closed by a contract completed and executed in the foreign state, although the orders were received from another state. When the delivery was upon a contract of sale made by the broker, the seller was at liberty to acquire the cotton in the market where the delivery was required or elsewhere. He did not contract to ship it from one state to the place of delivery in another state. And though it is stipulated that shipments were made from Alabama to the foreign state in some instances, that was not because of any contractual obligation so to do. In neither class of contracts, for sale or purchase, was there necessarily any movement of commodities in interstate traffic, because of the contracts made by the brokers.*

*"These contracts are not, therefore, the subjects of interstate commerce, any more than in the insurance cases, where the policies are ordered and delivered in another state than that of the residence and office of the company. The delivery, when one was made, was not because of any contract obliging an interstate shipment, and the fact that the purchaser might thereafter transmit the subject-matter of purchase by means of interstate carriage did not make the contracts as made and executed the subjects of interstate commerce"* (Italics supplied.)

In *Moore v. New York Cotton Exchange*, 270 U.S. 593, it was said:

*"The New York exchange is engaged in a local business. Transactions between its members are purely local in their inception and in their execution. They consist of agreements made on the spot for the purchase and sale of cotton for future delivery, with a provision that such cotton must be represented by a warehouse receipt issued by a licensed warehouse in the Port of New York and be deliverable from such warehouse. Such agreements do not provide for, nor does it appear that they contemplate, the shipment of cotton from one state to another. If interstate shipments are actually made, it is not because of any contractual obligation to that effect; but it is a chance happening which cannot have the effect of converting these purely local agreements or the transactions to which they*

relate into subjects of interstate commerce *Ware & Leland v. Mobile County*, 209 U S 405, 412-413 The most that can be said is that the agreements are likely to give rise to interstate shipments. This is not enough *Engle v O'Malley*, 219 U S 128, 139 See also *Hopkins v United States*, 171 U S 578, 588, 590; *Anderson v United States*, 171 U S 604, 615-616" (Italics supplied)

These authorities determine the unconstitutionality of the Bill as an attempted regulation of the business of buying and selling securities, whether conducted through the medium of stock exchanges or in over-the-counter markets. Such business is essentially local in character The fact that the mails, or other means of communication or transportation, may be employed in its conduct does not give it a different character Interstate communication is not interstate commerce Nor does the fact that transactions in securities on stock exchanges, or in over-the-counter markets, may give rise to shipment of securities from one state to another constitute such transactions interstate commerce, since there is nothing in the transactions of purchase and sale that necessitates or requires such shipments.

#### CONSTITUTIONALITY UNDER THE POWER OF THE CONGRESS TO CONTROL THE USE OF THE MAILS

Section 4 of the Bill prohibits the use of the mails "in interstate commerce" for the purpose of using the facilities of any securities exchange unless such exchange is registered as a national securities exchange under the provisions of the Bill. Section 14 of the Bill prohibits the use of the mails "in interstate commerce" for the purpose of making or creating a market for any security whether or not listed on any national securities exchange except upon compliance with such rules and regulations as the Federal Trade Commission may prescribe as appropriate in the public interest, or for the protection of investors.

Both inhibitions are, therefore, against use of the mails "in interstate commerce" If trading in securities listed upon securities exchanges, or whether or not so listed, is *not interstate commerce* the use of the mails for such purposes would not seem to constitute an inhibited use.

Furthermore, as the prohibition against the use of the mails for the purpose of using the facilities of any securities exchange is predicated upon the assumption that there exists in the Congress power to require such exchanges to register under the provisions of the Bill because engaged in interstate commerce, it would seem to follow that if such business is not interstate commerce and that power to require registration does not, therefore, exist, the inhibition against the use of the mails for the purpose of making use of the facilities of any such securities exchange is ineffective

Assuming, however, for the sake of discussion, an assumption which we have shown to be contrary to the facts, that the business of stock exchanges and that of their members, as well as dealing in over-the-counter markets, is interstate commerce, and that because of this fact the proposed Bill undertakes to prohibit the use of the mails in connection with the transaction of such business, does the control of the Congress over the use of the mails warrant the exercise of that power in the manner proposed?

Article I, Section 8, of the Constitution confers upon the Congress power "to establish post offices and post roads"

The power thus conferred has been held to comprehend the right to regulate the postal system of the United States and generally to determine what may or may not be carried in the mails *Ea Parte Jackson*, 96 U S 727

Cases in which this power of the Congress has been upheld have very generally related to matter which might be excluded because properly considered contrary to public policy or inimical of the public welfare, such as matter concerning the lotteries, *Ea Parte Jackson, supra*; matter involving schemes to defraud, *Public Clearing House v Coyne*, 194 U S 497; matter of a scurrilous or defamatory nature, *Warren v. United States*, 183 Fed. 718; matter tending to incite treason or forcible resistance to the laws of the United States, *Milwaukee Publishing Co v. Burleson*, 255 U S 407; and matter of an obscene or indecent nature, *Coomer v United States*, 213 Fed. 1; *Tyomæs Publishing Co v. United States*, 211 Fed. 385; *United States v. Journal Co*, 197 Fed 415

The provisions of the Bill attempting to exclude from the mails correspondence, or other matter relating to the business of buying and selling securities, would, therefore, involve an extension of this power of the Congress in a



manner not heretofore attempted, and, it is respectfully submitted, without warrant under the Constitution

The provisions of the Bill in this respect would seem to be founded upon some such assumption of power as that contended for by the Government in *Lewis Publishing Co v. Morgan*, 229 U S 288, which, as paraphrased in the opinion of the court, was said to constitute:

“ \* \* \* an exertion by Congress of its power to establish post offices and post roads, a power which conveys an absolute right of legislative selection as to what shall be carried in the mails and which therefore is not in anywise subject to judicial control even although in a given case it may be manifest that a particular exclusion is but arbitrary because resting on no discernible distinction nor coming within any discoverable principle of justice or public policy ”

In refusing to adopt the view that the power of the Congress to control the use of the mails involved any such unlimited application, the court said at page 316:

“ \* \* \* because there has developed no necessity of passing on the question, we do not wish even by the remotest implication to be regarded as assenting to the broad contentions concerning the existence of arbitrary power through the classification of the mails, or by way of condition embodied in the proposition of the Government which we have previously stated ”

The power of the Congress to control the use of the mails may not be exercised in such manner as to deny or destroy rights, either guaranteed by other provisions of the Constitution, or expressly reserved to the people by the Tenth Amendment

In *Ex Parte Jackson*, 96 U S 727, the court said at page 732

“ The right to designate what shall be carried necessarily involves the right to determine what shall be excluded. The difficulty attending the subject arises, not from the want of power in Congress to prescribe regulations as to what shall constitute mail matter, but from the necessity of enforcing them consistently with rights reserved to the people, of far greater importance than the transportation of the mail ” (Italics supplied )

Nothing in the opinion of the court in *Milwaukee Publishing Company v. Burleson*, 255 U S 407, is at variance with this doctrine as stated in the dissenting opinion of Mr Justice Brandeis, at page 430

“ The power to police the mails is an incident of the postal power. Congress may, of course, exclude from the mails matter which is dangerous or which carries on its face immoral expressions, threats or libels. It may go further and through its power of exclusion exercise, within limits, general police power over the material which it carries, even though its regulations are quite unrelated to the business of transporting mails. *In re Rapier*, 143 U S 110, *Lewis Publishing Co v Morgan*, 229 U S 288. As stated in *Ex Parte Jackson*, 96 U S 727, 732 ‘ The difficulty attending the subject arises, not from the want of power in Congress to prescribe regulations as to what shall constitute mail matter, but from the necessity of enforcing them consistently with rights reserved to the people, of far greater importance than the transportation of the mail ’ *In other words, the postal power, like all its other powers, is subject to the limitations of the Bill of Rights. Burton v United States*, 202 U S. 344, 371. Compare *Adair v United States*, 208 U S 161. ” (Italics supplied )

The power of the Congress to control the use of the mails may not, therefore, be constitutionally exercised so as to generally prohibit their use in connection with the buying and selling of securities through the medium of stock exchanges or in over-the-counter markets. Such power may be properly exercised only for the purpose of prohibiting specific transactions or methods of trading in securities when expressly declared to be contrary to public policy.

The only specific transactions and practices condemned in the Bill are those which occur in connection with trading in securities “ registered on a National Securities Exchange ”, which, of course, presupposes the power of the Congress to require such exchanges to register because engaged in interstate commerce. If the power to require registration does not exist, and the transactions and practices condemned in the Bill are not, therefore, in securities “ registered on a National Securities Exchange ”, they would not fall within the inhibited use.

There is, however, a general inhibition in the Bill against the use of the mails for making or creating over-the-counter markets in unlisted securities without complying with such rules and regulations as the Federal Trade Commission

may prescribe as appropriate in the public interest. So broad a delegation of power must, if constitutional, be exercised by the Commission in the same manner and with the same regard to other rights guaranteed by or reserved to the people under the Constitution, as would be required of the Congress under like circumstances.

It is not believed, therefore, that the Commission could, under color of the power thus conferred, prescribe rules and regulations destructive of the constitutional rights of those engaged in the buying and selling of unlisted securities in over-the-counter markets. To hold otherwise would concede to the Commission a power which the Congress does not possess and which might be exercised in such manner as to hinder and delay, if not in fact render impossible of transaction, important business of a purely private nature, the conduct of which is as much in the public interest as is the correction of the economic conditions which the Bill is designed to remedy.

#### CONCLUSION

The following conclusions are fully justified from what has been shown:

*First:* The Government of the United States is not national but federal in character, and may not exercise through the Congress powers not expressly granted, or by implication necessarily conferred, by the Constitution

*Second:* The power of the Congress to regulate interstate commerce, broad though it is, must be exercised in relation to transactions or businesses essentially interstate in character, or so directly related to interstate commerce as to be fairly comprehended within the power of the Congress to regulate such commerce. The business of stock exchanges and that of their members may consist of purely local transactions between buyers and sellers residents of the same state. It may also involve transactions between residents of different states, either with or without the actual shipment of securities between the states. Interstate communications may be employed in the conduct of such business but interstate communication is not interstate commerce. The nature of the business of stock exchanges and that of their members does not provide for, nor does it necessarily contemplate, the shipment of securities between the states. *If interstate shipments are actually made, it is not because of anything growing out of the making of the contract of purchase and sale of securities.* The necessity for any such shipment is not implicit in the transaction. There is no flow of securities through channels of interstate transportation such as that made the subject of regulation in the Stock Yard and Grain Futures Acts, nor are securities commodities in a commercial sense. Under the decisions of the Supreme Court of the United States in fairly analagous cases, the business of stock exchanges and that of their members is intrastate in character and not interstate, and, therefore, not subject to regulation or control by the Congress as interstate commerce.

*Third:* The power of the Congress to control the use of the mails, like all other federal power, is subject to the limitation of the Bill of Rights. Broad though it is, this power has never thus far been, nor may it now be, constitutionally exercised through the medium of the Federal Trade Commission or directly by the Congress, as is proposed in the Bill, in such manner as to hinder or delay, if not in fact render impossible of transaction, important business of a purely private nature, the conduct of which is of far greater importance to the general public than the correction of the economic conditions which the Bill is designed to remedy.

*Fourth:* The Bill as a whole is clearly unconstitutional  
Respectfully submitted.

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MARCH 1ST, 1934.

# STOCK-EXCHANGE PRACTICES

THURSDAY, MARCH 1, 1934

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

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

Present: Senators Fletcher (chairman), Wagner, Barkley, Bulkley, Gore, Costigan, McAdoo, Adams, Townsend, Carey, and Kean.

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; also Roland L. Redmond, counsel to the New York Stock Exchange.

The CHAIRMAN. The committee will come to order, please. Now, Mr. Whitney, you may proceed, if you will, just in your own way.

## STATEMENT OF RICHARD WHITNEY, PRESIDENT OF THE NEW YORK STOCK EXCHANGE—Resumed

Mr. WHITNEY. Mr. Chairman and gentlemen of the committee, yesterday we covered in some detail section 6 of the bill dealing with marginal requirements.

Section 7 of the bill deals with restrictions on members' borrowings, and contains 6 subdivisions. I think this entire section has been very thoroughly covered by Mr. Corcoran, and I think it would be repetitious for me to go into all the details unless it is the pleasure of the committee, or there are any particular questions.

The CHAIRMAN. There seem to be no questions. You may proceed.

Mr. WHITNEY. Section 8 of the bill deals with certain prohibitions against manipulation of security prices. Fundamentally we are in agreement with the purposes contained in this section, except that there are certain details that need clarification, in many of which cases it was agreed to by Mr. Corcoran; perhaps specifically in that connection, the necessity for arbitrage between various markets, which under subsection 7 seemingly would be prohibited.

Senator GORE. Subsection 7 of what section?

Mr. WHITNEY. Subsection (7) of section 8.

The CHAIRMAN. All right.

Mr. WHITNEY. Section 9 of the bill contains three subsections having to do with short selling, stop-loss orders, and the employment or use of any contrivance or device that the Federal Trade Commission deems detrimental to the public interest.

Short selling we have covered time and time again by way of explanation and stating our opinion of its necessity to a market.

As to stop-loss orders, we believe that any prohibition of them would be to the great detriment of the public.

Now, as to section—

Senator GORE (interposing). Mr. Whitney, I do not suppose it would do to make them compulsory. I have sometimes thought it might be better to make them compulsory than to abolish them.

Mr. WHITNEY. Do you mean stop-loss orders?

Senator GORE. Yes. But I understand that that would have a tendency to freeze your market in a way. But I did not mean that suggestion seriously, even though I have thought it might be better to make them compulsory than to abolish them altogether.

Mr. WHITNEY. Well, Senator Gore—

Senator GORE (continuing). But, you understand, I did not mean to make the suggestion seriously that you should make them compulsory.

Mr. WHITNEY. Section 10 of the bill purports to deal with the segregation and limitation of the functions of brokers, specialists, and dealers.

Now, as to the dealer, it is my understanding that various gentlemen have requested permission to appear before you to explain specifically wherein that materially and vitally affects their doing the business they are accustomed to engage in.

As to specialists, with your permission I request that a specialist of the exchange may have permission to appear and explain in detail just how he functions in the execution of orders intrusted to him. At the moment I think he is appearing before the House Committee on Interstate Commerce, so that if I may have your permission I will ask him later on to come before you.

The CHAIRMAN. All right.

Mr. PECORA. Mr. Whitney, how many specialists are there on the New York Stock Exchange?

Mr. WHITNEY. I believe about 350.

Mr. PECORA. Are there any who are specialists for more than one security?

Mr. WHITNEY. Yes, sir. Some have many, many stocks. Where a specialist has only one stock the presumption is that he has competition with other specialists in the same stock.

Senator GORE. I should like to ask one question right there on this stop-loss order business: I have heard it alleged that speculators would find out that there were a number of short stop-loss orders in, those who were on the short side of the market, and would redouble their efforts to hammer prices down so as to reach those stop-loss orders and thereby to avail themselves of the increased pressure by having stop-loss orders add pressure to the downward drive on the stock. Now, does one broker know of stop-loss orders on the part of others, or how is that arranged?

Mr. WHITNEY. Unless by some underhand means an individual should find out the fact that stop-loss orders exist on a specialist's books, I do not know how one could arrive at the information you suggest, Senator Gore. Specialists have never been allowed to divulge to anybody the fact that stop-loss orders exist on their books, or any kind of stop orders.

Senator GORE. I notice in the market reports oftentimes that one will see mention of the fact that stop-loss orders were reached in the

downward trend of a stock, and that that accelerated the downward tendency of the price of the stock. I suppose it becomes news after it happens.

Mr. WHITNEY. After it happens, yes; and the same thing can take place in a rising market as well.

Senator GORE. I do not get the point. Please explain it more fully.

Mr. WHITNEY. Stop orders exist to buy stock at a price as well as to sell stock at a price. And if a man is short of a stock and wants to put in a stop order he puts it in to buy at a price stop, where it becomes a market order, as soon as that price is reached or a higher price is reached.

Senator GORE. He puts in a market order to buy above the market price, is that it?

Mr. WHITNEY. Above the market price, presumably; yes, Senator Gore.

Senator GORE. Why would he do that?

Mr. WHITNEY. I will try to explain that: If a man sells 100 shares of General Motors short at 40, he may wish to limit his loss to 1 point. So he puts in an order to buy 100 shares of General Motors at 41 stop. That is the reason why they are called stop-loss orders.

Senator GORE. And that is true of a rising as well as of a falling market, is it?

Mr. WHITNEY. Yes, sir.

Senator GORE. I did not know that. I thought the use of it was to protect themselves in that sort of case.

Mr. WHITNEY. Perhaps they may, but of that I am not acquainted.

Senator GORE. They do that on the grain market I know, and I supposed that they did it on the stock market.

Mr. WHITNEY. It is very usual in such a case for them to use a stop-loss order.

The CHAIRMAN. Mr. Whitney, in reference to specialists, do I understand that a stock may have more than one specialist on the floor?

Mr. WHITNEY. Yes, sir. Any member of the exchange may become a specialist in any stock that he may desire to specialize in. That is his entire personal prerogative.

The CHAIRMAN. So that there may be more than one specialist in any particular stock?

Mr. WHITNEY. There are sometimes as many as 10 specialists. I think there have been 10 specialists at one time in the United States Steel common. And I believe there are—

Senator GORE (interposing). Mr. Whitney, I wish you would state their functions, what they do, and how they qualify to become recognized as specialists. What action has to be initiated in order to become a specialist?

Mr. WHITNEY. What they do in order to become a specialist, Senator Gore, is to advertise, to send out cards, I imagine very similar to what a lawyer or a doctor does, that they are going to enter that particular business. And they advise members of the exchange, and very often advertise it in the papers, that they intend as of a certain date to set themselves up as specialists in a particular stock.

Senator GORE. And they can do that of their own motion without any authorization to do it; is that so?

Mr. WHITNEY. Absolutely, sir. They then, as of that particular date, hope to receive orders in that particular stock, and they place

themselves at the particular post where that stock is designated to be traded in.

Senator GORE. Now, Mr. Whitney, will you kindly cover their activities in your statement?

Mr. WHITNEY. They receive and execute buying orders, selling orders, stop-loss orders, market orders, as well as limited orders, although the majority of the orders received by specialists are limited. They also have the privilege to buy and sell, as has any other broker on the exchange, for their own account.

Mr. PECORA. Mr. Whitney, would you mind, just for the sake of the record, defining for us the term "limited order" which you have just referred to?

Mr. WHITNEY. To give you an instance of a limited order: It is an order to buy, let us say, 100 shares of United States Steel at 56, or to sell 100 shares of United States Steel at a fixed price. Such orders, if given to buy below the market, are almost invariably given to a specialist. And if it is a selling order, and if above the market and limited as to price—which because of their nature must be limited—it is also given almost invariably to a specialist. These orders are entered in their books, that is, the specialists' books, which will be more specifically explained to you by the specialist I hope you will hear from; and when the market reaches those prices, if on a declining scale he buys the stock for the broker who gave him the order on behalf of his customer; or if on a rising market, he sells that stock which he has on order.

Senator GORE. Now, Mr. Whitney, if he has an order to sell United States Steel at 50, and if he also has an order to buy United States Steel at 50, does he have to give his customer preference instead of taking it himself? That is, the specialist cannot take the stock up in that sort of situation, can he?

Mr. WHITNEY. No, sir. He may not buy stock at 50 for himself if he has an order to buy for anybody else. Likewise, he may not sell stock at 50 for himself if he has an order to sell for anybody else at 50.

Senator GORE. That is my understanding of it.

Mr. WHITNEY. He also may not buy any stock for his own account if he has a market order, until that market order is filled; and, vice versa, he may not sell any stock for his own account if he has a selling order at the market, until that order has been filled.

Senator BULKLEY. Do you mean at any price? In other words, if he had an order to buy at 50 do you mean that he could not buy at 50 $\frac{1}{8}$ .

Mr. WHITNEY. Yes. But we will say that he has a buying order at the market, and then he may not trade for himself at any price until he has executed that order.

Senator GORE. But when he has corresponding orders, to buy and to sell, then he can buy and sell for himself, I take it?

Mr. WHITNEY. Yes; as may any other broker in the market.

The CHAIRMAN. Now, Mr. Whitney, in regard to separating the functions of these people mentioned in section 10 of the bill, I should like to get your view as to whether that is wise or not, I mean to attempt to do that. That is, as to whether a broker shall do a brokerage business, and a dealer shall deal in stocks.

Mr. WHITNEY. Mr. Chairman, I think that is a tremendously broad question. I personally feel that the elimination of trading for his own account insofar as the specialist is concerned, would be to the infinite detriment of the public.

Senator GORE. How is that? Will you please repeat that? I did not catch it.

Mr. WHITNEY. I feel that if a specialist were prohibited, as he is under the bill, from trading for his own account, subject to the rules of the exchange, it would be to the very real detriment of the public. I readily grant that there are divergent opinions on that subject in the same way perhaps as to other persons acting as dealer and broker. I think, as we have suggested, that that is a matter for real study, for great additional study I would add, before it is definitely prohibited.

Senator BULKLEY. What harm would it be to the public?

Mr. WHITNEY. I believe the public would not receive the same markets, as good markets, particularly in semiactive and inactive stocks. I believe if the market, as I have stated, for a stock was bid 30 and offered at 32, and the specialist were prohibited from trading for his own account, then if an order were received to sell at the market the immediate sale would have to be at 30. And the next order might be a market order to buy 100 shares, and it would be immediately executed at 32. The buying order would have to be immediately executed at 32. If, as is the present custom, the specialist wished to make a market between those figures it would be to the advantage of the customer, the public who wanted to trade.

Mr. PECORA. Mr. Whitney, is there any obligation on the specialist to do that under the existing rules of the exchange?

Mr. WHITNEY. There is no obligation, but that is the fairly universal practice.

Senator BARKLEY. Is there any possible conflict of interest between the specialist as a trader in his own name and in his representative capacity.

Mr. WHITNEY. There is in one regard, Senator Barkley; and if I may explain it?

Senator BARKLEY. Please do so.

Mr. WHITNEY. If a specialist has limited orders to buy stock, and let us say again to buy Steel at 50, or to sell Steel at  $50\frac{1}{2}$ , and he buys that stock from his customer or sells that stock to his customer, both being brokerage houses representing the public, he does it only after a bid and offering in the open market so that if anybody else wishes to trade or intervene in the trade they may do so. I mean any other broker. And he has to send for the representative of the customer, the other broker, and get confirmation and approval of the trade and the price. And the contract is then entered into between the specialist and the other broker who represents the public. The individual who puts his order in to sell, let us say, at  $50\frac{1}{2}$ , the stock which the specialist takes from him, has of his own volition and election to put that order in to sell it at  $50\frac{1}{2}$ . To my mind I cannot think there is any conflict of interest that can enter in there, because he can only sell that stock at the price that the customer has elected to sell it at, or at a higher price. He cannot sell it at less.

Senator BARKLEY. Suppose that I, through some broker here in Washington, give an order to sell 100 shares of Steel at 50, and that

is telegraphed up to New York and is then turned over to a specialist. Suppose that specialist in his own name happens to be long of 100 shares of Steel and he sells to me his 100 shares instead of buying it on the open market. He ceases then to be a public representative and becomes simply a dealer between himself and me, doesn't he? Does that ever occur?

Mr. WHITNEY. That may occur, sir; but the fact is, if I understand your question correctly, you have elected to buy 100 shares at 50. The specialist then bids 50 for the stock and offers 100 shares at  $50\frac{1}{8}$  in the open market. And, as I say, anybody else can take his 100 shares at  $50\frac{1}{8}$  and sell to you at 50—

Senator GORE (interposing). Mr. Whitney, will you please state that again?

Mr. WHITNEY. A specialist having the order bids 50 for 100 shares and offers 100 shares at  $50\frac{1}{8}$ . Any other broker may offer to take the 100 shares at  $50\frac{1}{8}$  or to sell 100 shares at 50. If anybody does, then the broker, in the instance suggested, sells 100 shares at 50. Now, as I understand it, that was your election, to buy that stock at that price, and I cannot see any conflict of interest.

Senator BARKLEY. It may not make any difference to me for I am in the market for 100 shares at 50; if he sells to me and if it so happens that the specialist on the floor at the time has 100 shares and is willing to sell them to me instead of buying 100 shares from somebody else for me. It may not make any difference to me individually, but it does seem to me to establish a dual capacity there, in which it is very hard to draw a line of demarcation between him as the representative of me, or as the go-between between me and somebody else who wants to sell 100 shares of Steel, but there is that relationship between buyer and seller that exists if he has 100 shares and I want to buy.

Mr. WHITNEY. There does exist a dual capacity, but that is surrounded by very stringent rules of the exchange, as to how he may so trade, and as I have said, I shall now repeat—

Senator BARKLEY (interposing). Of course, if he trades in his individual capacity he has to sell what he buys to somebody.

Mr. WHITNEY. Yes, sir.

The CHAIRMAN. Now, let us say that a specialist has an order to sell at 30 and an order to buy the same stock at 32. Then he can buy the stock at 30 and sell it at 32 himself, can't he?

Mr. WHITNEY. No, sir. If he has an order to sell any stock at 30 and an order to buy the same stock at 32, he cannot trade for his own account to the disadvantage of either of those customers.

Mr. PECORA. How would he execute those orders?

Mr. WHITNEY. That would entirely depend upon the market at the time.

Mr. PECORA. Well, assuming that that was the market.

Mr. WHITNEY. And that the last sale was—

Mr. PECORA (interposing). Assuming that the offer to sell was at 30 and that the offer to buy was at 32.

Mr. WHITNEY. And that the last sale, let us say, was at 30?

Mr. PECORA. Yes, sir.

Mr. WHITNEY. The presumption is that those two orders would be crossed in the technical term by the dealer at the price of 30, unless he could buy the stock at a cheaper price for the 32 buyer.



Senator BARKLEY. If he were able to sell in a coincidental transaction 100 shares at 30 while he represented a man who put in an order to buy at 32, wouldn't it be his duty to buy those 100 shares at 30 or anything below 32 that he could get the stock for?

Mr. WHITNEY. Absolutely yes; as I have said—

Senator BULKLEY (interposing). In that particular case, where he has an order to sell at 30 and an order to buy at 32 there would be nothing to prevent him from buying for his own account at  $30\frac{1}{8}$ , which would give the customer one eighth more than he offered, and then to sell that stock to the other fellow for, say,  $30\frac{3}{8}$ .

Mr. WHITNEY. No, sir; he could not do that. If he had an order to sell 100 shares at 30 and also had an order to buy 100 shares of the same stock at 32, those two orders would have to be taken care of before he could trade for his own account.

Senator McADOO. That is a rule of the exchange, is it?

Mr. WHITNEY. Absolutely.

Senator GORE. In that case he would buy at 30 instead of at 32.

Mr. WHITNEY. He would buy at 30, or less, if he could, in the market for the benefit of his purchasing customer who put in an order to buy 100 shares at 32.

Senator BULKLEY. Is the general result of a specialist trading for his own account a profit to the specialist?

Mr. WHITNEY. That is very difficult to answer because I do not know the answer. I would say that if a specialist is correct in his judgment as to the trend of the markets, then he will make money. But as to whether specialists as a group have made money over the last few years, my belief is that they may have made a living or they may have lost money. At any rate, I do not know of any very opulent or rich specialists.

Senator BARKLEY. That observation might be applied to everybody else who has been in the market over the last 4 years, I take it.

Mr. WHITNEY. I do not think they are any exception to the general rule. I do not think they are any wiser than anybody else.

Senator GORE. It would seem to me that if he could segregate orders, and operate on his own account, with the direct object of making a profit in the transaction and at the same time accommodating his customers and placing himself in a position to accommodate them in the future, that that might have a part in it.

Mr. WHITNEY. I do not think I understand your question, Senator Gore.

Senator GORE. Well, I am not sure that I do myself. [Laughter.] That is the reason I am searching my mind. I am seeking the motive, and I do not know whether it exists or not. That is, whether a specialist might operate on his own account in a given transaction with the hope of getting a profit for profit's sake in that particular transaction, or that he might sometimes operate in order to accommodate customers, buying and selling, and thereby put himself in the situation to continue to accommodate them.

Mr. WHITNEY. I think your question is a double question. I, of course, grant that specialists trade for their own account in the belief that they are going to make money thereby. Now, to answer the second part of your question, it is my firm belief that specialists who trade for their own account are the ones who get orders from commission houses because such houses believe that by giving orders

to specialists who do the trading, their customers will be the better served.

Senator GORE. In regard to the second part of my question, which, as you say, may be a double question, I thought he might carry on just if he broke even, without a specific profit in a particular case, in order to carry on his business of accommodating his regular customers.

Mr. WHITNEY. I think that is often true, as well as in order to create a market.

Mr. PECORA. Mr. Whitney, the outstanding virtue that is claimed for the right of the specialist to buy and sell stock that he handles is that it enables him to keep a closer market in the stock, isn't it?

Mr. WHITNEY. Yes, sir; and to create markets.

Mr. PECORA. And to create markets.

Mr. WHITNEY. Yes, sir.

Mr. PECORA. Well, now, in view of the fact that there is no obligation upon him to buy or sell for his own account for the purpose of keeping a closer market or to create a market, what would persuade or tempt him to make a transaction in his own behalf?

Mr. WHITNEY. As I have stated—

Mr. PECORA (interposing). In other words, does he do it for the altruistic purpose of keeping the market close or of creating a market?

Mr. WHITNEY. I think he does it for two purposes, perhaps as suggested by Senator Gore; certainly because he believes in the main that he can make money, that his judgment is right, just as we all use our judgment in our business, whatever it may be, that we think we are going to be right, and yet sometimes, quite naturally, we are very wrong. So it is in the case of the specialist. And I do frankly believe that the specialist in attempting to trade for himself attempts to create a market, which is probably to the advantage of all concerned, himself included.

Mr. PECORA. Which would be altruistic.

Mr. WHITNEY. In some cases that is true without question.

Mr. PECORA. Now, in view of the fact that he might have a double motive, one being self gain and the other the altruistic purpose of preserving a more orderly market for the general public, it is pretty hard to say, isn't it, to what extent the motive of self gain or profit might prevail over the other one, the altruistic one?

Mr. WHITNEY. I grant that. And as I have already said, I think this is a very deep and involved subject and deserves tremendous study from the people who are going to pass upon it from the point of view of making the bill restrictive.

The CHAIRMAN. Isn't it true that where the specialist can make money by trading on his own account he ceases to serve other people; that he could make that profit for his customer if he saw fit to do it instead of making it for himself?

Mr. WHITNEY. No, sir. In that case the customer must of necessity get a lesser price. That is, the customer would get a lesser price if the specialist did not trade for his own account.

Senator KEAN. Mr. Whitney, I should like to ask you this question: Isn't it true that, in order to obtain orders from commission houses, a specialist often will buy for his own account; and when he is doubtful as to whether he can sell again that, in order to get

orders from commission houses, he often makes a market so as to show them that he is really doing business?

Mr. WHITNEY. Exactly. And that is what I mean by the altruistic point of view of creating the market.

Mr. PECORA. In other words, transactions undertaken in that spirit by a specialist have a tendency to build up goodwill.

Mr. WHITNEY. I think so.

Mr. PECORA. Among other brokers and the public as well.

Mr. WHITNEY. Yes. Just the same as any broker seeks to execute an order entrusted to his care to the best of his ability.

Mr. PECORA. Well, frankly, I have discussed the question of the right of the specialist to trade in stock that he handles with persons having diverse views on the subject, and it does seem to me there are benefits that would accrue to the public from the right of the specialist to buy and sell for his own account. At the same time I think that right ought to be restricted in such fashion as to either entirely eliminate whatever evils may be incidental to that right, or restrict him as much as possible. Now, Mr. Whitney, could you suggest any formula by which that can be done? In other words, by which the benefits that flow from the right of the specialist to buy and sell for his own account could be preserved and the evils or incidental evils that may arise therefrom could be eliminated or restricted?

Mr. WHITNEY. Well, Mr. Pecora, I regret to state that the answer to that query is no. We have done everything we know by way of restricting trading by specialists to the end that the basis of such trading may be proper. If you will tell us, or if anybody else will tell us, what further should be done in that regard so that a specialist might still have the ability to create markets by trading for his own account we will be indeed grateful. But after years of the most serious consideration of this subject we do not know of any system that could be put into effect upon the floor of the exchange which would be better than the present system.

Mr. PECORA. Suppose you were to adopt a rule making it obligatory upon the specialist to report at the end of each day his own trades in the stock he is specializing in, I mean his trades for his own account. Is there such a rule in existence now?

Mr. WHITNEY. No, sir.

Mr. PECORA. Well, do you think that the adoption of such a rule might help toward reaching that desideratum?

Mr. WHITNEY. Mr. Pecora, you must have some idea in mind in asking such a question, so I can only answer by asking you what you think will help. We are seeking light.

Mr. PECORA. I am merely advancing a thought. I think you are better qualified to arrive at a judgment as to whether or not the thought if consummated, the idea if consummated, would be helpful.

Mr. WHITNEY. I do not quite see how it could be done. If you will explain what your idea is, perhaps I will get a better idea of what you have in mind.

Mr. PECORA. In this sense, that if the business-conduct committee of the New York Stock Exchange, for instance, were to have furnished to it every day a statement by each specialist of his trades for his own account, the members of that committee might be enabled thereby to determine fairly and equitably whether or not the trades were calculated to benefit the public more than otherwise;

and if a specialist's transactions as reported by him showed a too direct tendency in favor of self-gain on the part of the specialist, they might make suggestions to him that he abate a little bit in his trades, and so forth, at given times.

Mr. WHITNEY. If what you have in mind is to be used as a basis for further study of this entire subject, possibly that might do some good. But may I impress upon you that if a specialist trades for his own account in reference to any order that he has, that is, if he takes stock on sale at  $50\frac{1}{2}$  because he has an order to sell it at that price, he must send for the broker who gave him that order, or the representative of that broker, who has to come to the specialist, and he has it within his power and it is his obligation to inquire as to the time when that trade was made, find out if the price was fair in keeping with the market, and must confer and approve that trade on behalf of his customer; and thereby at that time he makes a contract with the specialist that he has sold to the specialist on behalf of his customer 100 shares of Steel, let us say, at  $50\frac{1}{2}$ . Now, it is my opinion that—

Senator GORE (interposing). Mr. Whitney, will you please state again the first point in your proposition, the first assumption about the transaction?

Mr. WHITNEY. The broker who gave the specialist the order to sell 100 shares of United States Steel, let us say, at  $50\frac{1}{2}$ , or the broker's representative, must go to the specialist's post, and he, representing and acting for the customer, who is an individual of the public, you understand—

Senator GORE (interposing). Yes; the man who wants to sell the stock at  $50\frac{1}{2}$ .

Mr. WHITNEY. Yes. He goes to the specialist, from whom he has had a message: Please come regarding so-and-so. And then upon his being assured, I mean the broker being assured in his own mind that the price was fair and in keeping with the market, says, "I agree to sell you 100 shares of Steel at  $50\frac{1}{2}$ ", thereby giving his confirmation and approval to the trade, and making a contract on behalf of his customer.

Senator BARKLEY. Does the specialist ever execute orders that are not limited, market orders?

Mr. WHITNEY. Yes, sir; particularly at the opening of the markets, particularly, sir, when the floor broker gives him an order to execute at the market, because the floor broker has the belief that the specialist can execute that order in the interest of the floor broker's customer better than the floor broker could do it himself.

Senator BARKLEY. Well, now, is this possible through a specialist? Suppose a specialist happens to have a number of shares of Steel that, let us say, he has purchased at a price below 50, and he wants to sell them as high above 50 as possible when he gets out, and he has an order to execute for some purchaser at 50. Does the self-interest of the specialist impel him to try to run that Steel up sufficiently high to enable him to make a personal profit, with the result that his customer would not be able to buy it at 50? Could that happen?

Mr. WHITNEY. If I understand you correctly, the specialist could buy stock at  $50\frac{1}{8}$ ,  $50\frac{1}{4}$ ,  $50\frac{3}{4}$ ,  $50\frac{1}{2}$ , if he wanted to; yes.

Senator BARKLEY. But that is not my point. I am asking if the specialist might be deeply enough interested in the stock because of its own performance, either prior or concurrently, that through his own efforts to make a profit himself he could be instrumental in advancing the stock sufficiently, rapidly, and high so that the man who had put an order in at a given price might not be able to have it executed, and in that way there might be a conflict between the specialist's personal interest and his representative interest.

Mr. WHITNEY. He could not do that without buying stock.

Senator BARKLEY. He has already bought it.

Mr. WHITNEY. But he has got to buy some more in order to influence the price and make it higher.

Senator BARKLEY. That is true; he could do that?

Mr. WHITNEY. That he could do. But he has got to get out of that stock—

Senator BARKLEY. If it goes up otherwise than by his own efforts, he is not responsible. But I am wondering if he might be so interested in the stock, because of its own performance, either prior or concurrently, that in order to make a profit himself he might be instrumental in advancing the stock so that the man who had put an order in at a given price might not be able to have it executed, and in that way cause a conflict between the specialist's personal interest and his representative interest.

Senator KEAN. Is it not true that if he advances the price and the stock sold at the price that he also had an order in for, he would be obliged to put it in at that price?

Mr. WHITNEY. Yes, sir.

Senator BARKLEY. Is your answer to my question "yes" or "no"?

Mr. WHITNEY. The answer is, I think, yes; that he might buy stock at a higher price than the limited order that he has on his books, but of course he is accumulating stock at the same time and he has got to get rid of it again some time, and the seller gets a better price.

Senator BARKLEY. Of course; but the man who wanted to buy at a given price has been deprived of the opportunity because the specialist may have advanced the stock beyond the price where he could buy it.

Mr. WHITNEY. That is true, Senator Barkley. So may any other individual who came in and wanted to buy. But as I see it, the individual who puts the order in to buy 100 shares at 50 elects to do so; and if that stock sells at 50 he will pay that much. So what happens in the market other than selling at 50 is of no particular interest to that particular man.

Senator BARKLEY. If the market went only at a normal pace without any artificial stimulation, he might get his stock at 50; but if the specialist happens to be long or thinks it is going to advance so he can make a profit and so he is encouraged to purchase for his own right, he might create a situation where the customer, who in a normal situation would be getting his stock at 50, because of this artificial stimulation could not get it at 50?

Mr. WHITNEY. I grant that it might happen; but the specialist is taking a very real risk in buying in that additional stock.

Senator BARKLEY. Let me ask one other question. How is the specialist compensated?

Mr. WHITNEY. He is compensated by a floor brokerage set by the exchange, which varies somewhat with the price of stock.

Senator BARKLEY. Is it a sort of commission basis?

Mr. WHITNEY. It is a commission basis; for the execution of every order per hundred shares he is paid a certain commission.

Senator BARKLEY. Who pays him that?

Mr. WHITNEY. The broker who gave him the order.

Senator BARKLEY. Is that a part of the commission that the broker charges the customer, or is that added to it?

Mr. WHITNEY. It is a part of it. In other words, the customer pays \$15 a hundred, let us say, for the execution of the order for 100 shares of Steel at 50. If the house to whom the customer gave that order gives it out to a floor broker or to a specialist, and the order is executed, the house pays \$2.50 to the floor broker or specialist.

Senator GORE. Let me ask you this: Is the primary function of a specialist in a way to match the bids and offers that come in from customers, to try to join their minds and hands and enter into a consummated transaction?

Mr. WHITNEY. Yes; partly, sir.

Senator GORE. Apart from that, he gets an offer but has not got a bid. Then he can trade on his own account, can he not?

Mr. WHITNEY. Yes, sir.

Senator GORE. And if he has both buyers and sellers it is his first duty to bring them together into the transaction; is that true?

Mr. WHITNEY. Yes, sir; if they can be brought together.

Senator GORE. And he cannot figure on his own account in that sort of a situation until that situation has changed?

Mr. WHITNEY. Not if his buyer and seller can get together first; no, sir—if I understand you correctly.

Senator McADOO. I just want to say, Mr. Chairman, that I am obliged to go to the Finance Committee, and I will ask you to excuse me.

Senator GORE. I have to go too, Mr. Chairman.

Senator KEAN. I would like to ask you this question in connection with Senator Barkley's question. Suppose the market is  $49\frac{3}{4}$  and a man puts an order in at 50. The specialist cannot buy—

Senator GORE. Is that an order to buy, or sell, Senator? Pardon me.

Senator KEAN. An order to buy. The specialist cannot buy for his own account at 50; he must take the order that the customer put in to sell at 50; is that right?

Mr. WHITNEY. I think I will have to ask you to repeat that, Senator Kean. I do not think I followed it.

Senator KEAN. If the market is  $49\frac{3}{4}$  for Steel, bid, and you put in an order at 50 to buy 100 shares at 50, the specialist cannot bid that stock up to  $50\frac{1}{4}$  because if the stock is sold at 50 he must put the order in at 50 for the customer?

Mr. WHITNEY. If I understand you correctly, Senator, the bid in the original case is  $49\frac{3}{4}$ ?

Senator KEAN. Yes.

Mr. WHITNEY. Then an order comes in to buy 100 shares at 50. The specialist may not buy stock for his own account at 50 until he has bought the stock for his customer at 50.

Senator GORE. But he would not be allowed to buy at 50 even if the price is  $49\frac{3}{4}$ ?

Mr. WHITNEY. If he has a bid of  $49\frac{3}{4}$  and that is the best bid he can get, he can buy for his own account above  $49\frac{3}{4}$ . He may not buy at  $49\frac{3}{4}$  until his order is executed.

Senator GORE. But as I understood Senator Kean's question, suppose the price was  $49\frac{3}{4}$  and the specialist received an order to buy at 50 for his customer: would he be allowed to do that?

Senator KEAN. No; the specialist cannot buy.

Senator GORE. But would he be allowed to buy for the customer?

Senator KEAN. I am talking about Senator Barkley's position. He made the proposition that the specialist could bid this stock up to  $50\frac{1}{4}$  for his own account. I say that if he bid it up over  $49\frac{3}{4}$  and past 50 he would have to take all the stock offered at 50 before he could make the quotation above 50.

Mr. WHITNEY. That is correct.

Senator GORE. I misunderstood your question, sir. I thought you said that if the price at the last sale was  $49\frac{3}{4}$  and he had an order to buy at 50. I do not see why he would execute that order unless somebody was going to try to move the market up.

Senator KEAN. Senator Barkley's position was that the specialist could buy this stock up for his own account without taking the orders on the way. That was the point.

Mr. WHITNEY. He certainly would have to take all stock that was offered to him or that he had on his books on the way.

Mr. PECORA. Does a specialist receive so-called "discretionary orders"?

Mr. WHITNEY. Sometimes, sir; yes.

Mr. PECORA. Would you mind defining discretionary orders as distinguished from fixed price orders or market orders or limited orders?

Mr. WHITNEY. May I give an instance?

Mr. PECORA. If you will. That probably would be the best exposition of the term.

Mr. WHITNEY. Supposing the customer of a house had 10,000 shares of stock to sell and the ruling price of the stock was around 30. He might say, "I will give an order; if you can sell this stock for me at 30 or better, use your discretion." That same order might be handed over to a specialist, and the specialist, as he felt in his judgment the trend of the market might be upwards, would sell that stock at 30 or at a price higher than 30.

Mr. PECORA. And likewise with the buying?

Mr. WHITNEY. Yes; likewise with the buying. The same discretion, Mr. Pecora, exists in any market of a sufficient size to warrant discretion.

Mr. PECORA. There have been evidences submitted to this committee, and doubtless you are familiar with some of them, anyway, where specialists have been participants in pools or syndicate accounts to trade in the stock that is to be handled as a specialist. That is true, is it not?

Mr. WHITNEY. I believe so, in the past.

Mr. PECORA. Under the rule which was adopted by your exchange on February 13 a specialist is no longer permitted to be a participant in a pool or joint syndicate account; is not that a fact?

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

Mr. PECORA. I presume that the adoption of that rule was due to knowledge that had come to the governing authorities that specialists in the past had been participants in pools or joint or syndicate accounts?

Mr. WHITNEY. I presume so.

Mr. PECORA. And the board of governors I also presume felt that the conditions required the adoption of the rule they put into effect a little over 2 weeks ago, prohibiting a specialist from being a participant in any such pool, joint or syndicate account in the stock he specialized in?

Mr. WHITNEY. I presume so; yes.

Mr. PECORA. You said that one of the useful functions of a specialist is that of making the market or creating the market?

Mr. WHITNEY. Creating a market; yes, sir.

Mr. PECORA. What is to prevent a specialist from creating a market in a manner calculated to improve his own position or interest?

Mr. WHITNEY. By buying stock or selling stock?

Mr. PECORA. By trading for his own account; yes, sir.

Mr. WHITNEY. I do not suppose that if that is done so as not to unfairly influence the market, there is any prohibition against it. He takes a risk whenever he buys or sells, as we all do.

Mr. PECORA. But specialists who have been examined here—one of them, at least, indicated very frankly that because he was a specialist he could tell the trend from the orders that he had on his books. Knowing the trend, that gives him a very substantial advantage in trading in stock for his own account.

Mr. WHITNEY. He was a very boastful man, sir.

Mr. PECORA. He might have been boastful, but I think perhaps his own performances, as admitted by him here, show that it was not an idle boast in his case.

Mr. WHITNEY. May I ask the gentleman's name?

Mr. PECORA. Mr. Wright.

Mr. WHITNEY. Did he not tell the committee that when he had some 50,000 shares currently to sell at the market he was long on stock for himself? Would that point out that his judgment was affected by the orders he had on his books or that he had gone contrary to them?

Mr. PECORA. He went even a little bit further than that in his testimony here. To refer to his language, he said he was "murdered" at one time.

Mr. WHITNEY. Yes.

Mr. PECORA. But nevertheless, despite the assassination, it left him \$138,000 to the good, net, which I think rather demonstrates that it was not an idle boast on his part that he could tell the trend of the market from the orders on his books.

Mr. WHITNEY. He undoubtedly had been right in that instance.

Mr. PECORA. Now, if the specialist were required—

Mr. WHITNEY. I take exception, sincere exception, to that.

Mr. PECORA. To what?

Mr. WHITNEY. That he could tell the trend of the market by the orders on his books; and I don't think Mr. Wright made any such statement.



Mr. PECORA. What statement do you think he made?

Mr. WHITNEY. I think he said he was correct in his judgment of the trend of the market, but not that his books showed it. There I disagree, sir.

Mr. PECORA. We can refer to his testimony on that. I will not stop now to hunt it up, but I will later on, so that there will be no shadow of doubt between us as to just what he said.

Mr. WHITNEY. I am not questioning what he said specifically, but my contention is that it was not what his book told him as to the trend of the market; it was his general knowledge.

Mr. PECORA. His general knowledge was based, at least in part, on the orders he had on his book?

Mr. WHITNEY. At least in part; yes.

Mr. PECORA. So that the orders on his book made a contribution to his general knowledge that enabled him to determine the trend and to determine it so accurately in the instance that we have in mind that he certainly profited very substantially, despite the fact that he was slaughtered or murdered, to use his expression, on July 18 last.

Mr. WHITNEY. I think you are using a very strange example to prove your case.

Mr. PECORA. A strange example?

Mr. WHITNEY. Yes, sir. When a man has thousands and tens of thousands of shares of stock to sell at a price, and in spite of that he goes considerably long in the stock, you think that is an invariable rule of information to the specialist?

Mr. PECORA. Have I said it was an invariable rule of information to the specialist?

Mr. WHITNEY. You implied it, sir.

Mr. PECORA. I am merely telling you what Mr. Wright testified to.

Mr. WHITNEY. I claim that it was his experience and not——

Mr. PECORA. That was the very evidence adduced here.

Mr. WHITNEY. I claim, sir, that it was his experience and that showed him the trend, and not what his books showed him necessarily.

Mr. PECORA. You admitted just a few moments ago that the knowledge that he had from the orders on his book was a contribution to his knowledge of the trend.

Mr. WHITNEY. It might be in part; yes, sir.

Mr. PECORA. Don't you think that if a specialist were required to report to the governing committee or some other suitable authority of the exchange his daily transactions, the governing authorities would be in a better position to determine how far his own transactions were actuated by self interest or desire for self gain and how far they contributed to the maintenance of a fair market in the public interest?

Mr. WHITNEY. If you believe, Mr. Pecora, that there would be some advantage, I am readily glad to take your advice.

Mr. PECORA. I am not offering any advice, because I would not be so presumptuous. I have not had any experience on the exchange.

Mr. WHITNEY. And yet you wrote this bill?

Mr. PECORA. I wrote the bill? I sat in at the conference and made my modest contributions to it. I think, however, that the evidence that has been presented to this committee in the past year or two

would qualify almost any person possessed of knowledge of that evidence to make suggestions with regard to the evils which should be curbed, eliminated, or restrained.

Mr. WHITNEY. Certainly, sir; but as I understand it—

Mr. PECORA. That there are evils is readily acknowledged by you and by your conferees. That we agree in large part upon those evils and are able to designate them, I think, must be conceded, too. The only question, then, is how to deal with the evils. I am merely submitting to you now for your consideration—you can trample on it all you want; I have no pride of opinion about it—the thought of having specialists, if they are to be permitted in the public interest to buy and sell for their own account, report their trades daily to the governing authorities of the exchange so that those authorities would be in a better position to determine whether or not the specialists trading have functioned in the public interest at any given time or period of time, and, if they have not, they may make appropriate suggestions, if you please, to the specialist that would cause him to modify his way.

Is there anything wrong with that; or are there any disadvantages that would flow from the adoption of that rule?

Mr. WHITNEY. I do not think so, Mr. Pecora. The bill prohibits specialists trading.

Mr. PECORA. I am now seeking to get your judgment as the judgment of a seasoned, experienced mind, on the matter of preserving to the specialist by appropriate revision to the bill the right to trade for his own account and at the same time in a manner that would not be detrimental to the public interest.

Mr. WHITNEY. I am in entire accord.

Mr. PECORA. I have already indicated, Mr. Whitney, that the thought that I have personally given to this subject has left me somewhat in doubt as to whether or not a specialist should be permitted to trade for his own account.

Mr. WHITNEY. I have suggested, and I think, entirely admitted, that this is a subject upon which there are very real differences of opinion; and if your suggestion in your belief would bring further light to the subject, it might be very wise to do it. But you appreciate that it would be a considerable task upon the specialist or his office. It would not be in the hands of the business conduct committee until well after the fact. It would then have to be compiled. Whereas specific cases are immediately available to the business conduct committee at the present time if there is thought on their part that the specialist has misused his rights.

I am entirely open-minded on any suggestion that is going to shed more light on this question of the specialist trading for his own account. I believe he should be allowed to do so; but we grant that there are other points of view, and we therefore believe that thorough and sincere study should be made on the subject as we have suggested.

Mr. PECORA. Frankly, I think the right of a specialist to trade for his own account is neither an unmixed evil nor an unmixed blessing.

Mr. WHITNEY. Quite right.

Mr. PECORA. I am trying to get a formula that will preserve the blessings and minimize the evils.

Mr. WHITNEY. We are with you there, entirely.

The CHAIRMAN. Do you know from your experience whether it would be practicable to require a specialist to report daily to the committee?

Mr. WHITNEY. Whether it would be practicable?

The CHAIRMAN. Yes.

Mr. WHITNEY. Well, as I said, Mr. Chairman, it would mean more work upon them; and I think that such things should be considered, as to whether in asking them or requiring them to do so any benefit would result. It is entirely within the power of the exchange to demand that, of course, if that is what you mean.

The CHAIRMAN. Not only that, but maybe we are requiring a thing to be done that cannot be done. I do not know how much work these specialists have to do or whether it would be possible for them to make daily reports.

Mr. WHITNEY. It would be possible; yes.

Senator KEAN. But it would probably require another clerk on their part?

Mr. WHITNEY. It might well do so, during times of activity; yes.

I am not trying to advance any argument against it, except the slight one that it would be additional work; and I think there are so many reports demanded now, that, unless good would result, I think it would be harsh to require it. Good might result.

Mr. PECORA. I was merely advancing it for your consideration and I was rather hopeful you would be able to give us your judgment on it now. But if you think it requires further thought on your part, of course you should have the opportunity of giving it further consideration and deliberation.

Mr. WHITNEY. I think it would, Mr. Pecora.

The CHAIRMAN. Now we will proceed with the bill.

Mr. WHITNEY. Sections 11, 12, and 13 of the bill deal primarily with questions which affect listed corporations. In that connection it is my understanding that there may be representatives of these corporations appear before you to show their side of the question. Particularly with relation to section 13, I had planned to tell you the real hardship the proxy rule would bring upon corporations, but Mr. Corcoran admitted that he thought it a hardship, too; so I will forget it.

Senator GOLDSBOROUGH. Are not sections 15, 17, and 18 in the same category?

Mr. WHITNEY. A similar category.

Senator GOLDSBOROUGH. They all have an effect upon American business enterprise?

Mr. WHITNEY. Very much so.

I do want to say for the record, please, that Mr. Corcoran referred to my statement before the House committee to the effect that I said any corporation with a \$5,000,000 capital might have to pay between \$500,000 and a million dollars per year for auditors, as required under the bill. That was said in answer to a question which I may have misunderstood; but in any event my answer was made in the light that even a corporation of that size might be engaging in a type of business which would involve such a very high cost of audit—I was not seeking to exaggerate—it will be a large cost because of the necessity of independent audits quarterly.

Mr. PECORA. How about independent audits semiannually or quarterly reports? That is, every 6 months, with a quarterly report submitted, audited, and the other two quarterly reports not audited?

Mr. WHITNEY. Mr. Pecora, this is my personal opinion: I am very shortly going to ask Mr. Altschul to state certain opinions and facts to the committee, with the permission of the committee; but my personal opinion is this, that an independent audit once a year by a corporation gives enough of the auditing aspect to the public. If you demand an independent audit semiannually or quarterly—

Mr. PECORA. We will say, semiannually.

Mr. WHITNEY. Semiannually—the value of that to my mind is going to be largely lost to the public. I am informed by the American Telephone & Telegraph Co. that if they had to give an audit quarterly—we will apply it semiannually—an independent audit quarterly, that for the first quarter of this year ending on March 31, they could not possibly have it in the hands of the public until July or August of this year. A balance sheet, something prepared by themselves, with truth, naturally, and not subject to the necessary review of an independent auditor, could be put in the hands of the public far more promptly. As I see it, the benefit that you and we are striving for is that the public shall have currently the facts with regard to corporations. We are in entire agreement with that.

Mr. PECORA. Mr. Whitney, in taking the example of the American Telephone & Telegraph Co., are you not taking a rather extreme case and seeking to generalize from its base?

Mr. WHITNEY. It is an extreme case, without question; but I believe, sir, that certainly our experience—but I would like to ask you to hear Mr. Altschul, because he knows far more about it than I, he being chairman of the committee on stock list. But company after company, not of great size, where they have to present to the exchange independent audits, insofar as my knowledge and belief are concerned, do not give them to us for some months after the period which they cover they are set. The same thing is true of our own questionnaires of firms.

They are always set for the last day of the month or the first of the next month, and they do not have to be filed until the 20th of the month, and in many, many instances with the larger houses they ask for 10 days' or 2 weeks' extension because of the physical impossibility of the individuals compiling such documents.

Mr. PECORA. You recognize that when a corporation lists its securities on an exchange it impliedly extends an invitation to the public to become partners in its business, so to speak?

Mr. WHITNEY. I grant that; yes.

Mr. PECORA. It invites them to buy its shares and thereby become part owners of the business.

Mr. WHITNEY. It places its shares in position to be bought. Quite right, sir.

Mr. PECORA. And when such an invitation is extended to the public, you agree, I presume, in principle at least, with the thought that such a corporation should be required to give definite information at frequent enough periods so that the public that by implication

is invited to buy its shares and become a part owner of its business, might with more intelligence buy its shares?

Mr. WHITNEY. You and I are in entire agreement; yes.

Mr. PECORA. Then the only question is in what form that information, and how frequently that information, should be conveyed to the public.

Mr. WHITNEY. So that it will not work an unfair hardship on the company and upon the shareholders who own the company.

Mr. PECORA. In order to keep the investing public that is invited to buy the shares not too much in ignorance.

Mr. WHITNEY. Of, sir, to give them information that is current. I think you used the word "current."

Mr. PECORA. Yes.

Mr. WHITNEY. And independent audits would delay that current aspect of the facts regarding the company which you wish to give to the public.

Mr. PECORA. And they would also have a better check, would they not, on the soundness of the information?

Mr. WHITNEY. I am not at all sure, unless you believe that fraud is practiced by our companies.

Mr. PECORA. I am afraid that we are impelled to that belief, in the light of evidence that this committee has heard within the last fortnight.

Mr. WHITNEY. That is not fair. All American companies? That is a harsh statement.

Mr. PECORA. I did not say "all American companies."

Mr. WHITNEY. You are predicating your statement on fraud, though, as I see it.

Mr. PECORA. I know and Mr. Altschul knows, because he was in this room when the evidence was submitted to this committee in the past fortnight, that such frauds have been perpetrated.

Mr. WHITNEY. Mr. Altschul will be here in a minute. I cannot speak for him.

Mr. PECORA. But Mr. Altschul has already expressed to this committee his opinion, based upon the evidence that he heard here.

Mr. WHITNEY. Then it is a matter of record.

Mr. PECORA. I am not making a general accusation that all corporations are engaged in the practice and custom of peddling out or giving out false information. I do not believe that for one minute. Neither do I believe that corporations' officials become sacrosanct and free from all the frailties of human nature merely because they become corporation officers. We pass laws prohibiting the commission of certain acts which we define to be crimes in the public interest; not because we believe that all men are criminals.

Mr. WHITNEY. We advocate just such laws, and have done so for a long time. A year ago today, as I stated to this committee, you will remember—

Mr. PECORA. But if these reports are audited either quarterly or semiannually rather than annually, don't you think that the auditing of the reports would give greater assurance with respect to the authenticity, accuracy, and reliability of information that you admit the public should have?

Mr. WHITNEY. Assurance, yes; current knowledge, no.

Mr. PECORA. Current knowledge or information, unless it is honest, is apt to do more harm than good, is it not, because of the false reliance that the public places upon it?

Mr. WHITNEY. Mr. Pecora, even accountants may not be honest.

Mr. PECORA. We are not going to enter into a discussion about the frailties of human nature.

Mr. WHITNEY. But you are right in that discussion now with respect to certain corporation officers.

Mr. PECORA. We have evidence to base my observation on, Mr. Whitney.

Mr. WHITNEY. I am not denying it.

Mr. PECORA. I am not making an idle statement when I say it is based upon evidence presented to this committee within the last 2 weeks.

Mr. WHITNEY. That is granted, of course; one case.

Mr. PECORA. The one case we investigated, Mr. Whitney. I could cite others.

Senator GOLDSBOROUGH. But it does not follow that we have discovered that everybody is dishonest.

Mr. PECORA. Certainly not; and I have been very careful to maintain that. I do not say, because the American Commercial Alcohol board gave information to the stock list committee of the stock exchange last summer on at least three occasions that did not square with the facts, that all corporations do that thing; certainly not.

Senator GOLDSBOROUGH. No. I quite agree that you are not making the implication go that far, I am sure.

Mr. PECORA. No. But if the public is invited to subscribe to shares of a corporation through the facility of having those shares listed on a public exchange, I submit that the public should be safeguarded as much as it can reasonably be accomplished in the information which is given to it and that it would enable the public to arrive at an intelligent judgment.

Mr. WHITNEY. We absolutely agree.

Mr. PECORA. Then, the only question is whether these reports should be audited once a year or twice a year?

Mr. WHITNEY. Yes, sir. Well, let us say four times, by the bill.

Mr. PECORA. I am now suggesting my own thought on the matter when I say twice a year rather than four times a year.

Mr. WHITNEY. And we are in no disagreement, as I believe, in that regard. The first question to be solved is whether it is too great a hardship or not.

Senator KEAN. But if this audit—and they do take long periods of time, I know—if this audit takes 4 months or 3 months, a great deal could happen to a company before the public would know what happened to it through an audit?

Mr. WHITNEY. Too much can happen; yes, sir.

Senator KEAN. So would it not be a good thing for the public—we are trying to protect the public—if the company submitted its statement promptly every quarter or every 6 months, and then that they also had that statement checked by an auditor? Would not that be a good suggestion?

Mr. WHITNEY. I think all these questions resolve themselves on two points: The unfair hardships that might result to the corporation and then, too, to its shareholders who are the public. Let us not

forget that. Any money the corporation has to pay is out of the shareholders' pockets.

And number 2: Whether or not the information given will be current enough so that it will be of value to the investing public. It all resolves itself, as I see it, in the last analysis, on what is to the best interest of the public; and you and I, Mr. Pecora, I think entirely agree.

Mr. PECORA. I think so.

The CHAIRMAN. Very well. We will pass from that.

Mr. WHITNEY. Now, Mr. Chairman, with your permission, may I ask Mr. Altschul to make a statement in regard to the listing requirements of the exchange which affect very generally these particular sections?

The CHAIRMAN. I think that would be in order. We have had Mr. Altschul before us.

Mr. WHITNEY. Yes, sir.

Mr. PECORA. Mr. Altschul's prior appearance had to do with certain limited acts and transactions. Now, I think Mr. Altschul is being offered to give the committee, from his own judgment and experience, his views with regard to these particular provisions of the bill.

#### **STATEMENT OF FRANK ALTSCHUL, CHAIRMAN, COMMITTEE ON STOCK LIST, NEW YORK STOCK EXCHANGE, NEW YORK, N.Y.**

Mr. ALTSCHUL. Mr. Chairman, I have prepared a brief statement which, with your permission, I would like to read to the committee. [Reading:]

I would like to submit to you herewith a document covering the organization and work of the committee on stock list, the listing requirements of the exchange as they exist today, and an account of the changes in listing requirements and policies of the committee which have been made from 1926 to December 1933.

This material has been assembled on short notice; it is at present in process of correction and revision. With your permission, as soon as this work is completed we shall furnish you with copies in their final form. This material has been brought together in order to make available to you in convenient form the fullest possible information.

I would like to draw your particular attention to the section entitled "Outline of Revisions and Extensions, etc." The reason I do this is because this section will serve to give you some indication of the extent to which my committee has been engaged in a continuing effort to accommodate its listing requirements, agreements, and policies to the ever-changing aspects of American corporate procedure.

You will note a reference to action of the governing committee taken on January 27, 1926, in the matter of the issue of common stock without voting power. This device was being increasingly used to lodge control in small issues of voting stock, leaving ownership of the bulk of the property divorced from any vestige of effective voice in the choice of management.

The committee felt that this tendency ran counter to sound public policy, and accordingly decided to list no more nonvoting common stocks. With this action of the committee, the period of the creation of nonvoting common stocks came to an end.

The section to which I refer contains a running account of such endeavors on our part. In a growing and developing economy like our own, corporate procedure is ever changing and at times its changing nature is accompanied by experiments of a character which require close scrutiny and sometimes prompt action if the public interest is to be served. To keep abreast of such developments, and occasionally possibly to anticipate them, requires a high degree of flexibility. In my opinion, this flexibility is most readily found in some such body as the committee on stock list, and such a committee is

peculiarly well adapted to consider and to resolve new problems as they arise because it is composed of men who are in intimate and daily touch with the world of business and finance.

I believe that flexibility in the formulation of these rules is of the utmost importance. Rules in this domain must of necessity be capable of adaptation to conditions which change from day to day. A statute crystallizing in law the rules of today may be utterly ineffectual to deal with the conditions of tomorrow. Such rigidity might easily obstruct the normal development of American corporate procedure where the object should be not to obstruct but to influence, in the public interest, the direction of such development.

Notwithstanding the efforts made by the committee on stock list, evidence of which you will find in the document which I have placed in your hands, we recognize that there is much that we have not been able to accomplish. One of our difficulties has its roots in the lack of uniformity in the corporation laws of the various States. The competition between States in this field is a matter of common knowledge, and the tendency of many States to liberalize the provisions of corporate charters with a view to making their laws attractive for the incorporation of companies has led to practices which have often given us concern. At times we have been able to resist such practices with a fair degree of promptness, but more often we have had to wait until, either as a result of our efforts or otherwise, public opinion had developed to a point where it would support determined action on our part.

The remedy for much of this we have long felt lies in a Federal incorporation statute. We recognize the enormous political difficulties in the way of such legislation, but the importance of it from the point of view of the protection of investors generally is so great and the advantages of it are so obvious that we would, with all respect, like to urge upon you the desirability to having this question fully explored.

Such an act would, for instance, furnish the means of clarifying and codifying such complicated questions as those growing out of preemptive rights, stock dividends, the par value of stock, or stocks of no par value. It would permit the development and imposition of uniform methods of accounting within industries, a matter of great importance to investors generally. Furthermore, it would permit the general adoption of a desirable and simple provision to the effect that auditors should be responsible to the stockholders of a corporation rather than to its management, and should only be removable after a full hearing before a stockholders' meeting.

Instances of deliberate misrepresentation in connection with listing applications have, insofar as we know, been comparatively rare, that they have occurred, however, admits of no dispute. We are sympathetic to legislation providing penalties for false statements contained in listing applications or in documents submitted in support of these; and I believe that such legislation would not alone be helpful to us in the work that we are trying to do but would prove an enormous safeguard to the investing public. Legislation which will act as a deterrent and will at the same time provide adequate punishment for transgressors—taken in conjunction with such legislation as I have suggested above—will, I believe, be most effective to accomplish the purposes which are being sought in the relevant sections of the bill. Regulation which takes the form of an attempt at continuing supervision of corporate activities in order to prevent every conceivable kind of fraud will, in my opinion, not only fail to prevent fraud but will of necessity hamper the conduct of honest business.

I have come prepared, Mr. Chairman, to make a complete statement to you in regard to those provisions of the bill under consideration which relate most directly to the work of my committee. If your time permits I would like very much to read this statement to you now, in order that you may have an opportunity of questioning me fully in regard thereto in case you care to. I believe that such a discussion would prove most helpful to all concerned.

Now, Mr. Chairman, I have a statement dealing with the sections of the bill in detail, which I will hand to you for your convenience.

The CHAIRMAN. Very well.

Mr. ALTSCHUL. I believe some of these points have already been covered, and it may be expedient if when we get to them I skip over them.



Mr. Pecora, I will be very glad if you interrupt at any time in this statement to discuss the particular matters that we happen to be on.

Mr. PECORA. Mr. Altschul, would you pardon postponement of your reading of this statement just long enough to enable me to ask you one or two simple questions with regard to the statement you just read?

Mr. ALTSCHUL. Certainly.

Mr. PECORA. You say:

Instances of deliberate misrepresentation in connection with listing applications have insofar as we know been comparatively rare, that they have occurred, however, admits of no dispute. We are sympathetic to legislation providing penalties for false statements contained in listing applications or in documents submitted in support of these; and I believe that such legislation would not alone be helpful to us in the work that we are trying to do, but would prove an enormous safeguard to the investing public

When you made that statement did you have in mind State legislation or Federal legislation?

Mr. ALTSCHUL. This statement was made in connection with a discussion of the Federal statute, and what I had in mind was that some of the benefits which you are obviously seeking in that statute, and with which we entirely agree, you would find a way to incorporate something in the statute which would cover. I am not a lawyer.

Mr. PECORA. You had in mind the Federal legislation?

Mr. ALTSCHUL. I was discussing the bill.

Mr. PECORA. Do you recognize that State legislation would be comparatively ineffectual?

Mr. ALTSCHUL. I recognize the difficulties, but I am not a lawyer. I am a layman. I cannot deal with the legal questions very thoroughly.

Mr. PECORA. And just one other question: In your reference in this statement to the efforts in the past made by the Committee on Stock List to keep off the board of your exchange stocks that contain no voting power, does that include voting trust certificates?

Mr. ALTSCHUL. It does not include voting-trust certificates.

Mr. PECORA. Do you recognize that that is a species of security which for a limited period of time at least deprives the purchasers, the stockholders, the public in other words—

Mr. ALTSCHUL. Quite right.

Mr. PECORA. Of an effective voice in management?

Mr. ALTSCHUL. Quite right.

Mr. PECORA. And it is an evil comparable to the one of nonvoting stock, except that the evil is limited as to time?

Mr. ALTSCHUL. No, sir. I think there is another important difference there. In the case of a nonvoting stock the purchaser buys an instrument that has been deprived of a vote in perpetuity right at the start of the operation.

Mr. PECORA. Yes.

Mr. ALTSCHUL. In the case of the voting-trust certificate it generally comes into being as a voluntary exchange of the voting-trust certificate for a stock certificate that had the voting power, and presumably the holder of the stock certificate who makes that exchange is making it for considerations that seem to him persuasive.

Mr. PECORA. How about the case of the Pennroad Corporation?

Mr. ALTSCHUL. Well, I am not familiar with the case of the Pennroad Corporation.

Mr. PECORA. Their certificates are listed, are they not?

Mr. REDMOND. Not listed on the New York Stock Exchange.

Mr. ALTSCHUL. I am not familiar with that.

Mr. PECORA. Then they are on the Curb, and I think they are listed on one of the New York exchanges.

Mr. REDMOND. I think they have been dealt in on the Curb.

Mr. PECORA. Those were voting-trust certificates at the outset.

Mr. ALTSCHUL. There are two fundamental distinctions. In the case of the voting trusts the laws of the various States on voting trusts are set up providing limits of time at the end of which the stockholder again returns to his former status.

The second point is that in a great many cases and in most of those that we have seen in the stock exchange, voting-trust certificates are issued in exchange for the stock and the exchange was made voluntarily by the stockholder, who exchanged his voting right for what he considered to be a good reason, and there are at times good reasons of that sort.

We do not feel that that has any of the same general implications that the nonvoting stock has.

I shall attempt to place before you my views concerning those provisions of the proposed legislation which relate most directly to the work of my committee. I find myself in accord with certain of these provisions. As I shall point out in detail later, others appear to me to go much too far and to be of such a nature as to suggest the possibility that they may defeat the purposes of the measure.

I am heartily in favor of such measures as will afford the maximum degree of protection to the investing public. The efforts of the committee on stock list have constantly been directed to this end. While I feel that in the main these efforts have been constructive and helpful, I would be the last one to suggest that further progress cannot be made. To the extent to which the provisions of this bill represent such further progress, these provisions of course meet with my approval.

Briefly, the committee on stock list has developed certain standards and requirements which must be satisfied by applicant companies if their securities are to be eligible for listing at all. These standards and requirements are matters of gradual evolution, responsive to the changing aspects of American business life and to the constant development of corporate procedure.

In connection with an initial listing application, the committee requires a formal printed listing application containing such information and supported by the documents which you will find described in detail in the memorandum which I have submitted to you. In general, the listing requirements are designed to furnish information concerning the character and background of the business, the nature of its assets and operations, the record of its earnings and such other pertinent material as seems likely to assist the investor.

If the securities of a company have been admitted to the list and the company applies for the listing of additional securities, a similar listing application is required; and in this application there must be up-to-date financial statements of the applicant company together with a statement of the purposes of the issue applied for, a copy of

the resolution of the board of directors authorizing such issue, and an opinion of counsel, not an officer or director of the company, as to the validity of the issue contemplated. A strong and usually successful effort is made, in connection with the application for listing of additional securities, to have the company comply with the then current requirements. Such compliance is often made a condition of the listing requested.

While we have occasion to consult our own attorneys on many points, we do not have an independent staff of lawyers to determine whether all the legal requirements for the issued securities have been complied with, and while we take up many accounting questions with our consulting accountants, we do not have an independent staff of accountants to audit the accounts of applicant corporations. In the absence of contrary evidence, we accept the legal opinion furnished to us by responsible lawyers in connection with listing applications, and we accept the audits prepared in behalf of applicant companies by independent auditors.

In connection with applications for additional listings, we do not, in the absence of evidence of bad faith, seek to examine into the actions of boards of directors with a view to arriving at an independent determination as to whether they have acted in pursuance of sound business judgment or in accordance with proper standards of conduct; nor do we attempt to control such action.

It is the board of directors, not we, who are elected by and responsible to the stockholders for the outcome of their policies; the record of the company which persuaded stockholders to invest is the record of the management of the company, not our record. In my opinion, no central body, whether the stock-list committee or the Federal Trade Commission, can possibly succeed in performing the functions of the managements of all listed companies.

If there is anything in the application which appears to the committee to be open to question, then the committee makes every effort to have the question resolved in accordance with its views; but we have conceived our chief responsibility to be to see that the facts have been fully and adequately disclosed, and if this disclosure indicates nothing which appears to the committee to be unsound or improper, we do not undertake an independent investigation of the facts themselves. In other words, we accommodate ourselves to the general spirit of American institutions in dealing with persons appearing before us on the theory that they are honest until evidence to the contrary is adduced.

I approach the consideration of the pending legislation with the general view that stock exchanges perform a useful and an essential function in our national life. This I conceive to be primarily the furnishing of a market place for securities with a view to facilitating enterprises in filling their legitimate capital requirements and with a view to enabling investors to purchase and sell securities readily in response to their needs or desires.

I recognize that abuses have grown up about the market place which require correction in order that the public may be afforded proper protection, and I believe that the object of farsighted legislation should be to afford such protection while placing as few obstacles as possible in the way of the normal functioning of this important part of our economic mechanism. I suppose that there

would be general agreement with the principle that, to the extent that the provisions of the proposed legislation are so onerous in their application as to render it impossible for corporations to comply with their terms, these provisions must be looked upon as inconsistent with the conception of the useful and essential qualities of security exchanges and that accordingly such provisions should be either modified or eliminated.

With this general background, I proceed to an examination of the provisions of the bill before you insofar as they relate to the listing of securities on security exchanges. My comments should be read in the light of the foregoing general discussion. And before going into the particular discussion, Mr. Pecora, it may be that you have some questions that you would like to take up now on what we have covered.

Mr. PECORA. I have made some notations, but I think perhaps we could more advantageously enter upon a discussion after you have completed the reading of this document.

Mr. ALTSCHUL. Section 11—Registration requirements for securities:

I draw your attention to section 11 of the bill entitled "Registration Requirements for Securities." Before entering into a detailed comment upon these requirements, I would like to consider this section in its broader aspects. One effect of this provision is to require that all existing securities now listed on any exchange shall be registered in accordance with the provisions of the act at least 30 days prior to its effective date if they are to continue to be traded in thereafter on the exchanges on which they are now listed.

Securities now listed are held today in various ways largely in reliance upon the fact that there is a market for them on recognized exchanges. To deprive these securities, or any considerable part of them, of the market which investors and lenders alike have relied on would be disastrous. On this account, it is important to point out, in the first instance, that the registration requirements for securities, taken in their entirety, could very easily in a large number of instances have this effect.

In my opinion, it is a dangerous thing to impose onerous requirements in connection with the registration of new issues, as this so easily has the effect of damming up the capital market of the country, with resultant hardships to industries seeking capital for expansion or for meeting maturities. However, it is far more dangerous to impose such requirements upon existing securities because this can obviously have the effect of freezing a large part of the liquid capital of the country, with the most deflationary consequences to individual holders, banks, financial institutions, no less than to the industry of the country as a whole.

Difficult as the administrative features of the act are insofar as they apply to new issues, they are infinitely more difficult when they apply to that great bulk of securities already outstanding. If section 11 is read in conjunction with section 32, it becomes apparent that if any securities now issued are to be traded in on any security exchange after the effective date of the act, October 1, 1934, applications for registration thereof must have been made before September 1, 1934. The act presumably contemplates that applications so filed and the documents supporting them are to be reviewed by

competent persons. So stupendous would be this task that I am convinced that the work involved, if conscientiously done, would consume years rather than months, if it can be actually done at all.

Beyond this, I am convinced that the delegation to a Federal body, not in immediate and daily contact with the current operations of the country's business, of authority to pass upon the registration of all securities to be dealt in—old and new alike—is unnecessary for the protection of the public. I consider that this protection can be better secured by other means, and that the contemplated method places obstacles in the way of the normal functioning of our business machine so serious in their nature that they will unfavorably affect the very interests of that public which these measures seek to protect.

Sec 11 (a) It shall be unlawful for any person to effect any transaction in any security on a national securities exchange unless a registration is effective as to such security in accordance with the provisions of this act and the rules and regulations made by the Commission thereunder and unless such security has been issued.

The effect of this provision, read in conjunction with section (b), would appear to be to prevent dealings in any security until 30 days after the stock exchange had certified to the Commission that the security had been approved for registration and listing. In the case of new issues this 30-day delay might place such an added risk upon underwriters as to raise a serious question of whether the business of underwriting new issues for the purpose of financing the capital requirements and the maturities of existing corporations could go forward at all.

Apart from the question of underwriters, we have frequently had before us, in the past, applications for listings where prompt action on our part, in order to make possible the early issuance of the securities in question, was essential to the carrying out of an entirely legitimate corporate purpose highly in the interests of the security holders.

I am apprehensive that the delays imposed in connection with the underwriting of new issues and of the issuance of new securities at times without underwriting will place an obstacle in the path of perfectly legitimate transactions helpful to American business.

I am uncertain of the precise effect of the words "unless such security has been issued", but I assume that they are intended to prevent a "when, as, and if issued" market. While the New York Stock Exchange has, in recent years, been reluctant to list on a "when, as, and if issued" basis, and has only done so infrequently, and then only when it seemed largely in the public interest, we believe that the "when, as, and if issued" market has a legitimate place in the business of providing capital for industry, and we feel that any abuses that is sought to correct in connection with such a market are capable of being dealt with without eliminating such a market altogether.

Beyond this, I should point out that many types of securities are now listed for which it would appear that under no circumstances is it likely that a registration statement would be filed. The removal from the list of these securities already outstanding in the hands of investors under such a retroactive law would, in many instances, affect the interests of investors most unfavorably.

The following possibilities which might result from such a provision of the law should be considered. Stocks and bonds of many companies that are in the hands of receivers might be forced off the list because of the fact that the original issuer had no longer any power to file a listing application or registration statement, and it is uncertain how far the receivers would go in doing so. In many instances, these securities have been kept on so as to not use the influence of striking to force minority stockholders into reorganizations or into deposit agreements of protective committees. If this section of the law remains unchanged, even if the registration requirements were modified, many situations might arise where the new company, protective committee, or voting trustees might elect to register the securities which they have issued for listed securities, but no person would be in a position to apply for registration of the listed securities themselves in their original outstanding form.

Thus, possibly quite unintentionally, pressure would be brought upon minorities to deposit under plans of reorganization in a way in which the stock exchange has always been reluctant to bring pressure itself.

In other cases, where, through the exchange of shares, a company has acquired a very large percentage of stock of another company and desires to have the stock of its subsidiary removed from the list, this provision of the act might well result in the acquiring company making no provision for the registration of the securities of the underlying company, and in this manner dissenting minorities might well be forced into a consolidation or exchange of shares contrary to their expressed wishes, merely in order to obtain a listed security. It has been the consistent policy of the committee on stock list not to permit its listing facilities to be used to club minorities into action in this manner.

Furthermore, it is difficult to see why foreign governments or foreign corporations which have issued bonds so many years ago and which have no further present need of the American capital market should apply for registration.

The amount of such securities that might be forced off the list through the operation of the provisions of the bill as now drawn is, as you know, very considerable.

**SEC 11. (a)** A security may be registered with a national securities exchange upon application by the issuer, by filing with such exchange and with the Commission such undertakings, information, and documents as the Commission may by its rules and regulations require in the public interest and for the protection of investors together with such additional undertakings, information, and documents as the exchange may require. If the exchange authorities certify to the Commission that the security has been approved by the exchange for listing and registration, the registration shall become effective thirty days after the filing of such certification with the Commission: *Provided*, That if it appears to the Commission prior to the expiration of such thirty days that the application for registration does not comply with the provisions of this Act or the rules and regulations made by the Commission hereunder, it may, after appropriate notice and opportunity for hearing within such period, enter an order denying the application for registration unless the issuer shall withdraw its application or consent to the Commission's deferring action on its application for a stated period longer than such thirty days.

The difficulties which I find with this section are already covered by my preceding comment.

**SEC. 11. (c)** The rules and regulations of the Commission in regard to registration shall require \* \* \*

(I) An undertaking by the issuer to comply with and so far as is within its power to enforce compliance by its officers, directors, and stockholders with the provisions of this Act and any amendments thereto and with the rules and regulations made or to be made by the Commission thereunder and, unless the issuer is a member bank of the Federal Reserve System, not to lend any funds in the money market of any exchange or to any member thereof or to any person who transacts a business in securities through the medium of any such member except in accordance with such rules and regulations as the Commission may prescribe.

That is a provision that requires an undertaking by the issuer that he will comply with all present and future regulations and will use his best efforts to have other parties comply with them as well.

I have grave doubt as to whether it is reasonable to exact any such far-reaching commitment in connection with an application for registration. This clause in itself may operate powerfully against registration.

SEC. 11. (c) (II)

Subject to detailed comment below on subtitles 1 to 11, I feel that information of the character specified in this subsection should obviously be available to investors and stockholders. This would seem to me to go little beyond what might properly be considered reasonable in connection with listing on the New York Stock Exchange. I recognize, however, that of necessity of requirements which appear reasonable as a prerequisite to listing on the country's primary security market, may be unduly burdensome when applied to many of the small exchanges of the country which, in their communities, perform a very useful function.

Accordingly, it would seem desirable to omit rigid requirements of this nature from the act itself, and to delegate the authority to prescribe listing requirements suitable to the needs of each exchange considered in the light of its own special problems to whatever agency may be designated by law to administer the provisions of the act. I am convinced that experience will prove this degree of flexibility to be essential if business is to go forward. In my opinion the New York Stock Exchange could then readily accept listing requirements drawn in accordance with the provisions of section 11 (c) (II) subject to such modifications as I have indicated as desirable or essential in my detailed comment which follows:

SEC. 11 (c) (II) Such information as to the issuer and affiliates in respect of:

- (1) The organization, financial structure, and nature of the business;
- (2) Particulars regarding the terms, position, rights, and privileges of the different classes of securities outstanding;
- (3) Particulars regarding terms on which securities have been or are to be offered to the public.

In my opinion, information covered by (1), (2), and (3) above should without question be available to investors.

SEC 11 (c) (II) (4) particulars regarding the directors, officers and principal securityholders and underwriters, their remuneration and their interests in the securities of and material contracts with the issuer and affiliates.

I have some question as to the wisdom of that part of (4) which would appear, when read in conjunction with other sections of the act, to provide for the publication of the remuneration of officers of registered corporations generally.

I can see that in certain instances such publication may be desirable and in the public interest. Yet, it places a serious competitive handicap on corporations which are listed or registered as against privately owned business in that the salaries which they pay to executives will be disclosed for the benefit of their more fortunately situated competitors. That instance is equally true between any companies that are listed. One has a chance to see what the other is paying for executives.

Beyond that, it is hard for me to believe that by and large officers, merely because they happen to be connected with registered companies, should be subject to a form of publicity which other citizens are protected from.

SEC 11. (c) (II) (5) Particulars regarding remuneration to others than directors and officers exceeding \$20,000 per annum

There is some question in my mind whether the compensation paid for professional services should be given publicity, and my objection is based on the same general consideration as I urge in connection with the compensation of officers.

SEC 11. (c) (II) (6) Particulars regarding bonus and profit-sharing arrangements.

I am in sympathy with the full disclosure of bonus and profit-sharing plans and the aggregate cost thereof to the company. However, I can see little reason why the distribution under these plans to the individuals participating in them should ordinarily be disclosed. I can see, of course, that in some instances it might be wise. Such a disclosure might at times prove a source of needless embarrassment to management in connection with the operations of the company.

Senator KEAN. What do you mean by that?

Mr. ALTSCHUL. We have had before us in committee at times—first of all, I would like to say this: We have discussed many times the desirability of the stock-list committee itself taking some forward step in the matter of these profit-sharing and bonus plans, and in connection with the study that we have carried forward there we have had occasion to discuss more or less informally with managements the viewpoint of managements. We have not so far reached a very definite conclusion, but we have found that in many cases reasons are advanced which would indicate that full disclosure would be undesirable.

There are cases inside a corporation, for instance, that have been drawn to our attention, where officers are getting compensation which the management considers adequate, where an officer is getting compensation which the management have determined upon, the executive officers have determined upon, as being the proper compensation for that man. The man happens to be a man who is very unpopular in the organization but very effective, and they consider him a very important element in their business. The disclosure of an additional amount of compensation that he receives through the operation of the profit-sharing plan has been urged upon us as being likely to create a situation where either they would lose a half dozen other men or that man would have to go. The total amount that is involved in the profit-sharing plan in the aggregate we would have no objection disclosing, but if we had to go into the refinement of



showing that Mr. John Jones gets \$10,000 additional, then we would have Mr. Smith and all the others disaffected, and we would have a lot of trouble within the company.

There are practical reasons of that sort that have come to our attention ever so often that bid us pause in this matter. We have been studying it and we are interested in it.

Mr. PECORA. Do you think those reasons that are based upon possible personal embarrassment to the individual whose compensation is sought to be disclosed outweigh the advantages to stockholders of full information with regard to compensation paid to those whom they put in management of the company, or who are in the management of the company, whether with or without the will of the stockholders?

Mr. ALTSCHUL. You raise a very broad question, Mr. Pecora.

Mr. PECORA. That is the question involved here.

Mr. ALTSCHUL. Yes, naturally; but I want to separate it for a moment. In a limited sense that I was discussing the question, I would say that many times you will find occasions where the publicity as to the individual amounts would be harmful to the company itself and, therefore, to the stockholders. I do not say that is at all preponderating in the number of cases, but there are many cases that are distinctly advantageous to the company. We have had those drawn to our attention.

Mr. PECORA. You recognize, though, that in any question that is a question of public policy the rights of the individual must yield to the benefits of the community or the public?

Mr. ALTSCHUL. Quite right. Oh, we stand strong on that platform, of course.

Senator KEAN. The question is whether we can protect the rights of the public by giving simply the amounts instead of the names and the individuals.

Mr. ALTSCHUL. My thought on that, Senator, would be—but, first of all, in answer to Mr. Pecora's question: In this competitive world the disclosure of these facts as to the salaries of officers, by and large, is going to be an adverse factor from the point of view of stockholders.

To put it differently, it is going to have certain very important adverse elements in it from the point of view of stockholders generally. I am not now limiting it to this one case of John Jones, but by and large the disclosure of these salaries is going to be a disturbing factor and have certain elements that would unfavorably affect the interests of the very investors whose interests you are trying to protect; because, in the first place, as between listed companies both of whom have to disclose the facts, it immediately sets up the possibility of sniping for management and disrupting organizations and going and taking a man here and letting him go there.

Mr. PECORA. Do you think that goes on anyhow?

Mr. ALTSCHUL. Oh, it goes on anyhow, but this is an open invitation. However, that may be a matter of opinion, and I do not think I am prepared to argue that.

Beyond that there is the serious factor that there are lots of privately owned concerns that have to give no such information, and they have an enormous competitive advantage then as against the

concerns that have to publish the amounts that they pay to their important executives. In a competitive industry people appraise pretty accurately the value of the services of the outstanding performers in that industry, and if you have a company, just because it is listed on the New York Stock Exchange or because it is listed with the Federal Trade Commission, having to disclose that they pay Mr. Jones a hundred thousand dollars, while some private company who has Mr. Smith does not have to say how much they are paying him, the private company has a distinct advantage.

Mr. PECORA. Don't you think such information has been cribbed in the past, and perhaps is apparently being cribbed from employees of private companies?

Mr. ALTSCHUL. I do not at all wish to be understood as suggesting that I know what salary is known to anybody else. I am sure a lot of information gets around, but this is equivalent to advertising on the front pages of newspapers so that nobody can possibly miss it, and it has certain difficulties.

I quite understand what the abuse is that you are aiming at, from disclosures that have been brought forth in various investigations in regard to bonuses of such a magnitude that stockholders would be interested in knowing about them. Those are perfectly patent. It might be that if the aggregate amount was set forth, then some properly constituted body would be able to determine whether the facts as to the distribution which was disclosed in confidence to them were of such a nature in special instances that they should be drawn to the attention of stockholders.

Mr. PECORA. Mr. Altschul, so far as you have gone you emphatically favor publication of particulars regarding bonus and profit-sharing arrangements.

Mr. ALTSCHUL. The amounts, the total amounts.

Mr. PECORA. Yes. In the past that has been a device resorted to to conceal compensation given to executive officers from the salary list.

Mr. ALTSCHUL. I did not understand that.

Mr. PECORA. In other words, in the past the device of giving an executive officer a bonus or a profit-sharing arrangement that yields him a substantial compensation in addition to his fixed salary has been adopted in order to conceal from stockholders the fact that such executive officers were getting a compensation that was not recited by the salary which they received, and which salary might have been made public to the stockholders.

Mr. ALTSCHUL. Mr. Pecora, I do not agree with that statement at all. The amounts of salary that the executive officers have been getting have in general probably been disclosed equally. The basis for the bonus and profit-sharing plan, as I have always understood it—I believe this to be the fact—the real basis for it has been to provide some means beyond the fixed salary by which unusual ability and unusual success in the conduct of business could be rewarded.

Mr. PECORA. Well, in instances that undoubtedly has been the reason, but in many other instances that so-called "reason" has been a mere pretext to permit of the payment of a compensation in a secret fashion.

Mr. ALTSCHUL. Of course, I have no knowledge of any such instances. I think the reasoning applied, broadly speaking, has been the reasoning I have given you, and I cannot see why we should per-

mit of the payment of this compensation in a manner secret from the stockholders, when the compensation they get by way of salary is not secret.

Mr. PECORA. I do not think any of those things should be secret.

Mr. ALTSCHUL. My point is that this does not add any new element of secrecy. You suggested that this was a device to provide for an element of secrecy in this distribution.

Mr. PECORA. I think it has been in the past, very frequently.

Mr. ALTSCHUL. They do not need any such device.

Mr. PECORA. Except that the salary might leak out, whereas bonuses or profit-sharing arrangements are more circumspectly guarded. As a matter of fact, in the case of the National City Co., which I recall at the moment, the evidence presented to this committee showed that the officers of that company participated in the distribution of the so-called "management fund", which enabled that company to pay huge sums in addition to very substantial salaries, to certain executive officers. The payment of those distribution shares in the management fund is effected through checks drawn upon a deposit account kept in another bank, so that even the employees of the bank through the clearance of those checks, would be able to know or find out, or even suspect, the existence of that management fund.

Senator WALCOTT. Let me add another thing. In one particular case we have in mind here the people who did the work did not get the extra bonuses. It was in proportion to the amount of salaries that they received in the holding or parent institution.

Senator COSTIGAN. What instance was that, Senator Walcott.

Senator WALCOTT. The National City Bank.

Mr. ALTSCHUL. Do not misunderstand me, Mr. Pecora. I think full information in regard to bonuses and profit-sharing plans should be disclosed. If you want to go beyond that and have the details of distribution placed in the hands of the commission, or whatever authority is going to be concerned with the administration of the provisions of this act, I think that is a perfectly reasonable request, but I do not think that the disclosure of the distribution should be made mandatory. I think that should be a matter of discretion, only to be used when there is some situation that you see, from the figures, is a situation the stockholders ought to be advised about.

Mr. PECORA. I do not think any company should be ashamed to make known to its stockholders the compensation it pays its executive officers, whether the compensation be in the form of salaries, bonuses, or profit-sharing arrangements, or what not; nor should those officers be ashamed to have their compensation which they receive made known to the stockholders.

Mr. ALTSCHUL. My objection to the provision has nothing to do with any question of shame. My objection is purely a practical one. In the competitive world, where you have companies that are listed on exchanges and companies that are not listed on exchanges, from the point of view of the investor himself, in the companies that are listed, I do not like to see the facts in regard to the compensation paid outstanding executives disclosed, so that their competitors, who have no such disclosure to make, have an important fact at their disposal which the managements of listed corporations do not have in respect to their own—

Mr. PECORA. Mr. Corcoran day before yesterday referred to certain statements made by some gentleman who appeared before the House committee on this bill last week, in which that gentleman made reference to the wide-spread system of espionage among competitive enterprises that virtually places, to a practical extent, not completely, such secret information as we are now discussing in the hands of all competitive corporations or businesses. Do you think that gentleman was venturing an observation not supported by fact?

Mr. ALTSCHUL. I do not know who the gentleman was, and I did not hear his observation. Of course, I know that in the competitive world an attempt is made by business men to inform themselves currently, as well as they can, about the operations of their competitors, but whether it goes to the extent of planting employees in places in order to get information or not I very much question.

Mr. PECORA. Not alone planting employees. A bookkeeper or employee in the accounting division of a corporation or private business, by reason of the nature of his employment, can learn these facts, and perhaps could readily be induced to make them known to some competitor.

Mr. ALTSCHUL. Mr. Pecora, while I think that the executives of leading American concerns are very zealous to protect the interests of their company, I am naive enough to believe that they would consider it highly indecent to embark upon a policy that could be designated as espionage. I do not know whether there is any espionage, or any counter-espionage. I think those things are more or less fantastical.

Mr. PECORA. I have no doubt that is your candid belief, Mr. Altschul. The only observation I venture to make about that is that you would probably find it enlightening if you could sit in the complaint room of the district attorney's office in any large community, say, a month or two.

Senator COSTIGAN. Mr. Altschul, is it not your view that it is in the interest of stockholders and in the public interest to be advised as to whether a corporation is efficiently or extravagantly conducted?

Mr. ALTSCHUL. I do, sir.

Senator COSTIGAN. I have reference now to information as to the payment of bonuses and other compensation, other than the ordinary compensation

Mr. ALTSCHUL. I entirely agree. The stockholders ought to be in a position to judge as to whether their company is being efficiently or extravagantly managed. I think, however, that that result can be accomplished short of giving these particular details of distribution as between individuals. We have tried, in the stock list committee, to prevail upon corporations to set up their accounts in such a way that the administrative expenses would be set forth as a separate item. We have made some progress, and here and there we have been able to accomplish it. We have not been able to enforce a general rule to that effect. That is one of the very things that would be covered by the uniform system of accounting within industries, and I think the results you are seeking are results we are entirely in sympathy with. I only raise some doubt as to the wisdom of going quite so far.

The CHAIRMAN. Do you think that a uniform system of accounting is advisable?

Mr. ALTSCHUL. I think, within industries, a uniform system of accounting should be developed and should be insisted on. We have tried very hard to bring it about. At present one of the things we have been doing is to try to get the oil industry, for instance, as a sort of test case, to adopt uniform principles. It is a question that requires an enormous amount of study in respect to each particular industry, to be sure that when you come out with your uniform system of accounts they do lead to a comparison between companies, and really mean something. You get into such ramifications, for instance, as finding companies that are in several different kinds of industries at the same time. On the other hand, I am entirely in favor of it. I think that while it is a thing we are not able to enforce to the degree we would like to see it done, it is one of the things we have always been urging.

Senator WALCOTT. Would you not add to that your statement that it must be by industries?

Mr. ALTSCHUL. I do say by industries.

There is one point in this connection that I think is worth making. There has been a disposition in some of these discussions—I do not know just where I have come across it; I think over in the House committee—there has been a disposition to point to the standardization of accounts in the Interstate Commerce Commission, and to suggest that the railroads handle their accounts this way, and public utilities handle their accounts this way, and industry should handle its accounts similarly.

There is, of course, one enormously practical point of difference. The railroads, after all, are a public utility. In fact, they have their rate structure fixed; they have their expenses determined by the Labor Board and by other agencies; and they have a monopolistic phase. There is no competition between them. When you get into those industrial concerns, you find that if you adopt a system that is as inflexible as the Interstate Commerce Commission system for accounts of railroads—with which I am entirely in sympathy—you then run into danger because you are applying the same system under which the railroads have worked, to a competitive industry, and you are handicapping companies as against one another—and, more important, companies as against some of their foreign competitors.

We come next to the clause that has to do with material contracts, not made in the ordinary course of business, and material patents.

From a theoretical viewpoint, compliance with this section is not impossible. Practically, it presents such difficulties as to make compliance extraordinarily difficult, if not actually impossible. This section provides that the registration statement shall set forth "particulars regarding material contracts not made in the ordinary course of business, and material patents." If it were possible to determine in advance which contracts and patents are material, and which are not, and which are made in the ordinary course of business, and which are not, then it might be possible to comply with the provision. But who will take the risk of determining whether a contract is or is not material, or is or is not made in the ordinary course of business, particularly when a mistake may prove so costly. The result must be that, if compliance is attempted at

all, all contracts and all patents will have to be summarized. This is the only safe method of procedure. It might well require the summarizing literally of thousands of contracts and tens of thousands of patents on the part of each of countless corporations. If we were to apply this provision to the case of a street railway company, for example, the company would have to summarize its easement contracts, its agreements for the placing of telegraph wires on the poles, the use of its property jointly with another carrier, and the agreements for the maintenance of crossings and of bridges, together with practically every element of operation which is covered by contracts.

In the case of businesses involving large numbers of patents, such as American Telephone & Telegraph Co., General Electric Co., or Radio Corporation of America, the work involved in such summarization would appear to be staggering beyond belief. In the aggregate, if this failed to discourage registration completely, it would still place an enormous burden upon applicant companies, and would result merely in the accumulation in Washington and in various exchanges of a mass of material so great that even the caring for it would present a problem and the digesting of it would be a matter of complete impossibility. I can see no practical advantages to be obtained for the security owners of the country from this provision. I have considered the possibility of amending the section, but I am unable to suggest any amendment which would seem to make it workable, and, accordingly, with all due respect, I am forced to the conclusion that it should be eliminated.

We now pass to the balance sheets for preceding years, and the profit-and-loss statements for preceding years.

I am uncertain just what is meant by the term "for preceding years" in the foregoing sections. Where companies have not been in the habit of having their accounts regularly certified, the task of getting merely the preceding year certified will in many instances itself present a difficulty. When it comes to extending this beyond the preceding year, many companies otherwise eligible for listing and registration may find themselves unable to comply with the provision either because of the expense involved or otherwise. In this connection I think I should point out that while the stock list committee has for a long time been urging on corporations the necessity of having audited financial statements, we did not have the support of public opinion to such an extent as to be able to make this a condition prerequisite to listing until very recently. We have now, of course, as you know, done so.

We come next to the section relating to copies of articles of incorporation, and also to the striking of securities from the list.

The documents referred to in paragraph 1 above should, in my opinion, clearly be made available to investors.

In connection with paragraph 2, I believe that the prompt exercise of this power is at times so necessary in the public interest that the stock exchange should have unquestioned authority to act in matters of this sort.

We now come to the question of annual, quarterly, and monthly reports. The first subsection in that has to do with requests for information of a general nature, unspecified.

This provision is so broad in its implications as to vest the designated agency with authority to exact information and documents from a company, the preparation and submission of which might prove extremely burdensome. Accordingly, I think this authority should be very much circumscribed, and perhaps defined.

Now we come to the thing that has been up for discussion a great deal this morning, annual and quarterly reports, including, among other things, a balance sheet and profit and loss statement certified by an independent public accountant.

This section imposes upon corporations requirements which I would be inclined to think could not be complied with in practice. As I understand it, it provides for the filing with the exchange, as well as the Commission, of quarterly reports, including a balance sheet and profit and loss statement certified by independent public accountants. If either the quarterly balance sheet or the quarterly income account has to be certified to, serious problems arise, not the least of which is that in many instances a physical inventory must be taken, and the actual disturbances involved in many industries in the year-end stocktaking would merely be multiplied four-fold. The cost of this work, which must ultimately fall upon the public either as stockholders or consumers, would be burdensome in the extreme, and in the case of many corporations, it would be unbearable. Beyond this, the cost would be great out of all proportion to any benefit that our practical experience in the matter of accounts would lead us to believe could be obtained for the investing public.

Quarterly reports are frequently more misleading than they are informative, on account of the distortion that of necessity occurs in an attempt to allocate earnings to too short periods of time. While we are in favor of obtaining quarterly income statements wherever we are satisfied that their publication is of real benefit to the investor, and when no disadvantages involved in their publication are apparent, we believe that a rigid provision requiring such publication in all instances would, on the whole, do more harm than good.

My experience with these matters leads me to the conclusion that there is a further intensely practical situation weighing against the inclusion of this provision in the bill. I am informed that there are not enough qualified accountants in the United States of America adequately to perform the work involved.

The suggestion might well be considered that as the agency designated by the Government to administer the provisions of this act is vested with broad powers to determine accounting requirements, these requirements need not be made in themselves rigid provisions of the act. It is altogether probable that flexibility in this regard may prove to be essential in the public interest.

Beyond this the question might well be considered whether such designated agency ought not at an early date to initiate a study looking to the development of uniform accounting practices within industries; and that when and as uniform accounting practices for an industry have been determined upon, corporations engaged in that industry, the securities of which are registered, be required to prepare their accounts in accordance with such uniform practices.

A measure advocated for some time by the New York Stock Exchange might also well be considered in this connection. I have already covered that in my early memorandum. I will not take your

time with that. As I understand, competent accountants will be heard by your committee in detail with regard to the accounting provisions of this bill.

Mr. PECORA. Mr. Altschul, before you leave that portion of your statement to pass on to a consideration of the next provision of the bill, would the arguments that you have made here with regard to quarterly reports, audited quarterly reports, apply to semiannual audited reports?

Mr. ALTSCHUL. Mr. Pecora, it would apply, not quite to the same degree but in theory it would apply. The expense item is reduced by half. The difficulty is reduced by half, but I think you still run several dangers. I do not think it serves any useful purpose.

We get annual audited reports now, and we make it a prerequisite of listing, and insofar as companies do not have audited reports, we are trying to bring them to the point where they do give us audited reports.

Mr. PECORA. My suggestion would simply involve the additional expense incident to two audited reports per annum instead of one.

Mr. ALTSCHUL. I think the only way one can view a question of that sort is to consider the item of cost, and the burden on the concern, on the one hand, in relation to the benefits to the public on the other. Mr. Whitney has pointed out that one of the disadvantages of this thing would be, even in the case of semiannual reports, the delay in the preparation of figures. I think that is a real disadvantage. We have audited reports from a very large number of companies today. We get quarterly unaudited reports from the preponderating majority of those companies. When we take the four quarterly reports put out by the company officers and tie them in with the annual report, in a case where there is any discrepancy that cannot be explained, such cases are extraordinarily rare. When a company has a company auditor, in most cases, while they do not certify to the quarterly reports, the same methods are applied uniformly by the company throughout the year, and we have the experience of seeing these things come in all the time, and taking the four quarterly reports, or the three quarterly reports that have come in before the annual report, and tying the thing together to see whether the results of the year substantiate the figures that have come out of the quarterly reports. These cases where we see any discrepancy that cannot be explained are extremely rare. I do not remember one at the moment.

The cases in which you can see that there were a few year-end adjustments, in connection with the stocktaking, and all the normal incidents to corporate accounting, and where you can see that the quarterly reports have been fair and are representative of the true condition, are the rule.

There is another disadvantage in the semiannual report, and that is the same disadvantage that applies to the quarterly report, except in the matter of degree. A year, in most industries, at best is a short enough time to which to try to allocate earning power. When you begin to split that up into half year, or quarter year, you run the risk of attaching an importance to those figures, merely because of the fact that they are certified, that the figures are not entitled to have in themselves. The figures may be accurate, certified, or uncertified.



Mr. PECORA. That feature would attach principally to corporations conducting businesses that are seasonal in character.

Mr. ALTSCHUL. It is partly a question of the seasonal character of the business. It is very striking in corporations conducting businesses of a seasonal character; but beyond those conducting businesses of a seasonal character, fluctuations within any short period of time other than a business year are likely to be very deceptive, so much so that while the New York Stock Exchange has been urging, as you know, the publication of quarterly reports for years, and has been gradually getting more and more corporations to meet its views, there are a number of times when corporations come to us and give us reasons which, as reasonable people, we must accept, showing that the publication of these figures would mislead the investor almost every time they are released.

At times that is because of the seasonal character of the business. At other times it is because, let us say, a department store put on a sale in March one year, and did not put it on until April the next year. You get the comparative figures completely out of kilter, and if you were to try to explain those figures away, and make them mean something, nobody would understand what it was all about anyway.

Mr. PECORA. That applies to quarterly reports, even if they are not audited.

Mr. ALTSCHUL. Yes, it does; but my only point was—

Mr. PECORA. Your committee has striven for years to induce corporations whose securities are listed to make published quarterly reports.

Mr. ALTSCHUL. We believe in quarterly reports, and we think, in general, they should be made available; but we do not believe a rigid requirement should be introduced in legislation making them mandatory, because anybody, whether it is the body designated by law to administer this act, or the stock list committee, would, every now and then, have presented to it facts which would lead it to say that in the interest of investors themselves that requirement ought to be waived. That does not happen infrequently. That is a matter of fairly frequent occurrence. The distortion of earnings in short periods of time would be likely to mislead investors, and create movements one way or the other in market prices and have no relation to anything that was real at all.

Mr. PECORA. How would you deal with the problem in the aggregate?

Mr. ALTSCHUL. On the basis of judgment. In the case of corporations where the quarterly reports are informative—which I think is the case with the bulk of the companies that now publish them—we would have them published. In cases where they come and give us a persuasive reason which shows that the publication of those quarterly reports is going to mislead the investor we are seeking to protect, we give them relief.

The CHAIRMAN. You would have the power in the Commission to waive that requirement?

Mr. ALTSCHUL. I think that would be essential. You would find times when the condition of the quarterly report would be very damaging to the investor, and whoever had the responsibility would

be the first to say, "Well, we do not want that done, because there would be a great deal of undue enthusiasm or concern."

Senator W<sup>A</sup>LCO<sup>T</sup>T. When you speak of quarterly reports, do you mean a balance sheet or a profit and loss statement?

Mr. AL<sup>T</sup>SCHUL. The quarterly reports that we get are quarterly income accounts. Occasionally there is a balance sheet included, but more generally it is purely an income account.

Senator W<sup>A</sup>LCO<sup>T</sup>T. Do they include the gross sales?

Mr. AL<sup>T</sup>SCHUL. Most corporations that we deal with object very strongly to giving gross sales.

Senator W<sup>A</sup>LCO<sup>T</sup>T. That is one of the points that has been raised here. They do not depend upon a physical inventory?

Mr. AL<sup>T</sup>SCHUL. No. The year-end report always catches up the inventory adjustments. Short of a physical inventory four times a year, or twice a year, there is no other way they can deal with that.

We have devised another scheme. We have felt that these quarterly reports in certain cases were misleading. Then we have suggested to corporations, when we are satisfied that these reports would be misleading, that they give us quarterly cumulative annual reports—in other words, that they give us, every quarter, the tie-up of the first three quarters, and the last quarter, annually, so that we get a certain continuity and avoid the distortion that you get in providing for the actual quarterly income accounts. That is another illustration of the fact that whatever agency deals with this subject must have a great degree of flexibility. Otherwise you will find that the rigid rules you have provided to protect the public in many cases will operate in such a way that if you had the power to change them they would have operated far better.

The CHAIRMAN. Proceed.

Mr. AL<sup>T</sup>SCHUL. The comment with respect to section 12 (a) (3) is practically repetition. I do not think it is important to go into that now.

Mr. PECORA. That merely gives the regulatory body discretionary power—that is, power which it may exercise in its discretion.

Mr. AL<sup>T</sup>SCHUL. As I read it, it said "monthly reports including, among other things, a statement of sales or gross income." I did not think it was discretionary from the point of view of sales or gross income. A statement of monthly sales is one of the most misleading things we run into.

Mr. PECORA. I am referring to subdivision (a) (4) of section 12.

Mr. AL<sup>T</sup>SCHUL. (a) (3) was the one I said was repetition. I had not finished with (a) (3). (a) (3) is repetition, and I do not think there is any need of going into it.

My feeling with respect to (a) (4) is that this provision is so broad in its implications that it vests the designated agency with an authority to demand reports the preparation and submission of which might prove extremely burdensome, and accordingly, I feel that this provision should be very much circumscribed, if not entirely omitted.

I have a similar feeling in regard to one other thing—

Mr. PECORA. As I read your comment with regard to section 12 (a) (4), it is, in substance, that because the power lodged in the regulatory body by this section might be capable of abuse, that no power at all should be delegated. That is true of any statute.

Mr. ALTSCHUL. Of course, the effect of that in this particular statute is the thing that bothers me, Mr. Pecora. While it is almost unthinkable, you might say, that corporations would refuse to register, there are some provisions, like this, that make it almost unthinkable that they would register. The whole object must be, it seems to me, to try to draft that clause in such a way that they will give you what you are seeking without making it impossible for corporations to comply.

Mr. PECORA. I think some of these comments conjure ghosts.

Mr. ALTSCHUL. I think you will find the American executive is a pretty good ghost conjurer when it comes to sending in these certificates. I try to place myself more or less in the position of the man who will have to look at this thing and decide what he is going to do about it.

Section 12 is not important.

With regard to proxies, there is no use in reading my comment on that. Mr. Corcoran dealt with that very adequately yesterday.

Mr. PECORA. Do you differ with Mr. Corcoran's views?

Mr. ALTSCHUL. No. We made, in general terms, the same recommendation as to the change he suggested yesterday. We went a little further, but that is a matter of no importance at this time.

The section I would like to cover is the section with regard to liability for misleading statements, because that, I think, is a very important section.

Mr. PECORA. A section that has teeth.

Mr. ALTSCHUL. Yes. It has more than teeth, I believe. I have covered that without any hesitation, because I think you know that the stock exchange is just as interested in avoiding the promulgation of false or misleading statements as the committee.

This section appears to me to be fundamentally unsound in principle in several particulars. In the first place, it makes liability result not only from a statement that is false, but from a statement which, while true, is found to have been misleading. The question of the truth or falsity of a statement is a question of fact; the question of the misleading character of a statement is clearly a question of judgment. To expose individuals to a liability for what may be a mere difference of opinion, and in the absence of any evidence of wrongful intent, seems repugnant to our ideas of fair play.

Mr. PECORA. I do not think the section, as worded, is subject to that criticism.

Mr. ALTSCHUL. My disadvantage is in reading this section as a layman, Mr. Pecora. That was what it meant to me.

In the second place, this section permits recovery, whether damage has been suffered or not and whether damage, if suffered, had an actual connection with the statements complained of. Beyond this, the measure of damage seems to me to be arbitrary and speculative.

These considerations, taken together, expose individuals whose function it is to exercise judgment to risks so serious, so unfair and so impossible to guard against as to be calculated to make those competent to accept such responsibility unwilling to do so.

I am of the opinion that the provisions of this section, as drafted, are of such a character as to be likely to render it impossible for corporations to comply with their terms. As now drawn, it would, I think, operate to prevent directors of corporations generally from

authorizing the filing of an application for registration, and in this manner it would tend to defeat the purposes of the act.

Accordingly, it would seem to be essential that section 17 be modified. In my opinion, it is only fair that the law should provide a remedy for one who has been misled by any misrepresentation willfully made contained in an application, report, or document filed in accordance with the requirements of the act. As I understand it, today such remedy, either does not exist or is only with the greatest difficulty enforced. The law should clearly go so far; but I can see no reason why it should go farther than this.

It seems to me possible that the civil provisions of the British companies act and those sections of the British larceny act, under which I am informed convictions of company officials have been obtained in Great Britain might well prove a helpful guide to legislators.

In this connection, it might be worth considering the provisions of the British Statute permitting the court to require security for costs and to award costs in its discretion. This is a provision intended to restrict the filing of strike suits while placing no obstacle in the way of the poor man who has a bona fide action which he wishes to initiate.

In regard to the effective date, there is nothing to be said about that. I will just close with my comment, if you have a minute to spare, Mr. Chairman.

So far, in my review of specific provisions of the bill, I have made an effort to recognize the reasonableness of certain features relating to the work of the committee on stock list and to offer suggestions designed to improve other features which appear to me to be burdensome or unworkable. However, I would not wish to be understood as implying that if the suggestions I have made are adopted the resulting provisions would embody my ideas as to what is required at the present time in relation to the matters with which they deal. Far less would I wish to appear as other than opposed to the bill as it stands and the philosophy which seems to me to underly it.

I recognize the gross abuses that grew up in the period of rank and unhealthy development that followed the war, and I heartily favor measures which will prevent or heavily penalize any repetition thereof. I do not believe, however, that in order to correct these abuses it is either necessary or wise to enact a law which threatens so seriously to destroy the normal functioning of a business mechanism which has been built up over a long period and which cannot be replaced overnight. On the contrary, it seems to me that in drawing such measures it is of the utmost importance to frame provisions which, while having the required deterrent and punitive effects, will not discourage the more responsible persons who will come under the law, nor subject them to such unjustifiable burdens and hazards as possibly to cause them to withdraw from the exercise of their responsibility.

In my opinion the restrictive character of the pending legislation, applying as it does to securities already listed, may profoundly decrease their present value and freeze a large portion of the country's liquid capital. The deflation and partial paralysis which this con-

notes is a condition which I am satisfied your committee would not willingly help to bring about.

The CHAIRMAN. It has been suggested that these provisions should not apply to existing contracts.

Mr. ALTSCHUL. Oh, yes. I understand that, sir.

I make this argument not merely as a member of the New York Stock Exchange but as a business man and investor profoundly interested in the welfare of American business. In view of the position which I have occupied and the practical experience which I have gained with such matters as are covered by this memorandum, I feel that I have the responsibility of expressing to you how profoundly I am convinced that the enactment of legislation such as that contemplated by the bill under discussion would be an adverse and deflationary influence tending to a great and unpredictable extent to counteract the progress that has been made toward recovery.

Thank you very much for your patience, Mr. Chairman and gentlemen.

Senator WALCOTT. May I ask you one question? Do you not think that a bill that is as stringent as this, and which places such broad powers in the lap of a Federal commission, whose personnel we know today and do not know tomorrow, but which is changing from year to year, would tend to disrupt an open market and force a great many businesses, large and small, to be even more secretive than they are now in their methods and as to what they are doing, by keeping away from the stock exchange?

Mr. ALTSCHUL. I think so, without question.

Senator WALCOTT. I do not think any point has been made of that here, and it seems to me that would be the natural effect of a bill of this character, unless it were severally modified.

Mr. ALTSCHUL. I think that is true without any question. I think much of the pioneer work the stock exchange has conducted in trying to get information from corporations would be upset by many of those corporations simply withdrawing into their shells and going back into some sort of closely held private concerns.

There is just one other thought that I want to mention in connection with these accounting provisions. As you know, we discuss these questions all the time with our consulting economist, because we are not accountants ourselves, and try to get the best information we can on these questions. Mr. May, of Price, Waterhouse & Co., or some of the accountants, were going to come down and discuss some of these questions with you, but there was one point Mr. May made in discussion with me which I would like to bring to your attention, because it is a very constructive feature.

He suggests that it might be possible to consider a rule for the publication of quarterly reports, one of which should be audited, leaving then, to somebody like the stock list committee, to decide with respect to different companies and industries, which quarterly report they wanted audited. That one, then, becomes part of the annual report.

The advantages of that are, in many cases, practical, because today the year-end work on accountants is perfectly terrific, and if there were certain corporations whose business could be accounted for better from July 1 to June 30, it would make accounting practice

throughout the country much better, because the better men would be available to do the work.

Mr. PECORA. In other words, they would stagger their work?

Mr. ALTSCHUL. They would stagger their work. And if, beyond that, there were some discretion in changing the dates once in a while, perhaps, you would get some of these benefits that you are seeking in quarterly audited reports. Mr. May's suggestion specifically was four quarterly reports, one of which should be audited.

I think that is all I have.

The CHAIRMAN. Mr. Altschul, you will be back at 2 o'clock, please, for a few minutes. Right after that we want to hear from the Baltimore people for about 15 minutes, and then Mr. Whitney will resume.

The committee stands adjourned until 2 o'clock.

(Whereupon, at 1 p.m., Thursday, Mar. 1, 1934, a recess was taken until 2 p.m. of the same day.)

#### AFTERNOON SESSION

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

The CHAIRMAN. The committee will please come to order. I believe Mr. Altschul is with us.

#### STATEMENT OF FRANK ALTSCHUL, CHAIRMAN COMMITTEE ON STOCK LIST, NEW YORK STOCK EXCHANGE—Resumed

Mr. PECORA. Mr. Altschul, on page 4 of your elaborated statement on certain provisions of this bill, you say:

In my opinion no central body, whether the Stock List Committee or the Federal Trade Commission, can possibly succeed in performing the functions of the managements of all listed companies

Do you make that statement because it is your opinion that the bill in question places upon the Federal Trade Commission, or purports to place upon the Federal Trade Commission, the responsibility of the management of all listed companies?

Mr. ALTSCHUL. There seems to me to be in the bill a number of provisions that are so far-reaching they would be a burden on the administrative body, such a burden as would be very similar in many cases to that of the management.

Mr. PECORA. What, for instance?

Mr. ALTSCHUL. If you take, for example, the various bits of information that are supposed to be furnished to the Federal Trade Commission as parts of the business of registration. I have gone on the assumption that they were not simply to be furnished for the purpose of being filed, but were to be furnished because the administrative body, whatever it is to be, was going to consider those things and reach some conclusion in respect of them, and possibly take some action or fail to take some action because of the conclusions they reach.

The information that will be asked according to the bill is so far-reaching in scope that it would seem to me that unless you conceive of that body as a body that would be qualified to examine that information coming to them with an informed business judgment in respect thereto, of the sort I would expect a management to exercise,

it is difficult to see just what value it will be to them at all. And if they are supposed to take some action after examining all that material, with the background of informed business judgment in respect of the material that comes to them, then their decision is going to be one that a management in the first instance makes. I am thinking particularly of the provision of the bill in regard to contracts and patents, which I have discussed rather extensively.

Mr. PECORA. The requirement of the bill that such information be furnished does not necessarily mean that such contracts are going to be left to the approval or revision or rejection of the Commission. You understand that, don't you?

Mr. ALTSCHUL. I understand that, Mr. Pecora, but I do not understand—

Mr. PECORA (interposing). Those reports are called for in some instances for their informative character, and for the enlightenment they might give to stockholders and the investing public. Now, do you feel that under those circumstances the provision requiring the filing of such reports and information with the Commission is equivalent to placing upon the Commission the right as well as the burden, duty, and responsibility of managing the businesses of all listed companies?

Mr. ALTSCHUL. I went on the general assumption that in asking for this information you are asking for information that is going to lead to a decision by the Commission, whether in the course of 20 days or of 30 days, that registration will be granted or not. Just to have all that data placed on file without its having any bearing on the Commission's decision, would seem to me to be a burden that was not warranted, unless it was going to influence the Commission's decision, and that, therefore, the Commission would have to review those different documents occasionally with that idea in mind, and reach decisions.

However, that is not the only provision to which I am referring, and it may have been a misinterpretation of mine, although I do not think so.

Mr. PECORA. You say on page 5, no, near the bottom of page 4:

If there is anything in the application which appears to the committee to be open to question—

Meaning the stock list committee of the New York Stock Exchange—

then the committee makes every effort to have the question resolved in accordance with its views; but we have conceived our chief responsibility to be to see that the facts have been fully and adequately disclosed, and if this disclosure indicates nothing which appears to the committee to be unsound or improper, we do not undertake an independent investigation of the facts themselves

Now, you are referring there, I think, particularly to the procedure of the committee in passing upon applications for additional listings, aren't you?

Mr. ALTSCHUL. Well, I think that refers in general to all applications.

Mr. PECORA. Well, how could you possibly tell without inquiry if the facts you desire have been not only fully disclosed but truthfully disclosed?

Mr. ALTSCHUL. Well, of course, that is a thing we can only tell about on the basis of our experience, and I think our experience justifies us in the belief that by and large they are fully disclosed. However, anything that could be introduced into legislation that would make assurance doubly sure, such as some punitive provision of this legislation in regard to making a false statement, I think would be very welcome. I do not know whether that answers your question or not.

Mr. PECORA. On page 5 you say further:

I recognize that abuses have grown up about the market place which require correction in order that the public may be afforded proper protection, and I believe that the object of far-sighted legislation should be to afford such protection while placing as few obstacles as possible in the way of the normal functioning of this important part of our economic mechanism.

What were the abuses you had in mind when you wrote that?

Mr. ALTSCHUL. Well, that was a very general sentence. I had in mind not only the particular abuses that have occasionally cropped out in connection with listing activities, but I had more generally in mind the various abuses that have grown up in the market place itself and which Mr. Whitney suggested a means of dealing with through this body that he has recommended be set up; I mean that he himself has recommended in his memorandum. That covers practically the whole field of stock-exchange activities as I see it. And in whatever field abuses have occurred, as I have read his recommendations, machinery was to be set up for coping with them. And large numbers of them are being coped with by the stock exchange today.

Mr. PECORA. What my question was more particularly designed to elicit was your own view based upon the advantages of the observations you have had as a member of the exchange, as well as a member of one or more of its committees, as to just what the abuses were that you think have grown up about the market place and which require correction in the public interest. In other words, in order that the Congress might properly deal with the abuses, I should like to know what the members of the exchange themselves think the abuses are

Mr. ALTSCHUL. I think some of them have been brought out in your own investigation. The recently adopted rules of the exchange are an attempt to deal, as I understand it, with some of those abuses. I do not know whether I could undertake to make an inventory for you at this moment of them, but, for instance, the rule of the exchange recently adopted preventing participation in pool operations by specialists. That obviously was aimed at that kind of abuse which had been brought to the attention of the Government, and it was acted upon.

Mr. PECORA. Couldn't you enumerate the abuses that have grown up about the market place which requires correction in your opinion?

Mr. ALTSCHUL. Well, Mr. Pecora, I did not come prepared for that. I came to deal fully with stock listing questions. I should really want to be much more fully informed of the testimony which has been brought out in these hearings to attempt to deal with that. I think if you will permit me I will just glance through these sug-



gestions which Mr. Whitney made in regard to the power that might be given to the body he suggested. For instance, he suggests:

The inclusion in the power given to this body of authority to regulate the amount of margin which members of exchanges must require and maintain on customers' accounts

But I am going a little off my beaten path and I hope you will pardon me.

Mr. PECORA That is what I want you to do.

Mr. ALTSCHUL. An attempt has been made in the bill to deal with the question of margin in a rather rigid manner. It seems to me that a very strong argument could be made there, as in the case of the most of these provisions, for flexibility. If you take, for instance, an illustration from another field: No law provides rigidly that Federal Reserve banks should establish a certain discount rate and that that should be maintained. The discount rate is changed from time to time in accordance with conditions. In the same way it would seem to me quite reasonable to have a provision that margin requirements should not be made rigid but left capable of being adjusted from time to time in order to accommodate itself to the day-to-day or month-to-month development in the speculative market. In that case when things get to a point where the margin requirement should be obviously raised, the power would be vested in some authority to raise the margin requirement; and when the time came for the enforcement of such a margin requirement, when such a high margin requirement we might say was no longer necessary or desirable from the standpoint of economy as a whole, then there should be authority in some board to adjust it downward again.

Mr. PECORA. Don't you think it would be in the public interest that there should be a minimum margin requirement embodied in the statute, without reference to any particular minimum now? I am addressing myself to the principle of including in the bill a provision for a minimum margin requirement, with a degree of flexibility above that minimum.

Mr. ALTSCHUL. Are you speaking now of a minimum margin requirement on accounts as a whole?

Mr. PECORA. You might classify them in any way you see fit. But I am addressing myself to the principle of some minimum margin requirement, either one which will apply to all margin accounts or where the minimum might vary in accordance with the necessities of individual kinds of securities or bases of securities.

Mr. ALTSCHUL. Of course, you will understand I am very much out of my field here, because I do not know anything about the margin business as such. Therefore I hesitate to express a very positive opinion in regard to the matter. But it would seem to me that a minimum, if set sufficiently low to allow of a reasonable degree of flexibility to the body that was finally or from time to time to determine the minimum amount of accounts as a whole, would be a reasonable provision.

Mr. PECORA. Can you suggest what the minimum should be?

Mr. ALTSCHUL. I could not. I think the experience of those in the stock exchange, who deal with margin questions from day to day, would be much more valuable to you as a guide than any suggestion I might attempt to give you.

Senator KEAN. Let me suggest if that were the law, and a stock of a customer went down below that minimum, of course, you would have to sell him out at once, just because that would be the law.

Mr. PECORA. You would have to sell him out in accordance with the rules and regulations the commission may prescribe under the terms of this bill, Senator Kean.

Senator KEAN. I say, you would have to sell him out at once.

Mr. PECORA. That is what brokers do anyway when their customers' accounts become undermargined. They sometimes send them an hour's notice, and unless they make good they are sold out.

Senator KEAN. But as a rule a broker tries to get them to put up an additional margin, and if the quotation is only a very small amount below the margin, 1 percent or something of that kind, why, they may carry him over for a short time. But they could not do it if there were a rigid minimum provided in the law.

Mr. PECORA. As brokers see the market for the stock being approached, don't you think the broker would be keen to remind his customer and suggest that he put up additional margin so as to protect his account from becoming undermargined?

Senator KEAN. Surely. But very often there is a sudden drop in the market and a man may be under a little bit, and if you send him notice and he cannot get around until the next day, the broker carries the account over with the idea that the market will go up again, which it generally does after a bad break.

Mr. PECORA. That might be an argument for a minimum margin requirement which would be substantial so as to lessen the danger of that point being reached.

Senator KEAN. No. It does not make any difference what your margin is, if it is the law that a broker shall not carry an account below the minimum margin. He would then be in duty bound to sell his customer out. He could not wait.

Mr. PECORA. That, I think, would be putting into a law what has actually been done in practice.

Senator KEAN. I do not think so.

Mr. PECORA. Except, perhaps, under the power given to the Federal Trade Commission to prescribe rules and regulations for the selling out of an account of a customer, he might get a better break, so to speak, than he gets now from a broker.

Senator KEAN. Well, I know lots of people who do not sell people out right away.

The CHAIRMAN. Wouldn't this provision be rather a relief to the broker? In other words, he could answer any complaining customer that the law required him to make the sale and not expect him to put up a margin.

Senator KEAN. That is true, but it would be pretty hard on the customer. For very often while the market may drop suddenly, it may come back again and never drop that low again for a long time.

Mr. ALTSCHUL. I think that Senator Kean's point just again illustrates the dangers of rigid provisions, whatever they may be, because circumstances change from day to day and a rigid provision which might be put into a bill with the idea of protecting the investor might by accident result otherwise.

Mr. PECORA. Heretofore brokers themselves have arbitrarily fixed minimum margin requirements and imposed those requirements

upon their customers. There hasn't been any hard and fixed rule about that. It is left to the arbitrary judgment or determination by each broker, except within the limits of the rules recently promulgated by the New York Stock Exchange. Now, the investing public has been at the mercy of this arbitrary determination about margin requirements fixed by brokers themselves.

Mr. ALTSCHUL. Well, of course, as I say, you are now taking me out of my own field.

Mr. PECORA. Well, if you prefer not to go out of your field, I do not think it would be fair to ask you to do it.

Mr. ALTSCHUL. Well, I know very little, in fact, I might say I do not know anything about the margin business.

The CHAIRMAN. You may proceed, Mr. Altschul.

Mr. ALTSCHUL. The second point that Mr. Whitney makes is:

Authority to require stock exchanges to adopt rules and regulations designed to prevent dishonest practices and all other practices which unfairly influence the prices of securities or unduly stimulate speculation

Again the striking thing about that suggestion is that it vests in somebody a degree of flexibility. And my argument throughout has been that the danger of rigidity in all these things is easily apparent. That is, the practices which you may want to regulate, or which may arise, you do not contemplate the stock exchange is very alert about and is trying to prevent them. It is in sympathy with legislation that will tend to prevent practices which may unfairly affect prices of securities.

Mr. PECORA. On that point it might be well to recall that yesterday afternoon Mr. Whitney informed this committee that one or more rules promulgated by the New York Stock Exchange on February 13, last, was or were the result of several years' consideration of the subject. Senator Bulkley then asked him what opposition had been expressed to the formulation of the particular rule that was then under discussion, and Mr. Whitney said, "None, that he knew of." So, apparently, with regard to a rule as to which there was no opposition it required several years' consideration before it was promulgated.

Mr. ALTSCHUL. Mr. Pecora, I do not want to try to amplify or change the draft of Mr. Whitney's remarks, and I am not sure that I understand the situation correctly. My recollection of that was that he said the particular transaction had been undertaken within, oh, the last 6 months, and the information elicited by the business conduct committee, which gave them facts upon which they could proceed. While the thing had been under discussion, the actual incidents that led to the reform were much more recent than that. Isn't that correct?

Mr. PECORA. I am simply calling attention to the statement Mr. Whitney made. He was the one who said that the rule was the outgrowth of several years' consideration of the question.

Mr. ALTSCHUL. Well, I am not familiar with that.

Mr. PECORA. Now—

Mr. ALTSCHUL (continuing). Mr. Pecora, I think when any body such as the one suggested by Mr. Whitney, is vested with the right to do the definite things that Mr. Whitney suggests should be done, you will accomplish the maximum amount of good with the mini-

mum amount of disturbance. And the reason for that, I want to repeat, is because it leaves the thing flexible, and because it does not crystallize in law at the given moment a number of rules which might be totally inadequate tomorrow.

Mr. PECORA. Now, just one or two more questions about the statement that appears on page 20 of your elaborated printed statement. You say:

I recognize the gross abuses that grew up in the period of rank and unhealthy development that followed the war and I heartily favor measures which will prevent or heavily penalize any repetition thereof

Now, again, I want to ask you what were the gross abuses that you had in mind when you penned that particular portion of your statement.

Mr. ALTSCHUL. Well, broadly speaking, I would say all the devices that developed which took on the nature of the fomenting of undue speculative activity. But my general idea is that speculation is a necessary part of an economy that functions as ours does, and that a stock exchange is a place where that speculative impulse should be allowed to express itself freely.

Mr. PECORA. You say freely.

Mr. ALTSCHUL. Yes; should be allowed to express itself freely. I think that while criticism may be leveled at speculation as such, there are times when the normal expression of the country takes a speculative turn. It may be necessary as a preliminary to recovery.

It may be necessary as a concomitant of a new period of forward movement and growth. When you get beyond that normal expression of speculative impulse that finds its urge in developing economy itself, and get into the different things that tend to foment it in an unnatural and exaggerated manner, those things generally constitute the abuses I was talking about. Some of them have been dealt with; yes, many of them I think have been dealt with; but they may take new forms tomorrow, and I think it only fair that somebody should have a change to review them as they arise.

Mr. PECORA. I want you to enumerate what you call in this portion of your statement:

the gross abuses that grew up in the period of rank and unhealthy development that followed the war.

Mr. ALTSCHUL. I think that the testimony given before your committee has brought out a good deal of information in regard to the speculative devices of trading against options, pool activities, and so on. I am not familiar with that testimony, and as to the most of it with me it is a matter of hearsay. But from what I have heard there is abundant evidence in that investigation to point to the character of the abuses I have in mind. They are mostly things that would be covered now by the recent regulations of the exchange, having to do with its operations.

Mr. PECORA. You recognize don't you, that the rules and regulations of the exchange are binding upon and enforceable only against its members, and that those same abuses might be perpetrated with similar detriment to the public interest by persons not connected with the exchange as members, but who employ the facilities of the exchange through brokers who are members. Now, in view of that, those abuses could only be dealt with by legislation,

in order to reach all classes of persons, whether members of exchanges or nonmembers, who were guilty of such abuses; don't you think so?

Mr. ALTSCHUL. I may be again speaking out of turn, but I would say that insofar as the exchange has recognized an abuse and tried to deal with it and to prevent it so far as its members are concerned, I cannot conceive that it would be otherwise than welcome if others were prevented by law, if they were prevented from indulging in abuses our own members cannot indulge in.

Mr. PECORA. Well, you realize that a law could not be made to apply simply to nonmembers of the exchange.

Mr. ALTSCHUL. Oh, no.

Mr. PECORA. I wish you would enumerate what you conceive to be the gross abuses that grew up in the period following the war.

Mr. ALTSCHUL. Well, that, of course—

Mr. PECORA (continuing). Instead of referring us to the record of this committee's investigation, which covers thousands and thousands of pages and millions of words. In other words, I should like to have the public, as well as the members of this committee, get the benefit of your observations and your knowledge with regard to those gross abuses, and get it in a phrase or two from you by means of your enumeration of those abuses. You cannot expect the public to read those thousands of pages of testimony taken by this committee.

Mr. ALTSCHUL. Well, of course, I have the feeling that the thousands of pages of testimony taken before the committee have been very well summarized to the public almost daily through the press. But apart from that, if I had come here with a view to speaking about topics beyond the particular scope of the committee on stock list, I would have tried to prepare for you a statement on that point. On short notice I would hesitate to do so, because I would be afraid I might include something I should not include, or leave out something that possibly I should include.

Mr. PECORA. I thought you had already given some consideration to the development soon after the war because of the reference you made in your prepared statement of a recognition of those "great abuses"?

Mr. ALTSCHUL. I have given a great deal of consideration to it, but before such a body as this I would hesitate to try to put that consideration into words on short notice. In general, I would consider within the category of abuses the different things which tend to unduly foment speculation and which would affect natural and normal development.

Mr. PECORA. Do you think that margin requirements have that tendency—I mean, to unduly foment speculation?

Mr. ALTSCHUL. No. I do not think that margin requirements have a tendency to unduly foment speculation any more than I think the discount rate of the Federal Reserve Board has a tendency to foment business.

Mr. PECORA. Why did the exchange authorities themselves during the first 6 months of 1929, or rather the individual members of the exchange, raise their margin requirements in a manner that created a minimum or an average of 40 percent of the market price of securities then being traded in by the public as their margin?

Mr. ALTSCHUL. Well, I do not believe that normal margin requirements unduly foment speculation. But I think it is quite apparent that as speculation develops a tightening of margin requirements is a force that operates against speculation.

Mr. PECORA. Against the practice of undue speculation?

Mr. ALTSCHUL. It ought to be, I think; yes, it ought to be anyway, in my opinion.

Mr. PECORA. Very well. Now—

Mr. ALTSCHUL (continuing). In the same way again as the raising of the discount rate to a very high rate tends to slow up business at a time when business has gotten out of bounds. It seems to me the mechanism is very similar in character. But we have evidence before us that a low discount rate itself, when conditions are unpropitious, does not start a business revival.

Mr. PECORA. You add a saving clause to your answer, when conditions are not propitious.

Mr. ALTSCHUL. Yes. I do not think that low margin requirements or normal margin requirements, whatever they may be, will of themselves stimulate speculation if there is no disposition because of other circumstances for more speculation to develop.

Mr. PECORA. It might prevent giving impetus to speculation that would make it necessary to apply a brake with such sudden force and energy that the cart might be overturned.

Mr. ALTSCHUL. Oh, yes. But I again point out there that I do not think speculation is of itself under all circumstances a necessarily evil thing. On the contrary, it may be a very necessary thing at a time when business is liquidated and revival is being sought; and there may be a good many reasons why margins and speculative impulses are nothing more than a symptom of revival and growing economy.

Mr. PECORA. Well, if you think that speculation should be permitted do you think it should be permitted on a broad scale with other people's money?

Mr. ALTSCHUL. I know of no reason why a person should not borrow other people's money and use it to finance purchases of securities, just as he does to finance purchases of real estate. The only important thing is whether the loan is secure in that case, and beyond that, of course, the question whether the amount being used in that manner is growing so unduly in regard to the economy as a whole as to create disturbance in the business structure. Those are things that the Federal Reserve, cooperating with some other organization, such as Mr. Whitney suggested the creation of, could be dealt with in that manner.

Mr. PECORA. Let us confine ourselves to the stock market. Do you think that speculation in that mart should be encouraged with other people's money?

Mr. ALTSCHUL. When you use the words "should be encouraged"—

Mr. PECORA (interposing). That is, encouraged by low margin requirements, by lowering your margin requirements more, and on other people's money that the speculator uses in his particular operations; isn't that so?

Mr. ALTSCHUL. Well, I don't think so. When you say "lower margin requirements" you are using a relative term.

Mr. PECORA. Yes; I am.

Mr. ALTSCHUL. Take, for instance, the normal requirements in normal times of the stock exchange. I think if those normal requirements are enforced at times when there is great speculation and when there is very little speculation, the fact that they exist, in my opinion, does not stimulate speculation any more than the low discount rate stimulates business. To follow your thought in regard to this bill, I think speculation, which may be a perfectly normal concomitant of our economy in its early stages, or as it runs along, may at some stage reach a point where for many reasons it may be dangerous or is threatening to become dangerous, and at such a time ability to change the margin requirements, by reason of flexibility vested in some such authority as Mr. Whitney has suggested, would be a very helpful thing.

Mr. PECORA. Well, it is a rather trite thing to observe that the lower the margin requirement the greater the temptation to the speculator to speculate. If a person desiring to speculate in the stock market is required to put up his own funds only to the extent, say, of 20 percent of the purchase price of the security he is buying, he would buy twice as much as if he were required to put up 40 percent. I think that is obvious.

Mr. ALTSCHUL. It is a trite observation, I concede, but I think it is an inaccurate one.

Mr. PECORA. Why?

Mr. ALTSCHUL. Because I do not think that the fact that the margin requirements are low is in itself a temptation to speculate.

Mr. PECORA. You think the temptation to speculate is inherent in the person who speculates?

Mr. ALTSCHUL. No; I think the temptation to speculate is either inherent in the situation or is not inherent in the situation. It emerges at times in response to all sorts of factors.

Mr. PECORA. Is not the volume of speculation engaged in affected by the margin requirements?

Mr. ALTSCHUL. There is no question about that; I agree on that.

Mr. PECORA. That is the only point I was trying to make.

I have no further questions.

The CHAIRMAN. That is all. You may be excused now, Mr. Altschul.

#### STATEMENT OF RICHARD WHITNEY, PRESIDENT OF THE NEW YORK STOCK EXCHANGE—Resumed

The CHAIRMAN. Proceed, Mr. Whitney, where you left off when you were interrupted.

Mr. PECORA. You gave up to Mr. Altschul for the purpose of taking up listings requirements.

Mr. WHITNEY. May I point out with regard to the matter recently discussed, about margins, that I think Mr. Pecora has the wrong impression that the exchange had no requirement as to margin during the panic and that brokers themselves raised their margin requirements at will. The exchange did have a minimum requirement. Brokers did also raise at will their margin requirements. I think it is fair to point out, because it is interesting, at least, perhaps, that in spite of the margin requirements, the raising of them

by the brokers at their volition, nevertheless speculation continued in even greater and greater sum total in spite of those increased margins.

Mr. PECORA. Because of the mania that then afflicted the speculating public?

Mr. WHITNEY. Quite right, sir. Mr. Altschul also said that the surrounding conditions had a very great bearing on the situation, and the imposition of higher margins did not, though perhaps it would have been desirable—perhaps it was the idea back of the brokers raising their margins, but it did not prevent the increase of speculation; which is just what I tried to show to you yesterday.

Mr. PECORA. That might have been due to the fact that the impetus which had been given to speculation because of the ease and facility with which persons could engage in it with money that did not belong to them had become so strong and so great and powerful that when you tried to apply the brakes they were burned, and the result was that we had a wreck; the car crashed into a tree and went into the ditch.

Mr. WHITNEY. You have argued here—and I have not taken exception to it, because I think it is a part of the entire situation that has a very direct bearing upon it—but you have, I think, argued here that the use of higher margins will stop speculation just at those times when it should be stopped; but I am stating, purely as a matter of interest, the facts as I remember them happening in 1929 in that particular regard, merely in passing.

Mr. PECORA. But I am not confining myself to a consideration of what was done with regard to the raising of margin requirements in 1929. The thought that I am suggesting is that the reason that those increased margins proved ineffective to reduce or control the excessive speculation that undoubtedly went on was because prior to 1929 brakes had not been applied and the economic machinery of speculation had attained a speed, through the impetus given to it throughout the preceding 2 or 3 years of the so-called "bull market", that when the attempt was made to apply the brakes the brakes either proved ineffectual or they were burned out. The desirable thing would be not to permit the economic machinery to reach that dangerous rate of speed where the sudden application of brakes would be ineffectual or would only bring a stoppage with a serious jolt to the occupant of the car.

Mr. WHITNEY. Then no brakes are effective.

The CHAIRMAN. Oh, yes.

Mr. PECORA. The brakes will be effective if the rate of speed is not permitted to grow without limit.

The CHAIRMAN. The same thing happened, according to the admission of the Federal Reserve Board, when they were late in checking this undue inflation. If they had started earlier, they might have prevented it.

Mr. WHITNEY. True, sir.

Senator KEAN. The stock exchange has existed for how long?

Mr. PECORA. A hundred and forty-two years.

Mr. WHITNEY. Thank you. A hundred and forty-two years.

Senator KEAN. During that period margins were never called for beyond 20 percent, during all that period?

Mr. WHITNEY. I do not think so, Senator.



Senator KEAN. Until this last time.

Mr. WHITNEY. We have had very serious panics during those 142 years, besides the one in 1929.

Senator KEAN. So that the business has gone on successfully and has developed, and our industries and our railroads and our various industrial activities have increased all during those years with the assistance of floating securities, without any trouble?

Mr. WHITNEY. Very materially; and I think speculation has played a very important part in the setting-up of our corporations and our industries throughout this country; our railroads perhaps more than any others.

Mr. PECORA. The fact that the country has continued and has recovered from these various panics and depressions is comparable to the experience of the average human being, that in the course of his lifetime he runs into periods of illness and recovers from them—which is no reason why such illness should not be averted if it can be.

Senator KEAN. That is correct; but, Mr. Whitney, is it not true, also, that nobody in the world has yet succeeded in preventing upturns and downturns of the market, owing to the financial conditions that occur all over the world?

Mr. WHITNEY. I do not know of any formula that has ever been devised; and I think we would be the first to like to see such a formula.

Senator KEAN. Is it not also true, Mr. Whitney, that during the war there was a tremendous amount of capital destroyed, and that therefore the world had less capital to operate on, and that to try to bolster up things various governments expanded credit in every way they could so as to try to keep prices level with what they were before the war?

Mr. WHITNEY. I think that is true.

Senator KEAN. And when the final crash came it was a question of a large percentage of the savings of the world, of the capital of the world, having been destroyed, and we had a new measure of value to which everything had to be regulated?

Mr. WHITNEY. I think that is so.

Mr. PECORA. Is that all with the purpose of suggesting the thought, Senator Kean, that stock market speculation had nothing to do with the panic and with the depression since 1929?

Senator KEAN. That is only an incident. The price of wheat, the price of land, the price of houses, the price of everything else all over the world had to go down to be measured by the loss of capital which had been destroyed in the war.

Mr. PECORA. Senator, I shall be able to bring to your notice, and I propose to do it at the proper time, public expressions of opinion, not only by Mr. Whitney but by his predecessor, the president of the New York Stock Exchange, in which they very frankly avowed the responsibility of the speculation mania which preceded October 1929, before the depression—not the sole responsibility, but as a contributing factor.

Senator KEAN. Did that affect the prices in France?

Mr. PECORA. Did what affect the prices in France?

Senator KEAN. The speculative mania on the stock exchange in New York.

Mr. PECORA. Insofar as the whole world is more or less interrelated in an economic system, I venture to say it had its repercussions in France and every other land with which we do business.

Senator CAREY. What percentage of margin do the New York banks require when a person makes a loan on securities with a bank? How much will they loan?

Mr. WHITNEY. At the present time, and taking the same stock that we demand 30 percent on debit balance for, their requirement is 30 percent of the loan.

Senator CAREY. So if we put a limit on the stock exchange, a man will probably go to a bank and borrow on the securities?

Mr. WHITNEY. I believe so. As I granted yesterday, it might make it more difficult. Perhaps various things would be looked into by the bank, and there might be other agencies built up that would loan to him.

Senator CAREY. Is there a limit in the bill as to banks?

Mr. WHITNEY. The limit in the bill is the same as brokers with relation to securities listed and members of security exchanges.

Mr. PECORA. If the borrowing is for the purpose of buying securities; yes. But the bill provides that a man may go to a bank and borrow on collateral to an extent exceeding the so-called "margin requirements" in the bill, provided the securities that he offers as collateral have not been purchased by him within 30 days prior to the time of the borrowing.

Mr. WHITNEY. Thereby not allowing to such borrower any power of substitution of those securities that he might during that period buy.

Mr. PECORA. And thereby not allowing the borrower to overcome the margin requirements of the act.

Mr. WHITNEY. There is one point, Mr. Pecora—I did not think we were going to get into an economic discussion here—that I do think has a very great bearing, and I would like to state it, on all boom and panic periods, and I think it is fundamental, and that is that the earning power of corporations is bound to be reflected in their price; when they have good earnings, in an increase in price, and when they have bad earnings, a decrease. There is nothing in the world, to my knowledge, that is going to prevent prices going up, whether there is speculation or not, if the earnings of the corporation are great; and there is nothing in the world to prevent the prices of the shares of corporations going down if they fail to earn money.

Mr. PECORA. But those increases in price, where they are based upon actual earnings, and hence corresponding increases in earnings, would be justified by sound economic factors; but where the increases in price are brought about solely by speculation, I venture to say that your own opinion and belief is that those increases in price levels of securities are not wholesome.

Mr. WHITNEY. Yes; but the period of time one is talking about, whatever time, naturally has its direct effect upon all corporations. In other words, the general tendency is to earn money, and there are good times for the corporations. That brings others perhaps not in that category, and vice versa—

Mr. PECORA. The moneys earned, whether realized or translated from paper profits into actual profits during the speculative mania that preceded 1929, were not reflected in the earnings of corporations,

as has been pointed out in documents issued by the stock exchange itself.

Mr. WHITNEY. I have a document here, if I may put it into the record, which shows composite earnings index of 166 companies from the first quarter of 1929 to the last quarter of 1933, and on it also is shown a monthly average of weekly stock price index of 421 stocks. During that period—it shows the height of the boom period and the depth of the depression—earnings fell faster and farther than did prices, and when earnings started to improve so did prices start to improve; but earnings went faster than prices. I merely bring this in, sir, as having a very important bearing upon a subject which is one of economics and in which there are many, many factors, as I think everybody will agree.

The CHAIRMAN. Do you wish that inserted in the record?

Mr. WHITNEY. I would like to have it in the record, Mr. Chairman.

The CHAIRMAN. It will be admitted.

(Photostatic copy of a graph showing monthly average of weekly stock price index for 421 stocks and a composite earnings index of 166 companies was received in evidence, marked "Whitney Exhibit No. 1, Mar. 1, 1934", and will be found reproduced at the end of today's record, in the committee's copy thereof.)

The CHAIRMAN. I think, Mr. Whitney, that the ordinary buyer of stocks of corporations on the market has very little conception of the actual earnings of those corporations. He just buys because it is his disposition to speculate, or what not; he does not go to the trouble to find out the actual, real value of stocks by the earnings of the corporation. Is not that true generally of the ordinary buyer?

Mr. WHITNEY. Mr. Chairman, I will agree that that may be more or less true, certainly in a period when the country is swept by a speculative mania. I think, during the times we have been passing through in the last 3 years or more, where he have seen the perfectly extraordinary increase in the number of stockholders in our larger corporations, where speculation was largely nonexistent, as shown by the debit balances of brokerage firms, those people have bought because they had faith in the companies' prospects, or on what they believed was a particular company's earning power. I do not think that those purchases were made from a speculative point of view at all. We have had perfectly terrific increases in the number of stockholders who own their stock and in whose name the stock is registered and for which cash was paid, and it was not bought on borrowed money.

Mr. PECORA. Has not that been due in part to the necessity for large holders of stocks to dispose of their holdings?

Mr. WHITNEY. There is always a seller for every buyer; yes.

Mr. PECORA. But you are putting the emphasis on the larger number of stockholders.

Mr. WHITNEY. I do not know any facts to verify your statement. It may be true.

Mr. PECORA. Do you think it is a violent assumption, based upon your own observations? You know there have been disbursements of large holdings of stock in the last 3 or 4 years.

Mr. WHITNEY. Yes; but I think that takes place at all times.

Mr. PECORA. Exactly. Don't you think it has been much more evident in the last 3 or 4 years?

Mr. WHITNEY. I don't know, if you are asking my personal opinion.

If I may proceed, we come to section 14 of the bill which purports to make it illegal for any person to use the mails or any means of interstate communication or transportation for the purpose of making a market in any security whether listed on a national exchange or not; in which, as I see it, complete control is given to the Federal Trade Commission on over-the-counter or outside market transactions.

That has been very fully gone into by Mr. Corcoran and I think there is but one point that I can add. As I see it, this gives to the Federal Trade Commission complete power to regulate the trading of State, county, municipal, and other governmental bodies, other than the United States Government, complete power to regulate the markets and how they shall be conducted in the indebtednesses or bonds of States and municipalities. I think that is a very dangerous power to give anybody, and might work to the terrific detriment of those particular governmental bodies.

Mr. PECORA. Do you know how markets are made generally in the over-the-counter market on securities that are traded in?

Mr. WHITNEY. Specifically, in what type of securities?

Mr. PECORA. Take any type that you want to use as an illustration of how markets are made in the over-the-counter market.

Mr. WHITNEY. Well, we will take New York State bonds. There are, I suppose, 5, 10, or perhaps 15 organizations—oh, there are more, but there are that many that deal actively and largely—

Mr. PECORA. Sort of specialize in it?

Mr. WHITNEY. Yes—in that type of securities. They make bids and offers and they very often send out lists as to their bids and offers. I am not sure they do it now, on account of the Federal Securities Act. Of if you inquire over the telephone, they will give you a bid and offer on these securities; and that is based largely on the question of the rate and worth of money at that particular time, taking into consideration, of course, the standing of that particular governmental body.

Mr. PECORA. There was some testimony presented to this committee last February—I think the witness whom I have in mind especially was a broker named Robinson who gave some rather illuminating testimony on how the over-the-counter market was operated. Do you happen to have read his testimony? I know you were down before the committee just about the time he was testifying.

Mr. WHITNEY. No; I do not think I read it.

Mr. PECORA. You may have heard him testify.

Mr. WHITNEY. I do not think I read it.

Mr. PECORA. Well, it is in the record.

Senator GOLDSBOROUGH. With regard to section 14, relating to over-the-counter markets, do you mean that that section would make it practically impossible to control the activity of nonmember dealers and that it would create a bootleg market?

Mr. WHITNEY. I will take it from two points of view. If the bill is enacted in its present form it would give the Federal Trade Commission, as I see it, complete authority to pass rules and regulations

with regard to over-the-counter markets in securities not listed; and I also feel that there is a very real danger that listed securities might be dealt in over the counter in bootleg markets, as you say; and as has been stated here by others, I think it very probable that under the conditions of this bill with reference to what you spoke about this morning, the imposition of rules and regulations upon corporations in order to be listed, their shares would also go into the bootleg or over-the-counter market.

Mr. PECORA. Mr. Whitney, if section 14 were to be modified so as to exclude from the operation of this provision Government bonds, State bonds, or bonds issued by any political subdivision, what would you say then?

Mr. WHITNEY. That would be progress in the right direction.

The CHAIRMAN. Has the New York Stock Exchange any rules or regulations with respect to open-market operations?

Mr. WHITNEY. I do not know just how to make myself perfectly clear to you. Our rules apply in the conduct of our members wherever they operate; but as to the securities that they shall deal in over the counter there is no rule, sir, if that is what you mean.

The CHAIRMAN. Yes.

Senator CAREY. Do you not read the bill to prevent anybody from selling any securities that were not listed on the exchange?

Mr. WHITNEY. As the definition now is, I think it would be subject to some review in a court as to whether that would not be so. Certainly one would be at his peril in selling any security over the counter unless done under the provisions set forth by the Federal Trade Commission, whatever they may be. They are not cited here.

Senator GOLDSBOROUGH. I gather from what you say that the market would be somewhat affected for municipal bonds and equipment trust certificates, bank stocks and insurance stocks?

Mr. WHITNEY. Very materially affected; yes, sir.

Senator KEAN. Would it not be practically impossible to trade in them?

Mr. WHITNEY. I think it would be impossible for any member of the securities exchange to trade in them, many of whom specialize, as part of their business, in that type of market. It happens to be true of myself. Therefore, I refrain from making any particular objection to it.

Senator KEAN. It is true of me, too.

Mr. WHITNEY. Section 15 comes under the remarks that Senator Goldsborough made this morning, in that it deals entirely with transactions by directors, officers, and principal stockholders of corporations and is very broad in its effect.

Section 16 requires every member of an exchange and every person transacting business, and so forth, to keep accounts, books and records such as the Federal Trade Commission may require.

Mr. PECORA. Pardon me. Mr. Whitney, but have you any opinion to express with regard to the provisions of section 15?

Mr. WHITNEY. We entirely approve, and as we suggest in offering the Federal incorporation law as a suggestion, we believe that anything to control dishonest acts should be done in that direction. But this is very broad. It goes into detail under which, in my belief, it would be extremely difficult for a management to operate.

Frankly, I do not think that such a subject should be incorporated in a stock exchange bill.

Mr. PECORA. You recognize the difficulty of any speedy enactment of the Federal incorporation law, do you not? It has been adverted to by representatives of the exchange who have already appeared before us.

Mr. WHITNEY. I do not know, sir, whether such a bill has ever been presented in either the Senate or the House for consideration.

Mr. PECORA. No; but there are very serious legal constitutional questions that are involved in that.

Mr. WHITNEY. Yes; I think there are very serious questions probably involved in the passage of any bill, just as I think we find very difficult questions arising in the consideration of rules and regulations to be adopted by the exchange.

Mr. PECORA. You are suggesting, if I correctly understand you, that the provisions of section 15 should not be found in a measure of this character?

Mr. WHITNEY. And other provisions.

Mr. PECORA. They more logically should find lodgment in a Federal incorporation bill? Is that the point you are making?

Mr. WHITNEY. Yes.

Mr. PECORA. If there is a rainstorm, and an umbrella is not handy, a newspaper might sometimes give shelter temporarily, anyway?

Mr. WHITNEY. Possibly.

Senator GOLDSBOROUGH. Under section 16 to which you referred a moment ago, the records of corporations are subject to inspectors, are they not, by the Federal income-tax representatives?

Mr. WHITNEY. Oh, yes.

Senator GOLDSBOROUGH. Are the people who are to be so inspected required to pay the expense of the inspectors?

Mr. WHITNEY. No, sir. I was coming to that. I think this imposes a very, very severe hardship upon members of exchanges and the exchanges themselves. Besides, as we will get to later, there is a so-called "fee" imposed upon exchanges, which is nothing more nor less than an additional tax on the purchase and sale of securities; and we now have in New York a Federal tax, a State tax, and also in some other States there are taxes affecting exchanges other than the New York Exchange.

Mr. PECORA. I think the fee you have mind is five-hundredth of 1 percent?

Mr. WHITNEY. Yes, sir; but in our case, taking a fair average, it would amount to \$500,000 to \$1,000,000 a year. Perhaps that is a small sum when we talk of billions, but it is pretty large to us.

Mr. PECORA. I just want to call attention to the fact that what you refer to as a tax amounts to one five-hundredth of 1 percent.

Mr. WHITNEY. I don't think that really changes the question, does it? It is what that develops into in dollars and cents. In the case of the New York Stock Exchange it would be large. Presumably not in every case.

Mr. PECORA. Because of the great volume of business transacted there?

Mr. WHITNEY. Yes; and it is, nevertheless, in the last analysis, presumably another tax upon the people who trade there.

Mr. PECORA. This provision that Senator Goldsborough has referred to, section 16, is somewhat similar to the provision we find in the National Banking Act which imposes the cost of examinations of banks upon the banks.

Senator GOLDSBOROUGH. It being based on the capital resources of the institution?

Mr. WHITNEY. This is not based upon the capital resources of any member of the exchange, nor in any way limited to the business to be conducted in the particular office under inquiry. It is terribly broad.

Mr. PECORA. It was freely acknowledged 2 or 3 days ago here when Mr. Corcoran was discussing this section that a calculation might indicate that this fee of one five-hundredth of 1 percent might yield a revenue that would defray the cost of these examinations so as not to impose a burden on the subject of the examination.

Mr. WHITNEY. Section 17 deals specifically with the responsibility of persons making any statement in any report or document filed with the Federal Trade Commission which is, in the light of the circumstances under which it is made, false or misleading. It can impose, as I see it, a very tremendous responsibility upon officers of corporations.

Mr. PECORA. Is it a responsibility that should not attach to them if they make false and misleading statements to the damage or detriment of one who relies upon them?

Mr. WHITNEY. I think it is so worded, sir, that what might be perfectly true at the time might prove at a later time to have been misleading; and I think the breadth and scope of the provision impose a terrific responsibility.

Mr. PECORA. To what particular language do you attribute that?

Mr. WHITNEY. Perhaps I can give an instance—

Mr. PECORA. Why not take the language of the bill itself that you think has that effect?

Mr. WHITNEY. I have just read it, sir—"false or misleading in respect of any matter sufficiently important to influence the judgment of an average investor."

I beg your pardon. I did not read that last part. It is conceivable that a director or an officer of the corporation might authorize an accountant or certain junior officers to give out statements regarding the company or information regarding the company that was considered perfectly proper at the time. It might happen that, innocently or otherwise, the junior officer might have issued something that was false or misleading, and yet the directors or officers of the company who had been responsible for having such a report or statement issued would be held liable under the very severe penalties in this provision of the bill.

Mr. PECORA. Aren't you overlooking this provision in subdivision (a) of section 17, which provides:

unless the person sued shall sustain the burden of proof that he acted in good faith, and in the exercise of reasonable care had no ground to believe that such statement was false or misleading

Mr. WHITNEY. I recognize that qualification, sir, but I still think, as I said, that there is a very severe possibility of penalty to be imposed.

Senator GOLDSBOROUGH. Is that where the 2-year provision is made?

Mr. PECORA. No, sir; that is subdivision (e) of section 17.

Senator GOLDSBOROUGH. Under section 8 have you a 2-year term of liability based upon the discovery of alleged violations of the act?

Mr. PECORA. That is subdivision (e) of section 17.

Senator KEAN. Was it not agreed, practically, that we would change that?

Mr. PECORA. Yes; I think it is one that might very well be considered.

Senator GOLDSBOROUGH. An order might be given over the telephone and not come to light for 2 years.

Mr. PECORA. Subdivision (e) of section 17 reads as follows [reading]:

No action shall be maintained to enforce any liability created under this section unless brought within 2 years after the discovery of the violation upon which it is based

There might well be added a provision that "in any event such action will be brought within 6 years of the alleged violation."

Senator CAREY. In line 8 on page 32 it says [reading]:

Unless the person sued shall sustain the burden of proof that he acted in good faith

That means that the man who is sued has to prove that he is innocent, rather than the man that sues has to prove that he is guilty?

Mr. PECORA. He has the burden of proof imposed upon him.

Senator CAREY. Is that fair?

The CHAIRMAN. He must show first that the statements are false or misleading. That establishes your cause of action. He can be relieved of that if he can show that he acted in good faith.

Mr. PECORA. And evidence showing that he acted in good faith is obviously, in such an instance, more under his control and available of development than would be evidence to show that he did not act in good faith under the control or power of the Government or the plaintiff. There are many counterparts of this provision in various branches of the law, even in the criminal law. There are criminal statutes whose constitutionality has been upheld, where the burden of proof is placed by the statute upon the defendant, in apparent violation of the rule that the burden of proof shall never shift to the defendant in a criminal case.

Senator CAREY. Does this not mean that anyone can charge a man with having made a false statement?

Senator BULKLEY. He has got to prove the statement and the falsity of it.

Senator CAREY. The man that makes the charge?

Senator BULKLEY. Yes.

Mr. PECORA. Or the misleading character of it.

Senator CAREY. I think the misleading part is the most serious part.

Mr. PECORA. The defendant can show on his own behalf that he did not make such false or misleading statement wilfully and that he acted in good faith by putting out a statement that was in fact false or misleading, and no liability would attach.

The CHAIRMAN. There is the same provision in the Securities Act. The defendant can put in a plea of confession and avoidance.



Senator GOLDSBOROUGH. You drew a distinction between a misleading and a false statement. I did not catch that.

Mr. WHITNEY. I said that the word "misleading" was one that presented grave difficulties to any officer of a corporation.

Senator GOLDSBOROUGH. It is too broad, you mean?

Mr. WHITNEY. Yes, sir; because in the future some one might, under this act, sue and prove, perhaps conclusively, that a statement was misleading as a result of what had happened since the time of the issuance of the statement, but at the time it would be very difficult on the part of the officer to prove that he had not intended to make it misleading.

Mr. PECORA. Conceivably a half truth is a more subtle form of falsity than an outright lie. It is also conceivable that only a part of the truth might be given in a statement which would make that statement perhaps not false in terms, but would make it misleading to the person who it was hoped would rely upon it. I think that is what that language is aimed at.

Mr. WHITNEY. Perhaps it is, sir; but I take it we are trying to deal with honest men as well as with crooks.

Mr. PECORA. We are trying to deal with all men; and those who are not honest we are trying to punish in the hope that the fear of punishment will be a deterrent to their dishonesty.

Mr. WHITNEY. It is my opinion, and merely my opinion, that the breadth of these provisions and the wording could make it a very grave position for a perfectly honest man inadvertently to have violated some of the provisions of this act.

Mr. PECORA. It is always open to a law-making body, where injustice develops in the operation of a statute, to modify the statute.

Senator KEAN. We are calling here in the bill, as it now stands, for an audit every quarter. Suppose that you get an audit for a quarter and that shows that the company has earned a great deal for that quarter. Is not that misleading to the people that expected it to earn the same amount for the other three quarters?

Mr. WHITNEY. I don't know, sir.

The CHAIRMAN. It is misleading, as was said in the English case, where the whole truth was not given. What was stated was true, but they failed to state that the dividends paid were not paid out of earnings, but out of surplus and reserve.

Mr. WHITNEY. Section 18 of the bill grants special powers to the Federal Trade Commission. Some of them are in regard to stock exchanges and members of exchanges, and others refer to authority over corporations who list on such exchanges. Again, as Senator Goldsborough said, the latter are very broad.

Senator GOLDSBOROUGH. You mean, the power goes beyond supervision and regulation?

Mr. WHITNEY. Yes, sir; in my opinion it does, far beyond.

Mr. PECORA. What is the language in that section that, in your opinion, has that effect?

Mr. WHITNEY. The specific language with respect to corporations as to the information that they shall file—

the items or details to be shown in the balance sheet and earning statement, and the methods to be followed in the preparation of accounts, in the appraisal

or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and nonrecurring income, in the differentiation of investment and operating income, and in the preparation, where the commission deems it necessary or desirable, of consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the issuer—

Mr. PECORA. Pardon me; I cannot find that language in the bill.

Mr. WHITNEY. Section 18 (b). I am reading from S. 2693.

Mr. PECORA. Yes.

the authority above given the commission shall include, among other things, authority to prescribe the form or forms in which required information shall be set forth, the items or details to be shown in the balance sheet and earning statement, and the methods to be followed in the preparation of accounts, in the appraisal or valuation of assets and liabilities, in the determination of depreciation—

And so forth. Yes.

Does not that power relate principally to the matter of prescribing uniform systems of methods of accounting, and isn't that the very thing you say the stock exchange may be unable to effectuate?

Mr. WHITNEY. It may, sir. It may. But I think it goes far beyond that, as well.

Mr. PECORA. I do not see where.

Senator GOLDSBOROUGH. Do you mean that because it includes substitution of the commission for the governing bodies of the security exchanges?

Mr. WHITNEY. No. We have no power over any corporation, sir, unless they freely come to us and desire to list on our exchange. Then they have to meet our requirements. Here the commission is given power on all corporations now listed or that may seek to list, not only the power designated, but, as I see it, further power as the commission may itself in the future prescribe.

Mr. PECORA. Which all relates to the power to make rules and regulations and modify them from time to time with respect to the form of information and other data which under this section must be filed with the Commission?

Mr. WHITNEY. Yes, sir. It all refers to that.

Mr. PECORA. I take it that this section is the basis for the contention that I see has been advanced by you in some of the printed material that has been submitted to this committee and to the House committee also, and in which you say, in effect, that this gives to the Commission the power to control and manage all business corporations?

Mr. WHITNEY. This and other parts of the bill.

Mr. PECORA. Well, I do not see how the power to manage and control and operate companies whose securities are listed is conferred upon the Commission merely by this provision of the act which gives them the power to prescribe the form in which information shall be given to the Commission for the purposes of enforcing this act.

Mr. WHITNEY. May I read?

Mr. PECORA. And carry out its purposes and provisions.

Mr. WHITNEY (reading):

SEC 18 (a) The Commission shall have authority from time to time to make, amend, and rescind such rules and regulations as it may deem necessary or appropriate to carry out and implement, administer, and enforce the provisions of this act, including rules and regulations governing the form and content

of registration statements [to which we are referring] and reports for various classes of exchanges, members, securities, and issuers [they being the corporations], and define the accounting, technical, and trade terms used in this act.

To my mind, Mr. Pecora, that is so all-embracing and could be so onerous as to give the Federal Trade Commission absolute control of a corporation.

Mr. PECORA. I wish you would be specific about that and show how the exercise of that power would operate in that fashion.

Mr. WHITNEY. By the imposition of forms of accounting, the frequency of reports and all of the things that are stated clearly here in the provisions of the bill upon corporations.

Mr. PECORA. You think that the power to impose forms of accounting is equivalent to the power to step in and run the business of a corporation?

Mr. WHITNEY. I have said I think that I am referring to section 18 and the other provisions affecting corporations in the act.

Mr. PECORA. But I would like to see what the other provisions are.

Mr. WHITNEY. I think we have covered a great many of them, sir.

Mr. PECORA. That you regard as affording a basis for your contention in that respect. The word has gone forth in printed documents that I understand were prepared by you to the executives of business corporations all over the country that this act—

Mr. WHITNEY (interposing). Listed corporations.

Mr. PECORA. Listed corporations—that this bill if enacted would put the Federal Trade Commission in the saddle of management and operation and control of every such corporation.

Mr. WHITNEY. If they choose.

Mr. PECORA. And I seriously and emphatically challenge that statement or that contention.

(Mr. Whitney conferred with Mr. Redmond.)

Mr. WHITNEY. If the chairman would allow, I would like Mr. Redmond to answer for the more technical point of view.

The CHAIRMAN. Yes; he may do so if necessary.

Mr. REDMOND. I ask the permission only because Mr. Whitney's statement is based on my interpretation of the act.

If you will turn to section 18 (a), it gives the Commission not only power to regulate the form of the information, Mr. Pecora, but also the content thereof.

Mr. PECORA. Yes.

Mr. REDMOND. And having the power both to regulate the form and the content of registration statements, the Federal Trade Commission could require as a condition of registration the including of anything it wanted in those statements. The right to include anything, to force a corporation to include anything, in effect is a club over management which would allow it to control management. And that is the basis of my opinion.

Mr. PECORA. Well, I think that is the most—

The CHAIRMAN (interposing). Specifying the content of a statement does not seem to me to control the management.

Mr. PECORA. I think that is the most fantastic kind of ghost to conjure.

Senator BULKLEY. I would like to clear this up.

Mr. REDMOND. Yes.

Senator BULKLEY. Do you contend that the control over the corporation is by any direct words in the act, or is it by the Commission having the power to make itself such a burden and a nuisance that it can indirectly control where it does not directly have the right to do it?

Mr. REDMOND. Exactly, Senator.

Senator BULKLEY. It is the latter?

Mr. REDMOND. It is the latter.

Senator BULKLEY. You do not base it on the former at all?

Mr. REDMOND. Not on the former.

Senator BULKLEY. Is that your view, Mr. Whitney?

Mr. WHITNEY. Yes, sir. I tried to express it before.

Mr. REDMOND. It even goes to the extent that the Commission could demand a corporation to make daily reports, on condition that if those reports are inaccurate in the least degree the directors and officers who would be required to file them would be liable both criminally and civilly. Now, you could imagine that if you face the board of directors with the alternative of certain action or having to file daily reports, the only action that that board could take would be to comply with the wish of the Commission. In effect it is a weapon that would allow the control of corporations.

Mr. PECORA. Mr. Redmond's statement in effect is saying that because a person is appointed to the Federal Trade Commission, in the event of the enactment of this bill, he would automatically be deprived of all sense of reasonableness and of mentality and that he would seek to discharge duties in the most vicious fashion possible.

Mr. REDMOND. No, Mr. Pecora.

Mr. PECORA. And with a view designed not to carry out the well-recognized purposes and provisions of this act, but simply to impede and hamper business corporations in the conduct of their business.

Mr. REDMOND. No, Mr. Pecora. My opinion is—

Mr. PECORA (interposing). You can make that argument with regard to any public officer who is given any discretionary power at all, as an argument why there should be no such public office.

Mr. REDMOND. No. My opinion, Mr. Pecora, is simply limited to this, that this bill gives that power. Whether that power in fact would be abused is an entirely different question.

Mr. PECORA. There are many laws which give the executive head of the Government a power that is capable of abuse, as for instance the power to pardon. He could make a general jail delivery of every Federal jail in the country under that power. Would you think that because it is possible under the executive power of pardoning that the President should be deprived of all such power?

Mr. REDMOND. No. That is an act of clemency, Mr. Pecora.

Mr. PECORA. Oh—it is a legal provision. It is an act that is vested in the Executive by the statutory authority, and it is capable of abuse.

Senator KEAN. Hasn't it been abused, Mr. Pecora?

Mr. PECORA. As I recall it, a Mr. Morse once was pardoned.

Senator KEAN. Don't you recall that in cases in South Carolina a Governor let out everybody in jail?

Mr. PECORA. No; I do not.

Senator KEAN. Don't you recall that in California a Governor pardoned everybody almost?

Mr. PECORA. I don't recall that; no, sir.

The CHAIRMAN. We are getting outside of the subject matter, now.

Senator GORE. Mr. Redmond, in that connection, this may be more or less academic, but if you had a man that is chairman of the Federal Trade Commission or a member of the Federal Trade Commission, or members who are really opposed to the existing system, sometimes called the "capitalistic" system, who wanted to bring about a situation where you could not sell securities in this country, where you could not finance new enterprise, where you could not re-finance an old enterprise, wanted to bring about a situation where all industry would be driven to the Government as the only lender of money, so as to bring industry into the lap of the Government, subject to Government control—do you think that this legislation would lend itself to that sort of an operation?

Mr. REDMOND. Senator Gore, I think the power exists, and it is only on the basis that the bill vests such a power that I gave my opinion to Mr. Whitney and the exchange.

Senator GORE. I might say that I have heard such fantastic fears expressed as that something of that sort might be latent in somebody's breast.

The CHAIRMAN. Let us go on.

Mr. WHITNEY. That is section 18. It also gives infinite power with regard to exchanges and their members, as I stated.

Section 19 imposes liability upon persons controlling any other person liable under the provisions of the bill.

That was gone into at some length by Mr. Corcoran.

Section 20 authorizes the Federal Trade Commission to investigate for the purpose of determining whether a person has violated or is about to violate any provision of the bill.

Sections 21 and 22 refer to hearings before the Commission. They shall be public.

Section 23 refers to the review in the courts, this section having been covered at some length by Mr. Corcoran.

Senator GOLDSBOROUGH. Let me ask you about 23, about brokers and dealers. Does section 23 (a) modify the sentence or finding of the Commission as to the facts "if supported by evidence shall be conclusive"?

Mr. WHITNEY. I do not think it does modify.

Mr. PECORA. You do not think it modifies?

Mr. WHITNEY. It says, "the findings of the Commission as to the facts, if supported by the evidence, shall be conclusive." To my mind the review allowed is not what I would think was a thorough review. I am speaking as an individual, sir, and not as a lawyer. I don't know.

Mr. PECORA. Frankly, you do not know really what is within the purview of this kind of a provision?

Mr. WHITNEY. Yes; but I am a business man, and it would frighten me dreadfully if I had no chance except as against the facts presented by the Federal Trade Commission.

Mr. PECORA. Well, don't you realize that on those hearings before the Federal Trade Commission you would have a right to present evidence, too?

Mr. WHITNEY. I would have the right to present evidence; yes.

Mr. PECORA. And the determination would be based upon all the evidence?

Mr. WHITNEY. As I understand it, however, if the finding of the Commission as to the facts, if supported by fair evidence, they shall be conclusive.

Mr. PECORA. Supported by the evidence before them, not the evidence which the Commission procures, but all of the evidence in the hearing. This says "if supported by evidence", and the evidence might be found in the testimony introduced in behalf of not the Commission but the persons brought in for hearing before them.

Senator BULKLEY. Is it "evidence" or "the evidence"?

Mr. PECORA. "If supported by evidence."

Senator GOLDSBOROUGH. It means the weight of evidence, doesn't it?

Mr. PECORA. I think it would be so construed by any court.

Senator KEAN. Would it be so construed as the weight of evidence?

Mr. PECORA. I think so; yes.

Senator KEAN. You think it would be the weight of evidence?

Mr. PECORA. Yes.

Senator BULKLEY. I think it should be made clear it means that.

Mr. WHITNEY. I agree, Senator Bulkley. It does not read that way to me. The inference is here that it was the evidence produced by the Commission and not the weight of evidence given before them.

Senator BULKLEY. What I would be afraid of is that it might mean "if supported by any reasonable evidence at all."

The CHAIRMAN. That is what it means, I think, "if supported by any reasonable evidence." That is the Interstate Commerce phraseology. However, we will reconsider that.

Mr. WHITNEY. Section 24 deals with the criminal penalties which may be imposed for any violation of any provision of the bill. That has been gone over in some detail by Mr. Corcoran.

Section 25 has to do with the jurisdiction of offenses and suits and vests them in the district courts of the United States.

Section 26 deals with the effect of the bill on existing law of various States.

Section 27 deals with the validity of contracts and affects, as I see it, all types of contracts.

Senator GORE. It what?

Mr. WHITNEY. Deals with contracts, the validity of contracts.

Senator GORE. What is that?

Mr. WHITNEY. Shall I read?

Senator GORE. No. [Laughter.]

Mr. WHITNEY. I think, Senator Gore, that the wording of the bill makes contracts even more nebulous than ever.

Senator GORE. I know there is something in the Bible somewhere that says "Where there is no law there is no sin." I don't want to hear it.

Mr. WHITNEY. Section 28 of the bill refers to the control of transactions on foreign exchanges.

Senator CAREY. Let us go back to 27 (b). Mr. Pecora, do you think this bill should contain a provision which will invalidate a contract that is already made? As I read this section (b), a contract which is made before this act goes into effect becomes ineffective.

Mr. PECORA. "Whether the contract was made before or after such effective date."

Senator CAREY. A man might have a contract to sell stock—

Mr. PECORA (interposing). If the cause of action were to arise after the effective date of this statute.

Senator CAREY. But would that not mean that if a contract was made previous to the passage of this law that suit could be brought either on the contract or the contract would not be a valid contract?

Mr. PECORA. If the cause of action arose after the effective date of the enactment, yes; I think it probably would.

Senator CAREY. Assume that the contract was in effect. Would that invalidate the contract?

Mr. PECORA. I think where the contract itself was made before this enactment but the cause of action arose afterward, the course of action perhaps would be created by this enactment.

Senator CAREY. By this law?

Mr. PECORA. Yes.

Senator CAREY. And would affect an existing contract?

Mr. PECORA. It would under those circumstances.

Senator CAREY. Is that a fair provision?

Mr. PECORA. I think under certain circumstances it would be upheld. This was taken from the securities act.

Senator CAREY. But that would not really make it stand; because it was in that act it would have to be in this act.

Mr. PECORA. But suppose an exchange now, suppose the New York Stock Exchange now were to make certain contracts between itself and its members, the effect of which would be to make certain acts of theirs prohibited by this bill valid. Would such a contract be enforceable as a means for evading the provisions of this act?

Senator CAREY. No; it should not be permitted, but I think there might be other contracts which would not be intended as evasions in any way.

Mr. PECORA. I think the reasonable intendment of the enactment is always something considered by the courts in construing its terms.

Senator CAREY. It seems to me this language could be modified or clarified or something. That was all.

Mr. PECORA. Suppose, for instance, the exchange today, before the enactment of this bill, were to make certain rules and regulations or impose certain conditions upon corporations desiring to list its securities or stock with the exchange, and those requirements were not in accordance with the provisions of this act. It simply means that the mere fact that such an agreement or contract was made between the exchange and the corporation would not save that corporation from the provisions of this act with regard to such listings if they are inconsistent with the provisions of the act.

Senator CAREY. Well, presuming a contract was made between individuals a year or two ago or before this securities act was enacted, it would be possible that they could be prosecuted under this act; either that or the contract would be invalidated.

Mr. PECORA. I cannot conceive of such a contract, Senator. Have you anything particularly in mind?

Senator CAREY. I haven't anything particularly in mind, but this language reads to me like it could mean that.

Mr. PECORA. Well, I do not think the courts would go astray on that.

Senator CAREY. This is certainly going to be a good bill for lawyers, with all these things.

Mr. PECORA. Every bill is.

Senator CAREY. This bill, particularly.

Mr. WHITNEY. Section 28 attempts to control transactions on foreign exchanges, as I stated.

Section 29 is that section which refers to so-called "license fee", which I frankly claim is a tax and regarding which we have spoken.

Section 30 authorizes the Federal Trade Commission to employ and fix the compensation of employees, and further exempts all such employees from the provisions of the Civil Service Act.

Senator GOLDSBOROUGH. Do you object to that because it is with no regard to cost? Is that what you mean?

Mr. WHITNEY. That would be a serious objection, as applied under section 16, whereby any number of such employees could be put into our offices and for any length of time paid whatever the Federal Trade Commission elected, and we would have to pay the bills, which is a pretty serious contemplation. It has serious possibilities, at least.

Senator GOLDSBOROUGH. Then the objection lies to the excessive cost of administration, is that it?

Mr. WHITNEY. Yes.

Mr. PECORA. Insofar as that portion of the cost that might represent the cost of making examinations would fall upon the subject of the examination.

Senator GOLDSBOROUGH. Yes.

Mr. PECORA. That is your principal concern, isn't it?

Mr. WHITNEY. And the possibility of extreme—I hate to use the word "nuisance"—to the officers and members if the particular persons so engaged were not competent in their work and did not fulfill what they were hired to do, and I think you know, Mr. Pecora, that the stock exchange member's business is a very technical one from the accounting point of view.

Mr. PECORA. I have in mind also, Mr. Whitney, that perhaps many bank executives in the past have found bank examiners to be nuisances, regardless of their competency.

Mr. WHITNEY. Possibly.

Mr. PECORA. That is no reason for abolishing examinations?

Mr. WHITNEY. No. No. Not at all. I just spoke the point. That was all.

Senator KEAN. It is also true, Mr. Whitney, isn't it, that a lot of these people come into the offices and expect your clerks to do all the work for them?

Mr. WHITNEY. I have known that to happen, Senator.

Sections 31 and 32 of the bill provide for the separability of its provisions in the event that any of them are invalid, and make October 1, 1934, the effective date of the bill.

That, gentlemen, covers the review of the bill insofar as I am concerned. There are a few words that I would like to say in this connection, but if there are any questions I would be very glad to answer them.

Senator KEAN. Mr. Whitney, before you begin on that, don't you think that employees and officers that are managing this bill should be prohibited from owning any stocks, bonds, or other securities?



Mr. WHITNEY. They certainly should be so controlled that they could not make use of any information that they obtained because of their official position.

Mr. PECORA. I do not think that is open to debate, even.

Senator KEAN. That is suggested.

Mr. PECORA. My own modest opinion is that that is not even open to debate.

Senator GORE. That is theoretically true, but whether it is practically possible or not I do not know.

Senator KEAN. I am just throwing it out as a thought.

The CHAIRMAN. Are there any other questions you want to ask Mr. Whitney?

Senator KEAN. I have a lot of questions I want to ask him.

The CHAIRMAN. Proceed with them, and let us get along.

Senator KEAN. All right. Mr. Whitney, if you will turn to page 5.

Mr. WHITNEY. Yes, sir.

Mr. PECORA. Of the printed bill, Senator?

Senator KEAN. The printed bill. The term "dealer"—do you think that that definition of a dealer is clear?

Mr. WHITNEY. I think it could be amplified, if I understand your question properly.

Senator KEAN. My question is this: As I read this, why, a person who is retired from business and came into your office and bought a hundred shares of stock one day, sold a hundred shares of stock the next day, under this provision would be termed a dealer.

Mr. WHITNEY. Yes, sir.

Mr. PECORA. I am rather inclined to think that is a very exaggerated interpretation of the section.

The CHAIRMAN. You mean he is engaged in the business?

Senator KEAN. Yes; that is his only business. He is doing it for himself and for his own account.

The CHAIRMAN. That is not a regular business.

Senator KEAN. I am referring to page 25, line 13.

Mr. PECORA. Furthermore, Senator, you probably recall that Mr. Corcoran made a suggestion on that.

Senator KEAN. Yes, he did. He agreed with me.

Mr. PECORA. Yes; he indicated that section 5 would require some clarification.

Senator KEAN. I just wanted to get it from Mr. Whitney.

Now, Mr. Whitney, on the subject of selling short: What page is that?

Mr. WHITNEY. Page 20, line 12.

Senator KEAN. On that, do you think that is a good provision? In the first place, we will go over on page 20, to subdivision (e), above there. I have exactly the same objection to that penalty as I had to the other penalty. Have you any objection to changing that, Mr. Pecora?

Mr. PECORA. I think the same reasoning should apply to this provision as should be applied to the other one, Senator.

Mr. WHITNEY. That is section 17 (e) on page 33?

Senator KEAN. Well, that is the other one.

Senator GOLDSBOROUGH. This is (e) on page 20.

Senator KEAN. Page 20.

Mr. WHITNEY. Of section 8; yes, sir.

Senator KEAN. Lines 3, 4, 5, and 6. It seems to me that that just gives a chance for blackmail.

Now, then, the effect of short selling: What do you think that this bill will do to that? Do you think that this is all right in regard to that?

Mr. WHITNEY. The act as written prohibits short selling entirely, "except in accordance with such rules and regulations as the commission may prescribe as appropriate or necessary in the public interest or for the protection of investors." It absolutely, as it now reads, prohibits short selling. In my opinion, short selling is a necessary economic function, and I have stated it so much that I hate to bore you again with it.

Senator KEAN. In other words, I have gone into a dry-goods store and they have had some carpet in the store, and I said that was not satisfactory, it was not long enough, or something of that kind, and they have said, "Next week we will sell you a piece of carpet of that length." Now, they sold that carpet to me short.

Mr. WHITNEY. Yes, sir.

Mr. PECORA. You mean because it was not long enough? [Laughter.]

Senator KEAN. This would prevent any transaction. For instance, a man might know where he could buy and he knew a man was anxious to sell a hundred shares of stock, and he knew he could get that stock at a price. This would prevent him satisfying a customer with that stock, because he would have to sell it short—that is right?

Mr. WHITNEY. That is right. It involves a great many considerations, all of which I believe I have covered here before you in the past 2 years, with regard to the sale of stock short other than when a man just plain deliberately sells it short for no other purpose. It prevents the sale of stock from a distant point in order to take advantage of the market.

It entirely prohibits the odd-lot business as indulged in by the large dealers on the exchange, and it entirely eliminates the selling short by any members of the exchange, more particularly perhaps the specialists, as we referred to them this morning.

Senator KEAN. In addition to that, Mr. Whitney, I am accustomed to getting a great many cables from abroad asking me to sell 500 shares, a few shares, something or other. That stock is mailed to me as soon as I report the sale. But I could sell seller 30. That would mean if I sold seller 30 that I had to sacrifice, say, 1 or 2 percent in the price, and the only way I can do it to satisfy my customer is to sell that stock short, borrow the stock till the steamer arrived with the stock on board it.

Mr. WHITNEY. Yes, sir.

Mr. PECORA. There have been members of the exchange who within recent days declined to characterize such a sale as a short sale. They say it may be a short sale technically, but where the customer actually, at the time of the making of the sale, owns the security it is not the kind of short sale that has come to be more or less condemned.

Senator KEAN. That is the only kind of short sale that I ever indulge in.

Mr. PECORA. That is a sort of short selling against the box, selling against the box, which is different.

Senator KEAN. There is a difference between my customer and yours, of course.

Mr. PECORA. But this provision would not cover a sale against the box, which technically is a short sale.

Senator KEAN. Yes.

Mr. PECORA. So you see that is not the kind.

Mr. WHITNEY. But it is prohibited by this section.

Mr. PECORA. Oh, no; it is not. It is not. It prohibits the making of a sale not owned at the time of the sale, seeking to effect the sale. But it does not even do that. When you say that this section prohibits short selling, you are absolutely ignoring what amounts to one half of this section, the portion which says:

Except in accordance with such rules and regulations as the Commission may prescribe as appropriate or necessary in the public interest or for the protection of investors.

Mr. WHITNEY. Let us be fair, Mr. Pecora. I read that myself, with the qualification. So I do not see how I could have ignored it.

Mr. PECORA. You say that this absolutely prohibits short selling.

Mr. WHITNEY. As written, I said it does.

Mr. PECORA. I do not agree to that, because to say that it prohibits short selling as written is to ignore the presence of those words in this section. It may very well be that the Federal Trade Commission, if this bill is enacted, will go as far as you go in your justification of short selling under certain conditions. They might even go further than you. You or I or anyone else is in no position today to say what rules and regulations the Federal Trade Commission may make with regard to this, but this section does not forbid short selling.

Mr. WHITNEY. They can prescribe rules that will allow it.

Mr. PECORA. Yes.

Mr. WHITNEY. And then they can immediately take the rules off again.

Mr. PECORA. Yes; just as the governors of the stock exchange may do the same thing.

Senator KEAN. Mr. Whitney, what rules have you in regard to short selling at the present time? You have rules regulating short selling, have you not?

Mr. WHITNEY. Yes.

Senator KEAN. At the present time, if you are suspicious about short selling, can you not call for, from the members of the exchange, a written report as to what they have sold and for whose account they have sold it?

Mr. WHITNEY. And we do it often. Periodically such reports are filed now and have been over a term of years.

Senator KEAN. Did you, on or about the 9th of February, ask who had sold short United Aircraft Corporation, Aviation Corporation of America, North American Aviation, National Aviation, Douglass Aircraft, and Wright Aeronautic?

Mr. WHITNEY. Yes, sir.

Senator KEAN. Have you those reports?

Mr. WHITNEY. With me here?

Senator KEAN. Yes.

Mr. WHITNEY. No, Senator Kean; I have not. I have some of them in Washington.

Senator KEAN. Will you produce those reports for the benefit of the committee?

Mr. WHITNEY. If it is your desire.

Senator KEAN. I so desire.

Mr. WHITNEY (after conferring with an associate). If I may add, Senator Kean, those contain, as you know, personal information, and I think, in order to protect the exchange, in justice, they should be produced under subpoena, because otherwise we are divulging private information.

Senator KEAN. Mr. Chairman, I ask that they be subpoenaed.

Senator GORE. Was that on the eve of the revocation of the mail contracts?

Mr. WHITNEY. Yes.

Senator KEAN. He has them here, and I ask that they be subpoenaed.

Mr. PECORA. I have not any objection to it at all. I cannot even suggest any objection.

The CHAIRMAN. Without objection, a subpoena will be issued.

Senator KEAN. I am perfectly willing, Mr. Chairman, that they be produced in executive session.

Mr. PECORA. I do not even see any occasion for producing them in executive session.

Senator KEAN. I do not care.

The CHAIRMAN. We will issue a subpoena that they be produced before the committee.

Mr. PECORA. If you will give us a statement, I will have a subpoena prepared and served on Mr. Whitney before the end of the day. If Mr. Whitney will tell me how soon he can respond to the subpoena and produce the data the subpoena will call for, I will make the return day of the subpoena accordingly.

Mr. WHITNEY. I think I have a compilation of those answers to the questionnaire here with me in Washington. Please understand I may be in error on that, and I do not want you to understand that the actual questionnaire answers are here. They are lodged with the business conduct committee at New York. I have merely the compilation, which I think shows all the facts.

Mr. PECORA. Shows all the facts Senator Kean has adverted to?

Mr. WHITNEY. I think so.

Mr. PECORA. And that could be produced tomorrow?

Mr. WHITNEY. Tonight.

The CHAIRMAN. We will make the subpoena returnable tomorrow morning.

Mr. PECORA. Senator Kean, what period of time do you want covered?

Senator KEAN. Just before that date.

Mr. PECORA. How long before?

Senator KEAN. Three or four days.

Mr. PECORA. What period of time is covered by your questionnaire, Mr. Whitney?

Mr. WHITNEY. I think the short sales from January 26 to February 9. May I request this, Senator Kean, that the originals be asked for? Our compilation might be in error in some way, and we will have those here in Washington tomorrow.

Mr. PECORA. All right.

Mr. WHITNEY. Will you make it returnable Monday, so that we can be sure we will get the things?

Mr. REDMOND. We do not know what condition the records are in in New York. We would rather put it off until a later date.

Mr. PECORA. Is that agreeable to you, to make it returnable Monday, Senator Kean?

Senator KEAN. Yes.

Mr. PECORA. Personally, I think the mere request made at this public hearing of you, Mr. Whitney, by the chairman, at the suggestion of Senator Kean, would relieve the exchange of any reproach for having produced those, which release it would get by the service of a subpoena. I think you could comply with the oral request of this committee, but if you insist upon a subpoena I will have one prepared.

Mr. WHITNEY. I must be guided by counsel, and if it is not objectionable to the committee, I request a subpoena.

Mr. PECORA. You prefer a subpoena?

Mr. WHITNEY. Yes, sir.

Mr. REDMOND. It is a mere matter of form, Mr. Pecora, but it will be easier in our files if we have a subpoena.

Mr. PECORA. The record here is just as good as any written record of that subpoena.

Mr. REDMOND. But this record will ultimately be put away in libraries.

Mr. PECORA. It is a part of the public record?

Mr. REDMOND. Yes.

Mr. PECORA. Have you a copy of the questionnaire?

Mr. WHITNEY. I do not think I have it here.

Mr. REDMOND. We can furnish you that by tomorrow morning.

Mr. PECORA. From January 26 to February 9, both dates inclusive?

Mr. WHITNEY. Both trading dates inclusive, I believe, but we will get you a copy of the actual questionnaire sent out.

Senator BULKLEY. Mr. Whitney, I would like to have your comment on the suggestion that short sales be prohibited except at a price at least one eighth higher than the last sale.

Mr. WHITNEY. I think, Senator Bulkley, that suggestion has been made sometimes, and I think, frankly, from my own point of view, that that would eliminate short sales almost entirely, because it would seem, by such a rule, that only 100 shares could be sold at every eighth.

Senator BULKLEY. Do you think the rule could be stated in such a way that it would be of any value?

Mr. WHITNEY. I will be very glad to go into it further, but I do not believe it could be so stated, and I honestly do not see how it could be properly policed.

Senator GORE. Mr. Whitney, may not a long sale have a more depressing effect on the market in times of stringency than a short sale?

Mr. WHITNEY. Yes; it may, and for that reason, Senator, very often when it is desired to sell a block of stock the order will be given to a notorious short seller to execute, so that the purchasers—

Senator GORE. A long sale?

Mr. WHITNEY. A long sale; yes, sir.

Senator GORE. So as to get the impact of that?

Mr. WHITNEY. No; so that the people will think that it is a sale by this man, who is a notorious "bear."

Senator GORE. As a layman, it seems to me that a long sale would always have a more depressing effect on a declining market than a short sale.

Mr. WHITNEY. It has, because it does not have to be bought back, and the short sale has to.

Senator GORE. That is one point. It is just a deadweight dropped on the market.

Mr. WHITNEY. You are quite correct.

Senator GORE. I was just wondering whether we could prohibit those.

The CHAIRMAN. Senator Kean, have you any more questions?

Senator KEAN. In connection with page 38, subdivision (d), my son is a little worried for fear he cannot be a broker if I am an underwriter or dealer. How about that?

Senator TOWNSEND. You mean father and son?

Senator KEAN. Yes.

Mr. WHITNEY. Are you asking me, sir?

Senator KEAN. Yes.

The CHAIRMAN. If he lives in the same house?

Senator KEAN. No.

The CHAIRMAN. They have to reside together. It says "or a child or parent residing with such person."

Senator KEAN. But there must be lots of fathers and sons that reside together that would like to do separate businesses. Do you think that that would preclude a son being a member of the stock exchange if his father was a dealer?

Mr. WHITNEY. If he lived with the father, unquestionably.

Senator KEAN. I do not think that ought to be. A boy ought to have a chance.

Mr. PECORA. He could live next door.

Senator CAREY. Mr. Whitney, it is complained that this act will cause the liquidation of bank loans, brokers' loans, and so forth, as soon as it becomes effective, on account of the margin provision.

Mr. WHITNEY. So we have contended; yes.

Senator CAREY. Would it be helpful if the effective date of this act were made later than October 1, 1934—or is it July 1, 1934?

Mr. WHITNEY. No; it is October 1.

Senator CAREY. Would the banks be able to have the customers liquidate these loans in the time allowed?

Mr. WHITNEY. I think that is almost an impossible question to answer properly, because it is my feeling that if this entire bill were made law, the liquidation would start right then.

Senator CAREY. It would not wait until that time?

Mr. WHITNEY. No, sir.

Senator GOLDSBOROUGH. I did not hear the question.

Senator CAREY. I asked if this act would cause the liquidation of many loans on account of the provision for margin.

Senator GOLDSBOROUGH. What was the reply?

Senator CAREY. The reply was that it would, and I asked if the date were put off for a longer period, whether that would help in that particular.

Mr. PECORA. The suggestion has been made here, Senator Carey, that the provisions of this bill be amended or modified so as to save present margin accounts. That has already been quite fully discussed before the committee, I think.

Mr. WHITNEY. Very briefly, I would like to say this in conclusion if I may. We feel, as stated, that the question of credit and the control of corporations lies without any stock exchange bill, and therefore what we have most particularly in mind affects the free and open market that we and other exchanges attempt to offer, and therefore the liquidity of such markets. Let us not forget that there are held, by the investors of the United States, in round figures, some 100 billion dollars worth of listed securities.

Senator GORE. Does it amount to that much now? I remember the figure when the crash came in 1929. It was about 90 billion.

Mr. WHITNEY. I think there are listed—

Senator GORE. That is the market value.

Mr. WHITNEY. There are 73 billions listed on the New York Stock Exchange alone, at the market value February 1.

Senator GORE. Of this year?

Mr. WHITNEY. Of this year.

Senator GORE. I saw a figure the other day of 37 billions.

Mr. WHITNEY. I think that is stocks, sir.

Senator GORE. Yes, sir.

Mr. WHITNEY. There are a large amount of bonds as well.

Senator GORE. You are including bonds as well?

Mr. WHITNEY. Yes; 73 billions. From our way of looking at it, and I think that of the framers of the bill, I presume that we must not disrupt the liquidity of our security markets. But from that point on there may be disagreement, and I am presuming that what Mr. Corcoran said the other day typifies the point of view of the other framers of the bill, in the main, subject to certain changes agreed upon or suggested.

He feels, however, that the margin requirements will not have a very serious affect upon the liquidity of the market; that only a diminution and not an entire strangulation of speculation will take place as a result of the imposed margins, or the suggested margins. He feels that the market, although there may be a broader element between the bid and offer in securities, will not be upset. We differ with that materially. We think the free and open market given by stock exchanges today will be ruined from the point of view of liquidity because, under the margin requirements here set forth speculation will be eliminated; and without speculation we do not know of any method of preserving a market. Instead of the rather regular, undisturbed market that Mr. Corcoran believes will exist if such a bill is enacted, we believe we will have panic and an absolute breakdown of the security markets of this country, naturally to the great detriment of those investors holding these listed securities.

Mr. Corcoran very, very kindly states that he does not believe that anybody can be an expert in stock-exchange technique, and he grants that he is an amateur; but he and the other drafters of the bill, although admitting little or no knowledge of stock-exchange practices—

Mr. PECORA. Of the stock-exchange practices, did you say?

Mr. WHITNEY. Yes.

Mr. PECORA. I want to be modest, but I make no admission that I have no knowledge of stock-exchange practices.

Mr. WHITNEY. All right, sir.

Mr. PECORA. I will say, however, in connection with that, that the principal knowledge I have acquired has been through the medium of the evidence presented to this committee. I have learned a great deal about those practices.

Mr. WHITNEY. Not complete knowledge of stock-exchange practices.

Mr. PECORA. I am not a technician.

Mr. WHITNEY. Some of them acknowledge not very great knowledge as technicians. On the other hand, we of the stock exchange, who have been lifetime students of this subject and claim to be technicians, differ in point of view. There are the two sides. Now, who is right?

The bill, as drawn, presumes that the drafters have the supreme knowledge of this subject, and grants to us no knowledge. I am perfectly willing to concede that neither side knows it all, and that neither will ever know it all. But I do feel that there is a middle course here, granting sufficient, or something, to both sides.

This bill is so rigid and inflexible in its provisions as, in our opinion, to absolutely hamstring and freeze security markets. We therefore suggest an authority which shall study, which shall have power to make regulations, but which, in itself, will not be hamstrung by the provisions of a bill which cannot be changed except by another act of Congress. We therefore suggest the middle course. If an authority is to set up, allow it to be flexible and mobile, and do not have it inflexible, so that if disaster does come, as we predict, it cannot be changed without another act of Congress.

With your permission I would like to read what was said on this general subject by Oliver Wendell Holmes, the Justice, in his opinion in the case of *Board of Trade v. Christie Grain & Stock Co.* I am not presenting this from the standpoint of a constitutional argument at all. He says, in part [reading]:

People will endeavor to forecast the future and to make agreements according to their prophecy. Speculation of this kind by competent men is the self-adjustment of society to the probable. Its value is well known as a means of avoiding or mitigating catastrophes, equalizing prices, and providing for periods of want. It is true that the success of the strong induces imitation by the weak, and that incompetent persons bring themselves to run by undertaking to speculate in their turn. But legislatures and courts generally have recognized that the natural evolutions of a complex society are to be touched only with a very cautious hand, and that such coarse attempts at a remedy for the waste incident to every social function as a simple prohibition and laws to stop its being are harmful and vain.

Along this line, gentlemen, we have suggested an authority which, we believe, after study and proper consideration, will not be harmful and vain.

In closing perhaps I can remark that where we suggest this point of view, modern-day liberalism has become absolutely dogmatic in the suggestion of the bill proposed.

Senator GORE. On that point, we have heard a good deal about the social philosophy. Its limits are not very well fixed and defined in my mind, but suppose somebody had a social philosophy that envisaged an industrial democracy and economic set-up where the



Government would finance all industry so as to control all industry—in the general welfare, of course—and as an incident to that desired to destroy stock exchanges and dealings in securities to make it impossible to finance private industry from private resources. Do you think such social philosophy, if anybody entertained it, might probably be facilitated through legislation of this sort?

Mr. WHITNEY. It could be, sir; yes.

Mr. PECORA. Mr. Whitney, you said a few minutes ago that the approximate market value of securities listed on the New York Stock Exchange on February 1 of this year was \$73,000,000,000.

Mr. WHITNEY. That is my memory.

Mr. PECORA. Could you get from the records of the stock exchange the approximate value of the securities listed on its board on the 1st of May 1929 and also on the 1st of December 1929?

Mr. WHITNEY. Yes, sir.

Mr. PECORA. I think that might be helpful too.

Senator GORE. The 1st of September 1929, as I remember it, it was about 90 billions. It went off 22 billions after the crash, and it got down to about 16 billions, did it not, Mr. Whitney, in June a year ago?

Mr. WHITNEY. I think, Senator, you have in mind stocks alone.

Senator GORE. I am figuring on stocks alone.

Mr. WHITNEY. I think you are low.

Mr. PECORA. You might include in that March 1, 1933.

Senator GORE. As I remember, May 1, 1932, the aggregate value of stocks listed was 20 billions, and the 1st of July it was 16 billions. Then it turned up the 9th of July.

Mr. WHITNEY. I could not possibly attempt to refute you, sir. Your memory is wonderful and mine is very poor. I just do not remember.

Senator GORE. I am speaking from memory, and I may be wrong.

Senator CAREY. You speak of setting up a commission. The commission proposed in your statement is really an ex officio commission. Do you not think that a commission made up of some men who have knowledge of stock exchange matters would be better than an ex officio commission?

Mr. WHITNEY. My suggestion, as you know, includes amongst the seven, two men representing stock exchanges who, I presume, would be technicians in the business, and I think they could point out, or they certainly would have the right of pointing out, to the rest of the commission their attitude on stock exchange matters, and the effect of rules and regulations upon that business.

If, in spite of what they did say—if they said, "Don't do this", and the commission did not take their advice, then, of course, it would be on the heads of the authority if the authority's judgment proved wrong. But the authority could move immediately to correct any mistaken point of view, or the mistaken imposition of rules that proved wrong; whereas, under this act, nobody, under the provisions as stated, could change it except Congress when it was in session.

Senator CAREY. I understand that; but what I was trying to bring out was this: A commission made up of officers who have other positions usually does not meet very often or pay very much atten-

tion to the business. We tried that with the Power Commission and afterward created a full-time Power Commission. I think if a commission were set up other than the Federal Trade Commission, it should be a commission not made up of ex-officio officers but made up of full-time officers who would be in a position to act, if they had to act, quickly. I am afraid your commission would be rather slow in moving.

Mr. WHITNEY. Any commission that could act quickly and promptly, and on which were represented the exchanges of the country, would be entirely satisfactory to the exchange, in my belief.

Senator CAREY. Two or three Cabinet officers would not be available very often to meet with the commission.

Mr. WHITNEY. Mr. Chairman, there is a member of the governing committee, and also a specialist here, Mr. Raymond Sprague, and I would take particular pleasure if you would hear him tomorrow, if that is satisfactory to the committee.

Senator GORE. He is a specialist?

Mr. WHITNEY. He is a specialist on the exchange and active all the time there. If he is to appear tomorrow, may I say to the committee that naturally I hold myself at your entire disposal, as does counsel, and any of the staff of the exchange. We will answer questions or give of ourselves in any helpful way we can to the committee. We truly mean it.

I thank you for your courtesy to me.

The CHAIRMAN. We are very much obliged to you, Mr. Whitney. Senator Costigan had some questions he wanted to ask, but he is not here. Will you be here tomorrow?

Mr. WHITNEY. I will be anywhere you want me.

The CHAIRMAN. Mr. Gould, we will be glad to hear from you. Please state your name, residence, and occupation.

#### STATEMENT OF THEODORE GOULD, BALTIMORE, MD., MEMBER AND SECRETARY-TREASURER OF THE BALTIMORE STOCK EXCHANGE

The CHAIRMAN. Mr. Gould, do you want to be heard on this bill?

Mr. GOULD. Yes; if I may.

The CHAIRMAN. You may proceed in your own way.

Senator GOLDSBOROUGH. Mr. Gould, as I understand the situation, you want to speak more particularly to section 10 of the bill.

Mr. GOULD. Yes, sir.

The CHAIRMAN. You may proceed.

Mr. GOULD. I represent the Baltimore Stock Exchange, which is a small exchange composed principally of small brokers and dealers. It is not our purpose to discuss the many objectionable features of this bill as now written but rather to call to your attention a few points which are vital to the small broker and dealer and to the small exchange.

Our exchange has had a long and honorable history. It was founded in 1838. From the time of the War between the States to the World War it aided materially in the reconstruction of the South. Much southern financing was done through Baltimore, and a ready market on our exchange was a factor in making capital willing to enter this field. At the present time the Baltimore Ex-

change is principally a local market filling an important local need. Nearly all of its active listed securities are those of Maryland corporations, and they are largely held locally. Our market is a cash market, where buying and selling orders meet. We know, and Maryland corporations and investors feel, that we fill a vital need in the business life of our city.

We have 65 full members, only 11 of whom are also members of the New York Stock Exchange. Of the remaining 54, 40 actively conduct a general brokerage and dealer business.

Section 10 of the proposed bill would force our members to choose between two closely allied functions of their business; namely, the handling of brokerage orders in securities on the one hand and the purchase of securities and their resale to the investing public on the other. The bill would not permit one member to do both. We do not believe there exists or would exist in our community sufficient business in either of these two functions apart from the other to give our members a fair opportunity to earn a living for themselves and their employes.

They would not be able to maintain the statistical departments and other features which many of them have for the convenience of their customers. The small broker and dealer has an entirely different problem from that of the larger broker with many branches or from that of an underwriting house. He executes commission orders for his customers, and when he can buy a block of securities he considers sound at an attractive price he buys them for his own account and then undertakes to distribute them to the investing public, making a reasonable profit between a wholesale and retail situation.

There is no reason why he cannot fill both of these functions without detriment to the public interests. There have been times when there were no investors brave enough to buy good securities at any price, and when but for the willingness of some broker-dealer to take a commitment for such securities there would have been a situation where a seller who had to sell could not find a buyer at any price. We had a case recently where a block of bonds of one of the political subdivisions of the State of Maryland was held by a county bank upon which there was a run. The bank was enabled to dispose of these securities only because of the willingness of a broker-dealer to take them on for his own account and hold them for resale to investors when the skies had brightened.

If the local broker-dealer is required to confine himself solely to commission orders and is not permitted to aid in the making of a satisfactory market in local securities, it will be increasingly difficult for such local enterprises to finance and refinance their normal business requirements.

Another part of the bill, section 7, works, what we believe, additional undue hardships on the small broker. Many of our members handle no margin accounts, carry no inventory, and require little capital. They take no part in syndicates. They conduct a cash business as broker and dealer in listed and unlisted securities.

Should one of these members secure from a bank or insurance company an order for a quarter of a million Government bonds upon which he can make one thirty-second of 1 percent, he would be unable to handle the order, if this bill becomes law. His capital

employed in the business is usually less than \$25,000 and his loan capacity under the bill would be too limited to finance the deal. At present he would have no difficulty in having a bank or correspondent receive and pay for these bonds for his account, delivering and collecting for them from his customer and crediting him with the profit on the deal of \$78.13.

Again the small broker and dealer would be unduly handicapped and might be eliminated entirely by the prohibition against his borrowing from a broker-correspondent, which is often the most convenient method of clearing cash trades.

We also call to your attention those portions of the bill which would entail considerable added expense to all brokers. In many cases this additional cost would mean the difference between profit and loss at the end of the year.

Returning to the position of the smaller exchange, it is, of course, true that the existence of the exchange depends upon that of its members. Outside of dues from members we have only listing fees as income. Many of the small corporations whose securities are listed on our exchange could not afford the heavy accounting fees which would be necessary to enable them to keep their securities listed. They might, however, withdraw their securities from listing and thus deprive the many small holders of their stocks and bonds from having a free and open market for their holdings.

We fear that new listings would be few and far between. The corporation executives will have to decide whether to subject themselves to the cost and risks of listing under the Federal Trade Commission and thus secure a free and open market for their securities, or to deprive their stockholders and bondholders of such a market by not listing.

We are convinced, and I am sure you gentlemen will agree with us, that in the interest of public protection an open, free, and public market in securities is much to be preferred over unknown, undisciplined dealings which could never be adequately regulated. We fear that such undesirable dealings will supplant our exchange on the date this proposed bill becomes law.

We urge, in lieu of this bill, a more flexible method to accomplish the end sought. Recent experience with prohibition has taught us that human nature cannot be changed by law. The purpose of prohibition was to eliminate certain evils practiced by only a comparatively few of our 120 million citizens. The effect was to substitute new evils greater than those sought to be eliminated.

The purpose of this act is the elimination of certain other evils apparently practiced by a few unscrupulous people. By this rigid law, affecting millions of honest corporation executives and employees, investors, dealers, and brokers, we might force the abandonment of the nefarious operations of the few; but this same law would also destroy all that is good in our markets which have grown up in over a hundred years of free trading, and we may find ourselves confronted with troubles and problems many times worse than the old. We cannot change the hearts of crooks and thieves by this legislation, but will send them to clever allies to figure out new ways to carry out their depredations.

How much better it would be if, instead of such drastic action, we should create a commission composed of representatives of the

Government, the exchanges and the investing public, to oversee exchange activities, leaving to the exchanges, under such supervision, the power to control abuses in the most effective way, and granting to such commission broad powers over interstate transactions in unlisted securities.

America has grown great through the reinvestment of earnings into new enterprises. This has been made possible largely through our exchange facilities for quickly turning securities into cash. We do not favor unbridled speculation but do favor every facility for investment, and we are convinced that this Senate bill, no. 2693, will dry up our security markets without accomplishing the aim sought.

I thank you.

The CHAIRMAN. Mr. Gould, how many members have you?

Mr. GOULD. We have 77 memberships, or at the present time 65, and the others are grouped and held by four members. The others are held either in estates or one of the members has what is known as "taken the membership."

The CHAIRMAN. Your objections are more particularly to sections 7 and 10 of the bill?

Mr. GOULD. Yes, sir.

The CHAIRMAN. Have you any suggestions to make as to modifications or changes in the bill that ought to be adopted?

Mr. GOULD. I believe the real purpose of section 10 of the bill is that one which applies more forcibly, so far as the small broker is concerned, on the question of the small broker acting in some cases as the dealer, and in other transactions, but never in the same case, as a broker, that that should be prohibited by law; and that is, of course, against the laws of the stock exchange and against the laws of the State of Maryland. I mean for a man to be both a broker and a dealer in the same transaction. Orders that come in to our smaller brokers are executed as commission orders in the case of listed securities. But in addition to that, there being not enough of that business for the broker to make a living, he has to, through his knowledge of the business, pick out securities which he thinks are attractive, and if he comes across a block of 25 bonds which he thinks are very attractive for a bank or an individual, he buys those bonds for his own account, and then he turns around and goes out to call upon prospective customers. He has marked up the bonds one half point, and he goes out and sells those bonds to customers. And it is a perfectly proper and satisfactory transaction from every standpoint. But if this bill should become law he would then have to either confine himself to handling that kind of business, and would not be able to handle the commission business, or he would have to handle the commission business and not be able to handle the other business.

Senator GOLDSBOROUGH. That is what you wanted to bring more particularly to the attention of this committee?

Mr. GOULD. Yes, sir.

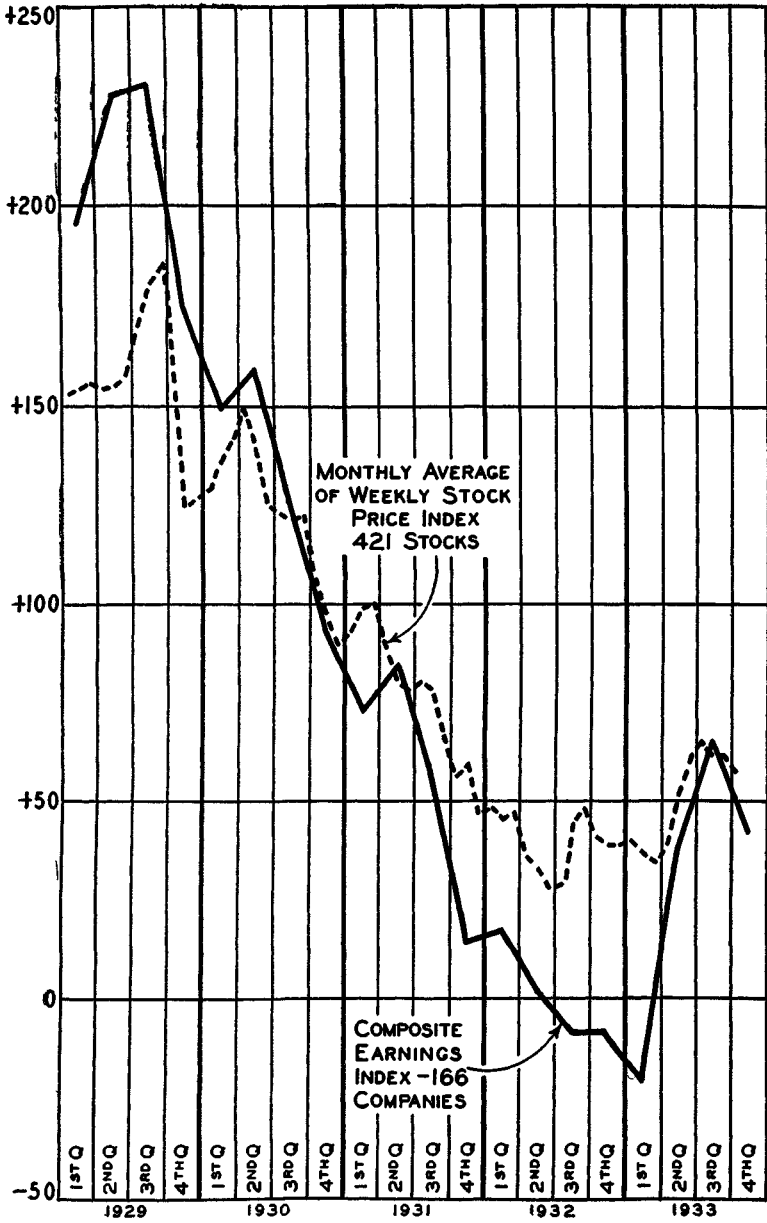
The CHAIRMAN. All right. If that is all, Mr. Gould, we are very much obliged to you for your appearance.

Mr. GOULD. And I wish to thank you gentlemen.

(Thereupon Mr. Gould left the committee table.)

(Thereupon, at 4:40 p.m. Thursday, Mar. 1, 1934, the committee adjourned to resume at 10 o'clock on the following morning.)

WHITNEY EXHIBIT NO. 1. MARCH 1, 1934



## STOCK EXCHANGE PRACTICES

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FRIDAY, MARCH 2, 1934

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

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

Present: Senators Fletcher (chairman), Barkley, Bulkley, Gore, Costigan, McAdoo, Townsend, Carey, and Kean.

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; also Roland L. Redmond, counsel to the New York Stock Exchange.

The CHAIRMAN. The committee will come to order, please. I believe we have a gentleman from Philadelphia who was promised to be heard. If he will just come forward to the committee table.

Mr. NEWBOLD. Thank you.

**STATEMENT OF JOHN S. NEWBOLD, JENKINTOWN, PA., A MEMBER OF THE FIRM OF W. H. NEWBOLD'S SON & CO., PHILADELPHIA, PA.**

The CHAIRMAN. Mr. Newbold, will you please state your name, residence, and business or occupation?

Mr. NEWBOLD. My name is John S. Newbold, Jenkintown, Pa.

The CHAIRMAN. And what is your business or occupation?

Mr. NEWBOLD. I am a member of the New York Stock Exchange, and we have been dealers for 90 years in general securities.

The CHAIRMAN. Have you examined this bill, S. 2693, that is pending before the committee?

Mr. NEWBOLD. Yes, sir.

The CHAIRMAN. We will be very glad to have you tell us your views about it.

Mr. NEWBOLD. I think I will stand, if I may, in presenting my views?

The CHAIRMAN. You may proceed in your own way.

Mr. NEWBOLD. For the sake of brevity and more concise presentation I have a memorandum to present concerning two provisions of the bill affecting investment dealers. I will first discuss section 10 of the bill.

The CHAIRMAN. Very well; you may proceed.

Mr. NEWBOLD. This group of investment dealers have engaged in the business of selling investment securities to their clients in

the city of Philadelphia, Pa., throughout the course of a long career. The names and the period of time which these firms or their predecessors have rendered this service are:

	<i>Service, years</i>
Biddle, Whelen & Co.....	170
E. W. Clark & Co.....	97
W. H. Newbold's Son & Co.....	90
Bioren & Co.....	69
Cassatt & Co.....	62
Edward B. Smith & Co.....	42
Graham, Parsons & Co.....	38
Elkins, Morris & Co.....	28
Janney & Co.....	27
Yarnall & Co.....	9

The investor in this country is properly deeply interested in the kind of man he must turn to in the safeguarding of his savings. The investment dealer should possess honor, good faith, and sound judgment. These, coupled with wide practical experience in testing values in all kinds of investment markets, are indispensable requisites in the man or group of men who hope to embark on a successful career in looking after the financial interests of other fellowmen. The investor should be no less concerned with the facilities the investment dealer puts at his service.

It seems to us who have been in the business many years that as complete an understanding as possible should be established between client and principal. Unless this understanding exists, the investor is likely to have an unbalanced list of securities not adequately suited to his needs. It is obvious that such an understanding is hard to create and must be the result of constantly growing confidence, and therefore easier to establish with one person than with several. It is equally obvious that the wider the scope of the investment dealer the more competent he will be in handling his customer's account in all its ramifications. If this scope is narrowed as contemplated in this bill, we feel that both customer and investment dealer will be seriously damaged.

The problems which are created by the provisions of section 10 not only for the investment dealers, but also the purchasers of securities from such persons, are far more serious than one not familiar with the necessities of the business of dealing in securities may imagine. Section 10 of the National Securities Exchange Act of 1934 contains this provision:

SEC 10 It shall be unlawful for any member of a national securities exchange or any person who as a broker transacts a business in securities through the medium of any such member to act as a dealer in or underwriter of securities, whether or not registered on any national securities exchange

This section proposes to incorporate into the Federal Statutes a prohibition against the transaction in a perfectly normal way of a business which has been engaged in for more than a century by those who have conducted it with integrity, with honor, and to the credit of this branch of the securities business, as well as to the satisfaction and protection of their customers.

The record of those who are generally classed as investment dealers, substantially all of whom also buy and sell securities as brokers on a commission basis, may well be envied by the representatives of any other business in this country that can show a continued service over so long a period of years.



The power to transact a business in securities as a broker at the same time that a person is acting as a dealer in or underwriter of securities is found by those presently engaged in such business to be essential to the conduct of such business in a manner that will produce a reasonable profit to the person so engaged and a greater protection and service to the customers of such person.

The report of the so-called "Dickinson Committee" disposes of the suggested segregation as follows:

*8 Segregation of brokerage and other forms of business.*—Your committee has given careful consideration to various proposals that the business of underwriting and retailing securities should be completely divorced; that those who underwrite securities and who are members of a stock exchange should not be permitted to carry margin accounts for customers; and that those engaged in the retailing of securities should not be permitted to be members of any stock exchange

The various activities in which the members of the stock exchange engage, such as underwriting, acting as broker, carrying margins, etc., are all closely intertwined in our financial structure. Any such proposed segregation should not be accomplished before we are in a position to calculate its cost and to foresee its repercussions. As an abstract matter, the segregation of these various activities has much to commend it. Such an important decision as this can hardly be left to the discretion of an administrative authority. Segregation, if it is to be accomplished, must be accomplished by legislative fiat. Your committee finds that there is not yet available sufficient information to enable it to recommend such a far-reaching decision. It recommends, therefore, that the stock exchange authority be charged with the task of assembling information to permit such a decision to be made intelligently and with assurance by a later Congress.

The investment dealers presenting these objections to section 10 of the proposed act are confident that if a stock exchange authority shall be created by the legislation of this session of Congress and shall assume the task of obtaining information concerning those persons engaged in the security business rendering both a brokerage and a dealers' service, that such authority will find sound and convincing reasons to maintain the existing powers and no substantial basis for attributing to this industry generally methods of business or courses of dealing which have been detrimental to the interest of those doing business with them.

Among the convincing reasons why this relationship should be maintained are the following:

1. The combined service rendered to their customers by investment dealers, which cannot be efficiently rendered by one who is a broker only, is of such value that it ought not to be destroyed by the proposed segregation. The investment dealer who is a broker also is able to supply the needs of his customers by purchases of securities upon the exchange to the extent that they are available, and by sales from securities then owned by the investment dealer or other dealers to the extent that they are not available by purchases on an exchange. It frequently happens that the demands of a customer exceed the available supply of a security then for sale on an exchange, and it is this balance which the ownership of such security by the investment dealer is supplied from the dealer's holdings, thereby making a transaction possible which otherwise might not be completed for a long period of time. The reverse also occurs, and to the advantage of the customer, when the market will not absorb at a fair price the quantity of a given security which the customer desires to sell, and it then becomes possible to complete the transaction for that cus-

tomers by the purchase from him by his investment dealer of the quantity of the security not then salable upon an exchange. In both instances, if the services demanded by the customer were to be rendered by one who was either solely an investment dealer or solely a broker, the transaction could not be promptly, efficiently and economically accomplished for the best interest of the customer.

2. The volume of business available to the houses here represented acting only as dealer or broker is not sufficient at all times to permit of a continuance in business with a reasonable profit, and it is therefore essential to the existence of the business that additional sources of revenue should be available from both types of business. This is particularly true of investment dealers in the great majority of small cities and towns throughout the United States and is clear to those familiar with the economic situation of these dealers that the attempted segregation would deprive them of a livelihood. It is to be remembered that not only does this affect the members of the firm, but a large group of employees whose training has been such that the only livelihood in which they could maintain an existence might be destroyed.

3. The investment dealers afford the personnel, experience, and what may be called the machinery for marketing new capital and new municipal issues, the latter including State and county bonds, which cannot be supplied by a broker under the terms of this bill. Those members of the stock exchanges throughout the country engaged solely in the brokerage business have neither the experience nor the machinery to afford a distribution for such new issues to the advantage of the investing public as well as to the issuers. This is particularly true as regards State, county, school district, and municipal bonds, and it is obvious that the proposed segregation would be greatly to the disadvantage of the municipalities concerned and to the investing public seeking such means for investment. The proposed segregation would require the investment dealer to elect between bidding for municipal issues or continuing his sales and purchases for customers as a broker. Such election, if in favor of the brokerage business, would deprive the municipalities and his customers of his services.

4. The elimination of the investment dealers as factors in the business of buying and selling securities, would deprive the stock-exchange business of what has been one of its most stabilizing and conservative influences. The record and place of the investment dealers in the history of the stock-exchange business has shown a consistent position on the conservative side and a helpful influence upon the markets.

The only apparent reason why the authors of the National Securities Exchange Act of 1934 have ignored the wise recommendation of the Dickinson committee and have included in this drastic legislative document the provisions of section 10 would seem to be a failure upon the part of the authors to understand the fundamentals of the business of a dealer in securities.

Now, Mr. Chairman and gentlemen of the committee, the other memorandum that I have is in relation to section 14 of the bill.

The CHAIRMAN. Before you pass from section 10 let me ask you: Do you propose any modification or change of that section, or do you want it eliminated entirely?

Mr. NEWBOLD. We think in principle it should be eliminated; that in principle there is no reason why a man should not be a dealer and a broker. That is essential to the best interests of the investor, without whom the dealer cannot live, and of course he must keep the confidence of the investor, which we think we have had as an experience extending over many years, and we think that mode of dealing is proper and necessary.

The CHAIRMAN. All right.

Mr. NEWBOLD. Would you like me to present what I have in regard to the function of the investment dealer?

The CHAIRMAN. Yes.

Mr. NEWBOLD. The function of the investment dealer is to give general and balanced financial advice to his customers whether it be in regard to bonds or stocks.

The business of the investment dealer is divided into three main divisions: (1) Sponsoring new issues. (2) Dealing in securities over the counter; that is to say, their purchases from or sales to customers or other dealers and where the investment dealer acts as principal. (3) Acting as a broker either in buying or selling bonds or stock for his customer.

The part of his business where the investment dealer sponsors new securities has been regulated by the provisions of the Securities Act of 1933.

The method of his approach to or relation with his customers where he acts as principal will be taken care of in the Code of Fair Practice for Investment Dealers, to be adopted under the N.R. A.

I might say for the information of the committee that we are not at liberty to produce that document because it has not yet been submitted to the President of the United States. However, we have all seen it, and I might say that it represents what has been the aspiration and the hope of those of us who have been in the business for a long time, and we have the highest regard for it, and feel very happy to have the matter put in a position where it can be enforced by and large throughout the country.

The brokerage end of the business is that of buying or selling securities for a customer's account and is a matter of mechanics. The question of giving advice to customers in doing this has been regulated by the provisions of the Securities Act of 1933. That is burdensome but wise. The rules or regulations issued by the various exchanges must be followed out in the execution of orders.

It does not follow because legislation of some form might seem necessary in respect to the operation of stock exchanges that the investment dealers of the country should be deprived of being allowed to act as brokers for their customers, thus making it impossible for them to give complete service and financial advice relative to purchases of stocks or of other securities registered on the security exchanges.

The CHAIRMAN. Now you may proceed with your remarks about section 14 of the bill.

Mr. NEWBOLD. The provisions of section 14 prohibit the making of "over-the-counter" markets for unregistered securities, unless such market is made in accordance with rules and regulations promulgated by the Federal Trade Commission. The passage of this

section in its present form would mean the delegation by Congress of power to the Federal Trade Commission, if it were so inclined, to prevent any market whatever for such securities by imposing drastic conditions which might be even more severe than the regulations applicable to registered securities traded in upon national exchanges. If the purpose of this section is to prevent speculation in unregulated securities, consideration should be given to the character of securities now commonly sold in the over-the-counter markets. This class of securities are dealt in largely by investors and not by speculators. They do not lend themselves easily to speculation, as may be realized when it is known that they consist largely of Federal land-bank bonds, Home Owners' Loan Corporation bonds, other Government securities, State, county, school district, and municipal obligations, bank and insurance company stocks, railroad equipment trust certificates, and bonds secured by trust mortgages upon real estate.

In addition to such unlisted securities, this over-the-counter markets afford an opportunity for transactions in large blocks of listed securities primarily for the benefit of institutional investors. The over-the-counter markets afford little opportunity for uncontrolled speculation, not only because of the character of the securities traded in and the transactions occurring there, but because of the type of customers with whom the investment dealer has the majority by volume of such transactions. These customers are such as insurance companies, savings banks, National and State banks, and trust companies, educational and charitable institutions, and corporate trustees. A different class of persons. These customers are advised by persons of long and extensive experience in the purchase and sale of such securities who are frequently as familiar with the market values as the representatives of the investment dealers trading with them. By saying "these customers", we mean the persons who are buying these things. I do not believe that anyone who is not in the business now realizes the change that has taken place in the last 10 years in the financial advice that all big purchasers of securities now have at their disposal. It is very difficult for the dealer, I might say, to know as much in many cases as the statistical department of the institution to whom he has to offer a security. The purchases made are for investment and not for speculative profit, and almost invariably are cash transactions not on marginal accounts. The problems arising out of such transactions are clearly not comparable to those which trading upon the national stock exchanges present, and a totally different treatment is required to control such practices, if any, that may have been indulged in by a small minority of the dealers. The subject matter of this section is dealt with by the Dickinson committee, as follows:

10 *Unorganized or "over-the-counter" markets*—No study of regulation of organized stock exchanges would be complete without giving consideration to the problem of the unorganized or "over-the-counter" markets. Because of their importance, and because of the fact that certain transactions and practices could still be engaged in on the "over-the-counter" markets which, under the proposed regulation, would be prohibited on the organized exchanges, your committee has considered whether and to what extent it would be possible to regulate such "over-the-counter" markets. On the basis of the consideration which it has been able to give to this subject, your committee has come to the conclusion that the problem of the "over-the-counter" markets cannot be satisfactorily dealt with by Federal governmental action. It has not yet

found any method of controlling such markets which it considers feasible or which could be applied without building up a Federal policing agency on such a scale as to be impracticable. It is, therefore, not prepared to recommend any Federal legislation for the regulation of such markets, but, if a further study on this subject should be considered desirable, your committee will undertake to proceed therewith.

In view of the fact that the evils which are complained of, due to individual transactions by a few dealers engaged in the over-the-counter market transactions, will be dealt with in a most comprehensive manner in the proposed fair-practice provisions of the investment bankers' code, which may be adopted before any national securities exchange act is finally passed, it would seem unnecessary to enact the provisions of section 14 at this time.

These memoranda present reasons why sections 10 and 14 of this bill should not become law, and the undersigned investment dealers of Philadelphia urge the serious consideration of them by the Members of Congress.

	Established
Biddle, Whelen & Co.....	1764
E. W. Clark & Co.....	1837
W. H. Newbold's Sons & Co.....	1844
Bioren & Co.....	1865
Cassatt & Co.....	1872
Edward B. Smith & Co.....	1892
Graham, Parsons & Co.....	1896
Elkins, Morris & Co.....	1906
Janney & Co.....	1907
Yarnall & Co.....	1925

The CHAIRMAN. Now, Mr. Newbold, in your business if a customer comes to you and wants to buy, say, some Federal land-bank bonds, or some farm-loan bonds, what is the process? That is, how do you proceed to get those up for him?

Mr. NEWBOLD. I beg pardon, Mr. Chairman.

The CHAIRMAN. What is the process now of serving him in such a case?

Mr. NEWBOLD. I try to find where the cheapest market is if he is going to buy, and where the highest market is if he is going to sell. And if I happen to have any in my list and they correspond to those market prices I sell them to him. If mine are higher than the market I either come down to meet the market—and, of course, there are fluctuations from time to time in the market—or else I buy them, frankly, in the cheapest place for my customer. And that has been going on in that way all the time, and it is done by going to a house that specializes possibly in the security. For instance, for all governments you deal through special houses who do hundreds of thousands of dollars or I might say millions of dollars of business a day, and there is backing and filling in these things with investors.

The CHAIRMAN. Where does your compensation come in? Do you charge a commission?

Mr. NEWBOLD. We charge a commission.

The CHAIRMAN. About what commission do you charge?

Mr. NEWBOLD. Well, in the case of Government bonds it is one thirty-second of 1 percent, I believe.

The CHAIRMAN. And how about in the case of Federal land-bank bonds?

Mr. NEWBOLD. I haven't bought any Federal land-bank bonds for some time and will have to ask. [After asking someone sitting behind him.] I am informed it is about a quarter of 1 percent in that case, and it is because there is nothing like the activity in Federal land-bank bonds or in home loan bank bonds that there is in Government bonds. That is, a sale of 20 million dollars of United States Government bonds is not at all unheard of, and therefore the commission is very low. And in the case of the more limited market, the more risk a man takes who takes a position in the market, the larger the commission is. But a quarter of 1 percent as suggested to me I think would prove to be high. I think the investor would not have to pay that much.

The CHAIRMAN. Are there any questions that any member of the committee wishes to ask?

Senator TOWNSEND. I do not wish to ask any.

Senator BARKLEY. I have no questions.

The CHAIRMAN. We are very much obliged to you, Mr. Newbold.

Mr. NEWBOLD. And I thank you both for myself and in the name of all our firms for your courtesy in hearing me.

(And Mr. Newbold left the committee table.)

The CHAIRMAN. We will now hear Dean Witter who has come on here from San Francisco. I understand that some gentlemen from California have been here all week, and they want to get away. I think we should accommodate them for about half an hour. I believe that is the time you requested?

Mr. WITTER. I think I will not take as much as that of your time.

#### STATEMENT OF DEAN WITTER, SAN FRANCISCO, OF DEAN WITTER & CO.

The CHAIRMAN. Please state your name, place of residence, and occupation.

Mr. WITTER. My name is Dean Witter. My residence is San Francisco, and I am both a broker and an investment banker.

The CHAIRMAN. Mr. Witter, the committee will be very glad to hear your views on this bill, S. 2693.

Mr. WITTER. I am authorized to speak for 204 dealers on the Pacific coast, about 30 of whom have seats on some exchange and who do both a brokerage and dealer business, and the remainder of whom have no stock exchange seats. All of these dealers also operate as brokers. Attached to this statement are copies of wires providing this authority. I should like to read them into the record. I particularly represent small dealers rather far removed from the financial centers.

I am allowed only 15 minutes of your time and will try not to repeat testimony already given. May I complete my statement, which is brief, and then I shall be glad to answer questions.

I am in favor of Federal supervision and control of stock exchanges. I am in favor of complete and accurate reports to stockholders; I am in favor of punishing misrepresentation, fraud, and other acts by either brokers or dealers which are detrimental to the public interest. I am opposed to pools, corners, and the manipulation of markets.

I have certain general objections to the regulation of stock exchanges by rigid and fixed statute. I do not think that a fixed statute endeavoring to deal with all the complex and intricate problems of the brokerage business can be so drawn as to eliminate the possibility of abuses without at the same time destroying the functions of exchanges and the free and open market for securities to the great detriment of the public.

Time does not permit me to cover the entire subject matter of the bill and I will therefore confine my statement to the effect of the first sentence of section 10 and section 19(b) insofar as this section relates to this sentence and section 7(c), which separate dealers and underwriters from brokers.

The presumed purpose of these sections which provide for the divorce of broker and dealer is, (1) to insure that the customer knows whether he is dealing with a firm as a broker or a dealer, and, (2) to prevent the use of the same capital for the conduct of two businesses. I do not presume that the bill was intended to enforce a hardship upon the conduct of legitimate business nor to further reduce the already decimated ranks of the dealers although these sections would do both. I shall later suggest how the purposes of these sections can be fulfilled without damage to public interest.

As drawn these sections would destroy the business of many small firms in smaller communities as these firms depend for their livelihood and their usefulness upon providing both brokerage and investment service to their customers. This would injure the investor. There may be no legitimate firms left in many smaller towns. If this is the case, it would make investment difficult and precarious. If there are any left, they would be wholly separate firms, which would have difficulty earning a livelihood. The investor could not buy municipal bonds and listed common stocks from the same firm. Neither the broker nor the dealer could take a comprehensive and disinterested view of the investors' requirements. Pressure will be exerted on the dealer to recommend only unlisted securities to his clients in order to handle all of their business. A broker is likely to be prejudiced in favor of listed common stocks only. I do not see how the public will be benefited by the proposed separation.

I believe the country as a whole will be injured. First, if I am correct in the assumption that many small dealers will be forced out of business or would become brokers only, then it will become even more difficult than it is at present for deserving local enterprises to be financed. Secondly, municipalities are largely financed by small dealers, who are also brokers and who purchase municipal obligations and redistribute them to the individual investor. Experience has shown that this type of financing cannot be handled on a brokerage basis. If an arbitrary separation is imposed, it would greatly curtail the market for municipal bonds and small local issues. I shall not go further into this phase of the matter because of limitations of time.

It would not be constructive to object to the divorcement of the brokerage and dealer business without suggesting some means which would insure the public against confusion of functions. This can be done by the segregation of the two businesses under one owner-

ship, and by having all letterheads printed either "Bond department" or "Brokerage department." All statements showing transactions with customers should be clearly phrased to indicate without possibility of misunderstanding whether the firm is acting as a broker or a principal in that particular transaction. This has been comprehensively provided for in the Investment Bankers' Code recently adopted.

The CHAIRMAN. But not yet signed or approved by the President.

Mr. WITTER. No, sir.

The CHAIRMAN. You may proceed with your statement.

Mr. WITTER. Our bond department has eight separate forms showing purchase and sale of securities and clearly setting forth whether we are acting as a broker or a principal. In the event that we are selling securities in which we have a profit that fact is also stated. I attach hereto copies of the eight forms which we use and in which we say in so many words that "We act as principal", if that is the case. If we act as principal in the sale of securities in which we have no profit or a loss we obviously omit the phrase "which includes a profit to us", and unfortunately we have had much use for this particular form.

In the conduct of my firm and many others we have scrupulously segregated our brokerage-department premises, books, accounts, organization, capital, personnel, and functions. In general our brokerage departments and bond departments are as separate as though they were two different firms except for mutuality of name, ownership, and general policy. I think that no harm and some advantage have come to the customers of each department through the dual functions of the firm. No brokerage department customers' man is allowed to sell our own participations or underwritings to his customers. The reason is practical as well as ethical. If we sell our own underwritings to brokerage-department customers, who often carry securities on margin, the securities are not permanently placed, and we have not fulfilled our obligation to the company whose securities we have been paid to sell. If we sell our underwritings to marginal customers, we are using our own capital for the purchase of our own securities. In the event of adverse developments we would be frozen with these loans. In addition brokerage-department customers have reason to resent biased advice, and the recommendation of our own issues would destroy our brokerage business.

I do not believe that it is practical to provide by statute that the two businesses should be as completely segregated as ours, as small dealers cannot afford the segregation of capital and premises. The large dealer, of course, could afford to segregate his business as between two departments; and I think, perhaps, it would be proper to insist that the large dealer do so. But I do not think that is a practical suggestion from the viewpoint of the small dealer. The main purpose of segregation is served by making it clear whether the dealer is a broker or a principal. This should be indicated in verbal statements and in written bills and confirmations.

The dealer and underwriter business has recently been largely confined to the purchase and sale of municipal bonds. These bonds are rarely, if ever, listed and under the provisions of Section 7 (c) a dealer can neither use his capital to carry such securities nor could he borrow money against them.



In passing I think I should point out that it is impossible for a brokerage firm to refrain entirely from acting as a principal, as in the case of errors which must be cleared, and that no dealer, whether member of an exchange or not, can refrain from acting as a broker unless it refuses to handle customers' orders to buy securities not owned by the firm. A strict interpretation of this portion of the bill would destroy the investment banking business and, consequently, the capital market which I think is admitted to be prerequisite to normal recovery.

Section 6 of the proposed bill forbids lending on unlisted securities which would enforce a great hardship upon the market for unlisted securities and particularly upon the smaller communities and the smaller firms. Section 14 regulating "over-the-counter" markets enforces a particular hardship on outlying territories as there are a multitude of unlisted bonds and preferred stocks traded in which are in most cases obligations of companies so small that their size would preclude compliance with any expensive listing requirements. The Los Angeles group have pointed out that there are over a thousand issues of companies traded in which provide in some cases some sort of collateral, and with which they could not deal if this bill become effective.

The Dickinson report to the Secretary of Commerce recommended control by a "Federal Stock Exchange Authority" and through a flexible mechanism to further study the means of regulating the stock exchanges and advised against placing stock exchanges in a strait-jacket. It urged that the law be limited to minimum requirements and that broad discretionary power be given the authority. Regarding the segregation of brokerage and dealer business it said:

Any such proposed segregation should not be accomplished before we are in a position to calculate its cost and to foresee its repercussions.

I think that the authority designated to exercise control of stock-exchange firms should be authorized to extend the segregation of the two businesses as far as its further study indicates it to be necessary in the interests of the public.

[Western Union]

SAN FRANCISCO, CALIF., February 27, 1934.

DEAN WITTEB,

*Hotel Carlton, Washington, D C :*

At a joint meeting of Security Dealers Association of San Francisco, local I B A. members and nonmembers, totaling 53 firms, a resolution was unanimously adopted authorizing you to represent them before the Senate Banking Committee and the Interstate and Foreign Commerce Committee of the House and to express for them their disapproval of the Fletcher-Rayburn bill as now written. Group wishes specific opposition registered to sections 6, 10, and 14. Dealers object to section 6, which in present form precludes extension by banks of credit on unlisted securities in regular course of business which would stifle public market for majority of Pacific-coast issues and cause deflationary liquidation, thereby impeding further national recovery. Dealers feel Pacific-coast market requires security dealer to act both as investment banker and broker in order to properly handle and diversify clients, investment account which must be given first consideration. Dealers therefor oppose section 10 because it encourages exclusive broker to favor and sponsor only securities on his particular exchange for commission consideration and likewise causes exclusive underwriter or dealer to recommend only those securities in which they personally are interested.

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In view of the excellent self-regulatory measures embodied within the fair practice provisions of Investment Bankers Code approved by this group today section 14 of bill is not only burdensome but unnecessary. Furthermore, believe section 14 destructive to unlisted market here because majority of western issues are not listed on any exchange and their marketability would be narrowed to detriment of both corporation and security owners. Partial list houses present follows: Anglo-California National Bank, American Trust Co, Bank of America, N H Bennett & Co, Bennett, Richards & Co., Brush Slocumb & Co, Blyth & Co, Cavalier & Co, City Co., Conrad, Bruce & Co, David Skaggs & Co, Denault & Co., Elworthy & Co, Eyre Palmer & Co, Heller Bruce & Co, Hellman Wade & Co, Henderson & Co, Heron & Co, Martin Judge, Jr. & Co, Leppo & Co., Mitchum Tully & Co, R H. Moulton & Co, R N Miller & Co, Collins & Sons, Inc, Schwabacher & Co., Shaw Hooker & Weeden & Co, Dean Witter & Co, Wulff Hansen & Co.

SECURITY DEALERS ASSOCIATION OF SAN FRANCISCO.

[Postal Telegraph]

LOS ANGELES, CALIF, *February 27, 1934*

DEAN WITTER,

*Carlton Hotel, Washington, D C :*

Security Dealers Association of Southern California a voluntary association composed of 71 investment dealers all operating in southern California, 20 members having seats on some exchange operating both as broker and dealer, and 51 members having no stock exchange seats but acting both as broker and dealer, had a meeting today, unanimously authorizing you to represent their association before Senate Banking Committee and Interstate and Foreign Commerce Committee in connection with Fletcher-Rayburn bill Our group here particularly concerned with section 6A, which we feel in present form would preclude extension of credit by banks on unlisted securities in regular course of business and feel should be definitely clarified. Section 10 we feel affects particularly legitimate small investment dealers whose relationship with client makes it necessary for them to act both as agent and principal in giving rounded investment service Dealer who is intrusted with client's investment account should surely be allowed to act as agent for that client if he feels it necessary Section 14 presents a particular problem in this territory as there are more than 1,000 issues unlisted bonds and preferred stocks traded in which are in most cases obligations of companies so small that their size would preclude compliance with any rigid rules that may be set up by Federal Trade Commission. We are wiring directly to committee as an association and some of our members also wiring members of the committee. Please advise in what way we may be of further assistance.

SECURITY DEALERS ASSOCIATION OF SOUTHERN CALIFORNIA,  
By EDW McWILLIAMS, *Secretary*

[Western Union]

PORTLAND, OREG, *February 28, 1934.*

DEAN WITTER,

*Carlton Hotel, Washington, D C*

The board of governors of the Investment Bond Club of Portland, having 33 dealers as members, would like you to represent the organization before Senate and House committees in regard to Fletcher-Rayburn bill. Our organization is disturbed by provisions in the bill which seriously hamper investment houses which are primarily dealers, these same provisions failing in our opinion to afford investing public any protection Sections 10 and 14 are particularly offensive in this connection Section 6 A would seriously injure holders of high-grade unlisted bonds In general we see no occasion for provisions of act which hamper investment dealers who occasionally act as brokers for convenience of customers. After all we have the Securities Act of 1933 and our code besides State regulations

INVESTMENT BOND CLUB OF PORTLAND  
R H MARTIN, *President.*

[Western Union]

SEATTLE, WASHINGTON, Feb 28 1934

DEAN WITTER,  
*Carlton Hotel, Washington, D C*

The Washington State Securities Dealers Association, a voluntary association composed of all dealers in securities in the state of Washington, at a meeting yesterday, unanimously authorized you to represent their association before the Senate Banking Committee and the House Interstate and Foreign Commerce Committee in connection with the Fletcher-Rayburn bill. While all members of our group are in accord that some regulation is desirable, they believe the bill in its present form will be detrimental not only to their own business but to industry in general and hence detrimental to the best interests of the public. Our members believe the following section will work an undue hardship upon their operations. Section Six A would prohibit banks from extending credit on unlisted securities in the regular course of business, thus depriving dealers of the credit they now receive on bank drafts as well as on inventory except in the case of listed securities. Section ten prohibits a dealer from acting as both dealer and broker. All dealers in this state have found it necessary to act both as principal and agent in order to render a complete investment service. This would work a particular hardship on dealers in this state whose businesses are of course smaller than in larger financial centers. The same result could be accomplished by requiring the dealer to state at the time the transaction is made and to typewrite or stamp on his confirmation whether he acted as dealer or broker or both.

Section fourteen, which purports to control over-the-counter transactions in unlisted as well as listed securities, would completely destroy the market for such unlisted issues. The stock of only one corporation and the bonds of only one corporation incorporated under the laws of the state of Washington are listed on a recognized national exchange—the New York Curb. Practically all securities issued by Washington corporations are in amounts too small to comply with the listing requirements of national exchanges. Destroying the market for such securities and taking away their collateral value would be detrimental not only to security dealers but to the entire community. Our group desires to make the following comment as to the effect of certain sections on general business and financial conditions: Under subsection two of Section six the fixing of margin requirements should be left to the Federal Reserve Board inasmuch as that body is responsible for financial policies in the United States. Margin provisions as fixed under this subsection would force liquidation of listed and unlisted securities not only from brokers but also from banks which is most undesirable at this stage of our recovery. Inasmuch as all banks are subject to supervision and examination by national and/or state banking department, they should be permitted some latitude in the making of collateral loans. Not only is this denied them under subsection three but also they are deprived of a highly satisfactory safe and liquid type of loan. Section twenty-two provides that all information filed with the Federal Trade Commission shall be made available to the public; thus intimate details regarding the business of every corporation whose securities are traded in are made available to all competitors whether domestic or foreign. The requirements for listing are so onerous that many small corporations may find it impossible to comply.

Moreover, there are apparently no limitations as to the number and nature of reports to be required from time to time by the Federal Trade Commission. The provisions relating to the responsibility of officers filing reports and the provisions governing the actions of officers, directors and stockholders owning or acquiring five per cent or more of a single issue appear after careful consideration exceedingly dangerous to the interests of the public. Moreover, the penalties provided thereunder bear no relation to any losses incurred and place a premium upon the activities of a litigious chisler. The Washington State Securities Dealers Association is composed of forty-eight investment bankers, all operating both as broker and dealer within the State of Washington.

WASHINGTON STATE SECURITIES DEALERS ASSOCIATION  
LYLE WILSON, *Secretary*.

Senator BARKLEY. Mr. Witter, are you filing the balance of this statement?

Mr. WITTER. Yes, sir; I should like to file it in full. I did not read it in full because a good deal of it was included in what Mr. Newbold presented to you.

The CHAIRMAN. But do you want all of these included?

Mr. WITTER. Yes, Mr. Chairman; if you please.

The CHAIRMAN. What is the name of your firm?

Mr. WITTER. My firm is Dean Witter & Co.

Senator McADOO. Mr. Chairman, I want to say that Mr. Witter is one of my constituents; that his firm stands very high in California, and that Mr. Witter himself is a man of character and capacity, and I am very glad to have him come here and explain the views of investment bankers.

The CHAIRMAN. We are very glad to have heard him.

Senator McADOO. Mr. Witter, you represent about all of them, do you not?

Mr. WITTER. I represent, I think, all of the dealers out there.

Senator McADOO. Now, we have, as I understand it, in California a great many stocks that are dealt in on exchanges that would not be susceptible of listing on any exchange.

Mr. WITTER. Yes, sir.

Senator McADOO. For instance, like mining stocks, or some of the oil stocks, representing adventures in enterprises which may or may not turn out successfully, and many people lose money in that sort of thing. Do you think it would be well to impose some drastic regulation upon such issues?

Mr. WITTER. Well, I think, Senator McAdoo—

Senator McADOO (interposing). Or do you think that would be objectionable. That is, that if you were to rigidly restrict that kind of enterprise, even though there have been some losses, that it would prevent a thing that has developed many successful enterprises and served that section of the country?

Mr. WITTER. By so doing you would undoubtedly restrict the development of some very worthy enterprises. But the main effect of providing any reasonable requirement for the listing of such stocks would only mean the driving of them from recognized exchanges to the bootleg markets of the country, as they would be purchased and sold in just the same way, and to the greater detriment of the public.

Senator McADOO. Then you do not feel that they are susceptible of regulation?

Mr. WITTER. I do not know of any means by which that class of securities could be estopped.

Senator McADOO. Well, now, in the matter of segregation of the investment business, to which you alluded in your statement, are there any abuses so far as you are aware of a conspicuous character resulting from the combination of activities of firms in California which engage in the investment banking business and also in the brokerage business?

Mr. WITTER. I do not believe that any firm can operate as a dealer, as I have said before, without also operating as a broker at times. That is, if they are going to provide any sort of service to their customers. I think there always have been and always will be some abuses of public confidence, both by dealers and by brokers, but I think a segregation of the two functions would make it more difficult to prevent such abuses, not less difficult.

Senator McADOO. Well, would it be possible by regulation to prevent the abuses without compelling segregation?

Mr. WITTER. I do not recognize any abuses that come from the joint functions of broker and investment banker in the same firm. The fact has been stressed here that there were three or four very large New York firms that went bankrupt to the detriment of themselves and the community in the period following the crash of 1929. But as to those three or four large firms—and I do not think there were more than that number—while they were both broker and investment banker, their business was handled in such a way that they would most certainly have gone broke whether they had served the dual function of broker and investment banker or not.

Senator McADOO. Then you do not think there are any abuses because of nonsegregation that would be cured by segregation?

Mr. WITTER. No; I think they would be aggravated by segregation.

Senator BARKLEY. In your statement you do not oppose the bill as a whole, do you?

Mr. WITTER. No, sir.

Senator BARKLEY. Do you discuss marginal requirements in your statement?

Mr. WITTER. No, sir; I do not. I do not feel that I am competent to discuss marginal requirements, except to say that I feel as a trader the marginal requirements proposed in the present bill are so severe, and the prohibitions against lending on unlisted securities are such, that it would result in practically an embargo on the brokerage business. In other words, the marginal requirements provided in the bill are much more severe than they appear to be on their face, because while there is a 60 percent margin provided, that might mean in reality a 150 percent margin. And if there were a fixed percentage beyond which a brokerage firm could not allow his customer's account to go, he would not be able to start with the 60 percent margin, as the bill provides, because if the market went down that day he would only have 59 percent and would have to sell his customer out entirely or in part, so that he would probably have to insist upon 80 or 90 percent in order to make his customer safe in the first instance.

Senator GORE. Is it your understanding that when it broke the margin line the broker would sell out the stock? Do you think that is the reason it has to be maintained, because there is no flexibility about this bill? In other words, if it starts at 60 percent you would have to maintain at least that percentage?

Mr. WITTER. I think while in a measure it may be flexible, yet it is greatly excessive.

Senator GORE. It certainly is not flexible if you cannot bend it at all.

Senator McADOO. Mr. Witter, would you think it in the public interest to put an embargo on stock transactions on margin altogether?

Mr. WITTER. No, sir. But I am getting on a subject that I am, perhaps, not as familiar with as others who are here. But I think it would be a catastrophe to the financial interests of the country if that were done.

Senator McADOO. Do you think abolition of exchanges altogether would be a good thing?

Mr. WITTER. No, sir.

Senator BARKLEY. Is the existence of a market for the purchase and sale of stock, for instance, in the case of the United States Steel Corporation, a matter that has any direct bearing upon the amount of steel that company makes, or the amount of steel that will be used in the case of railroads, automobiles, or other industries?

Mr. WITTER. Well, the fluctuations in prices of the various stocks has been alleged to have brought about all of our troubles, and that is the theory of the statement which has been made that the Government should do this, that, and the other. But I do not think there is any support that can be given to that contention.

Senator BARKLEY. The question is whether there is any public end served—I am speaking from your viewpoint only and not at present my own—that ultimately means the welfare of the people, to permit a man simply to go in one day, simply to buy Steel because he thinks it is going up and selling it the next day if it does not go up and holding it 3 days if it does not go up, or a week or a month—what effect that has on the actual business of the Steel Corporation. And the same question might be asked as to all corporations, whether it creates business for the steel company and whether it creates employment for their employees. The fact that I go in and buy a hundred shares of Steel and make a hundred dollars on it or \$500—what good does that do the steel company and what good does it do the people who are working for the steel company and those who have their money invested in the steel company?

Mr. WITTER. It does not do the steel company any good or any harm, and it does not do the people who have money invested in the steel company any good or any harm, except to the extent that those transactions provide a market which permits any investor that wants to buy, to buy, and any investor who wants to sell, to sell.

Senator BARKLEY. You are speaking about the investor now. I am speaking of traders.

Mr. WITTER. Yes, sir.

Senator BARKLEY. Day-to-day traders.

Mr. WITTER. Yes, sir.

Senator BARKLEY. Of course, if I made \$500 and needed some steel, it would help me to buy it. That might help the company.

Mr. WITTER. Yes, sir.

Senator BARKLEY. But on the whole I have been debating in my own mind, in consideration of this bill, what the debit and credit in the country, of business as a whole throughout the country, by which I mean productive business, the actual production of commodities and their consumption and sale, transportation, distribution would be; what effect the day-to-day trading on the stock market would have.

Mr. WITTER. I do not pose as sufficient economic authority to answer questions as broad as that, but I cannot see any direct harm or good that may come out of that transaction directly to the steel company, in the purchase of commodities.

But I think that a listed market for securities which provides a free and open market, a market place where those securities can be bought or sold, is fundamental to our present economic scheme

Senator BARKLEY. I agree to that, that if anybody wants to invest in steel he ought not to have to go to the home office of the steel company and sit down at a desk there in order to buy a hundred shares of Steel or any other amount. He ought to have some convenient place where he can go to get the Steel if he really wants to invest in it.

But is there an economic necessity for providing a place where a man simply can go in and buy something today that he never sees and never expected to see, and sell it tomorrow to somebody else he does not know and never heard of and never expected to see, know, or hear of? Is that really an economic necessity?

Mr. WITTER. Insofar as it is a factor which creates markets I think it is an economic necessity, because I do not think the country can endure without a market for securities.

Senator BARKLEY. Do you think that a market to enable people who want to invest in good faith would not be maintained or supported unless you allow all of these short-time transactions to which I have referred?

Mr. WITTER. Unless you allow speculation, the present markets could not be maintained.

Senator BARKLEY. Do you interpret this bill to prevent a man who has stock in a local company, like a lumber company or tobacco company or some local enterprise, that never expects to see the stock exchange and would not ever be registered on it—nobody wants to register on it because it is not that sort—from putting that stock up as collateral in a bank in the local community to obtain money to put into his business or to carry on any legitimate transactions locally that he might see fit to carry on?

Mr. WITTER. If there is a 30-day provision I doubt that it would prevent his offering that stock as collateral with his local bank, but I doubt the local bank would have any inclination to make a loan against the stock for which there was no market.

Senator BARKLEY. There would not be any market for that sort of stock without this bill.

Mr. WITTER. There is some market in the unlisted and the inactive markets for a great many securities.

Senator BARKLEY. I am speaking of the local stocks, of which there are thousands, purely local enterprises, making money, declaring dividends, but not on any stock exchange and not dealt in over-the-counter or any other way. They are closely held by the people in the community. Would you think that any law ought to be passed that would prevent me, as a stockholder in a lumber company in my home town, which is making money, from going to a bank there and borrowing money on it for 30 days or 90 days or 6 months?

Mr. WITTER. I have read the bill carefully, sir, but I think it takes an attorney to interpret that bill, and I think the attorney's interpretation might then be either uncertain or wrong, and if I endeavor to pass upon the intricate provisions of that bill I am afraid I will get myself into deep water.

Senator BARKLEY. If it should do that, do you think it ought to do it?

Mr. WITTER. I most certainly think it should not.

Senator GORE. Is not a stock exchange in the larger sense a mere market where securities are bought and sold, and is not such a market place essential to the liquidity of securities?

Mr. WITTER. It is absolutely essential to the liquidity of securities.

Senator GORE. Is not the liquidity of securities essential to the borrowing of money at the banks under existing conditions?

Mr. WITTER. It is almost prerequisite.

Senator GORE. And would not the abolition of a market place where you can buy and sell securities dry up the sources of credit largely and be an extremely deflationary movement?

Mr. WITTER. It would be the most deflationary thing that I think this country has ever known. It would destroy credits in the banks and would hamper business. I think it would make our present system of capitalism impossible.

Senator GORE. Well now, speaking of capitalism, the background of all this business is the theory or the assumption that capital for the enlargement of existing businesses and establishing of new business ought to be supplied out of the savings of the people of the country. Isn't that true?

Mr. WITTER. Yes, sir.

Senator GORE. That is the general assumption; and that these market places provide an institution or a place where people who have savings and who desire to invest them can go and buy securities when they get ready?

Mr. WITTER. Yes, sir.

Senator GORE. That seems to me to be the justification for it. Now, when you depart from investment on the one hand and embark on the field of speculation, the theory as I understand it is that speculation is essential to a free and open market or to a wider market, and it contributes to stability. Isn't that the theory?

Mr. WITTER. Yes, sir.

Senator GORE. Of course, it is the speculation end that we are trying to get at and correct the abuses of.

Mr. WITTER. I do not think you can legislate in such way as to prevent the American public from speculating. If they do not speculate publicly and openly, they will speculate in a manner which will be much more detrimental to them.

Senator GORE. Of course, I take it there is legitimate speculation and illegitimate speculation, so to speak. If you would run a dividing line between the two, you would be getting somewhere. I do not know that that can be done, but I think that is what we ought to address ourselves to.

Mr. WITTER. I think speculation has been blamed for a great many evils for which it was not at all the cause.

The CHAIRMAN. Do you draw any distinction between speculation and gambling?

Mr. WITTER. I am not familiar with the two definitions, sir. I would in my own mind.

Senator BARKLEY. Speculation sounds better; that is about the only difference?

Mr. WITTER. No; I think gambling goes to greater extremes.

Senator BARKLEY. I know the word "gambling" is an ugly word that we never like to have applied, but if I go in today and buy a hundred shares of stock thinking it is going up tomorrow, and with



the intention of selling it tomorrow and making a profit, what difference does it make whether you call it "speculating" or "gambling"?

Mr. WITTER. By that definition, all business is gambling.

Senator BARKLEY. I realize that. I agree to it. All life is gambling, so far as that is concerned.

Senator GORE. Anybody that buys anything for a rise is speculating.

Senator McADOO. That absolutely applies to every sort of commodity and every transaction and everything.

Senator BARKLEY. It applies even to running for office.

Senator McADOO. Yes; you gamble on that; and sometimes it is a very unfortunate gamble.

Senator BARKLEY. And sometimes is very unfortunate if you are defeated.

Senator McADOO. And sometimes very unfortunate for the country if you are elected.

The CHAIRMAN. Do you know what the requirements as to margin are in San Francisco?

Mr. WITTER. I think they have no rigid requirements as to margin.

The CHAIRMAN. What is the practice for margins?

Mr. WITTER. The practice is always for a broker to lend, first, what he thinks is safe, and second, what he can reborrow from the bank or from some other source to permit him to carry the loan which he is making.

The CHAIRMAN. It is purely arbitrary with him as to when he will sell a customer out or when he will carry him?

Mr. WITTER. Entirely a matter of judgment, sir. If there were margin rules as to 30 or 50 percent, no brokerage firm could conduct his business fairly to his customers without at times making a temporary and justified exception to that rule. If that were enacted into statute so that it was a violation of a crime, I think the conduct of the brokerage business would be impossible.

Senator BARKLEY. Do you think that marginal requirements ought to be based upon a situation that is brought about by a sudden decline in stocks, called a crash, or a sudden rise in stocks, called a boom, or ought to be based on the average, normal fluctuation or probabilities with respect to stock over a period?

Mr. WITTER. I think they ought to be based upon intelligence, and you cannot make any rules for intelligence.

Senator GORE. Well, that is hopeless now.

Senator McADOO. Mr. Witter, I of course in my questions heretofore and in all questions that I ask in this committee have assumed that there are two interpretations, because the questions I asked do not reflect my views frequently. I only ask them to bring out some point or to get your point of view.

On this question of margin, the broker really does exactly what the banker does.

Mr. WITTER. Certainly.

Senator McADOO. When he makes a loan against the stock that the customer purchases.

Mr. WITTER. Yes, sir.

Senator McADOO. The broker might say that 20-percent margin with a man of well-established credit and who is known to be fully

responsible would be sufficient, and that you could really carry his account on a less margin basis than you could the account of somebody who had no large credit or sources.

Mr. WITTER. Yes, sir.

Senator McADOO. But whose character might be all right, of course. Now, those risks the broker has got to judge for himself, just as the banker does?

Mr. WITTER. Yes, sir.

Senator McADOO. And any attempt to impose an arbitrary basis for credit, either in a bank or brokerage house, would be incapable of enforcement perhaps and would be very unfortunate in its effects, would it not?

Mr. WITTER. Yes, sir. And how are you going to distinguish between Government bonds and municipal bonds and inactive bonds and bonds that are highly speculative on the one hand, and between good stocks and bad stocks, between stocks that are so-called "investment" stocks and those that fluctuate wildly in the market, with any fixed rule, unless it is a minimum and beyond that minimum places the power to regulate in the hands of an intelligent authority?

Senator McADOO. Precisely. For instance, if you are carrying a margin account in a stock which has a very wide market all of the time and in which the fluctuations are for that reason not extreme, or less extreme than a stock which has not a wide market, where you can afford to do that upon a less margin than you could on a stock that was more susceptible of wide variations in price—

Mr. WITTER. Yes, sir.

Senator McADOO. All those are matters essentially of judgment on the part of the man who lends the money; isn't that a fact?

Mr. WITTER. Yes, sir.

Senator McADOO. And you could not by law impose some arbitrary restriction or rule there that would be workable, could you?

Mr. WITTER. No, sir. Nor do I subscribe to the theory that the amount that is loaned upon a stock will lend an effective bar to the enhancement of that particular stock, and I speak with at least some precedent, because it so happened that in San Francisco there were certain stocks listed in the exchange and very active, such as Bank of Italy and Bank Italy Corporation and later Transamerica, and those stocks were never good collateral in any bank or in any brokerage house, and still the stocks rose to fantastic heights and they broke very much farther than the market broke in similar issues or more active issues, because there was no short account, there was nothing to support the market. People were all enthusiastic about them one day, and the investors were all terrified the next.

So that I have never subscribed to the theory that the amount loaned on a stock will provide an effective bar to the heights which those stocks may reach in speculative times.

Senator McADOO. What you say about the banks that you have mentioned could be said of some of our best banks in California, where the stocks rose to extraordinary heights.

Mr. WITTER. Yes, sir.

Senator McADOO. And where the shrinkage was tremendously great, perhaps not so great and so far as New York banks, because even those banks of highest character are even worse than those in California.

Mr. WITTER. And I doubt that bank stocks have ever been recognized as the best type of collateral. They have not by my firm.

Senator GORE. Double liability has something to do with that, hasn't it?

Mr. WITTER. Yes, sir.

Senator GORE. Let me ask you this: Is it your interpretation of this bill as drawn that if a 60-percent margin is required and put up when the stock has declined to that point where your margin is reduced one point, say 59, then the broker would have to close out the account, under this bill?

Mr. WITTER. Yes, sir; that is what the law says if I read it correctly.

Senator GORE. Isn't that a good deal like when you hang a man and you spring the trapdoor and he reaches the end of the rope and something happens? There is no giving at all, no flexibility.

Mr. WITTER. No, sir.

Senator GORE. It looks to me a good deal like that. You just reach the end of your tether and that is all.

Senator McADOO. Mr. Witter, what you mean is that if a 60-percent margin is required and that margin, because the price of the stock should decline 1 percent to 59 percent, you would either have to sell the customer out or he would have to respond to a call for additional margin to maintain it at a 60-percent level?

Mr. WITTER. Yes, sir; I so understand.

Senator McADOO. You think this bill as drawn exacts that, do you?

Mr. WITTER. I again have to say that I am not an attorney, but I may say that that is my understanding of it.

Senator BARKLEY. That is the practice anyway, isn't it, largely?

Mr. WITTER. No, sir.

Senator BARKLEY. If a man lets his margin get below the requirements of the broker and does not put up some more money, the broker can sell him out?

Mr. WITTER. Yes, sir.

Senator BARKLEY. And usually does, unless there is such personal and credit relations between the two that he is willing to carry it for a few days, even though it is undermargined, in the hope that it will come back to normal?

Mr. WITTER. The difference is that the rule in any exchange is susceptible to justifiable exception.

Senator BARKLEY. Do you think that there ought to be a rigid rule laid down by the law that all stocks should be equally margined, or that there ought to be some discretion somewhere, either in the Trade Commission or the broker, to fix a different marginal requirement on the volatile stock like American Commercial Alcohol or Auburn Automobile or some others that rush up the hill and then rush back down before anybody can keep up with them either way?

Mr. WITTER. I think the Government would be assuming a very grave responsibility if it undertook to fix a limiting rate upon every stock in this country. I do not think it is practical. I do not think it could be done. I do not think it is a responsibility the Government should assume. If it were to be exercised, I think it ought to be exercised through the Federal Reserve banks.

Senator BARKLEY. Assuming that there should be some requirement as to margin in the law, you think there ought to be some discretion lodged somewhere to make exceptions or to give a certain leeway in the way of requirements that would depend somewhat upon the character of the stock and its fluctuations over a period of time or the circumstances surrounding it?

Mr. WITTER. Yes, sir. I believe most heartily in control and in supervision of the stock exchanges. I am perhaps out of step with some of my associate members of the stock exchange in that respect. I think that the Dickinson report, which was very carefully drawn up and which I heartily approve, provides a very proper basis for the drafting of a law which would provide for requirements and which would leave in the discretion of an intelligent and honest authority, which by the way, should devote its entire time to that job, which would be a big one—to see that the stock exchanges of this country are conducted in a manner which is in the public interest and not detrimental to the public interest. I think that is fundamental. It should be controlled.

Senator GORE. The broker is under every motive to protect himself with reference to these margin accounts, and I believe it has been testified here and the records show that there were not any losses; the brokers did not lose any money. Isn't that true?

Mr. WITTER. No, sir. There are a lot of brokers lost a lot of money, and some brokers became bankrupt because of their carelessness.

Senator GORE. Wasn't that, though, when they were trading on their own account?

Mr. WITTER. No, sir. Margins were the source of very great losses.

Senator GORE. I think they went so far as to say in New York there was not a known loss.

Mr. PECORA. Senator, I think that testimony related to the brokers' loans; the lenders of brokers' loans did not lose any money.

Mr. WITTER. Exactly.

Senator GORE. Oh, I see, and not to the extent that the brokers themselves did not lose?

Mr. PECORA. No, sir.

Senator GORE. I thought the evidence was that brokers trading on their own account took losses along with other people, but so far as accounts of their customers were concerned they sold them out in time to protect themselves.

Senator McADOO. Mr. Witter, as a practical question here, where there are vast amounts of securities of all kinds and characters, differing in value because of the merits of the investments themselves, we are undertaking in this bill to regulate by some arbitrary standards saying that 60 percent margin, if I interpret the bill correctly, shall apply to all loans made against securities that may be traded in through these banking houses.

Now, would it not be equally reasonable to say that all banks should require some fixed amount of margin or security on the multiplicity of loans with infinite varieties of securities back of them that are the basis of credit in the country?

Mr. WITTER. Yes, sir.

Senator McADOO. If it is, and we attempted that, to substitute the discretion of government for the discretion of boards of directors

and responsible officers of these banks, would you think as a practical question that the Government could administer it?

Mr. WITTER. Oh, I do not think that the Government could at all. I think that the Government when it assumes the function of governing all credit and governing all loans and providing rules and regulations for the lending of each bank and of every brokerage firm, is undertaking a job which it cannot possibly handle effectively.

Senator McADOO. On the other hand, I think that we all realize that there have been many abuses in the conduct of the exchanges throughout the country and that they need to be corrected. I think myself that some reasonable measure of regulation is highly desirable in the public interest. The question is, What is reasonable and what is practicable to meet the very complex and difficult problem that is presented, not only by this security business, trading in stocks and bonds but by the general credit situation?

Mr. WITTER. Senator, the Dickinson report sets forth a formula, after careful study, which provides for that type of regulation, and in this report I heartily approve.

Senator McADOO. I am very much impressed by the Dickinson report. I think it offers a beginning that, if adopted, would probably lead to satisfactory results. But I think the line ought to be drawn between regulation and management.

Mr. WITTER. Yes, sir.

Senator McADOO. Regulate is one thing, and to attempt to manage a complex business is a very different thing.

Mr. WITTER. I think it would be a disastrous thing.

Senator GORE. The general complaint urged here has been that the brokers have been a little too liberal with respect to margin accounts and let too many people in and made it too easy for themselves to wade in and get drowned soon or later, a lot of them. Is that your understanding?

Mr. WITTER. I think that is probably a just criticism. And the New York Stock Exchange has taken certain steps in the direction of increasing margins to remedy that particular thing. I would not object if they went further.

Senator GORE. I would like to say here for the record that if we invest some Government agency with the power to regulate margins and margin requirements when there is a general movement downward, Senators will find themselves under a good deal of pressure to try to exercise their influence with that institution to get them to liberalize the margin requirements and save their lives. That is politics.

The CHAIRMAN. Is there anything further you want to say, Mr. Witter?

Mr. WITTER. No, sir. I want to apologize for getting as far off the subject that I was authorized to talk upon as I did, because my purpose in appearing here, sir, was to say that those people whom I represent most definitely object to the provisions of the bill which separate the functions of dealer and broker.

Senator GORE. You say they object to that?

Mr. WITTER. They objected to those sections of the bill which have the effect of absolutely separating the brokerage and invest-

ment business, because the investment business cannot be carried on in this country without permitting the dealer to also act as a broker.

They object to section 6, which has to do with unlisted securities. They object to section 14, which has to do with over-the-counter markets.

On those subjects that I am authorized to speak for them I have gotten a long way away from, I am afraid.

(The papers submitted by Mr. Witter for the record are as follows:)

[Form No 1, specimen only Sale of owned securities in which firm has profit]

DEAN WITTER & Co.,  
486 CALIFORNIA STREET,  
San Francisco, December 28, 1933

Mr JOHN SMITH,  
Russ Building, San Francisco.

DEAR MR SMITH: At the request of Mr. John Doe, we are pleased to confirm sale to you of \$1,000 par value Pacific Gas & Electric Co First & Refunding 4½ % Bond due June 1, 1950. Price 87½, plus accrued interest.

In this transaction we act as principals, confirming at a net price which includes a profit to us

We understand you wish to complete this transaction tomorrow, December 29.

Thanking you for this business, we are

Yours very truly,

DEAN WITTER & Co,  
By \_\_\_\_\_

JJQ: SJ  
LMK

[Form No 2 specimen only Sale of owned securities in which we have a loss To another dealer]

DEAN WITTER & Co,  
486 CALIFORNIA STREET,  
San Francisco, December 28, 1933

BLYTH & Co,  
Russ Building, San Francisco.

As a matter of record we are pleased to confirm sale to you of \$1,000 par value Pacific Gas & Electric Co., first and refunding 4½ percent gold bond, due June 1, 1960 Price 87½, plus accrued interest

In this transaction we act as principals, confirming at a net price.

Delivery, regular.

Thanking you for this business, we are,

Yours very truly,

DEAN WITTER & Co,  
By \_\_\_\_\_

[Form no 3, specimen only Brokerage transaction, showing purchase for account of customer with commission shown on attached bill. Note bill specifies "Bond Department"]

DEAN WITTER & Co,  
486 CALIFORNIA STREET,  
San Francisco, December 28, 1933

Mr JOHN SMITH,  
Russ Building, San Francisco.

DEAR MR SMITH: At the request of Mr John Doe, we are pleased to confirm purchase for your account of—

\$1,000 par value Pacific Gas & Electric Co first and refunding 4½ percent gold bond, due June 1, 1960, price 87½, plus accrued interest plus commission

We understand you wish to complete this transaction tomorrow, December 29, 1933

Thanking you for this business, we are,  
Yours very truly,

DEAN WITTER & Co.,  
By \_\_\_\_\_

JJQ: SJ  
LMK

NOTE—On this form we will include the legend: "In this transaction we act as brokers."

[Specimen No. 3]

DEAN WITTER & Co  
486 CALIFORNIA STREET  
EXbrook 7211

Bond Department

SAN FRANCISCO, 2-20-34

Mr. JOHN SMITH,  
*Russ Building, City*

Purchased for your account:

1,000 Pacific Gas & Electric Co 4½s, due 6-1-60 (87½)----	\$875.00
Commission-----	2.50

Int J & D 1 accrued int 28 days-----	877.50
	3.50

Due Dean Witter & Co.-----	\$881.00
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Please add \_\_\_\_\_ additional interest per day if not paid on \_\_\_\_\_.

[Form No 4 (specimen only)—Brokerage transaction showing sale for account customer indicating commission charge Bill to accompany and to be marked "Bond Department"]

DEAN WITTER & Co.,  
486 CALIFORNIA STREET,  
*San Francisco, December 28, 1933*

Mr. JOHN SMITH,  
*Russ Building, San Francisco.*

DEAR MR. SMITH: At the request of Mr John Doe, we are pleased to confirm sale for your account of—

\$1,000 par value Pacific Gas & Electric Co. First & Refunding 4½%  
Gold Bond due June 1, 1960  
Price 87½, plus accrued interest less commission.

We understand you wish to complete this transaction tomorrow, December 29, 1933.

Thanking you for this business, we are  
Yours very truly,

DEAN WITTER & Co.,  
By \_\_\_\_\_

JJQ: SJ  
LMK

NOTE—On this form we will include the legend, "In this transaction we act as brokers."

[Form no 5 (specimen only)—Sale to customer from inventory in which we have profit See attached bill marked "Bond Department"]

DEAN WITTER & Co,  
486 CALIFORNIA STREET,  
San Francisco, December 28, 1933

Mr JOHN SMITH,  
Russ Building, San Francisco

DEAR MR SMITH: At the request of Mr. John Doe, we are pleased to confirm sale to you—

\$1,000 par value Pacific Gas & Electric Co.  
First & Refunding 4½% Gold Bond due June 1, 1960.  
Price 87½, plus accrued interest.

In this transaction we act as principals, confirming at a net price which includes a profit to us.

Our detailed statement is attached hereto.

We understand you wish to complete this transaction tomorrow, December 29, 1933.

Thanking you for this business, we are

Yours very truly,

DEAN WITTER & Co  
By \_\_\_\_\_

JJQ SJ  
LMK  
encl

[Specimen No 5]

DEAN WITTER & Co  
486 CALIFORNIA STREET  
EXbrook 7211  
Bond Department

SAN FRANCISCO, Feb 20, 1934

Mr JOHN SMITH,  
Russ Building, San Francisco

Sold to			
1,000 Pacific Gas & Electric Co 4½s due 6-1-60.....	87½	875 00	
Int J & D 1 accrued int 28 days.....		3 50	
Due Dean Witter & Co.....			\$878 50
In this transaction we act as principals, confirming at a net price which includes a profit to us			
Please add.....additional interest per day if not paid on.....			

[Form No 6—Specimen only. Sale from inventory for own account if we have a loss in securities sold]

DEAN, WITTER & Co,  
486 CALIFORNIA STREET,  
San Francisco, December 28, 1933

Mr JOHN SMITH,  
Russ Building, San Francisco

DEAR MR SMITH: At the request of Mr John Doe, we are pleased to confirm sale to you of—

\$1,000 par value Pacific Gas & Electric Co First & Refunding 4½ percent bond due June 1, 1960. Price 87½, plus accrued interest

In this transaction we act as principals, confirming at a net price

We understand you wish to complete this transaction tomorrow, December 29, 1933

Thanking you for this business, we are

Yours very truly,

DEAN, WITTER & Co,  
By \_\_\_\_\_

JJQ SJ  
LMK



[Form No. 7.—Specimen only. Sale to another dealer of securities in which we have a profit]

DEAN WITTER & Co.,  
486 California Street,  
San Francisco, December 28, 1933.

BLYTH & Co.,  
Russ Bldg., San Francisco:

As a Matter of Record We are Pleased to Confirm sale to you of—  
\$1,000 par value Pacific Gas & Electric Co. First & Refunding 4½% Gold Bond,  
due June 1, 1960.

Price 87½, plus accrued interest.

In this transaction we act as principals, confirming at a net price  
which includes a profit to us.

Delivery: regular.

Thanking You for This Business, We Are

Yours very truly,

DEAN WITTER & Co.,  
By \_\_\_\_\_.

		No. ....
		San Francisco, ....., 193.
Received from	DEAN WITTER & CO.	
The following securities		
\$1000 PACIFIC GAS & ELECTRIC CO. 4½s due 6-1-60 No.....		
6-1-34 et seq cpns attached		
@ 87½ 875 00	In this transaction we act as princi-	
0-28 3 50	pals, confirming at a net price, which	
	includes profit to us.	
878 50		
Name BLYTH & CO. INC.	FEDERAL TAX STAMPS	
Address: S.F.		
Remarks: JJQ	(Signature) .....	

[Form no 8 (specimen only) —Purchase of securities for own account; says we act as principals]

DEAN WITTER & Co.,  
486 CALIFORNIA STREET,  
San Francisco, December 28, 1933.

Mr. JOHN SMITH,  
Russ Building, San Francisco.

DEAR MR SMITH: At the request of Mr. John Doe, we are pleased to confirm  
purchase from you of—

\$1,000 par value Pacific Gas & Electric Co.  
First & Refunding 4½% Gold Bond due June 1, 1960  
Price 87½, plus accrued interest.

In this transaction we act as principals.

We understand you wish to complete this transaction tomorrow, December  
29, 1933.

Thanking you for this business, we are

Yours very truly,

DEAN WITTER & Co.  
By \_\_\_\_\_.

JJQ: SJ  
LMK

The CHAIRMAN. Very well. We are very much obliged to you.  
Now you are excused. Mr. W. G. Paul.

175541—84—PR 15—28

**STATEMENT OF W. G. PAUL, LOS ANGELES, CALIF., SECRETARY  
OF THE LOS ANGELES STOCK EXCHANGE**

The **CHAIRMAN**. Mr. Paul, state your name and place of residence, and occupation, please.

**MR. PAUL**. My name is W. G. Paul. I am from Los Angeles, Calif. I appear before your committee in two capacities: First, as secretary of the Los Angeles Stock Exchange, to present to you gentlemen or answer questions which you may have concerning that particular market.

And second, I wish to appear before you in all humility as representing a little fellow in our business, and as such I would like to present for your consideration serious consequences which this bill imposes upon the smaller man in our business, particularly in section 7 and section 10. I, of course, have certain opinions and ideas on the general sections of the bill, but they have been so ably presented by others, and you still have to listen to others present those arguments, that I prefer to confine myself to those two sections.

**Senator McADOO**. My attention was distracted for the moment, Mr. Paul. What were those sections?

**MR. PAUL**. Sections 7 and 10. Section 7 deals largely with the capital requirements for a stock broker, limiting the amount of business he may do with the capital he has, and as Mr. Corcoran very definitely stated, implying that that capital should be absolutely cash. I do not want to be glib in my expressions, but in all sincerity I believe that section 7 could conceivably put out of business a vast majority of the smaller units in our business who, after all, to an extent are the backbone of our business. I can conceive where the sections would concentrate the business, and by putting a pure premium on capital as such, possibly further centralize power through sheer money control.

I think the best answer or the best presentation of our objection to section 7 is in our own records as brokers. I think it is conceded, certainly records will demonstrate, that the mortality financially among brokers as such during the very trying period we have just gone through is on the whole an excellent one. Certainly, our own record in Los Angeles I am prepared to stand upon and defend. We have had some failures, but aside from the first failure, which was a direct result of the terrific crash in October, no failure has affected the public to any serious extent, and only two failures have even affected the public.

In other words, we in our business have always made a strenuous effort to see that those brokers who are members of our stock exchange shall conduct their affairs at all times in such a fashion that their financial condition shall protect the public with whom they are dealing. And I submit that the record, the actual record of failures on our exchange, and I believe the majority of exchanges is such as to justify some consideration to the tempering of the iron-clad capital requirements of section 7.

It is well known that many of us are financed through friends or relatives who come into our business in the relationship of special partners and who, instead of presenting to us actual cash, give us perfectly sound, liquid securities which are used as capital.

In our exchange audits and in our exchange questionnaires, through which we control the capital structure of our members, we are particularly and very keenly critical of any form of capital which is not purely liquid. Many of our brokers do margin business only to a limited extent, and to require them to keep capital in absolute cash position would seem to me to be an undue penalty, and I submit that those stringent provisions of section 7, in the light of past experience, can and should be very seriously considered before they are made a matter of basic law.

I do not care to take a great deal of your time on section 10, because it has been so ably argued, and yet again I want to present our position in that respect. In other words, I want to submit the records of brokers in the conduct of their business. And furthermore, I want to submit that in my humble opinion a member of a recognized stock exchange, such as a national securities exchange would be, under any form of legislation is, with all respect to the very high caliber of the majority of men who are not members of those exchanges and who conduct their businesses in unlisted or over-the-counter markets—it is my humble opinion that to permit the members of national securities exchanges to conduct also the dealer or unlisted business is in a way a safer medium to the public than in the other because, through the method of control which you have over such members, certainly any phase of their business will be subject to that control.

I want to further submit that we as exchanges have always exercised that control. We not only control the relation of our members to their clients as respects securities which are listed, but we say to any member of our exchange: We reserve the privilege of examining any transaction which you may have in any security with the public; and the net result is that in California, at least, I know that the listed brokers in the conduct of their dual capacities have certainly always exhibited a very high standard of conduct.

Senator GORE. How many listed brokers have you?

Mr. PAUL. There are 67 members of my exchange. They represent approximately 56 organizations, firms, or individuals doing business. My own experience in different committees in my exchange over the past few years would bear out the fact that we closely scrutinize such conduct.

In addition to that, the State of California, as I imagine most States, has in its statutory laws very definite provisions governing the relation of principal and agent. In other words, the statutes of my own State require me doing business in that State to observe the penalties and the written law governing my relationship to anyone if I should step out of the capacity of agent and act as an undisclosed principal. The securities act of the State of California, which is administered by the corporation commissioner, who is comparable to securities commissioner in other States, in that act itself are stipulated the laws of principal and agent. In our own exchange rulings we have it.

And I want to submit, if not the original, I will secure it if you wish—when I arrived in Washington and this discussion on section 10 was brought up, naturally I had thought about it all the way across the continent, and it occurred to me that in the light of my own experience in California, in the light of the relationship which

I have enjoyed with the authorities in California, particularly the corporation commissioner's office, our records demonstrated that the conduct of that dual business by members of the exchange in California had always been on a very high plane.

I was rather reluctant, and frankly questioned whether the commissioner of corporations of California would be willing to interject his opinion or statement, which naturally would be used as he knew I would want to use it. And yet I did, I wired to California and asked if they would approach Mr. Daugherty, who is our corporation commissioner, and ask him if, in view of the experience of his office, he could and would express an opinion as to the experience of his office—and his office licenses and controls all securities dealers in California—if he would give me an opinion or expression which I might use. The approach was made through counsel for the exchange. This letter is a copy of the letter which he wrote. [Reading:]

STATE OF CALIFORNIA,  
DEPARTMENT OF INVESTMENT, DIVISION OF CORPORATIONS,  
*San Francisco, California, February 23, 1934*

**MR. EARL C. ADAMS,**  
*Attorney at Law,*  
*c/o Loeb, Walker & Loeb,*  
*Pacific Mutual Building,*  
*Los Angeles, California.*

DEAR SIR: Replying to your wire of even date, I beg to advise you that I have discussed with some of the members of the Division of Corporations who have handled complaints against brokers licensed with this Division as a matter of daily routine

The substance of opinion is that there are practically no complaints against brokers who are members of the New York Stock Exchange. Compared with individuals and firms licensed in this State as brokers, there are very few complaints registered with us against members of the Los Angeles Stock Exchange or the San Francisco Stock Exchange.

There are a vast number of complaints lodged in proportion against individuals and firms holding or having held brokers' certificates from us who are not members of any exchange.

To obtain the actual number of complaints registered against individuals or firms in any given period would necessitate the work of a fair sized force for several weeks.

Yours very truly,

**EDWIN M. DAUGHERTY,**  
*Commissioner of Corporations.*

Senator GORE. Could you say how many of those certificates are outstanding in Los Angeles in connection with your exchange as compared with the licensed brokers?

Mr. PAUL. I am sorry, Senator, I could not, but I am confident that it is vast. It seems to me that almost everybody in California is either a real-estate broker or a securities broker. I can get the exact numbers and will be very glad to do that for you, the number of licensed brokers in California.

Senator GORE. That would not be so important. But what function do these certified brokers or near brokers perform as compared with listed or licensed brokers?

Mr. PAUL. If you secure a securities license to be a broker in California, that means that you may conduct any phase of the securities business. In other words, you may act as a broker of securities which are unlisted or even listed without being a member of an exchange necessarily; that you may trade in the obligations

of the State or any bond, or that you may represent a corporation in the sale of its securities to the public if those securities have been sanctioned by the corporation department. In other words, to be a member of an exchange you must also hold a license with the State.

Mr. PECORA. Mr. Paul, do those statutes which require the issuance of licenses to dealers and brokers in your State confer any supervisory power upon a State officer?

Mr. PAUL. Oh, yes; our corporation commissioner, of course, has complete power.

Mr. PECORA. Yes, to do what? Has he a power of examination and visitation?

Mr. PAUL. Yes, sir.

Mr. PECORA. I want to say that, to be exact, in 1923 I helped draft a bill which was introduced in the New York State Legislature seeking to enact that very principle. The bill failed of enactment principally because of the opposition of the New York Stock Exchange to its enactment. I was then in the district attorney's office, and we were in the midst of this bucket-shop campaign, and we sought to have legislation of that sort enacted in the State of New York. The principal opponents of the bill, which passed the State senate and failed in the assembly, was the New York Stock Exchange.

Senator GORE. Could you tell us how far the laws of California supervising the exchanges of California correspond with the provisions in this bill? What are the points of resemblance and difference?

Mr. PAUL. Well, I should say that the corporate securities act of the State of California in its provisions governing brokers is similar in this respect, that it is general; it confers the powers of supervision upon the corporation commission. Our securities act deals chiefly with the issuance of securities in that State which are to be sold to the public. I should say just from pure memory that the provisions in that act as relate to brokers are to a very limited extent specific. That is, there are no set phrases, such as a broker may or may not do this, he may and may not do that. It merely licenses him as such with our securities commissioner, and the presumption is that the securities commissioner shall take such steps as in his judgment may be necessary to protect the public in the relationship of that broker.

Senator GORE. Does it give the commission power to regulate margin accounts?

Mr. PAUL. No, sir.

Senator McADOO. He has no inquisitorial power?

Mr. PAUL. Oh, no.

Senator McADOO. Or power of visitation and examination?

Mr. PAUL. He or his representative may come to your office and examine your records.

Senator McADOO. With respect to the conduct of your business.

Mr. PAUL. I would say he possibly has that power, although he rarely exercises it.

Senator McADOO. His chief function is with respect to complaints?

Mr. PAUL. That is right.

Senator McADOO. Due to the fact that the initial issues of the corporation—either stock or bonds—do not comply with the requirements of our statute. Is not that about the extent of his authority?

Mr. PAUL. Yes.

Senator McADOO. But so far as any regulatory power over the conduct of the broker's business or anything of that sort is concerned—

Mr. PAUL. I should think he had that if he cared to invoke it, but it is more of a police power in that when occasion arises he may exercise it.

Senator McADOO. Upon complaint; but I mean to say he has not general inquisitorial power of his own volition.

The CHAIRMAN. He can revoke licenses.

Mr. PAUL. Yes; after hearing, and for cause.

Senator KEAN. He has got to have a hearing, and it must be for cause.

Mr. PAUL. Yes.

Senator GORE. Does it fix or regulate the relationship between the amount of capital and the amount of business transacted by a broker?

Mr. PAUL. No, sir. Furthermore, in California, as a prerequisite for a license, we require the filing of a surety bond in the amount of \$5,000.

Senator GORE. What are the stipulations of the bond—to do what?

Mr. PAUL. To protect any person doing business with that broker in the amount of \$5,000 against fraud.

Senator McADOO. That is not a very heavy bond.

Mr. PAUL. If I may continue for just a minute, I have presented here the implication that because we are carefully surrounded by laws in California the conduct of our business has been on a high standard, as exhibited by my own statement and as confirmed by our corporation commissioner. But frankly I think it goes deeper than that. I have heard certain expressions here in the hearing as it has been conducted to which I would take particular exception if they were intended as their inference might have led you to believe.

I do not believe any man can exist in any business unless his standards of ethics and business conduct are generally on a high level or a high plane. I do not know of any broker who could exist in business if his business were predicated upon taking advantage at every opportunity of his customer. Certainly, that is the basis for the contention which we make on section 10. I certainly could not hope to get the brokerage business of a customer of mine with my right hand if with my left hand I was dealing with him unfairly in the so-called "investment end" of his business. Most of the men—of whom I may say, in all humility, I am presenting myself as an example here—deal largely on a personal basis. Our clients to a great extent are friends who, over a given number of years, have learned to trust our judgment, in spite of 1929. They trust our integrity and our honesty, and they come to us more or less as you would go to a physician, with their financial problems. We discuss all phases of investment with that type of person, and certainly no investment account of any character can confine itself to any one class of securities, any more than a well-balanced meal could be all dessert.

Senator GORE. I can see how that might apply to regular customers, the so-called "bulls and bears." How about these "lambs" that just wander into the shambles occasionally and never get out?

Mr. PAUL. Can you produce a specimen for me, sir? I think, to a great extent, the brokers were "lamb."

Senator GORE. I would not want to indulge in anything personal here, but I think I could produce 1,000,000 corpses, perhaps, by going back to 1929, if that is specific enough.

Mr. PAUL. That is rather specific.

Senator GORE. You know what I have in mind. It is the babe in the wilderness that sees the market going up for quite a while, and he sees other people buying stock and selling it for more than they paid for it, and he decides that he will gamble, and takes a chance; and he feels that he will win. Have you any requirements with respect to margins that afford him a sort of safeguard against himself?

Mr. PAUL. May I approach that from two standpoints?

Senator GORE. I wish you would.

Mr. PAUL. Your margin I will discuss after I present another phase of that.

Senator GORE. There is a man who has excited the sympathy and pity of the country, and who has aroused this movement, largely.

Mr. PAUL. I believe there is great danger of your margin theory, which is being so seriously discussed, defeating its very purpose. I have been engaged in this business since 1919—very obviously I came into it right out of the war—and, frankly, one of the great problems I have faced, trying to be a conscientious man in my business, has been the problem of the pirates and bootleggers that have been mentioned here who are beyond the pale of all law. You cannot pass laws to stop those fellows. In fact, the more laws you enact, in my humble opinion, the better basis they will have to operate upon, because it begins to tie the hands of the fellows with whom, possibly, these very "lamb" should do business.

In this 15 years of business experience, I positively shudder at some of the things that have gone on—not excusing the broker, as such, now, but it is human nature, when things are boiling, that this little fellow we speak about begins to get the urge, and frankly, I think that a great danger has always existed, and might exist even more under terrifically stringent regulation, to force that fellow into the hands of the very fellow who would make no effort to protect him. I question whether you could protect that man through a margin requirement, as such, because if you limit the member of a stock exchange, over whom you would have, through your regulation, full control in his relationship to this "lamb", you force that very fellow to seek out some person who will do business with him. And, with no disrespect to the vast number of honest brokers in this country who are not members of stock exchanges, you would unquestionably force that man into the hands of the blue-sky operator, who would not even leave a skeleton.

Senator GORE. You think you would send the "lamb" to the Wolf of Wall Street, instead of the "bulls and bears"?

Mr. PAUL. No; I do not, sir.

Senator McADOO. The real solution is to prevent the propagation of "lamb", is it not?

Mr. PAUL. Has not that been a great problem since the earth was created?

Senator McADOO. If we could do that, we would not have any problem so far as they are concerned, but the difficulty is that in spite of any law or regulation—

Senator BARKLEY. There is another committee considering a bill of that sort in the Senate now.

Senator McADOO. Which committee is that?

Senator TOWNSEND. Birth Control [laughter].

Senator GORE. We will have to apply birth control to these "lambs."

Senator McADOO. Under no form of regulation can you prevent people from making unsound investments. Our "blue sky" laws are intended to provide this much protection, that only such securities as are considered good by the corporation commission of our State will be permitted to be sold on our exchanges or otherwise, but we know how ineffective even those laws are to protect people who have not the judgment to make investments. I think the exchanges, however, do need more regulation than they have had. Take your own exchange the Los Angeles Stock Exchange. You know that the regulations there were so insufficient that some very great tragedies have happened in our own community.

Mr. PAUL. That is right.

Senator McADOO. That might have been prevented if the regulations had been more stringent.

Mr. PAUL. That is right.

Senator McADOO. Even if they had been as stringent as those of the New York Stock Exchange, because many precautions were not in your regulations. So that there is no doubt about the fact that a reasonable measure of regulation of the stock exchanges would be greatly in the public interest, but the question is to find out what would be reasonable as well as practicable.

Mr. PAUL. I think that is true, and I think that is the reason we are here.

Senator McADOO. We are trying to find out.

Mr. PAUL. Yes.

Senator BARKLEY. A moment ago you said there are a vast number of perfectly honest brokers who are not members of any exchange. Do you mean that they have no connection with people who are members of exchanges? How can they transact business? It costs a lot of money to be a member of the New York Stock Exchange, and probably other exchanges, but these men you refer to as being perfectly honest men and I do not doubt that at all—have connections with people who are members of exchanges, do they not?

Mr. PAUL. Senator, those transactions which they would have with their customers in listed securities, they would execute through some member of a stock exchange, and probably would have no compensation from it.

Senator GORE. No what?

Mr. PAUL. They would receive no compensation from that, because the laws of the exchanges do not permit the splitting of commissions with nonmembers, and they would conduct that business to a degree incident to their broader business, which, in the case of the type of men I refer to, is the large municipal bond houses, the investment houses, the investment bankers, so-called, who act largely as dealers or as brokers in unlisted securities.



Senator GORE. And are not themselves members.

Mr. PAUL. No; they are not members of any stock exchange, and yet they are a very important unit.

Senator GORE. Would they be these certified brokers you spoke of a while ago, that are not licensed?

Mr. PAUL. Certified?

Senator GORE. Yes.

Senator McADOO. Licensed.

Mr. PAUL. Licensed. They would be licensed to conduct a securities business, but their conduct of their business would be off all stock exchanges.

Senator GORE. But they would be licensed by the State, and not by the exchange.

Mr. PAUL. That is right. The exchange would have no control over them, except in their relationships to the members.

Senator BARKLEY. Are there enough of the so-called "bootleggers", to which reference has been made, in the country to affect materially, one way or the other, the prices of stocks?

Mr. PAUL. Not to affect the prices of stocks, Senator, because their activities are such that they cannot affect the prices of stocks, but they are the type who do this—not in the sense of the old bucket shop, as we knew it, where it was organized, and where you could go in and more or less make a bet, but they are the type of fellows—let me interject this. The exchanges usually control the type of advertising which they will permit their members to do. We do not permit them to go out with flamboyant advertisements, advertising that they are the investment experts of the world for various reasons. The other type of man I refer to is not limited by any such restriction, either by law or as a member of an organization. The net result is that he is the fellow who does put these very attractive ads in the paper, and to him naturally flock the very "lambs" that we are discussing.

Senator BARKLEY. How does he operate? What sort of stocks does he sell, and through what agency?

Mr. PAUL. In the majority of cases, he does not ever buy or sell a stock. We have had them in California—and I am glad this came up, because it might be of interest to you in your consideration of these loan situations. We have had in California a very serious problem in the so-called loan organizations which were formed. They would offer to loan you more than your bank could or would loan on a security. Naturally that was tempting, and they usually offered it at a very reasonable rate of interest. You took your security to this particular organization, and they did advance you, we will say, 80 percent of the market value, and then they immediately proceeded to sell the stock, in the hope, first, that you would never come back; and second, that if you did, they would be able to pick it up again some place. That is a very difficult thing to control. Those fellows advertise their heads off, and they attract the very person who has no other means to protect himself.

Senator BARKLEY. In their individual transactions with men who are hard up for money, they might work a fraud upon them.

Mr. PAUL. It is fraud, of course

Senator BARKLEY. But even taking all such transactions, combined, throughout the country, are they sufficient to affect materially, one way or the other, the prices of stocks on the market?

Mr. PAUL. They have, in my opinion, probably no effect on the market price of stocks, but it comes down, in my opinion, to what is the essence of our proposed legislation here. It seems to me that the great thing we are all afraid of is fraud, individually, and my contention is that by far and large the vast number of members of the stock exchanges—whether it is New York or the smaller units—are far and above the practice of fraud in the daily conduct of their business. I am speaking for the vast majority. Certainly we can pick out cases of fraud by individuals, but I maintain that that does not mean that the whole moral structure of all brokers should be placed on that plane.

Senator GORE. You spoke a few minutes ago about the impossibility of prohibiting bootlegging entirely. I saw the other day that lotteries are conducted and authorized in thirty or thirty-two countries in the world and that the current business in this country, notwithstanding it is against the law, amounts to quite a volume throughout the year. That typifies what you have in mind, does it not?

Mr. PAUL. To a degree. It is extremely difficult of control. I think, along the lines Senator McAdoo has suggested, we presume we must have regulation of exchanges, and I think that the problem that you gentleman face is in the framing of that regulation so as not to restrict the men you are going to regulate to the extent where they are not even able to protect themselves or the public.

Senator GORE. To regulate and not prohibit.

Mr. PAUL. That is right.

Senator GORE. Do you have any rules and regulations in connection with your exchange that are not in force on the New York Stock Exchange, that you think would be advisable to apply to that institution?

Mr. PAUL. I have a great deal of respect for the experience of the New York Stock Exchange, upon which they predicate their rules, and we have in large measure followed very closely in line with their rulings, in the protection of our exchange.

Senator GORE. And your range of dealing covers pretty much the same as theirs?

Mr. PAUL. Yes; on a much smaller scale.

Senator GORE. With short sales, options, puts, calls, privileges, and so forth?

Mr. PAUL. I think the Pacific coast exchanges have had little difficulty with the so-called "option" or "pool", because, if they have been conducted, they have been conducted on a much smaller scale, and have not presented a problem either to the public or to us as an exchange.

Senator GORE. You do not think, as the result of your experience, then, you have made any improvements that might well be applied to the New York Stock Exchange?

Mr. PAUL. I would hesitate very much to say that, sir.

Senator KEAN. Do you figure that if this bill were enacted into law the effect of it would be to curb the legitimate business on the exchanges and promote the bucket-shop business?

Mr. PAUL. I do very much, Senator, and in that respect I would like to draw again to your attention this, that a member of an exchange is virtually like the proverbial goldfish. Every action he takes is subject to very close scrutiny. Every transaction he has with his customer can be traced down to its finest detail. As contrasted with that, the other lines of trading cannot. In other words, if I execute an order for a customer of mine on a stock exchange, I can prove, down to within a fraction of a minute, just exactly what I did. Contrary to that, if I am dealing in unlisted security, my customer is absolutely at my mercy and judgment, trusting that I may be able to find the best market, and when I report that market to him, he has no other check except my word for it.

Senator KEAN. And if this law were enacted it is your opinion that it would create a lot of bootleggers, or, in other words, bucket shops. In a bucket shop what they do is to bet against your judgment, so that if you give them an order to buy 100 shares of stock, they do not buy 100 shares of stock, but they look at the quotations and sell you 100 shares of stock at the quotation, or about the quotation. Is not that right?

Mr. PAUL. Of course, that is the bucket shop as we knew it.

Senator KEAN. Yes.

Mr. PAUL. Frankly, I think there is no question that if the regulation imposed upon members of national securities exchanges were too stringent and rigid, it would invite a type of man who would say to this small fellow, or the lamb, "You come and trade with me. You cannot trade with a member of the New York Stock Exchange, but I will take care of you." Quite frankly, I believe we will all concede that regardless of how woolly he may be, at least if he were dealing with a member of a securities exchange, we would have some control over that particular member.

Senator KEAN. Senator Gore thinks that the Lord tempers the wind to the shorn lamb. Is that right?

Senator GORE. Yes; unless there is more wind than lambs, Senator.

The CHAIRMAN. Mr. Paul, you said you thought that it was in order to have some regulation of the exchanges. What kind of regulations do you favor, and to what extent, and what would be accomplished by them?

Mr. PAUL. That would be rather presumptuous for me to say, because that would invite me to write the act.

The CHAIRMAN. Not necessarily; but I am trying to get at your idea.

Mr. PAUL. My reaction to that, to express it as briefly as possible, would be this. Apparently public opinion is such that they feel that the conduct of the securities business should be more subject to review and control by the Federal Government. I am not so sure but that such control, properly exercised, would be to the benefit of the business itself. Therefore I am prepared to say that I would not be undisposed to regulation, where that regulation was such that it would accomplish the desirable purposes, but, at the same time, not strangle the business it attempts to regulate. I am not meaning to generalize too much by that, but I do mean this, that I think it is impossible for any group to sit down here on the 2d day of March or the 3d day of March 1934, and place in a statute

regulations which, 6 months from now, they might themselves be very sorry are there, but which cannot be changed because of their nature. In other words, I am arguing for a degree of flexibility, even regardless of the amount of power which you may vest in any regulating authority. I think the greatest danger in an act such as this would be the straight up-and-down lines which could not be erased except by subsequent action similar to the process which created it.

Senator BARKLEY. You mean by that that you do not think the act itself ought to fix any metes and bounds at all, but just leave it to somebody else to fix them?

Mr. PAUL. It would depend, Senator, upon what particular functions you were going to limit by any definite metes and bounds.

Senator BARKLEY. You told us what kind of regulation you do not want. I would like to know what kind you would be in favor of.

Mr. PAUL. That is true. It seems to me we are burdening you with repetition of these outstanding things as they impress us. Frankly, I very definitely feel that a fixed, definite percentage on the margin basis might be extremely dangerous, I do not care how liberal you made it, or how severe you made it. It is impossible, in my opinion, to look so far into the future that the rigid line might not be subject to a very desirable change.

As I say, in connection with section 7, I cannot agree with Mr. Corcoran that that capital should be purely cash. I think that would be an extreme penalty on a great many organizations. I think possibly the capital requirements for business may be entirely too strict, because that absolutely penalizes a smaller unit in my business, which is perfectly solvent, and has remained perfectly solvent through all this period, by placing that arbitrary limit upon his business. It compels him to operate within that limit, unless he were able to introduce new capital, which, we will all grant, at least under present conditions, would be difficult.

Senator GORE. To what extent would you liberalize this cash requirement?

Mr. PAUL. As I understand it, any form of regulation will have to be, and should be under the control of some governmental agency, and it would seem to me that these definite lines of demarcation could very well be left to such regulations as they should propose from time to time.

Senator GORE. What is the custom in your market now in that regard—instead of cash, what?

Mr. PAUL. Marketable securities. Mr. Corcoran, of course, mentioned the highest grade, United States Government bonds. We do not go quite so far. We do demand that they be absolutely liquid, in the sense that they must not be local securities with a limited market. We take every case upon its individual situation. We penalize the capital statement of our member whenever a preponderance of any one particular security appears in his statement, which takes care of the danger of the underwriting situation. If we find, for example, a member of our exchange who is concentrating his business in any one particular issue, we immediately limit him, or penalize him, making it unprofitable, or rather difficult, for him to go ahead and take on more of that particular type of business.

Senator GORE. Sort of mixing his motives.

Mr. PAUL. That is it. Frankly, I think that under no circumstances have we ever permitted beyond 20 times, instead of 10 times, as stated in this bill. As has been stated by others, there are some securities—in fact many—which, at different times, we would give no credit to at all.

The CHAIRMAN. Do you have any difficulty out there, or any problem with the investment bankers sending out trained solicitors to place securities or sell them to the public?

Mr. PAUL. In the sense of difficulty, no, Senator. Of course the Securities Act went a long way to take care of that uncontrolled solicitation of business, and the misrepresentation of those facts.

The CHAIRMAN. Yes.

Mr. PAUL. Frankly, I can see exactly what Mr. Corcoran had in mind in his proposal to segregate, but I consider that an indictment on character.

The CHAIRMAN. Do your investment security people send out agents to sell securities to individuals?

Mr. PAUL. To a certain extent, yes—not, of course, nearly to the extent it had been done in the past. A broker does not; in other words, we do not send solicitors out.

The CHAIRMAN. There is some evidence before this committee to the effect that large investment houses have not only sent out these agents, but they held schools and trained them in what to sell, what to say, how to act, and how to conduct themselves. They go out among the people. We have evidence of one instance where a woman had \$10,000 in Liberty bonds, and this agent persuaded her to take some stock because it paid 7 percent. She took the stock, sold her Liberty bonds, and now she has nothing.

Mr. PAUL. Senator, the letter I offered in evidence here from my own corporation commissioner is along those very lines. In other words, in California, at least, his experience has been that, compared to dealers who were not members of exchanges, complaints of that nature have been very few.

The CHAIRMAN. Are there any other questions of Mr. Paul? Have you finished, Mr. Paul?

Mr. PAUL. Yes; thank you.

The CHAIRMAN. We are very much obliged to you.

#### STATEMENT OF RICHARD WHITNEY, PRESIDENT NEW YORK STOCK EXCHANGE—Resumed

The CHAIRMAN. Now, Mr. Whitney, do you want to call the specialist?

Mr. WHITNEY. If it is agreeable to the committee, sir, I would like to have you hear Mr. Raymond Sprague and Mr. Paul Adler, both governors of the exchange and both active specialists. They will endeavor to describe the functions of a specialist, and, of course, to answer any questions the committee may put to them.

The CHAIRMAN. Very well. We will hear Mr. Sprague.

Senator ADAMS. Mr. Whitney, may I ask you a question? How does a man become a specialist, and what limitation is there upon the number who may become specialists in a particular stock?

Mr. WHITNEY. It is purely voluntary, sir, and there is no limitation—voluntary on the part of the broker who is a member of the exchange.

Senator ADAMS. Any broker who saw fit to set himself up as a specialist in United States Steel might do so?

Mr. WHITNEY. He may do so, and may solicit orders from the other members of the exchange; yes, sir.

Senator GORE. And nobody else. The specialist deals with brokers.

Mr. WHITNEY. He deals with brokers entirely, as such.

Senator ADAMS. Is the surrender of his right to deal with other people a matter of regulation or of custom?

Mr. WHITNEY. There are some specialists who have business apart from specializing, but when acting as a specialist on the floor of the exchange, except in scattered instances, all of their orders come from other members of the exchange.

Senator GORE. And when they function as specialists, that is universally true, is that the idea?

Mr. WHITNEY. No, sir; there are instances where a specialist may do a commission business as well, and where his customers give orders in the stocks in which he specializes. There would be that dual situation.

Senator GORE. That would be his private customers.

Mr. WHITNEY. Yes; his private customers.

Senator KEAN. But, Mr. Whitney, as a rule, while he is a specialist he makes a specialty of dealing in the stocks in which he is a specialist.

Mr. WHITNEY. As a rule; yes.

Senator GORE. There is no essential conflict in his obligations?

Mr. WHITNEY. I do not think so, sir; because the same rules of the exchange would apply to him in so dealing, as has been already explained to you.

Senator ADAMS. How many specialists do you have?

Mr. WHITNEY. About 350, sir; out of 1,375 members.

Mr. PECORA. How many books do they handle?

Mr. WHITNEY. Some handle only one. Some may handle as many as 50. Mr. Sprague has 11, and he is alone. Mr. Alder, with eight brokers, has fifty-odd stocks.

Mr. PECORA. How many securities are covered by specialists' books?

Mr. WHITNEY. When I say "book" that means one stock.

Mr. PECORA. You mean there are 350 issues that are handled by specialists?

Mr. WHITNEY. No.

Mr. PECORA. How many issues are handled by specialists?

Mr. WHITNEY. Twelve hundred-odd stock issues listed on the exchange, and there are approximately 350 specialists.

Mr. PECORA. But how many of the 1,200 issues that are listed are handled by specialists?

Mr. WHITNEY. All of them.

Senator ADAMS. But there is a larger number listed. All the listed stocks are not handled by specialists. There is a margin of listed stocks that are not included within any of the specialists' books.

Mr. WHITNEY. No, sir. They are all handled by specialists. There is what we call our "inactive crowd", where the very inactive stocks are placed, but there, again, they are handled by the specialists in that crowd.

Senator BARKLEY. No specialist would make much money in handling a stock nobody wanted. In order to be compensated, he must have a rather active stock, must he not?

Mr. WHITNEY. Not necessarily, Senator Barkley.

Senator BARKLEY. If he is working on a commission, as was testified the other day, it seems to me he would be rather discouraged to become a specialist for a stock that was not being sold or bought to any great extent.

Mr. WHITNEY. Many specialists, sir, are very much discouraged in that way, and are seeking the placing of stocks by the committee of arrangements at the particular post where he has been in the habit of transacting his business, so that he may increase that possibility of compensation.

Senator GORE. Is there any way of estimating what percentage of the daily transactions pass through specialists, and what percentage goes by a different route?

Mr. WHITNEY. I think Mr. Pecora has some figures on that.

Mr. PECORA. What is that? I did not hear.

Mr. WHITNEY. The percentage of the daily business that passes through the hands of the specialists.

Mr. PECORA. We have data on that. I do not have them with me. I will have them before the committee here on Monday. We have gathered data that would indicate that, from our returns to the questionnaires made by the members of your exchange.

Senator GORE. Is it substantial?

Mr. PECORA. The task of recapitulating the data and tabulating it has been so tremendous that we have not yet finished it, but we will have it finished by Monday.

Senator GORE. Is it substantial?

Mr. PECORA. Oh, yes; it is quite substantial.

Mr. WHITNEY. It is substantial.

Senator KEAN. Mr. Whitney, suppose you have an order on three stocks. A broker may execute two of those orders for his own account. The third order, because he cannot wait, has to go to the other posts, and he gives it to a specialist. That is the way the business is done.

Mr. WHITNEY. You mean a representative of a commission house has three orders given him at one time, and possibly he may be able to execute two by himself, and the other, of necessity, he has to hand to the specialist.

Senator KEAN. Yes.

Mr. WHITNEY. There are some commission houses—I think I have stated this to you before—that give all of their business to specialists and to floor brokers, and their representatives do not attempt to execute any of their orders whatsoever. They act more as messenger boys than anything else.

Senator GORE. Then their representatives in that instance would not be members of the exchange.

Mr. WHITNEY. Absolutely members of the exchange; but they feel their best interest is served by giving all their orders to other

floor brokers and specialists. And when I say their best interest I mean that of their customers.

**STATEMENT OF RAYMOND SPRAGUE, NEW YORK, N.Y., A  
MEMBER OF THE NEW YORK STOCK EXCHANGE**

Mr. SPRAGUE. Mr. Chairman and gentlemen, we particularly want to talk on section 10, just because of its drastic provision. This provision destroys the specialist dealer.

Senator ADAMS. May I ask, Mr. Chairman, who the witness is?

Mr. SPRAGUE. Pardon me. My name is Raymond Sprague. I have given my name to the reporter.

Senator GORE. Would you mind, Mr. Sprague, defining and describing a specialist to us—what he can do, and what, as a rule, he does do?

The CHAIRMAN. I suppose he will get to that in a minute, Senator.

Senator GORE. He started to analyze the section. Go ahead in your own way, if you have that in mind.

Mr. SPRAGUE. I intended to do that, Senator, as I came to it.

The CHAIRMAN. State your name, official residence and occupation.

Mr. SPRAGUE. The stenographer has it. My name is Raymond Sprague, 39 Broadway, member of the New York Stock Exchange and specialist.

We intend to take up section 10 of the bill as it deals with the specialist dealer. This provision absolutely puts the specialist dealer out of business, and provides no adequate substitute. It affects us quite directly, but I believe it affects the public more, in this respect, than it affects the general liquidity of the market.

The bill goes further, in that it provides that the specialist may execute none other than fixed-limit orders. I have a few statistics, which I hurriedly had my office get together, asking them to select at random from the files the volume of orders received on given dates, and the percentage of market orders in that respect.

Senator GORE. How is that? State your categories again.

Mr. SPRAGUE. I had my office select at random from the files, orders of specific dates, and tabulate those orders, showing what percentage were market orders, as related to limited orders.

Senator GORE. That is Greek to me, Mr. Sprague. I do not know what you are talking about. I wish you would define what fixed-limit orders are.

Mr. SPRAGUE. I will define orders for you, Senator.

Senator GORE. Yes.

Mr. SPRAGUE. Orders are in three general classes: Market orders, which are such. A market order to buy is an order to buy at the best price obtainable. An order to sell is an order to sell at the best price obtainable.

Senator GORE. That is a market order?

Mr. SPRAGUE. That is a market order, sir.

The CHAIRMAN. Whose orders? Where do the orders come from?

Mr. SPRAGUE. These orders come from the public, through the commission houses.

The CHAIRMAN. Brokers?

Mr. SPRAGUE. And brokers; yes, sir.



Mr. PECORA. Are you speaking now of orders to the specialist?

Mr. SPRAGUE. I am describing the general character of all orders. The second are what we call limited orders, which, in effect, say "Buy for my account so many shares of stock, at a price, and no more." The reverse is to sell.

Senator GORE. You mean not above that price?

Mr. SPRAGUE. Not above that price; yes, sir.

Mr. PECORA. That is, it fixes the maximum price at which the customer wants to buy?

Mr. SPRAGUE. Correct.

Mr. PECORA. But the direction to the broker is to buy at any lower price if possible.

Mr. SPRAGUE. Yes, sir.

Mr. PECORA. It just fixes the maximum at which he will buy?

Mr. SPRAGUE. That is implied, sir.

The other side is the sale order of the same character, which sets the limit on the sale side. He must not sell below the limit, but may sell above if he can do so.

The third order is the stop order. The buy stop order, in effect, says "When the market reaches this price, buy 100 shares at the market—that price or higher." A sell stop order—

Mr. PECORA. Buy at that price or higher?

Mr. SPRAGUE. What I mean by that is, when it reaches that price or higher. It takes an actual sale to set that order in motion, and that order then becomes a market order.

Senator GORE. Are your prices going up or down, or either?

Mr. SPRAGUE. In effect, that would have to be a higher price, Senator, to go into effect.

Senator GORE. He would tell you to buy at a price higher than the last quotation?

Mr. SPRAGUE. Then the existing market. In other words, may I describe just an ordinary order such as that. Possibly it would clarify it.

Senator GORE. I wish you would; and after that, I want to get at the motive of the man who gives you that order.

Mr. SPRAGUE. The market in a given stock is  $34\frac{1}{2}$  bid, which means that is the price that would be paid. One hundred shares are offered at 35, which means it will be sold at that price. We term that the market— $34\frac{1}{4}$ —35. That is technical.

A stop order may be entered to buy 100 at 36 stop, which means that when the stock sells at or above that price, it immediately becomes a market order.

Senator, to answer your question, that might be for two purposes; one, to limit the loss on a short sale—

Senator GORE. I can see that.

Mr. SPRAGUE. And the other might be that the customer might feel that if the stock reached that price it would sell higher, but he was not interested in the current market.

Senator GORE. He is just an optimist, isn't he?

Mr. SPRAGUE. Does that explain to you, Senator, the character of it?

Senator GORE. Yes; I think it does. That is involved, sometimes, in these spreads, is it not? I do not want to divert you.

Mr. SPRAGUE. On the other side, the order to sell stock is a protective order, where the customer desires to limit his loss and wants protection at that point. In other words, he says—

Senator GORE. When he had sold short and did not want to ride down?

Mr. SPRAGUE. He was long in that case, and he did not want to take a chance.

Senator GORE. He did not want to get out and carry a loss. That is the way they do on the grain and cotton exchanges, I know.

Mr. SPRAGUE. May I proceed with the tabulation of the percentages, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. SPRAGUE. On October 23 we had a total of 930 orders—

Senator GORE. Last October?

Mr. SPRAGUE. Yes, sir. These were selected at random. My instructions were to go through the file and select at random and pick one large day out so we could get a comparison of the difference. This day showed 930 orders of which 27 were market orders. That is approximately 3 percent.

On October 20, 1933, we received 999 orders, of which 44 were market orders; approximately 4 percent.

On November 21, 1933, we received 968 orders, of which 23 were market orders; practically 2 percent.

On November 22 we received 581 orders of which 19 were market; approximately 3 percent.

Senator GORE. Was that on a Saturday?

Mr. SPRAGUE. I have no record of that here, sir.

The CHAIRMAN. What were the other orders that were not market orders?

Mr. SPRAGUE. They were limited orders, sir, limited as to price.

Senator TOWNSEND. Do you have the percentage there as to buy and sell?

Mr. SPRAGUE. No, sir.

Senator BARKLEY. Was that a fair average normal business day?

Mr. SPRAGUE. These were normal days, sir.

Senator BARKLEY. Was that a fair average over a year as to the percentage of market orders as compared with limited orders?

Mr. SPRAGUE. I have no adequate means of checking that, Senator. These were selected at random.

Senator GORE. You do not show how many limited orders or stop orders there were?

Mr. SPRAGUE. No, sir. These are all characterized as market orders as against limited orders—

Senator BARKLEY. What is the object of selecting a few at random unless it enables you to use it as an average?

Mr. SPRAGUE. These were selected at random because I wanted to show a general picture.

Senator BARKLEY. A general picture would call for a general average.

Mr. SPRAGUE. What I am attempting to show you is that these average days as against a day larger than the average would have an effect, where the provision is made—

Senator BARKLEY. Is the percentage any greater on a bigger day than on a smaller day?

Mr. SPRAGUE. Yes, sir; that is what I intended to show. There are 3 other days where the percentages are 3 percent, 1½, and 3 percent.

On July 21, 1933, which was an active day, we received 1,676 orders. There were 335 market orders. The percentage there was 20 percent.

Senator ADAMS. Was that a day of rising or falling?

Mr. SPRAGUE. I believe that was a day of falling prices.

Senator ADAMS. Do you get more market orders on a day of falling prices than you do on a day of rising prices?

Mr. SPRAGUE. I believe the percentage would be about the same. In other words, when we have an emergency market and the orders are sent to you directly, the brokers give them to you because they are hard of execution.

Senator ADAMS. In a time of a falling market you have those who are lending money on securities, and margins not being supplied those stocks are thrown on the market, are they not? Are they thrown on ordinarily as market orders or as limited orders?

Mr. SPRAGUE. You would have a greater percentage of orders made at the market in a day such as that, either on a rising or a falling market.

Senator GORE. They are taking to cover.

Senator ADAMS. Is it the practice of a bank or one who is loaning upon market securities, when they are forced to foreclose or sell, to turn them in to sell at the market or to fix the price?

Mr. SPRAGUE. That, sir, we have no way of telling.

Senator ADAMS. You have been there a long while, and I thought you could possibly answer that.

Mr. SPRAGUE. I would assume at most times, if the orders were not in the form of stock orders, they would be at the market.

Senator ADAMS. Would not that tend to increase the percentage of market orders on those days of decline when they were foreclosing on securities?

Mr. SPRAGUE. Yes; but I think the same thing is true, Senator, where you have market orders originating from customers who do not like the looks of the market and want to get out. It is not a question so much of margin as it is their feeling that they want to sell and be free.

Senator GORE. Before the margin is gone?

Mr. SPRAGUE. For protection purposes. I say I cannot identify what would come from banks or what would come from margin requirements. It is a question of their selling because of the feeling that they want to get out of the market.

I cite that because the provision of the bill states that specialists should only handle fixed-limit orders. It shows that in times of stress and bad markets the specialists perform a function that the other broker cannot perform, by handling market orders. It is a physical impossibility in many cases for brokers to handle the orders themselves.

Mr. PECORA. If that phrase were changed to "limited-price orders" instead of "fixed-price orders", would that relieve the hardship of which you speak?

Mr. SPRAGUE. I do not think that would change it, Mr. Pecora, because you still have limited orders. Whether you say fixed orders

or limited orders, it means practically the same thing, and it would prevent the commission houses from adequately performing the function which they do perform; that is, giving service to the public.

Mr. PECORA. What limitation, if any, would you put in the statute?

Mr. SPRAGUE. I do not think you can—

Mr. PECORA. You would not put any limitation in?

Mr. SPRAGUE. I do not think you can; sir.

Senator GORE. You think you would likely do more harm than good if you did?

Mr. SPRAGUE. Yes; I think it would be a very dangerous thing to do, because it puts a limit on your operation at a time when it is needed.

The CHAIRMAN. You do not think there ought to be any provision with reference to specialists at all?

Mr. SPRAGUE. Well, sir, my feeling is that we probably may not be perfect, but we are doing the best we can, and we certainly believe we should not be rigidly forced out of the business without an adequate examination and a thorough survey, which I do not believe can be done in a few months. I believe statistics are cold; that you cannot take statistics and make them live. The time at which a specialist really performs a function is in a time of emergency when called upon to fill a breach.

The CHAIRMAN. Are there no abuses at all with reference to specialists? Don't they become traders and all that sort of thing?

Mr. SPRAGUE. I believe we have to go on the assumption that men are honest, Mr. Chairman.

Senator BARKLEY. If we could do that we could repeal all criminal laws throughout the country.

Mr. SPRAGUE. They do not prevent crime.

Senator BARKLEY. But you would not repeal them on that account, would you?

Mr. SPRAGUE. No.

Senator GORE. I was wondering if it would be wise to put a provision in that the specialist should be honest?

Mr. SPRAGUE. The rules of the exchange do limit us in our tradings.

Senator GORE. You say there are times when the specialist steps in and closes the breach, or words to that effect. Describe that operation, please. That is what I want to get at.

Mr. SPRAGUE. You find many days, sir, of emergency where many selling orders pour into the market and the market will not take those orders. There is not sufficient buying power to absorb those selling orders. We do step into the breach in that case and we do purchase stocks when we cannot get the public to buy; we cannot get anybody but a speculator to buy.

Senator GORE. You take over those selling orders; you buy stock?

Mr. SPRAGUE. At a fair price; yes.

Senator GORE. Let me ask you this—because I am 100 percent ignorant on this business. Suppose steel is selling at 50 and I wire you or give you an order to buy steel at 49, and Senator Barkley gives an order to you to sell steel at 51. Does that create a situation where you function, and, if so, what do you do?

Mr. SPRAGUE. That might be answered in this way, Senator. As I understand it, you have given me an order to buy at 49?

Senator GORE. Yes I think maybe Steel will go up, but I do not want to pay 50; I am trying to buy a little below the last quotation. Senator BARKLEY thinks he can unload at 51. I thought maybe that was one of those breaches where you kind of work the situation out and serve both of us. Of course, you could not do both.

Senator BARKLEY. That situation itself creates a market.

Mr. SPRAGUE. Yes; so there is no problem

Senator ADAMS. You might put the man who sent the stock in to be sold at the market, at a point where his stock, normally running at \$30 a share in the absence of a market, would be left at the mercy of the speculator later to offer \$10, and that would be the only market.

Mr. SPRAGUE. Maybe I can make it a little clearer by a practical example.

Senator GORE. I want you to do that; but just before you do, let me ask you this: Further orders would have to drift in between those margins in order for you to function in that situation, would they not?

Senator TOWNSEND. No; because one is to buy and the other is to sell.

Mr. SPRAGUE. I do not quite get that clear. You have a limited order to buy at 49 and a limited order to sell at 51. In the absence of any other orders that creates a market.

Senator GORE. That is what I say, and further orders would have to come in in order for you to perform any function at all?

Mr. SPRAGUE. That is right, sir.

Senator GORE. And they would have to be market orders?

Mr. SPRAGUE. They might come at limits in between, or they might be market orders.

Senator BARKLEY. As long as you have only got those two orders you do not do anything at all; you could not?

Mr. SPRAGUE. I might choose to make a market in between by bidding 49½ on my own account—

Senator BARKLEY. But that still would not execute either the 49 or the 51 order?

Mr. SPRAGUE. No, sir; it would not.

Senator GORE. In some cases you do that?

Mr. SPRAGUE. Many times we create a market.

Senator GORE. I want to get at what you might do and what you sometimes do do.

Mr. SPRAGUE. It is a very simple case to explain.

The CHAIRMAN. In that case could you not, as a specialist, buy at 49 from Senator BARKLEY?

Senator BARKLEY. Not if I put in an order at 51.

Mr. SPRAGUE. No, sir; I could not buy. The rules provide specifically that while in possession of a market order to buy I cannot buy for my own account.

Senator GORE. That is one of the points that I was trying to bring out.

Mr. SPRAGUE. I cannot buy for my own account until I have filled that order. On the reverse I cannot, while in possession of an order to sell at the market, sell for my own account any securities until I have filled the order in hand. It also is provided that I cannot, while in possession of an order to buy at a limited price, buy for my own account at that price without first filling the orders I have in hand.

On the reverse side I cannot sell for my own account at a limited price until I have already sold my orders at that price.

Senator BULKLEY. Does anyone know you were in possession of it a given time, or is it all a matter of your own conscience to observe that rule?

Mr. SPRAGUE. I would say that is more or less my duty.

Senator BULKLEY. It is your duty, but in the enforcement of it do you rely wholly on your conscience or is there any way of checking it up?

Mr. SPRAGUE. I am impelled to trade at fair prices. I do not disclose my book; I can disclose my market, but not my book. In other words, if I have a market of  $49\frac{1}{2}$ -50 and I wanted 200 shares at  $49\frac{1}{2}$  and 300 offered at 50, I do not disclose what is above or what is below those prices.

Senator BULKLEY. I am not talking about a disclosure; I am talking about this question, that if you have, for instance, an order to sell at 49 and to buy at 50, you have a margin in there, and you could not accept either one of those for your own account, according to the rule?

Mr. SPRAGUE. No, sir.

Senator BULKLEY. But does anybody else know that you have those orders at that time?

Mr. SPRAGUE. Nobody knows, because there will be a transaction that will take place on those orders—

Senator BULKLEY. You understand that this is not personal at all, but what I mean is this, that if anyone should want to make a personal profit out of a situation like that, could he not do it without being detected?

Mr. SPRAGUE. No.

Senator BULKLEY. Why not?

Mr. SPRAGUE. Because the sale you make is public. It is printed on a ticket. It goes out, and that is the price at which the contract is made. A man wanting to buy at 50 while another man wants to sell at 49 must meet at some point between those two prices. I cannot intervene either personally or for any account in the transaction.

Senator BULKLEY. Suppose you should do it: how would you get caught? What would be the process of your getting caught?

Mr. SPRAGUE. You could not do it, because of the fact that it is a public transaction, and the man having an order to buy at 50 and seeing the transaction on the tape at  $49\frac{1}{2}$  would claim that price as his price.

Senator BULKLEY. If he happened to be looking at the ticker at the moment. But, of course, the majority of them send in from somewhere else, and they do not know at what moment the orders are executed.

Mr. SPRAGUE. I would like to explain that a little bit.

Senator BULKLEY. Yes; I would like to have you.

Mr. SPRAGUE. The houses themselves have set up forces to check on that. They check those transactions both as to time and as to place.

Senator BULKLEY. You mean that the broker through whom you received your order would be watching you?

Mr. SPRAGUE. Correct, sir. The broker is the guardian of his customer's account, and he sets up that function. If the customer

happens to be sitting in the office, he also can check it; but the function itself is under the supervision of the house, and it in turn must see that the customer receives a fair price. So the transaction, if made under 50, would entitle the buyer to stock at that price. Likewise, if made above 49, the seller would be entitled to it at that price. So the contracts would meet at a price which would be determined by the market.

Senator BULKLEY. Is there a record of the precise time at which all these transactions take place?

Mr. SPRAGUE. Yes, sir; there is a time record. Most houses have that facility, and it is quite generally used.

Senator TOWNSEND. Is there any record on your book of the time you receive the order?

Mr. SPRAGUE. No, sir; we have no time record.

Senator GORE. Reverting to my illustration, Mr. Sprague, when steel was selling at 50 I ordered you to buy at 49, and Senator Barkley ordered you to sell at 51. You cannot buy on your own account while my order is unexecuted?

Mr. SPRAGUE. At 49, sir; right.

Senator GORE. And you cannot sell at 51 while Senator Barkley's order is unexecuted?

Mr. SPRAGUE. No, sir.

Senator GORE. What can you do?

Mr. SPRAGUE. I might try between those limits to make an order for my own account at prices in between. I might bid 49½ or 50½.

Senator ADAMS. But you are limited to that narrow space there?

Mr. SPRAGUE. Yes, sir. I cannot trade or execute an order for my own account which would interfere with those orders.

Senator BARKLEY. You could execute an order for your own account at a definite figure, could you not? Or are you limited to executing market orders? You know what the market is all the time. If you have an order to buy stock at the market or sell at the market, until you have executed those orders you cannot buy or sell at the market in your own name, can you?

Mr. SPRAGUE. I might buy in the event that a seller came in—

Senator BARKLEY. If a seller came in, then he would sell to the man who had given you a market order to buy, would he not?

Mr. SPRAGUE. The procedure in that case would be that your buying order and selling order would meet at the price of the next sale.

Senator BARKLEY. They would cancel each other?

Senator GORE. Is that what is called a "cross-transaction"?

Mr. SPRAGUE. That is a cross transaction. Everything being equal and no other orders in the market, you would bid at a price which would be fair. If another order or orders enter into the transaction, they would be the determining factor in the price.

Senator BARKLEY. What percentage of your compensation is derived from your duties as a specialist as compared with your personal transactions?

Mr. SPRAGUE. I do not know that I could give you that in percentage figures. I would make more money in trading than I would in commissions; but I would also qualify that by saying that more money is made by buying stocks and carrying them through a period.

Senator ADAMS. You may lose on your own transactions, whereas a commission transaction is a profit to you?

Mr. SPRAGUE. Yes, sir. We very often lose. I can carry them over a period or determine that I would make the market in between. The function that I would like to outline is that by drawing the market together and buying for my own account I have stabilized and sustained the market and I do perform a function that benefits the buyer and the seller.

Senator GORE. I have understood that to be one of the functions, but I was trying to see how it happened.

Mr. SPRAGUE. In this way, sir. Using the example you gave me, that of orders at 49-51. I could quote my market at  $49\frac{1}{2}$ - $50\frac{1}{2}$ . A seller might come into the market and sell to me at  $49\frac{1}{2}$ . If my bid was not there he would have to sell at 49. After having bought a hundred at  $49\frac{1}{2}$  I then could close my market so that a subsequent buyer then would buy at 50 instead of 51, and in that way I have benefited both the buyer and the seller to the extent of a better market.

Senator GORE. If your order to buy exceeded your order to sell by 300 shares you would cancel them out as far as they were crossorders, and then you would have the rest left on your hands one way or the other?

Mr. SPRAGUE. No, Senator. If I had 300 to buy and only 100 to sell I could sell 200 for my own account, thereby drawing in all orders at the same price—

Senator GORE. How is that?

Mr. SPRAGUE. I say, if I had 300 to buy and only 100 to sell at the current market, I could sell 200 additional for my own account and satisfy all customers; but if I had three single hundreds to buy at the market and only 100 to sell at a price reflected by a fair market I could not buy 100 for one account without having claims from both other accounts for stock at the same price.

Senator BARKLEY. How do you get to be a specialist?

Mr. SPRAGUE. I, sir?

Senator BARKLEY. Anybody.

Mr. SPRAGUE. I would say it is mostly a matter of choice.

Senator BARKLEY. Choice of yourself or somebody else?

Mr. SPRAGUE. Choice of myself. Mr. Whitney said that a specialist could set himself up in business. We have had two other cases of that type. One is a request type, which would be that if the commission house felt that a fair market was not being maintained—and that very often happens because a specialist does not trade for his own account—they would ask some broker to open a book in particular stocks so they might give him their orders.

Senator BARKLEY. Do specialists have to be members of the exchange?

Mr. SPRAGUE. Yes, sir.

Senator BARKLEY. So you cannot walk in and go to specializing?

Mr. SPRAGUE. You cannot, sir. May I qualify myself a little bit? I am in my thirty-third year in Wall Street. I started when I was 14.

Senator GOLDSBOROUGH. Do I gather from your evidence that you do not think this act ought to prescribe anything in regard to specialists?



Mr. SPRAGUE. I would not be as broad as that. I would say that I do not think that the law should be so rigid that it would drive the present system out of business entirely. I am not afraid of regulation, but I want you to look at our case.

Senator GOLDSBOROUGH. Have you any suggestion that you want to make as to what ought to be included in the act in reference to regulating specialists?

Mr. SPRAGUE. Frankly, I have no suggestions to make. We are progressing as we go along. There are things that develop, and it is a series of evolutionary moves. My feeling in this is that by this rigid regulation you are depriving the public of a better market. If you drive the dealer out you are going to put the public at the mercy of a market that does not exist in many cases.

Senator GOLDSBOROUGH. And it is for that reason that you think the act ought not to have any such regulation?

Mr. SPRAGUE. I do not think it should be rigid, sir. I am perfectly willing to go over a period of time and let you examine into our case and see what we do, and get statistics, but not to take statistics over a short period of time and attempt by those statistics to tell whether the specialist performs his duty or not. You cannot set up a rule of thumb on this.

Senator BARKLEY. Being a specialist, and objecting to this provision, would you undertake to submit one to the committee for its consideration?

Mr. SPRAGUE. A provision, sir?

Senator BARKLEY. Yes.

Mr. SPRAGUE. I do not know of any at the moment in my mind.

Senator BARKLEY. You say you are not afraid of regulation, and you would not go so far as to say you object to any regulation. How far would you be willing to go in regulation?

Mr. SPRAGUE. I do not pretend to say that we are perfect. I think we have gone as far as we can go along the lines as they develop. We are perfectly willing to sit down and go over these various features over a length of time so that the thing can be studied from an impartial point of view and then see whether there are abuses that can be regulated.

Senator BARKLEY. Of course it is difficult for you or for anybody up in New York to sit down with this committee over a period of time and work out some provision that might be acceptable. We have the bill before us for consideration, and inasmuch as you object to what this bill provides, and you state that you are willing to be regulated, I was wondering if you could submit something in a concrete form that would meet your ideas.

Senator GOLDSBOROUGH. Your thought is that you might submit an amendment to section 10?

Mr. SPRAGUE. What I object to is that its rigidity drives us out of business.

Senator BARKLEY. Can you suggest some let-up on the rigidity so it would not drive you out of business?

Mr. SPRAGUE. We would like to take the matter under consideration and see if we can furnish you with a suggestion.

Senator BARKLEY. All right

Mr. ADLER. May I make a statement, Mr. Chairman?

The CHAIRMAN. Yes.

## STATEMENT OF PAUL ADLER, NEW YORK, N.Y.

The CHAIRMAN. Will you state your name so the reporter will know who is talking.

Mr. ADLER. Paul Adler; 15 Broad Street, New York.

Mr. PECORA. Will you further identify yourself by reference to your business?

Mr. ADLER. My business is that of a specialist.

Mr. PECORA. You are a member of the New York Stock Exchange?

Mr. ADLER. Yes, sir. I have seven partners, all members of the New York Stock Exchange, and we deal and specialize in about 50 issues.

Mr. PECORA. That is, you and your partners combined?

Mr. ADLER. Myself and my partners.

Senator BARKLEY. They are all specialists, too?

Mr. ADLER. Yes, sir.

Mr. PECORA. All floor operators?

Mr. ADLER. We do trading on the floor of the exchange.

Mr. PECORA. Will you give your firm name?

Mr. ADLER. Adler, Coleman & Co.

I think Mr. Pecora's suggestion was a good one, to take over a period of time the amount of stock dealt in by a specialist for his own account, also the stock handled for the account of others, and I think we could go over this matter and come back with a constructive suggestion. Certainly we would try to.

The important part of section 10, as you have heard it explained by others, is taking a liquid market out. In other words, the fewer the dealers and traders in any one thing the harder it is for the customer, a member of the public, to obtain a fair and reasonable market immediately. I speak for the traders on the floor plus the specialists. Twenty-five years ago a trading specialist was more or less unknown. Over a period of the last 25 years, not only by the desire of specialists to trade, but at the request of commission houses who are our customers, the trading specialist and the trading and dealing specialist firm has come into being. He has come into being more or less from a natural demand. For me to say that we should trade as a natural demand possibly might be out of order. There is a gentleman here representing one of the big international commission houses who is most emphatic in saying that he believes it furthers, aids, and abets his business, which is taking care of his customers, to have specialists every ready to deal and take up the slack in the market as they might occur.

Senator GORE. All of the 1,200 or 1,300 stocks listed are apportioned out among 25 or 30 posts?

Mr. ADLER. Yes, sir. At post 30, which is an inactive post, there are probably 200 or 300 stocks. There are several stocks which are very actively dealt in. They are taken care of by one firm of people.

Senator GORE. Very few people would care to be hitched to that post?

Mr. ADLER. No; it is good business. The commission is a little higher.

Would you care to hear Mr. Moore, who is a representative of a banking house that I mentioned, and who might give you one

short case where a specialist enabled him to execute an order for their foreign account? I think it is a rather interesting one.

The CHAIRMAN. The primary function of a specialist is to act on commission for another house?

Mr. ADLER. Yes

The CHAIRMAN. He is an agent; that is his primary function. When he goes to trading for himself he is acting in a different capacity altogether. Do you do both?

Mr. ADLER. Yes, sir.

The CHAIRMAN. That seems to be the question here, whether one man can act for others in 1 minute and then act for himself at the same time or in the next minute.

Mr. ADLER. I think a very good illustration of this is to hear a representative of a commission house who can tell you and let you judge of that situation.

Mr. SPRAGUE. I think that would be a good idea, because it brings out a point in question.

Senator BARKLEY. Have you finished all that you wish to say?

Mr. SPRAGUE. No, sir; I have a few more remarks, sir

Senator TOWNSEND. I think Mr. Sprague should be allowed to finish.

Senator BARKLEY. Are we going to have an afternoon session, Mr. Chairman?

The CHAIRMAN. Yes. There are several other people yet to be heard.

Senator GOLDSBOROUGH. Can we not have Mr. Sprague finish?

Mr. SPRAGUE. The suggestion was to introduce Mr. Moore as part of the corroboration of the general picture.

The CHAIRMAN. If you prefer to finish, go ahead.

Mr. SPRAGUE. I would like to, sir. I think the question of liability is very important in any general consideration. I do not think it is generally known that the specialist has a direct liability for every order he handles. In other words, I am paid, roughly, \$2.50 per hundred shares for the execution of an order. For the execution of that order I am absolutely responsible to that customer. I am also liable under contract for the making good of the customer's order. In other words, if I accept an order from a commission house to sell 100 shares of stock, and that house should fail, I must assume that contract. That is my liability. The same thing is true of a limited order. We have had many orders in very strenuous times, of large size. We cannot pass over by general disclosure the liability which attaches itself to us on a contract. I cannot give up the name of a commission house and by passing that name off pass my liability with it. I am held accountable for any contract I make.

I think that has been very much misunderstood, because in most cases we have been described as parasites who just simply sit there and take all that comes with no responsibility.

We also have no monopoly of orders. We receive a certain percentage of orders. Most of the orders that we receive are orders that cannot be readily executed by brokers. Brokers who can execute orders do so. It is a matter, then, as to whether we are to get them because of the fact that the orders are away from the market and cannot be handled by the broker, or that the emergency in the

market is such that they cannot fairly execute the orders and must leave them with us.

We have heard many times the fact described that we can tell by our books what the market is going to do, what the stock will do; that we have the whole picture in front of us and know exactly what is going to happen. That, sir, is a fallacy; that is untrue. I have a book of a corporation having 4,932,000 shares outstanding. This is an actual book of a day. The total orders on the book with a price range of 38 to 57, were 31,500 shares; that is, in the entire day's orders within that price range.

Mr. PECORA. What stock was that?

Mr. SPRAGUE. That, sir, was Sears, Roebuck, which is a fairly active stock.

Senator GORE. It fluctuated that much?

Mr. SPRAGUE. Yes, sir; that was the price range of orders on the book, between 38 and 57. There were in all 31,500 shares of stock entered on that day.

Senator GORE. What day was that?

Mr. SPRAGUE. That was last Monday, sir.

Senator BARKLEY. You mean 38 was the last price at which anybody wanted to buy and 57 was the last price at which anybody wanted to sell?

Mr. SPRAGUE. I quoted the price range because I am not sure whether there were more orders below that price and more above 57. In this book which I would like to leave with you, book B, there are 490,367 shares of stock, and the total orders on that entire day were 4,900 shares. That was all the orders on the book.

Senator BARKLEY. What stock was that?

Mr. SPRAGUE. Book B was New York, New Haven & Hartford Railroad Co. preferred stock. Book C, which is Postal Telegraph & Cable preferred stock, which is the only stock of that company listed, has 305,295 shares outstanding, and the total orders on the book were 4,900 shares.

I think if you will examine those books they will not tell you much as to what the market is going to do, but the character of the market.

Another preferred stock which I have—the total outstanding stock is 186,453 shares and the total orders on my book were 600 shares.

Senator GORE. What is the point you are making? I happened to be out for a moment. I am sorry.

Mr. SPRAGUE. The point I am making is that we have been charged with a monopoly of orders and therefore are in a position to know exactly what the stock is going to do and that therefore we can govern our trading and make money; that we have access to information that nobody else can get.

Senator GORE. That figure of 600 represents your orders?

Mr. SPRAGUE. It represents the total orders in that stock on that day, out of an issue of 186,453 shares.

Senator GORE. When you say "total orders", you mean the total orders that came in?

Mr. SPRAGUE. The total orders on my book for the entire day.

Senator GORE. Do you have any record of how many shares turned that day?

Mr. SPRAGUE. Yes, sir; 100; and I purchased them.

Senator BARKLEY. Most limited orders to buy are below the market, are they not?

Mr. SPRAGUE. They may be below or they may be above, depending on the market.

Senator BARKLEY. Of course if they are above and the market goes up, they would be executed. If they are below when it goes up, they will not be?

Mr. SPRAGUE. Right.

Senator BARKLEY. And the more market orders come in on a rising market the less likely limited orders below the market are to be executed?

Mr. SPRAGUE. That is right.

Senator BARKLEY. And the same on a declining market?

Mr. SPRAGUE. Yes, sir.

Mr. ADLER. I wanted to further say, in answer to your question, that while we know when we handle these orders that we have a certain number of orders, as Mr. Sprague explained to you we do not know what the other holders of the stock intend to do or will do when the stock goes up or down. While we might see very few sale orders in sight, we do not know what will happen or what some stockholder might make up his mind to do if the stock advances. We might have 500 or 600 to sell and we have no way of telling or deciding what some stockholder might do who may possibly have 10 or 50 or 100 shares of the stock.

Senator Fletcher, in answer to your question about the dual capacity, may I state that we have tried in every conceivable way to conduct our business properly, and there have been put into effect very stringent rules to make sure that no advantage is taken by a specialist in his dual capacity. Certainly suggestions along that line would be helpful. It has already been done by the exchange authorities, and I know Mr. Pecora knows the rules as well as I do, and that they are very strict and thorough rules protecting the public, not a specialist acting in a dual capacity.

The CHAIRMAN. I cannot quite understand how it can properly be claimed that the specialist under this act would have to go out of business simply because he is prohibited from trading. Why cannot that be separated and still preserve the specialist?

Mr. ADLER. I can answer that in this way, that a specialist does a certain volume of business in these inactive stocks, and it would be very difficult, I think, to find a specialist who would be able to cover these stocks. The public, therefore, would not get the markets as promptly. That might not be so very important. But the errors that can creep in and the liability are important. Mr. Sprague has an example here, Senator Fletcher, where he executed an order on a commission basis for 100 shares of stock. An error was made in that—and I will let Mr. Sprague take it up from this point to show you how that worked out and how it would be economically unsound for a specialist to take those risks which he must take in acting under his duty where he is only trading on a commission. I think Mr. Sprague has a very good example of what happened to him on 100 shares of a stock.

Mr. PECORA. Does not every broker take a risk of liability of error in executing an order?

Mr. ADLER. Yes; but he only executes one order at a time, whereas a specialist in an active time might be forced to handle a dozen or twenty orders and work at a much more rapid pace than any broker does that has an individual order.

Mr. PECORA. He can get other brokers to help out in times of activity of that sort.

Mr. ADLER. He does that.

Mr. SPRAGUE. Mr. Chairman, this is an actual case and explains, I think, very well, why it would be hard to obtain specialists in stocks of that character.

On July 26—this was in 1932—I sold in error 100 shares of stock at 36, preferred stock. That order was a clerical error left in my book that should have been canceled. By the time we had run down and found the error, which was done promptly, the report had been cabled of the purchase. Necessarily we had to make good on the contract and sell 100 shares at 36. We were able to cover that transaction on August 1 at 44½, which was a net loss of \$850 plus expenses accrued.

The shares traded in of that stock for the entire year were 10,200. That is on the average of about 100 shares per 3 business days. Total commissions, if I had had half of those would be \$255 for the entire year. If I had commissions on the entire transactions and represented both buyer and seller, my commissions would have amounted to \$510. So the net result of the error was about \$340 out of the entire year. It is hard to get men who will take that chance.

Mr. PECORA. What contention that you are seeking to make does that sustain?

Mr. SPRAGUE. The risk of accepting orders in stocks where the commissions are so scarce, without the ability to trade which the bill denies to specialists would cause us to pause appreciably before accepting that risk.

Senator GORE. Just what mistake did you make? I did not quite follow you.

Mr. SPRAGUE. We sold 100 shares of stock in error, through a clerical error.

Senator GORE. At 36?

Mr. SPRAGUE. Yes, sir; and we had to cover that transaction at 44½, which was a net loss of \$850.

Senator GORE. I was called out a minute ago and did not quite finish my interrogation, so I want to ask you this. Suppose you had an order to sell 500 shares of United States Steel at the market, and an order to buy 300 shares. I believe you stated that you have to execute the order as a whole.

Mr. SPRAGUE. If the orders were separate orders. If there was one order, we take that into consideration. You are talking of five single hundred-share orders?

Senator GORE. Here is what I have in mind. John Doe orders you to buy 500 shares of steel. Richard Roe orders you at the same time to sell 300 shares. As I understand you, if you fill those orders to buy 500 shares you have got to supply 200 shares in addition to the 300 that Richard Roe authorizes you to sell.

Mr. SPRAGUE. That would not necessarily follow.

Senator GORE. That is what I want to find out.

**Mr. SPRAGUE.** Where the orders are of the character you have described—where the order was 500 shares for one man and 300 shares for the other, then we would execute the 300-share order and attempt to execute the other 200 thereafter. If, on the other hand, you had five separate orders to sell and three separate orders to buy, then each of the sellers and each of the buyers would expect the next sales price, and it would be necessary for you to find a buyer for the other 200.

**Senator GORE.** Or else buy them yourself as a specialist?

**Mr. SPRAGUE.** That is correct.

**Senator GORE.** It looks to me like there is one function that the specialist really performs in carrying the market on.

**Mr. SPRAGUE.** Yes, sir. Mr. Chairman, I have a telegram from the San Francisco Exchange citing their experience in trying to operate without a specialist. There is also a letter from the Los Angeles Exchange which confirms that.

**Senator GORE.** They all tried it?

**Mr. SPRAGUE.** They tried without and found it was impossible to do business. I have letters from representative commission houses in New York citing facts, and I would like at this time, if you will hear him, to have Mr. Moore state personally to the committee his experience

The **CHAIRMAN.** Very well.

**STATEMENT OF HARRY H. MOORE, PARTNER IN THE FIRM OF HALLGARTEN & CO., NEW YORK, N.Y.**

The **CHAIRMAN.** Please state your name, address, and business for the record.

**Mr. MOORE.** My name is Harry H. Moore, 44 Pine Street, New York. I am a member of the New York Stock Exchange and a partner in the firm of Hallgarten & Co., which, by the way, has been in business for over 75 years.

I have never been a trader or a specialist, but for 25 years a commission broker for the customers of my firm, who are the public. I have been impressed by the value of trading at the posts in that it unquestionably facilitates the search for best prices for customers. I have observed over the years that the rules of the stock exchange governing specialists' trading progressively improved until today I am convinced that whenever a specialist trades for his own account he confers a benefit upon either a public buyer or seller; frequently both

I have executed selling orders in panics when my heart was gladdened by a specialist's bid to cover previously established short positions, or because of willingness to assume a long one at a price level higher than the public. I have, in rampant bull movements, bought stock for my customers cheaper than the selling public was willing to sell. These are not casual experiences but the rule at such times; and I believe the commission broker owes it to the situation to testify to the value of the practice.

I cite two personal experiences of very recent days, one to show the detriment in its absence and the other to prove the value to the public in its presence.

From Switzerland I received an order to buy a somewhat inactive stock, 1,000 shares at 80. The previous sale on the same day was 73. The specialist's book had for sale 100 at 76, 100 at 79, and 100 at 80—

Senator GORE. They had sold it at that?

Mr. MOORE. It had sold, Senator, at 73 just before I came in, and he had one in his book which he was willing to sell, a public order, at 76, another at 79, and another at 80. This specialist would not trade. I asked him to. It required 2 days to fill the order, with the last and bulk of the stock being bought at 80. When I finished the book bid was 70—\$10 below my last purchase. Had a selling order similar to my buying order happened to follow, the stock would have sold down to 60 and a 20-point over-all range established because a specialist would not trade.

Incidentally, I notice that stock today or yesterday was 60 bid, offered at 78—a typical example of a market without trading and the wide range at which the public must sell or buy its stocks without trading.

Mr. PECORA. Is that a usually inactive stock—the one you have reference to?

Mr. MOORE. It is a usually inactive stock; yes, sir.

Mr. PECORA. And a wide spread is observed in all inactive stocks, is it not? It is not exceptional to a particular issue such as you are referring to?

Mr. MOORE. I should say it is exceptional, Mr. Pecora, because when an inactive stock is in the hands of a trading specialist he does not allow that condition to exist; he makes a closer market.

The CHAIRMAN. What service did the specialist render that was of any particular value there?

Mr. MOORE. None, Senator, in this case. I am saying that this is a case where I did not have the benefit of his services by his trading being injected.

Mr. PECORA. He did not trade simply as a matter of personal disposition?

Mr. MOORE. Correct. It was certainly harrowing to me as I reflected that each one point of increased cost to my customer was \$1,000, and I verily believe that had I met a trading specialist I would have saved my customer at least \$5,000. It was also distressing to realize that I must leave the book with a bid 10 points below my last purchase.

Senator GORE. You say the stock closed at 70?

Mr. MOORE. Eighty, Senator, I paid for the last stock, and then the best bid when I finished my thousand-share order was 70.

Senator GORE. Did you sell at 70?

Mr. MOORE. I did. I bought my stock at 80. When I finished there was only a bid of 70 for the next seller who might come in.

Critics of the practice will say that this specialist benefited his customers by not offering to trade below their price—

Mr. PECORA. May I interrupt at this moment to ask you a question? You say you are a member of the exchange, and, of course, you are familiar with its rules. You know that a specialist today is under no duty to trade or make a market. When he does it, he does it as an act of volition and personal disposition on his part?



Mr. MOORE. Correct. I am not trying to prove that this specialist violated any particular rules of the exchange by not trading.

Mr. PECORA. No; I see the point you are trying to make; but so long as a specialist under the existing system has no duty to make the market or to support the market, the same thing that you are referring us to might happen at any time with any specialist in any stock?

Mr. MOORE. Correct.

Mr. PECORA. It all depends upon the whim, caprice, or the will of the specialist?

Mr. MOORE. Yes, sir.

Senator GORE. Is it your theory that his presence minimizes the risk?

Mr. MOORE. When a specialist does trade he benefits the commission broker and his customer.

Mr. PECORA. Do you think he trades at a disadvantage to himself as a rule?

Mr. MOORE. I think he endeavors not to, but quite frequently they trade at a disadvantage to themselves.

May I present the other case?

Mr. ADLER. May I just add one thing? I can safely say for the specialists that they do feel it their duty. They are not forced to trade, but they do feel it their duty to their customers, who are commission houses, to sustain and keep as close a market as possible, sometimes to their great disadvantage, and sometimes being forced into that position to do their duty to their customers. I could cite numerous instances at openings or in fast markets one way or the other, where we have felt it our duty to step into a breach whether it was profitable or not.

Mr. PECORA. Those instances where a specialist steps into the breach and has found it unprofitable to do so are comparatively rare, are they not?

Mr. ADLER. Well, they are not so rare.

Mr. PECORA. They are not nearly so frequent as cases where, through the medium of trading on your own account, it was at a profit to yourself?

Mr. ADLER. I just want to bring out the point that we do feel it a duty to our customers at all times, if possible, to sustain and keep a good market.

Mr. PECORA. Mr. Moore, whose appearance has been urged by you, is telling this committee of instances where a specialist ran away from the stock to the disadvantage of Mr. Moore's customers.

Mr. ADLER. Exactly.

Mr. PECORA. I do not see the force, then, of Mr. Moore's argument here to sustain the point that you are seeking to make.

Mr. ADLER. I think Mr. Moore is trying to show that if this specialist had traded it would have been better for the whole market in general on that particular issue.

Mr. PECORA. So long as the specialist is not under compulsion to trade, the same thing may happen over and over and over again?

Mr. ADLER. Exactly.

Mr. MOORE. That is correct, Mr. Pecora.

By contrast I want to cite here an instance in which a specialist did trade, hoping by the two instances to show the value of trading as against the damage of not trading.

Mr. PECORA. But, Mr. Moore, it is your candid belief that if specialists were placed under the compulsion of supporting the market they would be so eager to trade for their own account in any and all circumstances?

Mr. MOORE. I am unable to say that. That is a voluntary matter, and I presume it would be decided by each individual according to his capital and his inclination.

Mr. PECORA. And according to his interests?

Mr. MOORE. And according to his interests.

Mr. PECORA. His self-interest?

Mr. MOORE. His self-interest. A specialist trades as a matter of profit.

Mr. PECORA. Exactly.

Mr. MOORE. There is no question about that. We claim that his trading is done as a matter of profit.

A second instance which occurred in a fairly active, medium-priced stock, at an opening just the other day, was this. The closing sale the previous session was  $29\frac{7}{8}$ . There were brokers present with orders to buy 1,500 at the market, and the orders on the book of the specialist could only supply all of these at  $34\frac{1}{2}$ —

Senator GORE. What was the price?

Mr. MOORE. The stock had closed at  $28\frac{7}{8}$  the night before. This was the opening. No price had yet been established for the following day. There were brokers present who wished to buy at the market 1,500 shares, and the specialist could only supply all of these 1,500 shares at a price of  $34\frac{1}{2}$ , which would have been  $4\frac{5}{8}$  higher than the previous day's closing, and would have been a very severe fluctuation on a price of 30, well over 10 percent.

After calling for governors' advice and receiving approval, the specialist sold 1,500 shares for his own account at 31, thus establishing a price of only  $1\frac{1}{8}$  above the previous close, and in the following hour, with the purchasing power he thus established, he maintained a market at  $30\frac{5}{8}$  low and a high of 31, and into that market came numerous buyers and sellers in 100-share lots of stock. So in that time 1,700 more shares were traded in within the hour in that narrow range.

Mr. PECORA. What was the result to the specialist?

Mr. MOORE. His personal profit or loss result?

Mr. PECORA. Yes.

The CHAIRMAN. What did he make or lose?

Mr. MOORE. I could not answer that because I don't know. He had 1,300 shares that he was long on. That was the inventory that he had accumulated.

Mr. PECORA. For his own account?

Mr. MOORE. Yes, sir, in trading in previous days, and 200 shares he did not have to supply. He had to go short 200 shares. I presume on the 200 shares that he went short and which he covered at  $30\frac{5}{8}$  he got \$75 gross, for his expenses had to be deducted. What he made on his long inventory I don't know, because I don't know the cost.

I was there and saw this and was sufficiently pleased at the moderation of the overnight price change and the aftermath of an orderly stabilized market to make these notes of the incident.

In this instance the specialist benefited all public buyers and created a splendid after-market. He could only have benefited his booksellers by creating disorder. The balance of the result was beneficent, just as in the other case the result of the specialist not trading was damaging.

I think the public lacks education as to the value to it of the trading of a specialist. The customer or public buyer seldom knows that his purchase has cost him less because of it, or the public seller that he receives more because of it. The buying public, whose limited orders are overbid, usually denounces the specialist because his order is not executed—overlooking that in free and moving markets the overbidding is as likely as not to arise from other public buyers as from the specialist; and always in its criticism the public ignores the fact that the sellers, who are an equally important part of the public, are benefited by receiving higher prices. The selfishness of human nature limits his appraisal to his own disappointment, and the other side of the picture holds no interest for him.

It is educational to recall the transition from the ruthless, competitive trading specialist of my early experiences, who gleefully exploited the anxious commission broker, bent on faithful performance of service, to the cooperative, helpful trading specialist.

Trading by the specialist is a voluntary matter. Most specialists indulge in its practice and are willing to risk their capital for this purpose. Here and there one will not, and in such cases the disadvantage to the public stands out distinctly. One almost is inclined to wish that it were compulsory for all specialists to so perform.

Today the specialist's concept of service is as keen as that of the customer's specific agent, the commission broker. The specialist's limitations are written large in the law of the New York Stock Exchange, and he has responded willingly to the present-day philosophy of public service which inspired their adoption.

I thank you, Mr. Chairman.

Senator GORE. I want to ask a question of Mr. Sprague.

#### STATEMENT OF RAYMOND SPRAGUE—Resumed

Senator GORE. Mr. Sprague, you were talking awhile ago about these orders to buy above the market. You said a customer might give an order to buy above the market figure, and if the stock was active enough it might go higher?

Mr. SPRAGUE. Yes, sir.

Senator GORE. I can see how that might operate; but we have had testimony here as to the operation of pools and syndicates who are undoubtedly calculating on that very instinct of human nature and who apparently run the price up just to catch those fellows who are lying in wait to buy on the activity of the stock. In other words, these pools create activity and signs of activity and they might bid the stock up. Would there be any serious impairment of the freedom of the market if we were to put a stop to those fellows who calculate on that trend of the market? I can see how innocently John Doe and Richard Roe might give you an order to buy Steel at

51 when it was selling at 50. On the other hand, I can see how a group such as we have had testimony here concerning might take advantage of that very disposition to carry on the operations of these pools and syndicates. It looks to me like it would stop mischief if we prevent that.

Mr. SPRAGUE. Senator, to answer that, that order might have been placed by a man who had sold his stock out and did not want to lose it; he intended to replace it at a higher or lower value. In other words, he had a hundred shares of stock that he was in possession of and he decided to take his profit at the time with the idea that he would replace it at a lower figure. He might then feel that he would want the stock back either at a higher or lower figure—

Senator GORE. Figuring he had made a mistake?

Mr. SPRAGUE. Yes. I would say that those orders are fairly rare in my experience.

Senator GORE. Would it not be better to let him take the consequences of his mistake than to let a customer serve a sinister motive, if such there be—and I think there are at times in those who are engineering these pools and syndicates and just lying in wait for just such fellows as that.

Mr. SPRAGUE. I would hate to outlaw a man's right in that respect.

Senator GORE. To pay more for a thing than it is worth? Is that any serious impairment of a man's constitutional, inalienable right—to prevent him from paying more for a thing than is necessary?

Mr. SPRAGUE. He does not pay more for it until it arrives at that price.

Senator GORE. If he can buy it at 50 when he placed the order, and the order is not executed on his direction until it reaches 51, it looks to me like you are letting the lambs be fed to the wolves.

Mr. SPRAGUE. I never had a wolf on my side, Senator.

Senator GORE. You know there have been such enterprises in the past. You do not profess to be ignorant of that?

Mr. SPRAGUE. I have not read all of this testimony, but I believe that is a fact.

Senator GORE. That is, you believe there are pools and syndicates?

Mr. SPRAGUE. Oh, yes.

Senator GORE. You have a rule now, do you not, or you did have, that you cannot make a short sale at less than the last preceding long?

Mr. SPRAGUE. That is correct.

Senator GORE. Is not the point in that to keep a fellow from selling? Suppose steel is selling at 50 and a short operator comes in. You would not let him sell for less than 50?

Mr. SPRAGUE. That is, to maintain a long?

Senator GORE. You would not let him sell at 49?

Mr. SPRAGUE. No, sir.

Senator GORE. Why not, if you let a fellow buy above the market? I think it is a good rule, as little as I know about it. That is still the rule, is it not?

Mr. SPRAGUE. Yes, sir; it is.

Senator GORE. I can see that it prevents just hammering the price down like a triphammer, and I do not see why it would not work as a protection against some of the abuses that undoubtedly do exist and some that ought to be corrected and cut out and some of the

abuses that you people ought to help cut out. It seems to me that it should work both ways. If a man wants to sell stock for less than he can get for it, I think you ought to stop him from doing that. If he wants to pay more for a stock than he can buy it at, I think it ought to operate there. I am speaking without knowing all the intricacies of this business, but that is the way it looks to me at the moment.

Mr. ADLER. A man that owns stock may sell it below the last sale. A man who wants to purchase can buy it above the last sale if he chooses.

Senator GORE. I understand that. You can make a long sale at half what it is selling at, of course; but a man's motive of self interest will protect him against that. I think when a man offers to buy at above the market price he may have a perfectly legitimate motive, as you say, figuring if it goes that high it will go on up; but he might have some other motive that would not be justified or justifiable.

The CHAIRMAN. It is half past one, now, gentlemen, and we will take a recess until half past 2.

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

#### AFTERNOON SESSION

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

The CHAIRMAN. The committee will come to order, please. Mr. Sprague, I think Mr. Pecora wants to ask you a few questions.

Mr. SPRAGUE. All right.

#### STATEMENT OF RAYMOND SPRAGUE, NEW YORK CITY, MEMBER OF THE NEW YORK STOCK EXCHANGE AND A SPECIALIST—Resumed

Mr. PECORA. Mr Sprague, is it possible for a specialist to ascertain the trend of the market in the security in which he is specializing by the orders on his books?

Mr SPRAGUE. Mr. Pecora, to answer that question I would say that the orders on the books of a specialist do not indicate in general the trend; that the phenomenon of the market is very often that it rises through the volume of the stock and declines through the volume of bids. In that respect I would say that the book offers no trend.

Mr. PECORA. Take in the ordinary market, would the specialist be able to judge the trend of the market from the orders on his books?

Mr. SPRAGUE. I would say in that respect, not from the orders on his books but from the general trend of the general market.

Mr. PECORA. Do you mean that—

The CHAIRMAN (interposing). Wouldn't the orders on his books, being orders to sell or to buy so many shares, respectively, indicate somewhat the market trend?

Mr. SPRAGUE. To explain that, Mr. Chairman: In rising markets we very often find the volume of the selling orders is greater than the volume of the buying orders on our books; and in a declining

market the volume of the buying orders is greater than the volume of the selling orders on our books.

The CHAIRMAN. But that is not usually the case, is it?

Mr. SPRAGUE. That is quite often the case. I would say that in a majority of the times you would find that true. Now, the reason for that is that we have mostly limited orders on our books to sell, whereas the orders that show the trend of the market are orders executed by other brokers. So that the volume of the orders on our books usually are heavier on the selling side in a rising market, and heavier on the buying side in a declining market. Those orders are placed to purchase below the market, or placed to sell above the market. They have been limited as to their price at which to buy or sell.

The CHAIRMAN. According to that a specialist would have to do just the contrary to what his book indicated.

Mr. SPRAGUE. Very often that is true.

Mr. PECORA. Mr. Sprague, you know Mr Charles Wright, don't you?

Mr. SPRAGUE. I know Mr. Wright to speak to him.

Mr. PECORA. At least you know he is a specialist.

Mr. SPRAGUE. Yes, sir.

Mr. PECORA. On the floor of the New York Stock Exchange.

Mr. SPRAGUE. Yes, sir.

Mr. PECORA. And a very active one.

Mr. SPRAGUE. I presume so, although I have no personal knowledge of it myself.

Mr. PECORA. Well, now, he has given testimony before this committee within the last 2 weeks, and I will read to you a portion of his testimony on that point, and am going to ask you how far you would confirm what he testified to:

Mr. PECORA. And with that information—

That is, information obtained from knowledge of the buying and selling orders on his books:

And with that information are you not in a better position to determine what the trend of the market is going to be?

Mr. WRIGHT. No, sir.

Mr. PECORA. Why does not that information give you that advantage?

Mr. WRIGHT. I just told you.

Mr. PECORA. Because the trend of the market is the other way?

Mr. WRIGHT. Because the trend of the market is opposite to what the book is.

Mr. PECORA. Doesn't that give you knowledge of the trend of the market if it runs opposite from the trading indicated by the buying and selling orders on your book?

Mr. WRIGHT. Yes; you could say it did.

Mr. PECORA. Is not that an advantage?

Mr. WRIGHT. Sometimes, sometimes not.

Mr. PECORA. When is it an advantage and when is it a disadvantage?

Mr. WRIGHT. That I cannot answer. I would have to have a book in actual operation to be able to tell you.

Mr. PECORA. From your general knowledge and experience can you not tell us without having a concrete case before you?

Mr. WRIGHT. No, sir, I could not describe it.

Mr. PECORA. It is an advantage to one trading in the market to know what the trend of the market is likely to be, is it not?

Mr. WRIGHT. It certainly is.

Mr. PECORA. That is always an advantage, is it not?

Mr. WRIGHT. Yes.

Mr. PECORA You always have that advantage from the knowledge you have as a specialist, do you not?

Mr. WRIGHT If I always had that advantage, I would not ever lose money; and I very frequently lose money

Mr. PECORA. It might not be an advantage which conclusively would enable you to make money every time on a trade, but it is always an advantage, is it not, to have that knowledge?

Mr. WRIGHT Yes, sir; if you have it

Mr. PECORA. And the specialist has got it?

Mr. WRIGHT At times.

Mr. PECORA Has he not always got it?

Mr. WRIGHT. No, sir. Lots of times your books will bare and you don't have bids and offers on the stock What advantage is the book then?

Mr. PECORA. Then he probably would not trade; is not that so?

Mr. WRIGHT. Yes.

Now, that is the substance of the testimony given by Mr. Wright with regard to whether or not a specialist, because of the knowledge he has of the orders on his books to buy or sell stock that he specializes in, can judge the general trend of the market, or of that particular issue he is dealing in. Would you differ from the opinion Mr. Wright has expressed before this committee in the answers he made to the questions I have just read to you?

Mr. SPRAGUE. I would differ in this respect: That I do trade when there are no bids. I do trade when there are no offers. As far as the trend itself is concerned.—

Mr. PECORA (interposing). When you do it under those circumstances what is your purpose in doing it?

Mr. SPRAGUE. I create a market to an extent. I back my judgment to that extent, to the extent that I am wrong for the time being but I am right for the long time.

Mr. PECORA. That is usually done at the opening, isn't it?

Mr. SPRAGUE. Oh, no. I very often have had a book in an active stock, such as Sears-Roebuck, where my nearest bid would be a point and a half away from the offer.

Mr. PECORA. Mr. Wright was asked these other questions, to which he made these answers:

Mr. PECORA Are there times when, due to market conditions, a specialist makes the market for the stock?

Mr. WRIGHT Yes, sir

Mr. PECORA Under what circumstances is the specialist called upon to do that?

Mr. WRIGHT. When there are no bids or no offers of stock

Mr. PECORA. How does the specialist make the market in that situation?

Mr. WRIGHT He does it under the supervision of a governor of the exchange.

Mr. SPRAGUE. I do not think that question was clear, Mr. Pecora.

Mr. PECORA. Well, he answered it.

Mr. SPRAGUE. Well, I would say that I do not think his answer is correct, and for this reason: That he says when there are no bids or offers he makes the market under the supervision of a governor of the exchange. What he was referring to there, if I gather it correctly from his testimony, is that when, in the absence of bids, he very often is called upon to buy stock, that in that case a governor of the exchange supervises it, and sees that the price is fair. But it is an extraordinary case.

Mr. PECORA. When a specialist trades for his own account for the purpose of making a market or keeping the market close, does

he do it as a rule under circumstances that will tell him in advance he is going to lose by the operation?

Mr. SPRAGUE. I do not think you can say he will do it in advance with knowledge that he will lose by the transaction. But he takes a chance of losing. He also is using his judgment as to whether he will make a profit. It may be that he, in order to keep his market closer and more orderly, will quote his market closer and be closer.

Mr. PECORA. Were you ever a participant in any pool or joint account in a stock in which you were specializing?

Mr. SPRAGUE. I have never been a participant in any joint account, syndicate, or pool in my own stocks, nor have I been such participant in any other stock. I think they are rare.

Mr. PECORA. You think they are what?

Mr. SPRAGUE. On the part of specialists I think that is rare.

Mr. PECORA. What was that word?

Mr. SPRAGUE. Rare.

Mr. PECORA. Well, there has been considerable testimony presented to this committee to show that specialists have participated in pool operations for their own account.

Mr. SPRAGUE. In their own stock?

Mr. PECORA. In their stock; yes, sir.

Mr. SPRAGUE. Well, I have absolutely no knowledge of it, and my impression was that that was the exception and not the rule. It is rather the exception.

Mr. PECORA. It is what?

Mr. SPRAGUE. The exception.

Senator WALCOTT. And in connection with directors of the corporation in whose stock they were dealing?

Mr. PECORA. Yes; Senator Walcott, circumstances of that sort have only recently been brought to the notice of this committee in sworn testimony and documentary evidence.

Mr. SPRAGUE. May I say that I have been specializing since 1918, and I worked with specialists from 1912 on up to 1918; and I have traded as a firm and as an individual, and I have never had any such connection, and have never seen anybody in my stocks have such connection.

Mr. PECORA. Well, you yourself have heard of instances where specialists were participants in pool accounts trading in their stock, haven't you?

Mr. SPRAGUE. I have heard that recently.

Mr. PECORA. Did you hear it only recently?

Mr. SPRAGUE. I have never heard anything I could verify to that extent until recently. I have heard common gossip to that effect, but I have no absolute information.

Mr. PECORA. Have you heard that gossip on the floor of the exchange?

Mr. SPRAGUE. I have heard that gossip, I do not know whether on the floor or off the floor, years ago.

Mr. PECORA. I mean in recent years.

Mr. SPRAGUE. I would say that all that has come to my knowledge recently has been the testimony that you have had here.

Mr. PECORA. Don't you remember the testimony this committee heard in 1932? Take for instance the radio pool.



Mr. SPRAGUE. That is what I refer to.

Mr. PECORA. In which Mr. Meehan was a participant.

Mr. SPRAGUE. That is what I am referring to, both the Meehan and the Wright testimony.

Mr. PECORA. The Meehan testimony was given here in 1932, or rather testimony with regard to that particular pool operation; and Mr. Wright's testimony and Mr. Day's testimony were given here only within the last two weeks.

Mr. SPRAGUE. Well, I am referring to the——

Mr. PECORA (continuing). The testimony with regard to Mr. Meehan's pool related to pool operations back in 1928 and 1929. The testimony recently given by Mr. Wright and Mr. Day related to pool operations in the summer of 1933.

Mr. SPRAGUE. I have heard many times that a pool was operating here or there, but I never had any evidence of it.

Mr. PECORA. And you did not go out to seek the evidence, did you?

Mr. SPRAGUE. I did not.

Mr. PECORA. You did not go out and try to confirm the gossip you heard, did you?

Mr. SPRAGUE. I did not.

Mr. PECORA. What do you think is the extent to which a specialist trades as compared with the general or public trend in his stock? What would be a fair average or proportion?

Mr. SPRAGUE. I would be unable to answer that question directly.

Mr. PECORA. Then answer it from your own experience.

Mr. SPRAGUE. I would say that it varies with the activity of the market.

Mr. PECORA. What would be the proportion in your case?

Mr. SPRAGUE. Well, really I could not give you that except generally. I might say 15 or 20 or 25 percent.

Mr. PECORA. That is, from 15 to 25 percent of the trading.

Mr. SPRAGUE. I would say so; yes, sir.

Mr. PECORA. That is it in stock as to which you handled the book? That is, it is done by you as specialist for your own account?

Mr. SPRAGUE. You are asking me a question I have no knowledge of. I am merely guessing.

Mr. PECORA. I mean in your case.

Mr. SPRAGUE. I am unable to give you the facts. I am guessing.

Mr. PECORA. Your guess ought to be pretty good because based upon your own experience.

Mr. SPRAGUE. I do not know, because I have not sought that data.

Mr. PECORA. Couldn't you tell from your experience based on your daily operations over a number of years, about what proportion of the trading you, as a specialist, do for your own account as compared to the entire trading in the security for the public account?

Mr. SPRAGUE. I actually could figure it out for you if I went to the book and got the figures. I could not guess at it.

Mr. PECORA. I am not asking you to tell me exactly but to give me an approximation.

Mr. SPRAGUE. I would not want to give you an approximation. I would rather give you the facts.

Mr. PECORA. Give us an approximation if you can, and then if you want to supplement it with the actual figures after you have an opportunity to gather them meanwhile, do it.

Mr. SPRAGUE. I would rather gave you the actual figures than to guess at it. In the matter of inactive stocks I might participate to a much larger extent, because in that case I am needed. I can give you an instance of the other day where there were traded in 600 shares and I purchased 300 shares, and that would be a 50-percent participation. In some recent—

Mr. PECORA (interposing). I am asking you for the average based upon your experience as a specialist. I am not seeking to pin you down to isolated transactions but am trying to get your general average.

Mr. SPRAGUE. I am trying to give you that without making a statement to that effect. I would rather get the actual figures and tell them to you than to guess at it, which I do not think is a fair way to get it.

Mr. PECORA. Well, your guess would not be a guess based upon no knowledge, would it? It would be a guess based upon your full transactions over a period of years.

Mr. SPRAGUE. Not necessarily.

Mr. PECORA. Couldn't you tell this committee, generally or approximately, the percentage of the entire trading that is represented by the trades you make for your own account in the stocks of which you handle the books as specialist?

Mr. SPRAGUE. I have told you I cannot guess at it.

Mr. PECORA. I do not want you to guess, but to give us your best approximation, and if you want to call it a guess, all right, we will take it as a guess.

Mr. SPRAGUE. I have given it to you as 15 to 25 percent.

Mr. PECORA. You said from 15 to 25 percent of the trades

Mr. SPRAGUE. Yes, sir; that is a guess. I do not know.

Mr. PECORA. If you find subsequently that you have made a wild guess, give us the exact figures and we will let the record show them.

Mr. SPRAGUE. How long would you like that to cover altogether?

Mr. PECORA. Oh, I do not want to put you to any particular trouble about it. Anything that you think will operate to—

Mr. SPRAGUE (interposing). It does vary, you know.

Mr. PECORA (continuing). Anything that you think will operate to indicate a fair average.

Mr. SPRAGUE. All right.

Mr. PECORA. Mr. Sprague, how long have you been on the stock exchange?

Mr. SPRAGUE. Since 1918.

Mr. PECORA. Would you say that the trading you have done for your own account in the long run proved profitable to you?

Mr. SPRAGUE. I would say so, but I would qualify that by saying that in my instance in a great many stages of stocks I have taken a position and stayed with those positions, and I believe there is where the money is, and not in in-and-out trading. I might also say in reference to that, in the case of many stocks I might buy other securities on the same basis, either for short or long range.

Mr. PECORA. What advantage does the specialist see in giving support to a falling market?

Mr. SPRAGUE. The answer to that question is this: Now, I am not trying to place myself in the position of being a public benefactor, but—

Mr. PECORA (interposing). I am glad to hear you say that, because I am afraid the impression has been created here by statements of those who attempted to paint the specialist in just that role.

Mr. SPRAGUE. Well, now, you didn't let me finish my answer.

Mr. PECORA. Go ahead.

Mr. SPRAGUE. I say I do not wish to put myself on record as being a public benefactor, but give me a selfish motive and I create a better market in my stocks so that people will invest or speculate in my stocks. In that way a man can buy or sell with knowledge that there will be a market that he can buy or sell in. And I think to that extent it is an advantage to the investor just as well as it is to speculator, because when an investor seeks stocks for investment purposes the first thing he looks at is marketability, liquidity, how he is going to be able to get out once he gets in. And whether he is a speculator or an investor that is a factor.

Mr. PECORA. And by prompting the liquidity of the market in that way you are making it easier and more attractive for the public to step in and either invest or speculate.

Mr. SPRAGUE. Well, I would say that I would not be making it easier, but they do it. It does make for a liquid market, so they can buy and sell if necessary or thought desirable.

Mr. PECORA. And that makes it more attractive to the average investor or speculator to go into the market?

Mr. SPRAGUE. It supports the market to such an extent that they may feel they will have a follow-up market in even they want to sell their stock.

Mr. PECORA. And that encourages them to go into the market.

Mr. SPRAGUE. I would not say that would encourage them. I do not think they need any encouragement.

Mr. PECORA. The arguments made here repeatedly in favor of liquidity would suggest that liquidity is desirable, because it enables an individual at any time to go into the market and either buy or sell the security he is interested in.

Mr. SPRAGUE. Yes, sir; but you are talking now about the difference between liquidity and encouragement.

Mr. PECORA. Well, as liquidity decreases don't you think speculation or even investment may decrease?

Mr. SPRAGUE. It might be very much to the damage of the customer who had already invested in those securities. There are apt to be a lot of people in them and they are entitled to a fair market if you can make it for them.

Mr. PECORA. And wouldn't there be a fair market if the specialist were not permitted to buy or sell for his own account?

Mr. SPRAGUE. In many cases I am afraid not.

Mr. PECORA. Wouldn't the market in those cases be a market made by the public trading itself?

Mr. SPRAGUE. I think in that event it might be a very, very poor market, because at times an owner of stock wants to sell his security. He is very much damaged in that by reason of absence of a market.

Mr. PECORA. That is not likely to be true in the case of securities more or less actively traded in, is it?

Mr. SPRAGUE. At times inactive stocks of one day are active stocks of another day. They vary accordingly.

Mr. PECORA. Well, now, there are certain stocks listed on the stock exchange that are generally recognized throughout the year as active stocks, aren't there?

Mr. SPRAGUE. Yes, sir.

Mr. PECORA. As compared with other stocks on the list that are generally recognized throughout the year as being inactive stocks.

Mr. SPRAGUE. There is also a third class, semiactive stocks, which are very important, and they are stocks which need the protection of a fair and decent market.

Mr. PECORA. Now, to what extent does the specialist stand by the market, even in the case of active stocks, when there is a period of considerable activity that may disturb prices?

Mr. SPRAGUE. Not having had what you might call an active stock it is hard for me to answer you in behalf of such a stock. But I would say that trades in that stock mean that he narrows the quotations so that there is a better market, a more liquid market, for the purpose of anybody availing himself of it who is willing to buy or sell.

Mr. PECORA. Doesn't the specialist as a rule, even in the case of an active stock, run away from the support of the market when he thinks he is going to be hurt by standing by?

Mr. SPRAGUE. No, sir. In answer to that question I will say that I have seen many cases where men did not run away but stood there and took it and we had to do it in 1929.

Mr. PECORA. To what extent in 1929?

Mr. SPRAGUE. To a great extent.

Mr. PECORA. To what extent, if any?

Mr. SPRAGUE. I can cite my own instance, where I stood by and took blocks of stock with no bids on my book, and stabilized my market.

Mr. PECORA. How long did you stand by?

Mr. SPRAGUE. It was plenty long enough in one particular day.

Mr. PECORA. How long did you stand by?

Mr. SPRAGUE. One day at the very height of it.

Mr. PECORA. Because Mr. Wright told us about his standing by and getting murdered on July 18, last, in American Commercial Alcohol Corporation stock, and yet upon further inquiry he frankly admitted that after he was murdered he was left with a net profit of \$138,000.

Mr. SPRAGUE. Well, I was not murdered, but I stood by and stabilized the market when there were no bids.

Mr. PECORA. Just one minute.

Mr. SPRAGUE. Mr. Pecora, perhaps you would like to look at a book.

Mr. PECORA. Mr. Wright showed us his book in American Commercial Alcohol Corporation stock.

Mr. SPRAGUE. But this is a little bit different I am afraid.

Mr. PECORA. What issue is that?

Mr. SPRAGUE. This is the Curtiss-Wright, and shows the volume of orders at various times. The book I am handing you is Mr. Adler's

and he probably would explain it to you. That will give you an idea of a book of that type. There are several other books here of various types if you would like to look at them for the purpose of getting an idea of what the book means to you.

Mr. PECORA. Well, I will be glad to listen to any exposition Mr. Adler may want to make of this as a sample book.

Mr. ADLER. I should like to suggest in answer to your earlier questions as to whether a specialist by looking at his book makes up his mind which way the stock is going, that this is what we call a volume book, and the bids are to be found on the left side. Would you like to see one of these, Senator Walcott?

Mr. WALCOTT. I shall be glad to look at it.

Mr. SPRAGUE. And we have others if any other members of the committee wish to look at them.

Mr. PECORA. Go ahead, Mr. Adler.

Mr. ADLER. If we may develop this a little—and it will only take a few minutes—I should like to show you a very interesting point, where we inject a bid. In this type of stock it practically takes care of itself on the book [pointing on book]. This is what we call the real volume stock, and when it gets down to a level of this sort you will see on the bid side possibly a couple of thousand shares wanted at  $4\frac{1}{8}$  and a very small amount offered at  $4\frac{1}{4}$  and  $4\frac{3}{8}$ , and then the volume again starts on the next page at  $4\frac{1}{2}$ ,  $4\frac{5}{8}$ , and  $4\frac{3}{4}$ . I frankly tell you that the specialist trading in a situation of this sort does not hinder or help the situation. It is a more or less automatic job; in fact, we call these book markets. Now, I have here—

Mr. PECORA (interposing). Well, now, on this book that you have shown us and which we are using as a sample, do the entries indicate that the specialist is trading for his own account?

Mr. ADLER. There is no entry here to indicate that at all. Personally I wouldn't do that, trade for my own account. I watch the action of the stock and the activity of people who buy a block or a small amount, and stay with it. You see, I cannot trade in this stock under the rules of the New York Stock Exchange. The stock is  $4\frac{1}{8}$  bid by customers and offered at  $4\frac{1}{4}$ , and all sales at those prices are done for those customers, for others. I am prohibited from dealing in that stock unless I buy  $4\frac{1}{4}$  stock.

Mr. PECORA. Give us an example of what you say, under what circumstances you would trade or have traded.

Mr. ADLER. I will be very glad to do so.

Mr. PECORA. Have you such a book here?

Mr. ADLER. I should like first to give you an actual example of a trade that I made last week, and I can also give you an example of a trading account under the same conditions where I made a profit. Last week the market in Wilson & Co. preferred was 73 bid and offered at  $74\frac{1}{2}$ , and the last sale was  $74\frac{1}{2}$ .

Mr. PECORA. Is that one of the stocks on the list—

Mr. ADLER (interposing). In which I specialize.

Mr. PECORA. You characterize as an active stock?

Mr. ADLER. No, that is in the semiaactive class. That is the class where the specialist's trading really counts for more.

A broker walked in from a firm and said, "I have 1,300 shares of this stock to sell at the market." And I said, "Well, there is a hundred wanted at 73 and a hundred at 72 and a couple of hundred

at 70." He said, "Well, I don't want to sell them there." I said, "I will give you 73½ for the 1,300 shares." He said to me, "I don't want to sell it down a dollar or a half dollar without conferring with my customer." I said, "By all means, go back to your telephone. Tell your customer that your specialist will buy his entire block at 73½ if he wants to sell them."

He went back to his phone. As it happened, he told me the order was from Australia, but the office partner had instructions to handle it, and the office partner, after deliberating, sold the 1,300 shares to me at 73½.

Now, the interesting part of that is, Mr. Pecora, that if I had not made that bid and he had sold the stock in the open market he might have sold it down to 68. As it subsequently developed, I got rid of 100 shares of this lot which I had purchased at 74½. Then some other broker came in and sold a couple of hundred at 73. Then I had to buy a couple of hundred at 72. Then it sold at 71. And the next morning there was 600 for sale at 70, which I bought, after conferring in the same manner with the broker.

Now, luckily, the next day this stock rallied to between 73 and 74 and I was able to liquidate some stock. As it happened, the following day an announcement came out in the morning paper that the packing stocks, or the packers, were under observation or scrutiny by a Government committee, and they broke badly. But I frankly, had gotten out of some of my stock. The packing companies were under inquiry. In that case I really frankly think we made a liberal bid. The customer was very satisfied. He had all opportunity to make up his mind whether he wanted to sell it or not. He might have come back to me and said, "No; I don't want to sell you that stock. You handle that order for me." Then, as luck might have had it, I might have sold the stock at 74½ or 74¾, or I might have been forced to sell it all the way down if the market happened to break or that particular stock had started down.

Mr. PECORA. That is a chance that everybody takes?

Mr. ADLER. That is a perfectly legitimate chance with an order. However, by my making this bid at that moment it satisfied that customer.

Now, there is just one more instance I would like to give you of an interesting happening.

Mr. PECORA. Before you give that instance, would you say, Mr. Adler, that such an act on the part of the specialist enables the keeping of a closer market?

Mr. ADLER. I think so, Mr. Pecora.

Mr. PECORA. A narrower spread between bid and asked?

Mr. ADLER. I think it does two important things, and I do not like to appear one-sided on the thing.

Mr. PECORA. That is one of the important things you advocate for it?

Mr. ADLER. Yes.

Mr. PECORA. Doesn't that have a tendency to encourage persons to speculate?

Mr. ADLER. I would not call that encouragement. That is, a man that holds 1,300 shares of Wilson preferred stock—naturally an investment—and my making that bid at that time enabled this man

to switch his entire investment. He might have wanted to sell that and buy something else, and his buying might have been contingent on his getting a fair price for that stock.

Mr. PECORA. A general effect flowing from such operations on the part of the specialist, resulting as it does in the making of a narrower or closer market, is an incentive to speculation on the part of the public, isn't it?

Mr. ADLER. I would say it performs a function that an investor—an investor, as this case showed—had a chance to get out when he felt like it. In other words, it created a very good market for the investment.

Mr. PECORA. By the preserving of narrow markets or a close spread between bid and asked prices encouragement is given to the general public to take a chance on speculation if they are speculatively inclined, doesn't it?

Mr. ADLER. I always had a theory on that, definite one, that an investor when he sells something is not very much interested whether he sells it to a speculator or a specialist or anybody else.

Mr. PECORA. He is only interested in the price he gets?

Mr. ADLER. And the fact that the market is there is made either by another investor or a specialist or a speculator. And we will say that the speculator or the investor is attracted to a stock where there is a better market. I think not only for the speculator; it goes for all three classes.

Mr. PECORA. The better market would include the feature of a narrower spread between bid and asked prices?

Mr. ADLER. That is what we term as a good market.

Mr. PECORA. Yes.

Mr. ADLER. And that is what the commission houses require of us.

Mr. PECORA. So that by keeping a narrow market or keeping the market close in these stocks that you handle you encourage persons to trade in those stocks, don't you?

Mr. ADLER. Well—

Mr. PECORA. Whether that be your purpose or not, that is the effect of maintaining a close market, isn't it?

Mr. ADLER. I don't think it would encourage speculation in that stock.

Mr. PECORA. Doesn't it encourage trading in the stock?

Mr. ADLER. Well, our theory is this: I am a specialist in a tobacco stock, and I say if I make a good close market in that stock the investor or the trading public will buy or sell that property much more readily than trading in something that has a terrifically wide spread.

Mr. PECORA. Exactly. That is just the point I am seeking to make, Mr. Adler, and that is a necessary result which flows from the making of a close market or keeping within as narrow a range as possible, the spread between bid and asked prices, isn't it?

Mr. ADLER. I think it would penalize a buyer or a seller if I did not make it as close as possible. Don't you?

Mr. PECORA. I do. Certainly. That is just the point I am seeking to make, that one of the results directly flowing from the function of the specialist, this useful function that you refer to of the specialist, trading in a manner for his own account that enables him to

make a close market, is that the market is made more attractive to the average speculator to trade in that stock.

Mr. ADLER. Well, couldn't we say average speculator or investor?

Mr. PECORA. Or investor; yes.

Mr. ADLER. Yes; I think an investor.

Mr. PECORA. Yes; the trader.

Mr. ADLER. I would not want to say that we make a market close for the average speculator. I think it is very important when I make a close market if possible in American Tobacco preferred, which I do whenever I can; I think that is important from an investment angle.

Mr. PECORA. And don't you think that adds to the amount of trading that the public indulges in in that security?

Mr. ADLER. In that particular security? Yes, I do.

Mr. PECORA. Yes. That results in more business for the broker and more commissions?

Mr. ADLER. Yes.

Senator WALCOTT. Although it might be an entirely investment market or investment stock?

Mr. PECORA. Yes.

Mr. ADLER. Entirely an investment stock, because most of my activity I think comes in the less active issues which are more of an investment type. But I am a specialist in quite a number.

Let me explain to you one thing that happened, as I remember it very distinctly. In the last day of the panic in 1929, which is one of the proud moments of our career as specialists and our firm, we had 1,500 shares of American Tobacco preferred to sell at the market in single lots at quarter of 3, and the best bid was either par or \$95 a share, with the last sale 115.

Now, you and I know very well that when American Tobacco preferred comes on the market that is the best stock—or in my opinion one of the finest preferred stocks there is.

Mr. PECORA. You will probably get more orders tomorrow. [Laughter.]

Mr. ADLER. My partner is sitting here, and I said to him at that time, I said, "I am not going to let this stock sell down to par." And we sent a message to each one of the brokers that had given us this order, that had entrusted this order to us, that we would guaranty them the bid price. Now, I don't remember whether bid was par or 95. We said we would guarantee them the bid price overnight.

In other words, if that stock had opened at 80 the next morning, I was bound to take 1,500 shares at 95, and that is actual fact. We guaranteed them the bid price overnight.

The next morning every order was in there again to sell at the market, and a gentleman walked in with 1,500 shares of American Tobacco preferred to buy at 115, and I am not quite sure of the fraction at which I sold him this stock, but it was between 114 and 115, and in opening at that figure I had a couple of hundred more to sell, which I took for my own account and gambled my way out of.

And what I think is one of the important functions is to protect a stock in that way. Now, I dare say I cannot afford to do that every day, but that is one of the ones that I remember very well.

The CHAIRMAN. He wanted 95 and sold at 114?



Mr. ADLER. I did not buy it at all. I did not let stock sell. I did not trade in the stock for my own account at all. I took a chance on losing some money, not much, but held that sale up overnight until the market recovered to an extent to execute those orders properly—at least what I thought was properly.

That might happen, Mr. Pecora, a dozen, fifty, or a hundred times a day in a small way, where there is no bid for a stock and I will quote this stock 62, 63, and I will guarantee a man 62 for his stock. That is what is termed "stopping a hundred" for a man. In other words, I guarantee him a 62 price and maybe I sell it at 62½ or three quarters and maybe I don't.

Now, frankly, I do not do that every minute of the time. But one of my duties as a specialist is, if possible, to maintain a fair market for my customers, because if I do not, I am going to have competition the next week and he is going to get the business. That is one of the ways I have to trade to keep my business together.

Mr. PECORA. That is to build up a good will?

Mr. ADLER. Exactly. That is advertising account.

Mr. PECORA. Just as a department store or any store will offer a special sale of a commodity or give an article of merchandise to you even below the cost price?

Mr. ADLER. Yes; but I cannot cut the rates.

Senator TOWNSEND. Suppose you had had an order to buy American Tobacco at the market the next morning?

Mr. ADLER. Supposing I had had an order to buy it at the market?

Senator TOWNSEND. Yes, the 1,500 shares; suppose you had had an order to buy 1,500 shares at the market. What would have been your course?

Mr. ADLER. Supposing I had had that order?

Senator TOWNSEND. Yes; or that some broker had given it to you.

Mr. ADLER. Some broker has given me an order to buy 1,500 at the market while I had 1,500 shares to sell of the other brokers?

Senator TOWNSEND. Yes.

Mr. ADLER. I would have to arrive at a fair price. I might do that in consultation with another governor of the stock exchange to arrive at a fair price where both of my clients are going to be perfectly well satisfied. The fair price would be based on the other orders in the stock. In other words, if the stock had developed where there was stock wanted at 110 and offered at 115, after conferring with my partners and possibly another governor of the exchange, I might open that stock at 113 or 112½, some figure to arrive at where both people are perfectly well satisfied, because they are both my clients and they both pay me the identical commission.

May I just add one thing before I forget it, Mr. Pecora?

Mr. PECORA. Yes.

Mr. ADLER. And explain it to the gentlemen of the committee. That is that any unusual movement in one of the stocks—for instance, before a stock is allowed to break perhaps 3 or 5 points a member of the Business Conduct Committee is usually sent for, the situation gone over, and then the specialist is told, "Well, you may trade at that price because the situation demands it." But in all unusual occasions one of the Business Conduct Committee or one of some other committee must be sent for to confirm that price. In fact, I as a governor of the exchange, send for a member of the

Business Conduct Committee myself on rare occasions when I have an unusual price movement in the stock.

Mr. PECORA. And by the way, Mr. Adler, in view of the fact that you have mentioned that subject, how many of the governors of the stock exchange are also specialists?

Mr. ADLER. I think 7.

Mr. PECORA. Only 7?

Mr. ADLER. I think that is the count. I am not sure.

Mr. PECORA. Seven out of the 40?

Mr. ADLER. Maybe it is—it is either 7 or 10. Someone mentioned to me that there were 7 not long ago, but I know—or at least I am very well certain—that there are not over 10. I think the number is 7.

Mr. PECORA. I have heard the number placed at 15.

Mr. ADLER. Well, if I had a Stock Exchange directory I could verify it very quickly, if there is one in the house. I can find that out for you before I leave.

Mr. PECORA. In what proportion of cases where you trade for your own account for any purpose whatsoever, either to support the market or to create a market or to maintain a close market, have you incurred losses in the trading as compared with the number of cases where your trading is at a profit to yourself?

Mr. ADLER. I do not think the number of times we take losses is as against the number of times we take profits.

Mr. PECORA. Give us that, and then you can make any explanation you want of that or bring in any collateral matter that you may want to bring in.

Mr. ADLER. I could not really tell the number of, we will say, the winning trades.

Mr. PECORA. The proportion, I mean.

Mr. ADLER. The proportion?

Mr. PECORA. The general proportion.

Mr. ADLER. But I know the theory of our trading is this, that if we are wrong get out, and if we are right stay in. So, I might make 4 trades out of 5 that are losing trades, and on the fifth one I might possibly show a profit on the whole thing.

Mr. PECORA. Then let me put it this way: Taking the trading for each day as a unit, in what proportion of your daily tradings do your trades for your own account show profits, as against the proportion in which they show losses?

Mr. ADLER. I never really—I know we have done nicely at times. For instance, from last July on I could not get right for months. [Laughter.] I was in about 16 businesses all at once. I got very optimistic, and I am still optimistic.

Mr. PECORA. Did you get right by the end of the year?

Mr. ADLER. Well, I find that this rally or improvement in general prices has helped us be right to a certain extent, but I am an optimist and I am going to stick to my story, and I am going to keep those stocks.

Mr. PECORA. Could you give the committee any enlightenment along the lines I have asked for based upon your own personal experience?

Mr. ADLER. On the actual number of profits made during the day against losses? I can guess at it.

Mr. PECORA. No; I mean taking each day's trading as a unit, not each trade during the day but the entire trading each day as a separate unit. On how many days does the trading that you engage in for your own account result in a profit to you throughout the business year, as compared to the number of days that your trading results in a loss to you?

Mr. ADLER. I think we make money 3 out of 5 days. I wish it was bigger.

Mr. PECORA. And at the end of the year you are always on the right side of the ledger?

Mr. ADLER. We have been so far.

Mr. PECORA. You would not say that is true of the general public trader, would you?

Mr. ADLER. Well, it is a peculiar thing, Mr. Pecora. I have done very well as a business. It is a business with us. It is not a trading business. In my own personal investment which we made with the money that we had earned I did exactly what everybody else did. I lost a very handsome fortune in the best stocks in the world. I had the finest looking list that I had ever seen, and I did just what everyone else did; I kept them too long. I got "murdered."

Senator WALCOTT. That was from 1929?

Mr. ADLER. We will say I started to invest—I have been in business for 25 years. I have been a member of the stock exchange since 1917.

Mr. PECORA. You have incurred heavy losses in common with most persons in the market when you took a line of stocks for a long period of time?

Mr. ADLER. This is both in my time and as a personal investment?

Mr. PECORA. Yes.

Mr. ADLER. Yes, sir. We have incurred heavy losses in our daily trading.

Mr. PECORA. But your transactions as a specialist, undertaken for purposes of giving support to the market or creating a market, and so forth, result in profits to you from the beginning to the end of the year as a whole?

Mr. ADLER. I think our main profits are made from the beginning to the end of the year as a whole in being right or wrong on the market, not on the specialist jobbing. In other words, I am probably going to be right this year because I have got stocks.

Mr. PECORA. There is a directory of the stock exchange.

Mr. SPRAGUE (examining directory). I am checking it, Mr. Pecora. It shows seven to my count. I am just going through it again.

Mr. ADLER. May I check it?

Mr. SPRAGUE. Yes; you check it.

(Mr. Adler proceeded to check the directory.)

The CHAIRMAN. Then your business as a specialist is a perfectly safe business? You run no risks there, and the commissions are fairly good pay?

Mr. SPRAGUE. I would not say we run no risk.

Mr. ADLER. Our risks are terrific at times, not every day. It is a legitimate business man's risk. My risks in 1929 in the panic, frankly, I did not know whether I was broke or not, I admit, about 7 nights in a week. Because, as Mr. Sprague explained this morning, when I bought a block of stock for another customer, for another

house, if the other house failed and could not take it in I must, and during 1929 for those few weeks that was quite a worry, because I did have some very fine supporting orders and some very fine buying orders. Executing them from those people at \$2.50 a hundred and having to guarantee the contract, in those days, or in days like last July, when we did not know what was happening, that is a big order.

Mr. PECORA. I may say, Mr. Chairman, that we will have some evidence to present to the committee that has been culled from the returns to the questionnaires that we sent out to members of the New York Stock Exchange that will show in their own figures the outcome to the members of the exchange of their own trading.

Mr. ADLER. May I add that in our particular business we have a couple of side lines. I do not do any margin business in our firm whatsoever, but we have what we call an arbitrage department, and we do a little in the commodity markets for our own account.

Mr. PECORA. Mr. Adler, while you are here I want to ask you if you care to discuss with this committee or tell this committee your views concerning stop-loss orders?

Mr. ADLER. Stop-loss orders as far as a broker is concerned are very difficult orders to execute and to give satisfaction on. Why? A sell stop order when it is elected and becomes a market order is a sell order in a weak market. The market must be weak or the order would not be elected, as we call it. Therefore, you have a sell order in a weak market. To execute a sell order in a weak market with any degree of proficiency is a very difficult thing to do.

Mr. PECORA. What is the effect on the trend of the execution of, say, a substantial volume of stop-loss orders?

Mr. ADLER. It might develop at times, at rare times, into a serious situation. I can answer that in this way, though: At the present time there are very few stop orders. In fact, I have a list here, if you don't mind my referring to a note, because I thought you might be interested in that particular thing. In Curtiss-Wright I have orders to buy on my book, which you have in front of you, 82,000 shares. I have sell orders for 118,000 shares. And my total stop orders on the buy side are 200 shares, and my total sell stop orders are 1,100 shares. So you can see that the percentage of stop orders is not big.

In Tobacco B, in which I have bids of 6,300 shares total in the book, as against offers of 8,500 shares, I have 100 shares to buy on stop and 400 shares to sell on stop in the entire book.

I will frankly say that at times a large volume of stop orders in a stock can seriously disturb that market, but as a general rule—and I think that our ideas are to do this for general times and not for one specific day out of a hundred—the stop orders are not an important factor.

And I tell you one thing, though, that they are very difficult orders for a specialist to execute with any degree of success.

Senator WALCOTT. Suppose a broker goes to you as a specialist and you are willing, which is against the laws of the stock exchange, but you are willing to give him the picture that you have just given us now. A broker knows pretty well what to do in the way of executing orders buy or sell for the next 24 hours, because you are going to clear up that situation if you can.

Mr. ADLER. I have always been a staunch advocate of not giving out the books.

Senator WALCOTT. Exactly; but I wanted to emphasize that here, because he has given you a perfect picture as to what to do if you are going to speculate in that stock after tomorrow. For instance, if that were today's picture, you would know exactly what to do tomorrow if you got the inside secret from the specialist.

Mr. PECORA. That information is possessed by the specialist, necessarily, from the fact that he maintains a book

Senator WALCOTT. It is always possessed by him, but it should never be divulged to an outside broker.

Mr. PECORA. There is a provision in this bill to that effect.

Senator WALCOTT. I wanted to bring that out, though, because there is a perfect picture.

Mr. ADLER. Here is the book on the J. C. Penney Co. at the close of business February 26, 1934. When that stock opens on February 27, the next day, there might be a brand new picture in there. In other words, I might have all kinds of orders to buy and sell, depending possibly upon what general news had come out, or what particular news has come out on this stock.

Senator WALCOTT. Exactly; but before you had cleaned up on that picture there, if you had had the picture, say, at 2 o'clock in the afternoon, if you had divulged it to a broker, or if you were acting for him, you would know pretty well what to advise that broker.

Mr. ADLER. If you can make that a little clearer to me—I confess I am a little dense on that question. In other words, is this the point, that if there were a preponderance of buy or sell orders, and I informed somebody—

Senator WALCOTT. If, as a specialist, you knew all the orders that had come in on a certain stock during the day, it would be a very material guide as to what to do, provided you were just going in and out, making turns.

Mr. PECORA. In other words, it would inform you on the trend, and you could be guided by it in trading for your own account.

Senator WALCOTT. It is always of value to a man who is speculating to know whether there is a long or short interest in a certain stock, is it not?

Mr. ADLER. I do not think so. It does not do me any good.

Senator WALCOTT. You are the only one I have ever heard say that.

Mr. ADLER. I have seen some of the biggest short interests right in the last few years, and I confess I thought they were all wrong. I saw the market go down through these books for 3 years, and I knew very well I was all wrong, and I saw it right under my own eyes.

Senator WALCOTT. I am talking about the technical position of a specialist.

Mr. ADLER. I am even talking about technical positions with my own stock, Senator. I was not successful on the short side, in spite of seeing other people sell stock short.

Senator WALCOTT. That is a little different thing. You are avoiding my question.

Mr. ADLER. I am not trying to avoid it.

Senator WALCOTT. I do not think you are, but you are avoiding it unintentionally. The situation I am describing is that of an in-and-

out man, what we call a ticker-tape watcher. He sits there all day and watches the tape back and forth. If he had the exact position of all the stocks, either for sale or for buy, of the specialist in that stock—if he could get that picture, say, at 2 o'clock, he probably could make a turn before the clean-up that night.

Mr. ADLER. I do not think he could.

Senator WALCOTT. I think he could.

Mr. ADLER. Because I find it difficult enough to make that turn for myself, and I am naturally in a position to do it much more quickly than he is.

As I say, I am a firm advocate of not divulging the contents of the books. I think that these orders, which are given to me by clients, should be kept in my book.

Senator WALCOTT. I think that is the only concern of a Federal Government, or a State government, to see that a position is not divulged. I am not sure that it is a Federal function, either. It may be a State function. But, at any rate, that is getting into details.

Mr. ADLER. Perhaps Mr. Sprague can answer that a little better than I can.

Mr. SPRAGUE. Senator, I wonder whether you are referring to the presence of stop orders on the book or general orders?

Senator WALCOTT. I am referring to the whole picture, the buying and the selling orders and the stop orders, on both sides.

Mr. SPRAGUE. On stop orders the specialist is absolutely prohibited from initiating a transaction. As to the general picture, as I tried to explain before, I do not think the book truly reflects the situation, unless you guess at the way it goes. If you have a volume of stock on the up side, the phenomenon of the market is that it goes through all stock. You may not have any near bids. Ordinarily a man looking at it will say "there is the place to sell it, because all this stock is overhead", and yet if you sell you will find you are wrong nine times out of ten.

Mr. ADLER. Let us take this Curtiss-Wright book. They started to buy stock at  $4\frac{1}{4}$  and  $4\frac{3}{8}$ . The bids on my book still might be  $4\frac{1}{8}$ . Then the stock starts to go through a half, which, as you see, in front of you, is full of stock. It looks as if there is a lot of stock there. I do not keep the buy orders to put that stock up, because the buy orders must be at the market, or the stock would not go up. In other words, the stock would not go up and through  $4\frac{1}{2}$  if everybody put in orders to buy at  $4\frac{1}{4}$ . In order for that stock to go up, of necessity those orders must be at the market, which carries the stock through the price. I frankly confess that when I first got on the floor a number of years ago, and I did get a book of this type, and a lot of sell orders, I would absolutely be sure that stock was a sell, and I would sell it, and it would cost me a lot of money to find out I did not know anything.

Senator WALCOTT. You are talking about selling at a stated price. I am talking about buying or selling at the market. If you get that position the market does not carry through orders at the market, because they carry along with you.

Mr. SPRAGUE. I do not think the Senator was here this morning when we explained the rule in that respect.

Senator WALCOTT. You have a rule?

**Mr. ADLER.** There is a rule.

**Mr. SPRAGUE.** We cannot buy for our own account while in possession of orders to buy, before we have completed the orders.

**Senator WALCOTT.** I know that rule, of course. That is an old rule. But somebody else might learn from you the secret of the position which is shown on your book, and might profit by it. That is the only point I am trying to make. If you told somebody else he could profit by it. I am only trying to draw attention to the fact that you are in possession of expert knowledge with reference to a given stock in which you are a specialist, which would enable somebody else, if you divulged that position, to profit by it.

**Mr. SPRAGUE.** Are you talking about market orders?

**Senator WALCOTT.** Market orders.

**Mr. SPRAGUE.** I think that is not confidence at all.

**Senator WALCOTT.** Of course it is not. I am not accusing you of anything that is unethical. I am calling attention to the fact that you are in possession of facts which would enable an outsider, if he knew those facts, to profit by them.

**Mr. SPRAGUE.** If you made your book public. It has been suggested that if you made that public you would invite competition, whereas in this particular case we are not inviting competition, because that is a confidence; and if you abuse that confidence, you are subject to strict discipline.

**Senator WALCOTT.** I understand that. We agree, then, as to the fact.

**Mr. ADLER.** Senator, may I interrupt to this extent? While I say I have always been firmly against divulging the book, there is a definite rule of the stock exchange today which prohibits a specialist from divulging his book to anyone except a member of the business conduct committee upon request.

**Senator WALCOTT.** I know that, and yet in the course of the investigation of 2 years ago we found important specialists who were taking the directors of certain concerns in with them in partnership, in pool operations. They would always get the advantage of the insider's knowledge, and the insider—in other words, the specialist on the stock exchange—would have the advantage of the director of a corporation who knew just what orders were on the books of the corporation, so that he would know, if they were short of orders, to go short on the stock; and if they were long of orders, to bull the stock. There is a combination which you cannot beat.

**Mr. SPRAGUE.** That is also regulated against.

**Senator WALCOTT.** It is as a result of our investigation.

**Mr. PECORA.** Mr. Adler, when was that rule put into effect? Was that the rule promulgated on February 13 last?

**Mr. ADLER.** I think that is the one.

**Senator WALCOTT.** Both rules were following the investigation here.

**Mr. ADLER.** Prior to that, though, Mr. Pecora, we have discussed this thing a number of times in committee.

**Mr. PECORA.** Mr. Whitney testified the other day that that rule represented the result of several years of consideration, during which time he had not heard any opposition expressed to the rule.

**Mr. ADLER.** While it has not been in writing, it has always been in the best interests to divulge that book for any other than constructive business purposes. In fact, I said at one time "I think we should close the books", but it was said that there are a number of instances when it is for constructive business purposes, and if you close them up definitely, it might obstruct the man that really wants to invest some money. Let me illustrate what I mean by constructive business purpose. For instance, a man might come to me and say, "How can I buy 500 Liggett & Myers?" I used to tell him "There are 100 here at 74½, 200 at 74¾, and 200 at 75." He gives that information to his customer. His customer has asked him, perhaps, how he can buy two or three different stocks, and if I offer him the stock, he picks out what he wants to buy. That is showing the book, or divulging information for constructive business purposes.

On the other hand, if a man asks you what is on the book, and you tell him, and he finds that out for somebody, or in order to mark the stock up quickly on a light volume, that would be divulging the book against the best interests of the public, or against the best interests of the exchange.

**Senator WALCOTT.** That was the only point of my question, to bring out that fact. You and I agree.

**Mr. ADLER.** You and I agree. That has always been, though, more or less the rule on the stock exchange, even if it was not in the rule book.

**Senator WALCOTT.** It is an ethical practice.

**Senator TOWNSEND.** If I give you a stop-loss order on a thousand shares of stock at 80, and the first sale is 100 at 80, or 79, what happens to the other 900? Is it a market transaction immediately?

**Mr. ADLER.** May I explain how a stop order becomes effective?

**Senator TOWNSEND.** Yes.

**Mr. ADLER.** You give me a thousand shares of a stock to sell at 80 on stop. That becomes a market order to sell 1,000 shares when that particular stock either sells at 80 or below. As soon as 100 shares of that particular stock is sold by someone else at 80 or 79¾, I then have 1,000 shares of stock to sell for you at the best price obtainable.

**Mr. SPRAGUE.** Mr. Chairman, may we present one other man for about 3 or 4 minutes? He is a commission broker in New York, and I would like to have him go on record.

**The CHAIRMAN.** Yes.

**Mr. SPRAGUE.** Mr. Weicker.

**Senator WALCOTT.** Mr. Chairman, I ought to go to another meeting. Are we going on with the bill, or some particular section of the bill?

**Mr. PECORA.** These gentlemen are discussing section 10 of the bill.

**The CHAIRMAN.** There is also a gentleman here from California.

**Senator WALCOTT.** May I read for the record at this point, because we are on section 10, a paragraph from a letter from a friend of mine who is a broker, quoting this part of section 10. [Reading:]

It shall be unlawful for any member of a national securities exchange or any person who as a broker transacts a business in securities through the medium of any such member to act as a dealer in or underwriter of securities, whether or not registered on any national securities exchange



The particular point that this covers is with reference to municipal bonds. Here is the comment, which I would like to have in the record. [Reading:]

This would make it illegal for a member of the New York Stock Exchange to bid for and buy for his own account and sell and distribute State, city, town, and other municipal obligations. Has it not been true that the greater part of the debts, long time as well as short, of the Connecticut cities and towns, for example, have been handled through houses that are members of the New York Stock Exchange? And is it not true that unless exception is made in this section the market for Connecticut city and town obligations will be reduced and restricted? No matter how many investment dealers there are, still the elimination of the members of the New York Stock Exchange houses from the bidding, and as a means of distribution, would materially decrease the market for Connecticut municipal obligations and the obligations of municipalities all over the country.

That is entirely relevant to the discussion going on just now, but it does apply to section 10.

Mr. PECORA. To another provision of section 10.

Senator WALCOTT. I think it is a fair criticism.

Mr. SPRAGUE. Mr. Chairman, may I present Mr. Weicker?

Mr. ADLER. Mr. Pecora, would you like the copies of these books left here for the interest of the committee?

Mr. PECORA. All right. They may be left here. They will not be spread on the record, because it is hard to reproduce them.

(The following are two communications referred to by Mr. Adler in the course of his testimony:)

LOS ANGELES STOCK EXCHANGE,  
OFFICE OF THE SECRETARY,  
*Los Angeles, February 26, 1934*

Mr. RAYMOND SPRAGUE,  
*39 Broadway, New York, N Y*

DEAR SIR: In connection with your analysis of the "Specialist System" in the operation of Stock Exchanges, the experience of the Los Angeles Stock Exchange may be of interest.

When we first instituted Specialists we denied them the privilege of trading for their own account in those stocks for which they acted as Specialists. Our rule was conceived under the theory that they were in the possession of certain confidential information and therefore should not be in a position to take advantage of it. From the inception of this plan studied disapproval began to manifest itself, Specialists were so restricted that their very purpose—the conduct of an orderly market—was being defeated. Finally as an experiment, not being willing to entirely surrender the theory upon which our original ruling was based, we decided to permit Specialists to trade and now, after several years operation of the "experiment" I doubt that a return to our original plan would even be considered. Our rules are such that a Specialist can never place his interests ahead of the public or a member broker and every transaction in which he participates as a principal must have the approval of the interested broker. Through our system of time stamping all orders and executions every action of a Specialist is subject to closest scrutiny down to the fraction of a minute and thus far we have found in no instance the necessity for disciplining any Specialist for any action detrimental to the public or the Exchange. We find our Specialists develop a pride in maintaining fair markets which obviously is of real advantage to the Exchange, its members and in turn the public.

Trusting this information will be of service to you, I am

Yours very truly,

W F PAUL, *Secretary*

[Radiogram]

SAN FRANCISCO, CAL., February 24, 1934.

PAUL ADLER:

*Adler Coleman and Co,  
15 Broad St, New York*

When SF Stock Exchange adopted specialist system May nineteen twenty six specialists were prohibited trading their own account A complete test was given and found inadequate from market as well as public point of view Specialists were then allowed to trade their own account beginning May nineteen thirty We found this change to be to best interests of public

F. M. DWYER,  
*San Francisco Stock Exchange*

**STATEMENT OF THEODORE WEICKER, JR., NEW YORK, N.Y.,  
MEMBER OF THE NEW YORK STOCK EXCHANGE**

Mr. WEICKER. Mr. Chairman and gentlemen of the committee, the business conducted by my firm is that of acting as brokers for brokers. My partners and I devote ourselves entirely to the handling and execution of orders originated by the member firms of the exchange on a commission basis. In acting as the agents of such firms we never engage in trading for our own account—except in error—for the reasons that carrying a position in a large number of stocks would involve us in too great a risk. Secondly, that the business of executing orders in some stocks while watching a position in other stocks at the same time would be impossible, and, thirdly, if we were to do any trading for our own account in an effort to make a better market for our customer whose order had been entrusted to us for execution, we would be duplicating a function already carried out by the specialist who is always familiar with conditions in a stock at any particular time.

By far the majority of the firms for whom we do business have their own exchange-member partners and so our services merely supplement the service our customers provide. However, through having nine members of the exchange in our partnership in addition to the services of a number of associate brokers who are also members of the exchange, plus quite a complete set-up of mechanics developed over a period of years with the assistance of the exchange authorities, we are able to be of definite service to approximately 60 of the largest commission houses in the business at different times and under varying conditions.

I sincerely hope you will pardon me for having devoted so much of your time to a description of my business, but it is important that you should be clear on the point that our entire business is that of acting as the agent of a member of the public and also that the scope of our work justifies me in making certain general observations based on our experience.

We receive business primarily because we render service in two respects: First, because of our ability to obtain satisfactory executions when we are buying and selling; and, secondly, because, with the assistance of the exchange authorities, we have provided every available mechanical device we know of which will facilitate our advising our principal as promptly as possible as to the price at which he has bought or sold or at what price he is protected. Both of these factors depend very largely upon the specialist's being able to act as broker and dealer.

If the specialist were not permitted to trade for his own account, we would be unable to satisfy those whose orders were entrusted to us for execution, because of the spread that would most likely exist between the bid and asked price. For instance, if the market in a stock were 31 bid and 33 asked, and we received 100 shares to buy at the market, and we were obliged to take the stock offered at 33, which would be printed on the ticker tape, and then shortly afterward we or someone else received an order to sell 100 shares in the same stock at the market, and we were obliged to sell the stock for 31, both customers would be most dissatisfied, and to dissatisfy will eventually lead to a complete loss of confidence in the market for securities.

It is my belief that a continuous market is the basis on which confidence in the liquidity of listed securities rests and that this is the principal advantage and difference possessed by a listed as compared to an unlisted security. In addition, if the specialist were unable to trade, there would be many occasions when, due to the size of the spread between the bid and asked price our broker instead of being able to execute his order promptly would be obliged to remain in the stock with a market order and be unable to give his principal anything definite concerning the price at which his order can be executed.

It has been our experience that the more promptly an execution or some definite information can be reported to a customer from the floor of the exchange, the more confidence the customer has in the particular stock he is interested in, and it is also interesting to mention here that it is our experience that the farther away a customer is from New York City, where the exchange is located, the more desirable it becomes to expedite in every way possible all reports on transactions made for such an individual, and it is therefore our belief that by preventing the specialist from trading for his own account, our firm, which has made a specialty of handling the orders of the public, will be unable to give such service as we believe they are entitled to.

Another point that does not seem to be sufficiently understood lies in the fact that the specialist's field of activity is not a business in which he has an exclusive franchise. In fact, specialists have inadvertently invited competition in their stocks by other brokers willing to act as specialists in the same stocks due to either, first, their willingness to trade sufficiently for their own account in order to make as orderly and continuous a market as possible, or secondly, if they were unable to handle the volume of business in their stocks efficiently.

Certainly we would be obliged to take our limited orders away from any specialist who gave us inferior service in any respect, if another specialist in the same stock enabled us to do better for our customers, not matter how long our relationship with the first specialist had existed.

Speaking for my partners and myself, we believe that there is no difference between the best interests of the public whom we serve and the best interests of ourselves as brokers and, in the light of our experience that by preventing the specialist from trading in his own stocks and for his own account, irreparable damage may be done to

the market for securities in which we are all so anxious to develop the greatest amount of public confidence.

I thank you for your very kind attention to these remarks and sincerely hope they may assist you in reaching your decision with regard to the specialist's function, which my partners and I myself consider so essential to a well-run and orderly market.

The CHAIRMAN. Do I understand you are members of the New York Stock Exchange?

Mr. WEICKER. Yes, sir; nine members of the exchange in one partnership.

The CHAIRMAN. You are doing a brokerage business?

Mr. WEICKER. A brokerage business on a commission basis.

The CHAIRMAN. We are very much obliged to you.

Mr. Frederic H. Johnson, president of the San Francisco Curb Exchange, will be heard at this time. We will close the hearings with his statement.

#### STATEMENT OF FREDRIC H. JOHNSON, PRESIDENT OF SAN FRANCISCO CURB EXCHANGE

The CHAIRMAN. Please state your name, place of residence, and business.

Mr. JOHNSON. Fredric H. Johnson; San Francisco, Calif; president of the San Francisco Curb Exchange.

Mr. Chairman and members of the committee, I present a problem quite different from that of most exchanges. The San Francisco Curb Exchange was formed January 3, 1928, to take over the unlisted securities of the San Francisco Stock Exchange. In addition to these securities, listings were made as interest in stocks developed in San Francisco.

Stocks are admitted to trading through sponsorship of a member and not by direct application by the corporation. The Curb Exchange was formed primarily to provide a market for securities in which the public of this vicinity were interested and for which there was no organized market.

The governing board has always felt in its service to the investing public that the imposition of too drastic listing requirements, in the absence of registration or other requirements, regulating over-the-counter sales, would drive the majority of the local securities to over-the-counter dealers, whose charges are frequently excessive, in contrast to the fixed moderate commission of an organized exchange. Furthermore, in over-the-counter transactions the customer is deprived of published quotations and sales and is frequently compelled to work in the dark.

Several issues listed on major markets in the East are also admitted to trading on San Francisco curb. Only such stocks where there is a genuine public interest are admitted to trading. This trading is demanded due to the time difference between eastern markets and the Pacific coast where during daylight saving, the New York market closes at 11 o'clock San Francisco time. A business man on the Pacific coast hardly arrives at his office when the New York market is closed. The afternoon market in San Francisco, which lasts until 2:30, gives him ample time in which to consum-

mate the purchase or sales of securities without having to wait for the next business day.

That, by the way, is used at times of importance, such as announcements on the part of the president, on matters of corporate interest. Our exchange has been used by Paris, by Shanghai, by St. Louis, and by parts of the country. We feel, in extending this service, that we are rendering a continuous market to the people of the entire United States, as well as those who live on the coast.

We have felt in the past that the function of our exchange is primarily that of supervision of the method in which securities are dealt in rather than regulation of the corporations. Such regulation is the function of State or Federal agencies. The curb exchange feels that a public market is the only manner in which the public at large can be assured of a fair price for the purchase and sale of their securities.

In other words, if such regulations are passed as are provided for in this bill, it undoubtedly will cause the closing of our curb exchange and the forcing of our local securities, of corporations which do not wish to list on their own part, into the street market again. Their reasons for not listing are matters of their own importance. We obtain their yearly statements and their semi-annual statements. We scrutinize the history of a company before we admit it to listing. We endeavor to give the public a free market, rather than a restricted market, such as the over-the-counter markets naturally are, and we are making our plea for a liberalization in this bill, to maintain such benefits, rather than to have to force our stocks off a board, which can be regulated, and into an unorganized market.

The CHAIRMAN. Are there any particular sections of the bill that you object to, Mr. Johnson?

Mr. JOHNSON. We do not object to the sections of the bill, Senator. We wish to live and we wish to continue in this service, which would be impossible if we had to register ourselves, these stocks, because these corporations, for purposes of their own—some of them are very small—cannot pay a large registration fee. Some are not interested in listing at all. We are not interested in what the corporation wants. We are interested in providing a market in which stock is sold to the public. We are interested in regulating that market and providing a continuous market at all times.

The CHAIRMAN. Do you object to any supervision or regulation by the Federal Government?

Mr. JOHNSON. We realize that supervision and regulation are coming, and we will gladly conform to those principles at any time, Senator. What we do not want is to be put out of business, because we are not conforming to the listing requirements in the manner that the New York Stock Exchange does. We could not live if we had to.

We also admit to listing the stocks of corporations in the Hawaiian Islands, which have looked to San Francisco for their banking for years. These corporations have distributed their stocks to the public. They feel that they are not interested in the market in their stocks whatsoever. You will find that is quite true in the western part of the country, our situation being different to that degree. We also list the stocks of Alaskan Corporations, such as certain salmon packers and certain gold mines, and those corporations are not interested

whatsoever in the market for their stocks. We are interested to provide that market for those stockholders, and they would have none that I know of otherwise.

If there are any questions I shall be glad to try to answer them. My plea is to allow the curb exchange to exist rather than to throw from an organized floor all these stocks back on the street.

Senator TOWNSEND. What part of the bill is most objectionable to you?

Mr. JOHNSON. The part of the bill that would be detrimental to us in particular is the part, not that would license exchanges—we do not object to that—but the part that would require us to list all of our stocks. We could not list them. It seems to me that the Government can require from those corporations annual statements. We have not the speculative interest on the coast that is centered in the larger exchanges. We are not subject to pools, or we have not been. We are a new exchange.

The CHAIRMAN. Do you have any requirements now as to listing?

Mr. JOHNSON. Yes, sir; we have. An issue must be sponsored by a member, who gives the complete history of the corporation and the stock outstanding. We enter into no contract with the company whatsoever.

The CHAIRMAN. How many members have you?

Mr. JOHNSON. We have approximately 78 members. I may be slightly wrong on that. Seventeen of them are solely curb members. The others are joint members with the San Francisco Stock Exchange.

The CHAIRMAN. You are not a corporation, are you? Are you a joint-stock association?

Mr. JOHNSON. We have the same sort of charter that the San Francisco Stock Exchange has. In other words, we operate exactly as they do.

Senator, my thought is not to destroy what we have known as a curb market, and throw our stocks to the mercy of street markets, or over-the-counter markets, but in some way to preserve what we have there, which is in the public interest, most decidedly.

The CHAIRMAN. Is that all?

Mr. JOHNSON. Yes.

Early in 1933 the governing board discussed additional requirements for admitting securities and on June 8 a revised application for trading form was adopted. On October 13 supplementary requirements for mining stocks were adopted.

The volume on the San Francisco Curb from 1929 to 1933, inclusive, is as follows: 23,793,988 shares of stock, \$6,011,500 par value bonds. The same for the first 2 months of this year is: 352,203 shares of stock, \$28,000 par value of bonds, proving an established market and a necessary one in the industrial and civil life of the coast.

The CHAIRMAN. Thank you very much.

I have been handed a statement by Mr. Van S. Merle-Smith, of New York City, representing certain investment houses serving banks and insurance companies. I would like to have that inserted in the record.

(The statement of Mr. Van S. Merle-Smith is as follows:)

MEMORANDUM SUBMITTED BY VAN S MERLE-SMITH, 30 PINE STREET, NEW YORK CITY, ON BEHALF OF CERTAIN INVESTMENT HOUSES SERVING SAVINGS BANKS AND INSURANCE COMPANIES

The undersigned firms wish respectfully to outline the particular type of business in the investment field carried out by them.

These firms or their predecessors have been doing business in this field for generations—one of them over 130 years

Their clients are largely investment institutions such as savings banks, insurance companies, commercial banks, charitable and educational institutions, trustees of trusts, corporate and individual investors, who are primarily interested in the highest grade of seasoned investment securities. Most of such clients have done business continuously with the undersigned firms for many years

Our business has been threefold, security analysis, acting as brokers, and acting as dealers

This threefold business has been developed over a long period because of the requirements of our type of clients. Our customers require careful and continuous study of particular securities coupled with expert knowledge of markets and normal price ratios between securities. The larger institutions also must have means provided whereby to purchase and sell advantageously large blocks of securities.

To accomplish such purposes the undersigned firms were forced to build up their statistical and research organizations until the expense involved for this purpose amounted to a heavy proportion of overhead. The value of such service is indicated by the continuous demand for information and advice

Due to the narrow market for bonds on the exchange, large blocks cannot be purchased on the board without a material effect upon the price of the securities. Many issues of seasoned bonds are of the closed-mortgage type, which have long been held by investment institutions and accordingly change hands so infrequently that there is seldom an active market for these bonds on the floor of the exchange. Moreover, many of the high grade or seasoned investment bonds, such as State and municipal bonds and railroad equipment and other securities are not listed on any exchange at all. They must be bought and sold over the counter in both broker and dealer transactions

To meet this general situation the undersigned firms became merchandisers of securities and are accustomed to gradually accumulate from time to time blocks of desirable seasoned securities which are sold when required to the larger institutions at prices, if the securities are listed, closely approximating the prices on the exchange. These blocks are acquired partly on the board and partly directly from many institutions and individuals with which we are in touch.

Over a period of years a very considerable proportion of all the business of this nature with the larger institutions in seasoned securities has been done through the undersigned firms

Conversely, when these institutions are faced, for one reason or another, with the necessity of selling very large blocks of securities, such firms as ours supply a vital market or distribution agency. For instance, during the savings-bank runs in Philadelphia in 1932, or in New York or New Jersey in 1933 shortly before the banking holiday, millions of dollars of high-grade securities were marketed for the savings banks through our firms in order quickly to supply the cash urgently needed to meet demands. The market for such securities on the exchange had largely collapsed, but this distribution was accomplished quickly and at reasonable prices largely on a brokerage basis. This was successfully accomplished because the liquidating banks and the other institutions who were able to help were willing to rely where necessary upon the knowledge and fairness of our firms in arranging the transactions and setting prices fair to both sides in spite of the market chaos that then existed. These special incidents furnish dramatic examples of a vital service in secondary distribution which the undersigned firms have and are continuously rendering.

To collect or dispose of blocks of securities for such institutions it is vital that our firms be permitted to buy and sell, not only over the counter but also upon the exchanges and without the additional cost of employing a broker middleman

At times the exchanges offer the only outlet for securities, particularly when the dealer feels it cannot recommend purchase by one of its own clients. If, as dealers, we are forbidden, as might be construed from the act, to buy and sell upon the exchanges, the ultimate purchaser or seller must suffer because of the price spread which must be asked in order to compensate for the increased risks of delay in distribution or acquisition. If forbidden to be members of an exchange but permitted to transact business on the exchanges through other brokers, the added expense involved would probably necessitate the abandonment or severe curtailment of our research department. We believe that from a financial standpoint it is only possible for us reasonably to finance an adequate statistical research service by a combination of a broker-dealer business. The earnings of the brokerage business, or from the dealer business, in high-grade securities (which yields only a very limited turnover profit) will not, in our opinion, separately justify the expense of an adequate statistical research department.

Furthermore, both institutional and other clients from time to time desire, or we recommend, that certain transactions be carried out upon a brokerage basis, sometimes on the exchange and sometimes on the over-the-counter market. The price spread required to compensate for the risk to the dealer involved in the chaotic markets during the last few years would make dealer transactions often too costly for our clients. Smaller investors buying small blocks usually can more economically be served by transacting their business as a broker. If, as is the case with some of us, we give continuous supervision of a list of securities for a fee, all transactions for such clients must be carried out as a broker.

In addition, it is obvious that each client presents a different investment problem, whether in the type of security desirable for his list or in the maturity of the bonds which may be best suited to his needs. Obviously, such firms as ours cannot hope to keep in stock, in view of the heavy risks involved, a list of securities adequate to meet every need of our clients.

We submit the conservative investors need and should have a combination of broker-dealer investment house which is a member of a National Securities Exchange. The advisability of this triple service can easily be confirmed by those investors of capital funds best qualified to know, such as savings banks and insurance companies, as well as individual and corporate fiduciaries. It would not seem in the public interest to disrupt relationships between such houses as ours which have existed in some cases for generations, nor would it seem in the public interest to restrict a secondary market which seems vital to large investment institutions through crippling by legislation the complex and important machinery which has for so long a period served its purpose to the satisfaction of these same institutions. We feel that the legislature, desiring perhaps to correct certain abuses which may have grown up in connection with the use of the market provided by the exchanges, should consider carefully before passing legislation, the provisions of which will indirectly cripple the various services we have outlined.

In this connection we should make it clear that the broker-dealer business to which we refer is done on a cash basis.

To what extent the restrictions of the act will affect our capacity to finance our own business through the banks is not very clear. Many institutions, such as savings banks and insurance companies, have stringent rules affecting the investment of their funds which postpone the date for the acceptance of and payment for securities purchased until the necessary formal ratification of the transaction has been concluded. During the intervening period and until payment is made the securities so contracted are customarily carried by the investment house. Our firms must also carry a large inventory of securities which are necessary if we are to continue the services referred to. If the restrictions in the act relating to margins and ownership of the collateral over a period, are applicable to all borrowings to finance the carrying of securities as outlined above, it will unnecessarily curtail both our volume of business and the service we render.

We would not be in a position to bid at public sale for issues of State and municipal bonds or railroad equipment obligations. In such cases the amounts to be purchased are often large and have to be paid for upon delivery and may have to be carried in whole or in part for some time before the investment house can in turn sell them. The proposed restrictions would necessarily curtail the market for issues of municipal bonds.



We understand that the Public Works Administration is preparing to receive bids for securities held as collateral for loans made by it to certain municipalities. The normal bidders for these bonds would, to a very large extent, be investment houses like our own. If we could not finance the purchase of these securities by immediate bank loans we doubt very much if the Public Works Administration could obtain satisfactory bids.

In the case of bank loans for such purposes we see no logical need for legislative restrictions. We believe the security of such loans may safely be left to the discretion of banks or other loaning institutions, particularly when the type of collateral offered is considered.

We take pride in our business. We have spent many years in building up a clientele among institutional and individual investors. We believe that they have faith in our integrity and fair dealing, and if desired will so testify. We are convinced that restrictions that may indirectly cripple our capacity to render investment advice are not in the public interest. We believe our clients are entitled to the services we can render without curtailment. We believe they are entitled to a market for their investments which is as free and unrestricted as is possible in the public interest. To that end we believe that investment houses doing the type of business we have outlined above should be permitted and encouraged to continue a broker-dealer-advisory service.

Respectfully submitted

R L DAY & Co.  
DICK & MERLE-SMITH.  
R W PRESSPRICH & Co.  
RUTTER & Co  
SALOMON BROTHERS & HUTZLER.  
WOOD, STRUTHERS & Co

#### SUPPLEMENTAL MEMORANDUM

This memorandum is intended as a supplement to that already submitted by the undersigned firms.

In respect of specific recommendations for amendment of the bill in question our interest lies mainly in the provisions of the first sentence of section 10, which forbids members of an exchange or any person who as broker transacts a business in securities through such member to act as a dealer.

We are informed that a suggestion has been made in the House committee that the act be amended to permit members to act as broker-dealers, provided they carry on their business upon a cash basis.

A study of this committee's memorandum describing the type of business done by the firms we represent will show that from our point of view such an amendment would be wholly satisfactory and would permit us to continue our business as presently conducted.

We have been reluctant to propose or argue for such an amendment, realizing that the question of restriction, of margin trading though not of importance in our business, involves considerations affecting other firms both large and small throughout the country now rendering valuable service in the investment field. It furthermore raises difficult questions which probe deeply into the fundamental fiscal policy of the United States, embracing as it does questions of deflation and the inadvisability of restricting a form of credit which may be of considerable importance in meeting and sustaining the capital needs of industry.

For such reasons we have been disposed to recommend that the first sentence of section 10 be stricken out because we feel that joint broker-dealer service is in the public interest, believing that the general question of margin credit should be the subject of further study.

On the other hand, it is only fair to our own interest to restate that from a personal point of view the opportunity to conduct a threefold broker-dealer-advisory service, provided it is done on a cash basis would be wholly satisfactory.

Respectfully,

R. L. DAY & Co.  
DICK & MERLE-SMITH.  
R. W. PRESSPRICH & Co.  
RUTTER & Co  
SALOMON BROTHERS & HUTZLER.  
WOOD, STRUTHERS & Co.

The CHAIRMAN. We will now adjourn until 10:30 Monday morning.

(Whereupon, at 4 p.m., Friday, Mar. 2, 1934, an adjournment was taken until Monday, Mar. 5, 1934, at 10:30 a.m.)

# STOCK EXCHANGE PRACTICES

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MONDAY, MARCH 5, 1934

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

The committee met at 10:30 a.m., pursuant to adjournment on Friday, March 2, 1934, in room 301 of the Senate Office Building, Senator Duncan U. Fletcher presiding.

Present: Senators Fletcher (chairman), Bulkley, Costigan, Byrnes, McAdoo, Adams, Carey, and Kean.

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; also Roland L. Redmond, counsel to the New York Stock Exchange.

Senator ADAMS (presiding). The chairman has been detained a few minutes and has asked me to preside until he comes. The committee will please come to order.

I understand it was agreed that Mr. Shaughnessy would be heard first this morning. You may come forward, Mr. Shaughnessy.

## STATEMENT OF FRANK C. SHAUGHNESSY, PRESIDENT OF THE SAN FRANCISCO STOCK EXCHANGE, SAN FRANCISCO, CALIF.

Senator ADAMS (presiding). Mr. Shaughnessy, I understand that you have a statement you wish to make to the committee.

Mr. SHAUGHNESSY. Yes, sir.

Senator ADAMS. You may proceed.

Mr. SHAUGHNESSY. My name is Frank C. Shaughnessy, and I appear before this committee as the president of the San Francisco Stock Exchange to express its disapproval and to voice its objection to the proposed National Securities Exchange Act of 1934, S. 2693.

I do not appear before this committee solely to criticize the bill. I should prefer that the committee consider my appearance as a respectful effort to be helpful to the committee in understanding the problems of the Pacific coast stock exchanges and particularly the San Francisco Stock Exchange.

We believe that the gentlemen sponsoring the proposed legislation are serious and high-minded men who are sincere in their desire to change and rectify certain conditions and situations which they think are bad. There is no doubt that pool manipulations, questionable proxy practices, and certain activities of corporation officials, should be corrected. The general intent of the bill is good, and with its main purpose very few will disagree. However, I am of the opinion that the bill in its present form is not good.

I believe that almost everyone is willing to agree that genuine regulatory legislation, based upon the general public good, is a desired or desirable thing. You have had many reasons and many arguments presented to you as to why the proposed legislation is unsound, so it would be needless repetition upon my part to point out to you specific hardships. The other opponents of the bill have thoroughly reviewed it and stated their objections.

The objection of the San Francisco Stock Exchange does not go to parts of the bill alone but it objects to the bill in its entirety. We stand for regulation that will help to give the public sound and honest markets and to that end we are anxious and willing to do everything possible. So, we believe that the ultimate effect of the bill, if enacted in its present form, will not be regulation but will be destruction of the stock exchanges. We think that before a new bill is drafted or any plan for the regulation of the stock exchanges is evolved, that a conference of the various stock exchange heads of the country be held. Surely it is not too much to ask that the people most directly, perhaps most vitally, concerned be given an opportunity to express their opinions and to present their points of view. We believe that such a conference should be called, perhaps under the direction of a congressional committee. We stand absolutely upon the ground that the stock-exchange business is sound and legitimate, and that the vast majority of the members of the exchanges subscribe and adhere to a code that is not exceeded by any other business or profession in the country.

Shocking scandals have been disclosed about certain activities on the New York Stock Exchange, but it should be borne in mind that these particular transactions represent a very small percentage of the vast amount of its legitimate transactions. Many evils which by implication are ascribed to stock exchanges are entirely independent of market manipulation, and I shall quote you a particular instance.

The stock of the Southern Pacific Co. sold for many years around \$100 per share, and at the height of the boom at much higher figures. Now, there was a very good reason for the price of \$100 or more, for at that time the stock was paying a dividend of \$6 a share and earning considerably in excess of that amount. At the very depths of the depression Southern Pacific sold around \$7 a share and there was an equally good reason for this low price, because at that time the company was neither earning nor paying dividends and had accepted aid to take care of immediate obligations. Surely by no stretch of the imagination can the rise and fall of this particular stock be ascribed to stock-exchange manipulation.

Another present or immediate example: On the San Francisco Stock Exchange the Natomas Co. shares are listed. About 1 year ago this stock was quoted considerably under \$20 per share. On Saturday, March 3, 1934, that is last Saturday, it was quoted at about \$88 per share. The reason for this spread is obvious. The Natomas, a land and dredging company—a gold producer—is now showing big earnings and paying dividends, and independently of market manipulation a price higher than that which prevailed 1 year ago is justified.

I might add, gentlemen of the committee, that if we should get a reduction in the gold price we will probably have a corresponding drop in the price of Natomas Co. shares.

The San Francisco Stock Exchange is modeled upon the general plan of the New York Stock Exchange, and our situation is, in a way, a reflection of that institution—and in certain stocks we are competitors of the New York Stock Exchange.

Mr. Eugene E. Thompson, president of the Associated Stock Exchanges, is submitting a brief upon the part of his particular group, and his brief quite generally covers all of the objections to the bill. Therefore, I shall not presume to needlessly take up your time. Nevertheless, there are certain provisions of the proposed bill that particularly affect the San Francisco Stock Exchange, and I call them to the attention of this committee with the hope that earnest consideration will be given to them.

The specific objections of the San Francisco Stock Exchange are:

1. The provision of section 10 that no member of a national securities exchange shall act as a dealer in, or underwriter of, securities will be of very far-reaching consequences in San Francisco.

(a) It will mean the elimination, as members of the exchange and as brokers, of banks, which are dealers within the definition of subdivision 5 of section 3, in that they necessarily engage in the business of buying and selling securities for their own accounts.

(b) It likewise means the elimination as brokers and members of the exchange of associate members which invest for their own account.

(c) By reason of the somewhat restricted San Francisco market many brokerage firms are necessarily obligated to deal in securities of companies listed on the exchange in the interest of maintaining a fair market. By reason likewise of the limited market, many brokerage firms have engaged to a limited extent in the dealer business, particularly in bonds. Section 10 threatens to put many such brokerage firms out of business.

2. Section 6 (a) and section 6 (b), in limiting loans of members to registered securities and in limiting the amount which may be loaned thereon, will have disastrous consequences through the membership in the local exchanges of most of the San Francisco banks. Thus, if a bank member remained a member of the exchange, it could not loan to a customer on any unregistered security. The credit of small industries would be very materially affected by this provision. Furthermore, such bank could not loan on registered securities in excess of the loan limitation imposed by section 6 (b), even if the security were owned for 30 days prior to the loan, within the provisions of section 6 (c). Unless the act is amended in substantially the manner suggested by us, the bank members will probably be forced to withdraw from the exchange.

3. The provision of section 7 (a), which require that a member of a national securities exchange borrow only from a member bank of the Federal Reserve System, works a peculiar hardship upon San Francisco brokerage firms, which purchase for customers through New York Stock Exchange members, securities listed on the New York Exchange. In the usual instance the San Francisco broker maintains his account with the New York brokerage firm with a debit balance. Section 7 (a) would prohibit this and require the

San Francisco broker to take up the transaction through available moneys borrowed from a Federal Reserve member bank.

4. The provisions against short selling by any director, officer, or owner of securities, owning more than 5 percent of any class of stock of any issuer, within section 15, subdivision (b), subsection 2, needs amendment to permit of actual and legitimate sales of securities by such persons, in that it is physically impossible in many instances to make delivery of the securities in New York or in San Francisco within 5 days from the date of sale. There is business that comes to the San Francisco Stock Exchange from the Philippines, Hawaii, and various centers on the Pacific coast. My amendment the alternative for delivery should be the deposit in the United States mail or in some other channel of transportation.

5. The provisions of the bill which make loans against unregistered securities almost impossible of accomplishment—viz, through the operation of section 6—and make transactions with such securities almost equally difficult—viz, through the provisions of sections 11 and 14—operate to the particular disadvantage of the smaller concerns on the Pacific coast and elsewhere throughout the country. In addition to possibly not desiring to register their securities, many companies probably could not afford the cost of registration and maintenance thereof, because of the fees, auditing and accounting expenses.

6. The provisions of the act with respect to registration of securities, sections 11 and 12, work to the particular disadvantage of many of the smaller companies whose securities are listed on the San Francisco Exchange. The added burden of fees, expenses of auditing, and accounting, may prove prohibitive to such companies. At the same time they will be confronted with the alternative of withdrawing their securities from registration and thus lessening the ability of their stockholders to obtain loans on their securities and maintain a fair market in the security.

The history of the San Francisco Stock Exchange is excellent. In its whole record of 52 years there have been 8 failures, and only 6 of them have meant loss to the public.

If this bill should pass in its present form, the existence of the exchange certainly would be threatened, because, of the 106 securities listed, 100 represent companies with less than 500,000 shares of issued stock. Many of these companies will not face the expense of going to New York for listing and many could not afford the expense of quarterly reports for independent audits. They would, therefore, be forced to withdraw their securities from even the local exchange. As a result, the investor would be denied a market for most securities, except those which could afford the requirements of the New York Exchange, in the event that the San Francisco Stock Exchange should be forced out of business.

The most serious consequences, from the standpoint of the public, are that markets for nearly all securities will be impaired. By preventing the participation of many small investors through limitation of odd-lot transactions, not only does the bill discriminate in favor of the large investors but it largely destroys this tremendous source of new capital. For years the San Francisco Stock Exchange has been a means of attracting capital into enterprises which have developed the oil, mining, timber, and agricultural resources of the

coast and supplied most of the shipping, banking, and utility services of this region. Without the market facilities of this exchange, the expansion of practically all of these enterprises will be severely checked. They will be able to appeal to only a small number of capitalists instead of to the thousands of small western investors.

The bill presents tremendous administrative difficulties in regard to the effective functioning of the Federal Trade Commission.

As stated before, the objection of the San Francisco Stock Exchange is not to the specific provisions of the proposed bill alone, but it objects to it in its entirety, for the reason that we believe the proposed legislation is not regulatory but that its ultimate effect will be strangulation.

The board of governors of the San Francisco Stock Exchange has instructed me to respectfully state to this committee that it wholeheartedly approves and endorses the spirit of the plan submitted by Mr. Richard Whitney, president of the New York Stock Exchange, as a genuine, sincere, and honest attempt to properly regulate stock exchanges.

However, we firmly believe and strongly urge that in order to have a thorough and complete understanding of the many questions involved in the stock-exchange situation, a conference of the various exchanges be called under proper governmental sponsorship to the end that a just solution may be conceived.

And if you will be indulgent for just another few minutes, I should like to make a supplemental statement:

Assuming that the bill cannot be defeated in its entirety, the following amendments are offered as necessary amendments to the act. They are presented primarily in the interest of the San Francisco Stock Exchange and its members and member firms, including bank and associate members. They are offered likewise as the amendments most reasonably likely of adoption in that the general purpose of the bill will in no way be affected by their adoption; on the contrary, the bill would become more workable.

The definition of "dealer" in subdivision 5 of section 3 should be amended in substantially one or the other of the following ways: At the end of the definition, page 5, line 15, add:

except for the purpose of his own investment

or

for the purpose of resale or repurchase to or from his customers or clients.

The foregoing amendment is essential to take care of the situation where an individual member—or a bank or associate member—buys securities for his own investment or without the purpose of resale or repurchase to or from the public.

Section 10, in which the provision most objectionable to investment firms and bank members appears, should be amended in one or the other of the following ways: At the end of the first sentence, page 21, line 14, add:

, unless in each transaction involving any security in which such member or person has acted as dealer or underwriter, the purchaser or seller thereof is advised of such fact.

or, before the beginning of the first sentence, page 21, line 9, add:

Except as prescribed by the rules and regulations of the Commission, \* \* \*

This latter alternative is less desirable. Of course, the elimination of the restriction altogether is the most desirable.

This amendment is intended to take care of odd-lot dealers, specialists who may be compelled to take a position in the interest of a fair market, and San Francisco firms which engage in a legitimate dealer business. The provision either for full disclosure or for regulation by the Commission would serve the full purpose of the statute in the separation of dealers, underwriters, and brokers. The main objection to the second alternative is that, until the Commission prescribes its rules and regulations, the future operations of the firms and members involved will be fraught with uncertainty.

Section 6 (a) should be amended by the insertion on page 12, line 2, after the word "exchange", of the following:

(except if the exchange member is a member bank of the Federal Reserve System).

Section 6 (b) should be amended by the insertion on page 12, line 10, after the word "exchange", of the following:

(except if the exchange member is a member bank of the Federal Reserve System).

Section 7 (a) should be amended as follows: On page 14, line 2, after the word "than", insert the following:

a Federal Reserve bank or

These three amendments are intended to take care of bank members of the San Francisco Stock Exchange. The second of these three amendments is particularly to permit banks to make loans provided for by section 6 (c). Under the present working, a bank member would be prohibited by section 6 (b) from doing this.

Section 7 (a) should be further amended, as follows: At the end of line 3, page 14, strike out the semicolon and insert:

, or a member of a national securities exchange.

This amendment is to provide for orders placed by a San Francisco broker with a New York Stock Exchange firm, permitting such San Francisco broker to carry an account with the New York firm.

Section 7 (b) should be amended in line 8, on page 14, by the change of the figures "1,000" to "2,000."

This amendment is consistent with the permissive loan limits as of the present time and the adoption thereof will not adversely affect the purpose of the act in view of the power of the Commission to further reduce this borrowing limit.

Section 8 (a) (9) should be amended at page 18, line 21, by the insertion at the end of the section of:

Nothing herein contained shall be deemed to affect ordinary purchase and sale transactions in legally issued warrants or rights to subscribe, or in securities carrying warrants, rights of conversion, or other privileges.

This amendment is offered to preclude the present language of the act from so operating as to forbid transactions in rights, warrants, and bonds carrying conversion and other privileges. The amended section will still prohibit the dealing in puts, calls, straddles, and similar options.

Section 10 should be amended on page 21, line 20, by the insertion of the words "or market" after the word "price" and before the word "orders."



This amendment permits specialists to carry on their normal function without an unnecessary handicap.

Section 11 (a) should be amended on page 22, line 7, by the addition at the end of the section of the following:

Nothing herein shall be deemed to forbid ordinary transactions for the purchase and sale of rights to subscribe for securities or of securities to be issued, where registration is effective as to such rights to subscribe or securities to be issued.

This permits the dealing in rights and of stock on a "when issued" basis. These dealings are necessary in the interest of financing, and the purpose of the act is served by requiring, as set forth in the amendment, that registration be effective as to such rights or "when issued" stock.

Section 13 (a) should be amended in either of the two following manners:

By the insertion, page 26, line 23, after the word "included", of "in whole or in part if the Commission so requires," or by the addition at the end of the section, page 27, line 6, of the following:

Nothing herein contained shall be deemed to apply to the solicitation of proxies for any regular or annual meeting of the stockholders at which only routine and usual business is to be transacted

This amendment is necessary to avoid the absurd situation of requiring a corporation to send to each stockholder whose proxy is solicited for the purposes of a regular or annual meeting, a great mass of data, including a list of all stockholders, which in the case of American Telephone & Telegraph Co. would be over 700,000 persons.

Section 15 (a) (2) should be amended by the addition on page 29, line 21, at the end of the subdivision, of the words:

or forwarded within said time for delivery in the mails or other usual channels of transportation

The foregoing amendment is to take care of short sales in San Francisco where delivery cannot be made in New York within the period of 5 days.

In addition to the amendments previously suggested by the writer in the interest particularly of the San Francisco Stock Exchange and its members and member firms, including bank and associate members, the following additional amendments to the National Securities Act of 1934 are suggested:

Subdivision 10 of section 3, containing the definition of "security" should be amended by striking out the words:

any direct obligation guaranteed as to principal or interest by the United States. appearing in lines 8 and 9 on page 7 and by the addition of the words:

any security issued, or guaranteed as to principal or interest, by the United States or any Territory thereof or by the District of Columbia or by any State of the United States, or by any political subdivision or municipality of a State or Territory or by any public instrumentality of or in States or Territories exercising essential governmental control, or by any corporation created and controlled or supervised by and acting as an instrumentality of the government of the United States pursuant to authority granted by the Congress of the United States; or any security issued by or representing an interest in or a direct obligation of a Federal Reserve Bank

This definition is largely an adaptation of subdivision 2 of Section 3 of the Securities Act of 1933 except that we have not included in the securities excluded those of any national or state bank. The reason for the amendment is quite apparent in that (1) a market must be created for these securities; (2) the securities are considered as prime collateral and should not be in the class of unregistered securities or in the class of securities upon which 60% margin is required, and (3) the whole tenor of the act would be to preclude registration of any of these securities inasmuch as the states, municipalities, political subdivision, etc. could not comply with the provisions of Sections 11 and 12 of the Act with respect to registration. An examination of the requirements of registration as set forth in these Sections immediately discloses that the enumerated securities could not be registered.

Section 6 (a) should be amended by the addition at the end thereof, page 12 line 8, of the following:

, except as prescribed by the rules and regulations of the Commission

This amendment eliminates the present proposed absolute prohibition against loans being made on unregistered securities and would permit loans thereon by a member, but only subject to the rules of the Commission.

Subdivision 6 (d) should be amended by striking out from lines 16 and 17 on page 13, the following:

the time within which initial and subsequent payments shall be made by the customer,

Under the provision as now written the Commission must prescribe by rules and regulations the time when the first payment and all subsequent payments must be made by a customer in the purchase of securities. This is an unnecessary regulation in view of the loan restrictions of the Act, even as amended, and the Commission's power to regulate the loans. If those words were to remain in the Act it is possible that they would automatically exclude any purchase and sale of securities except for investment.

Section 8, subdivision (5) should be amended by striking out the words commencing with "and does not prove" page 17 line 1 and ending with the words "false or misleading;" page 17 line 3, and inserting in lieu thereof

and if such person knows, or in the exercise of reasonable care should know, at the time of circulating or disseminating such information, that the same is false or misleading;

This amendment is in accord with normal rules of law that the burden of proving neglect or intentional misrepresentation should rest upon the party claiming such misrepresentation. In view of the normal tendencies of juries to be liberal in support of the contentions of individuals against brokerage firms, corporations, etc. the present rule as to the burden of proof should be continued as it is more than ample protection for the injured party. Shifting of the burden to the party charged with the misrepresentation is contrary to the principle of American jurisprudence that guilt is never to be presumed and is encouragement for groundless and concocted litigation.

Section 11 (c) should be amended by striking out all of paragraph (II) commencing on page 23, line 17 and ending on page 24, line 23 and inserting in lieu thereof:

(II) Such information as to the issuer and affiliates as in the opinion of the Commission is necessary for the proper protection of the public and of investors in the securities of the issuer

The advisability of this amendment lies in permitting the Commission to prescribe its requirements as to the information to be submitted instead of providing positively in the statute as to the information, much of which will, in certain corporations, be both unnecessary and burdensome. The amendment provides for greater flexibility and still gives to the investing public, through the Commission's regulations, the protection which the Act intends.

Section 12 (a), subdivision (2), should be amended by striking, on page 25 line 21, the words "and quarterly", and further amended by striking out entirely subdivision (3) lines 24 and 25, thereafter changing the numbering of subdivision (4) line 1, page 26, to subdivision (3). These changes are intended to eliminate certain of the most burdensome and unnecessary requirements placed upon corporations with registered securities.

Section 15 (b) subdivision (3) should be amended on page 30 by changing the word "unless" in line 5 to "if" and striking the word "no" in line 6. This again relates to the burden of proof the argument with respect to which has been set forth in connection with the amendment to Section 8 (a) (5).

Amend Section 16 by ending the sentence with the word "appropriate", line 11, page 31, and striking out the balance of the sentence commencing with "and the cost", in line 11, and ending with "person examined"—line 14, page 31. Placing of the burden for expensive and cumbersome, and possibly unnecessary, investigation upon the party investigated is contrary to the principles of democratic government and of Anglo-American jurisprudence. The burden of payment for investigation, etc. should only rest upon the party investigated if found guilty of violations of the provisions of the statute. The heavy penalties elsewhere imposed in the statute would appear sufficient to take care of this liability.

Section 17 should be amended by ending the sentence with the words "such statement", line 18 page 32 and striking commencing with "unless the person", line 8 page 32, to and including "false or misleading", line 11, page 32, and inserting on line 2 page 32, after the word "investor" and before the word "shall" the following:

and which statement is, or in the exercise of reasonable care should be, known to the person making or responsible for it as false or misleading

This again shifts the burden of proof back to where it belongs under recognized principles of law. The argument for this change has been set forth more at length with respect to the amendment to Section 8 (a) (5).

Senator ADAMS. Mr. Shaughnessy, am I correct in assuming that the evils which seem to have been disclosed in reference to the New York Stock Exchange do not exist in the case of the San Francisco Stock Exchange?

Mr. SHAUGHNESSY. Well, that is rather a broad question, but from my own experience and from my own knowledge, and you will understand that I am restricting my answer to my own knowledge, those evils do not particularly exist in the case of the San Francisco Stock Exchange, although I have been told that, perhaps, some evils exist out there also. But I do not know that of my own personal knowledge.

Senator ADAMS. I think Senator McAdoo will certify that there are no evils on the San Francisco Stock Exchange.

Mr. SHAUGHNESSY. Oh, no. There are evils there, no doubt.

Senator McADOO. Mr. Chairman, I would like to suggest that the proposed amendments be made a part of our record.

Senator ADAMS. That will be done.

Mr. SHAUGHNESSY. Might I add one more thing to my statement?

Senator ADAMS. Certainly.

Mr. SHAUGHNESSY. The other day when Mr. Dean Witter, of the firm of Dean Witter & Co., was before you gentlemen, there were certain questions propounded to him about margin requirements. I fear that you gentlemen got a wrong impression from what he said, the impression that we have no set margin requirements in the case of the San Francisco Stock Exchange. If so, that was not a proper answer. We have a definite rule about margins, but it is a flexible rule, and it is within the discretion of the proper committee. For the last several years it has been around 30 percent. But after Mr. Witter testified here on Friday I telephoned to San Francisco and found out that at the present time the average of margins on accounts on the San Francisco Stock Exchange is about 50 percent. This is above the minimum set by the exchange; in fact, some accounts are margined below 50 percent, and some above that amount.

Senator McADOO. That is, on the general average?

Mr. SHAUGHNESSY. Yes, sir; as a general average.

Mr. PECORA. Fifty percent of the debit balance, do you mean?

Mr. SHAUGHNESSY. Yes, sir.

Senator ADAMS. In your statement I noticed you stated that you think the stock exchanges ought to be heard in regard to the bill. It occurs to me that that is just what this committee is doing now, giving stock exchanges full opportunity to be heard.

Mr. SHAUGHNESSY. But you did not quite understand my contention.

Senator ADAMS. I thought in your statement you were raising the complaint that the stock exchanges had not been heard in regard to the bill.

Mr. SHAUGHNESSY. That they had not been consulted in reference to the make-up of this bill.

Senator ADAMS. It occurred to me that is just what this committee is now engaged in—in giving the stock exchanges a chance to be heard.

Senator McADOO. But Mr. Shaughnessy's suggestion was that there ought to have been a conference and that the heads of the various stock exchanges throughout the country should have been called in and heard in connection with the Government officials, so that they would have had an opportunity to be consulted about the preparation of the bill. Now, as I see the situation, this bill is proceeding in the usual way of all such matters, by way of giving as far as

possible ample time to representatives of stock exchanges and others concerned throughout the country to appear before the committee to present their views. Those views, of course, will be considered. I do not think the other way would be as effective as the method we are now proceeding on.

Mr. SHAUGHNESSY. Of course, I do not know as much about that as you gentlemen, but that was merely presented by me as an idea by which I thought the matter might be better arranged. As I say, this thing was sprung upon us so quickly; just a few days before I left San Francisco I read the bill, and I am frank to say that I was quite shocked on reading some of the provisions of it. And I felt at that time that had some of the stock-exchange people sat in on the drafting of the bill, there might have been some different ideas in it.

Senator McADOO. Well, they will have opportunity to present their proposals here, and the committee will give them consideration. My experience with conferences has been that there is such a wide diversity of opinion among those participating that you never arrive at any conclusion.

Mr. SHAUGHNESSY. Well, of course, I do not know about that. But the way I feel about this bill is that if probably you and Mr. Redmond could have sat down across the table, that he, with his knowledge of stock-exchange conditions, and you, Senator McAdoo, with your brilliant record, might have drafted a bill that would have been somewhat more satisfactory.

Senator McADOO. In that case I am afraid I would have played the part of the lamb.

Senator ADAMS. I think it would be entirely conceivable that the bill would have been somewhat different if drawn by stock-exchange people.

Mr. SHAUGHNESSY. I certainly agree with you on that.

Senator KEAN. You say that the average account now on margin is about 50 percent?

Mr. SHAUGHNESSY. Yes, sir.

Senator KEAN. But it would be very disastrous to your stock exchange in event a margin of 50 percent were required, so that you would have to sell a man out if his account went down to 49 percent, wouldn't it?

Mr. SHAUGHNESSY. That certainly would be, in my opinion.

Senator McADOO. You mean if that were required by law, and therefore that there would be no flexibility.

Senator KEAN. Yes.

Mr. SHAUGHNESSY. Yes, sir. I certainly think it would be bad in that case.

And now I wish to thank you gentlemen for giving me this opportunity to be heard.

Senator ADAMS. We are glad to have given you the opportunity. (Thereupon Mr. Shaughnessy left the committee table.)

Senator ADAMS. Mr. Whitney, we will hear you now.

**STATEMENT OF RICHARD WHITNEY, PRESIDENT OF THE NEW YORK STOCK EXCHANGE—Resumed**

Senator ADAMS. Mr. Whitney, you are here under subpoena to bring certain data that was being gathered over the week-end in reference to certain short sales, I believe.

Mr. WHITNEY. Yes, sir.

Senator ADAMS. And you have that data here?

Mr. WHITNEY. Yes, sir.

Senator KEAN. Mr. Whitney, my object in asking you for this information was, in the first place, to show the competence and the control that the stock exchange has over its members; second, to find out whether any officers or directors of airplane companies had taken advantage of the public in selling their stock short; and, third, to find out if any public officials had betrayed their trust in giving out information that led to short sales.

Now, Mr. Whitney, I hand you a statement purporting to be a graph of the sales during this period, which, Mr. Chairman, I should like placed in the record if there is no objection.

Senator ADAMS. I hear no objection.

Senator BULKLEY. What is it, Senator Kean?

Senator KEAN. It is an official graph.

Senator BULKLEY. How official is it?

Senator KEAN. There will be official graphs produced here later on by Mr. Whitney, as I understand.

Senator BULKLEY. All that you have said so far is that it purports to be a graph. I should like to have a little more light on the authority for calling it an official graph.

Senator KEAN. Well, I will substitute Mr. Whitney's graph for it. In other words, I will substitute the official graph for it.

Senator BULKLEY. Official in what way?

Senator KEAN. As being taken from the stock-exchange lists and drawing a line showing how the stocks went up and down.

Senator BULKLEY. Do you mean the air stocks?

Senator KEAN. Yes; only the air stocks.

Mr. WHITNEY. Well, Senator Kean, this graph that you handed me has reference to United Aircraft & Transport Corporation common stock.

Senator KEAN. Yes. Have you all of them together?

Mr. WHITNEY. No; not together. We have separate graphs, and ours are a little bit more extensive than the one that you have presented here.

Senator KEAN. I will substitute yours for mine. I should rather have yours. Now, Mr. Whitney, that graph that I should like to have entered on the record—

Senator BULKLEY (interposing). Is it one that has been prepared by the New York Stock Exchange?

Senator KEAN. Yes.

Senator BULKLEY. To show what?

Senator KEAN. The variations in prices of stocks during this period under discussion.

Senator McADOO. Is it a chart?

Senator KEAN. Yes.

Senator COSTIGAN. How many charts have you, Mr. Whitney?

Mr. WHITNEY. I have one on each separate stock. There are seven of them. They show the range between December 29, 1933, and February 15, 1934, or approximately that date.

Senator COSTIGAN. Then you have made a list for each stock, a separate stock being covered by each of the seven graphs.

Mr. WHITNEY. Yes, sir. Now, we will take Aviation Corporation capital stock—

Senator McADOO (interposing). Pardon me for a moment. Wouldn't it be wise, Mr. Chairman, if these are going to be placed into the record, to allow Mr. Whitney to present his chart for each one of the companies, but let us get the corporate names of those which he will present?

Senator COSTIGAN. I think we might be given all of the names at once.

Mr. WHITNEY. I was attempting to tell you what is on all of the charts, and then we will come to—

Senator COSTIGAN (interposing). I should like to have the names given first.

Mr. WHITNEY. All right. The names of the seven companies for which charts have been compiled are:

The Aviation Corporation of Delaware, common stock; Bendix Aviation Corporation, common stock; Curtiss-Wright Corporation, common stock; Douglas Aircraft Co., Inc., capital stock; North American Aviation, Inc., capital stock; United Aircraft & Transport Corporation, common stock; Wright Aeronautical Corporation, capital stock.

On each and every one of these charts, gentlemen of the committee, there is shown from approximately the 2d of January until the 15th of February 1934 the closing price each day of the stock; the full lot of reported sales on the stock exchange each day; and the total short interest as of December 29, 1933, and as of January 31, 1934. That is what is included here.

Senator ADAMS. Is there a legend or statement on each graph showing that, so that the graph itself will be self-explanatory?

Mr. WHITNEY. I think it will be self-explanatory entirely.

Senator KEAN. Now, Mr. Whitney, these graphs, or some of them at all events, show the variation during this period under discussion; that is, at the beginning while there were less than 4,000 shares short, just before the President announced the cancelation of the air-mail contracts, there were 44,000 shares short. Those are just rough figures.

Senator McADOO. Senator Kean, which ones are you speaking of now? Are you speaking of all of them or just one of them?

Senator KEAN. That refers to all of them, but there is a variation in the case of all of them.

Senator McADOO. A short position in respect of what companies?

Senator KEAN. That will be shown by Mr. Whitney.

Mr. WHITNEY. The total of the seven companies as of December 29, 1933, was approximately 4,400 shares, and as at January 31, 1934, it was approximately 34,000 shares for all of them. We have not got the intermediate figures, nor to the end of this chart, February 15, 1934.

Senator KEAN. On my chart it shows, taking them all, that there was a short interest of about 44,000 shares. That was what I had in mind.

Senator CAREY. Are these tables being presented here this morning the result of a complete investigation by the New York Stock Exchange, or are you going on with some further investigation?

Mr. WHITNEY. We are making further investigations, sir.

Senator McADOO. Could you state by companies the short interest as developed between those dates? That is, show the short interest at the beginning of the period that you take, and the short interest as of February 15, I think you said?

Mr. WHITNEY. No. Only at the end of December and at the end of January. They are the only figures we have. But I can do that for you.

Senator McADOO. Well, give us just what your charts there show, by companies, so that we will know whether a larger short interest developed. It would simplify the matter if we had that data in our record.

Mr. WHITNEY. All right. The short interest in Aviation capital stock was, approximately, 100 shares on December 29, 1933, and approximately 2,900 shares on January 31, 1934. Is that the way you want it given?

Senator McADOO. Yes.

Senator CAREY. How many shares did you say on January 31, 1934?

Mr. WHITNEY. I said 2,900 shares. These are given approximately in all cases. I am reading from the chart. But I can give you the absolute figure down to the one share if you want that information. But as I understand it, you now want what this chart shows?

Mr. REDMOND. Here are the detail figures, Mr. Whitney.

Senator McADOO. Mr. Whitney, you were giving just the data I wanted, as applied to each company.

Mr. WHITNEY. I will make it even more exact than that, now. Now, Senator McADOO, if I may revise that figure: Aviation Corporation capital stock, short interest on December 29, 1933, was 116 shares, and on January 31, 1934, it was 2,897 shares.

Bendix Aviation Corporation common stock, short interest December 29, 1933, was 1,060 shares, and on January 31, 1934, 2,826 shares.

Curtiss-Wright Corporation common stock, short interest December 29, 1933, 126 shares, and on January 31, 1934, 9,402 shares.

Senator McADOO. What was that first figure?

Mr. WHITNEY. It was 126 shares.

Senator McADOO. All right. Go ahead.

Mr. WHITNEY. Douglas Aircraft Co., Inc., capital stock, short interest on December 29, 1933, 10 share, and on January 31, 1934, 1,375 shares.

Senator McADOO. What was the date of the cancelation of the air-mail contracts.

Mr. WHITNEY. I think it was on February 9, but I am not certain of that date.

Mr. PECORA. The 9th of February?

Mr. WHITNEY. I think it was, sir; but I do not want to be taken as an authority for that because I do not remember exactly.

Senator McADOO. All right. Go ahead.

Mr. WHITNEY. North American Aviation, Inc., capital stock, short interest on December 29, 1933, 5 shares, and on January 31, 1934, 1,635 shares.



United Aircraft & Transport Corporation capital stock, short interest on December 29, 1933, 3,435 shares, and on January 31, 1934, 11,926 shares.

Wright Aeronautical Corporation, certificate of stock, short interest on December 29, 1933, nothing, and on January 31, 1934, 130 shares.

Senator CAREY. Mr. Whitney, you don't know whether these lists come up to the time that the contracts for the air-mail lines were canceled or not, do you?

Mr. WHITNEY. These lists I have just given you do not. They only come to January 31, 1934, whereas it is my understanding that the air-mail contracts were canceled on the 9th of February.

Senator CAREY. Well, the list of sellers that you will furnish the committee, will they come up to February 9?

Mr. WHITNEY. Yes, sir.

Senator McADOO. You didn't give us the T.W.A., did you?

Mr. WHITNEY. That was not asked for, and, besides, I do not think it is listed on the exchange.

Senator McADOO. Or American Aviation.

Mr. WHITNEY. No; I do not think it is listed on the New York Stock Exchange.

Senator McADOO. Those are not listed on the New York Stock Exchange?

Mr. WHITNEY. No, sir; I think not.

Senator KEAN. Then we could not ask for them. But, Senator McADOO, there is another man coming on here from whom we will ask that information later. But we could not ask for that in this examination.

Senator McADOO. All right.

Senator KEAN. Now, Mr. Whitney, in regard to these air stocks, I hand you herewith what purports to be the notice to the members of the New York Stock Exchange, asking them to report on the matter. That is a correct copy, is it not?

Mr. WHITNEY. That is a correct copy of the notice sent out to the members on February 15, 1934. I have here, Senator Kean, a list of those items that were asked of me.

Senator KEAN. Mr. Chairman, I should like that paper filed as a part of this hearing.

Senator McADOO. Why not read it into the record?

Senator KEAN. All right. I will do that. [Reading:]

(The paper was marked "Whitney Ex. no. 1-A doe Identification, Feb. 5, 1934.")

NEW YORK STOCK EXCHANGE,  
COMMITTEE OF BUSINESS CONDUCT,  
February 15, 1934

*To the Members of the Exchange:*

The committee on business conduct directs me to request that you furnish it by noon, Monday, February 19, 1934, with a list of all sales made by you in the following securities during the period from January 26, 1934, to February 9, 1934, both inclusive (trade dates), giving the volume and prices, the names of the members or firms with whom the sales were made, and of the customers for whom you acted:

The Aviation Corporation of Delaware common stock.

Bendix Aviation Corporation common stock.

Curtiss-Wright Corporation common stock.

Douglas Aircraft Co., Inc., capital stock.

North American Aviation, Inc., capital stock

United Aircraft & Transport Corporation common stock.

Wright Aeronautical Corporation capital stock.

Please indicate in each instance whether the sale was for long or short account.

This information is to be sent in a sealed envelope addressed to the committee on business conduct. Delivery should be made at the incoming window, annex department, 18 New Street, New York City.

Please note that this request calls for a reply from each member of the exchange to whom it is sent, regardless of whether or not he has any information to submit.

ASHBEL GREEN, *Secretary.*

And I ask that that may be made a part of the record.

Senator ADAMS. All right. You have read it, and the committee reporter has taken it down and made it a part of the record.

Senator McADOO. Why did you fix January 31, 1934, as a date instead of a later date, just preceding the cancelation of the air-mail contracts?

Senator KEAN. Well, as I understand it, that is covered by data to be given here. And that took place on the 9th of February, as I understand it.

Mr. WHITNEY. There is furnished here the period between January 26 and February 9, 1934, both inclusive, approximately 2 weeks, sir.

Senator McADOO. All right.

Senator KEAN. Now, Mr. Whitney, I asked the chairman and I now ask you for that copy of that questionnaire. Will you have that questionnaire put in the record?

Senator ADAMS. Do you mean the letter that was just read?

Senator KEAN. Yes.

Senator ADAMS. That will be made a part of the record by the committee reporter, just as you read it.

Senator KEAN. Now, Mr. Whitney, I find here a letter from Mr. Redmond, which enclosed that, written on Saturday, and in which he says:

Mr. Whitney requests that I send you the enclosed copy of the questionnaire sent to members of the stock exchange in regard to short sales of aviation stocks.

I received that letter with the enclosure on Saturday, and I replied as follows, which I should like to go into the record, if I may have it done.

Senator ADAMS. All right.

Senator KEAN. The letter is as follows:

UNITED STATES SENATE,  
COMMITTEE ON BANKING AND CURRENCY,  
March 3, 1934.

ROLAND L. REDMOND, Esq.,  
*The Willard Hotel, Washington, D. C.*

MY DEAR MR. REDMOND: Thank you for your letter of March 3, enclosing the stock-exchange questionnaire of February 15 in regard to aviation corporation.

If possible, to save space in the record, I would like Mr. Whitney to be prepared to answer the following questions:

The total number of sales of each of these stocks on the days mentioned, the firms that sold long stocks and the firms that sold short stocks, and the names of the clients for whom this stock was sold.

My object in asking for this information in the first place is to show how competent and what control the stock exchange had over their members; second, to find out whether the officers or directors of these airplane companies had taken advantage of the public in selling the stock short; third, to find

out whether any public officials had betrayed their trust in giving out information that led to short sales.

Yours very truly,

(Signed) HAMILTON F. KEAN.

And I submit that for the record.

Senator ADAMS. Very well.

Senator McADOO. Senator Kean, you did not ask him the question as to whether any public officials had, either directly or indirectly, engaged in selling air stocks short.

Senator KEAN. I do not think Mr. Whitney could answer that question, Senator McAdoo.

Senator BULKLEY. Is Mr. Whitney going to submit the names of all who sold stocks short as to these aviation stocks?

Senator KEAN. Yes.

Senator BULKLEY. Then we can determine whether they are public officials or not.

Senator McADOO. But, Senator Kean, I notice that you confined it to officials of the corporation.

Senator KEAN. Officials and directors.

Senator McADOO. Of the companies.

Senator KEAN. Yes; and also public officials.

Senator McADOO. Well, as to whether or not any of those gave out information I do not know that Mr. Whitney could answer. But as to purchases and sales by others than officers and directors of the companies, I did not get any such request from your reading of the letter.

Senator KEAN. Oh, that is in there, all right.

Senator McADOO. All right.

Senator CAREY. Mr. Chairman, I should like at this time to make a motion if I may.

Senator ADAMS. All right, Senator Carey.

Senator CAREY. I move that Mr. Pecora and his investigators of this committee be instructed to check the lists furnished by Mr. Whitney and to make such investigations as may be necessary to ascertain:

(1) If any of those making sales of stocks in air lines are holding political office or are related or associated with any person in an official position;

(2) If any sales were made either through fictitious accounts or on behalf of others, to ascertain the name of the actual seller; and

(3) To report to this committee the result of such investigation.

Senator ADAMS. Is there any discussion in reference to the motion? [A pause, without response.] All in favor of it will say "aye." [Several ayes.] Those opposed will say "no." [Silence.] The motion is carried and Mr. Pecora will go ahead and make the investigation and furnish the information desired.

Mr. PECORA. Well, the temporary holiday seems to have come to an end. We will proceed. Now, Mr. Chairman, I should like to suggest as a necessary preliminary that Mr. Whitney at this time produce for the record such data as he was subpoenaed to present here this morning; and after they shall have been presented I will see if, as a foundation for the investigation that Senator Carey's motion covers, we are prepared to proceed.

Senator ADAMS. Very well; that may be done.

Senator KEAN. Mr. Pecora, before that is answered I should like to ask Mr. Whitney whether he will produce, for the benefit of the

committee, one of the lists of the stock exchange members, with their partners?

Mr. WHITNEY. Yes, sir; the directory, do you mean?

Senator KEAN. Yes.

Mr. REDMOND. I have one at the hotel but not here. But I think that Mr. Pecora has a directory.

Mr. PECORA. We have the 1933 directory.

Mr. REDMOND. You haven't one as of January 1934?

Mr. PECORA. No.

Mr. REDMOND. There is one for January 1934, and I will furnish you a copy of it.

Mr. PECORA. All right.

Mr. WHITNEY. Do you now wish me to submit these various papers in accordance with the subpoena?

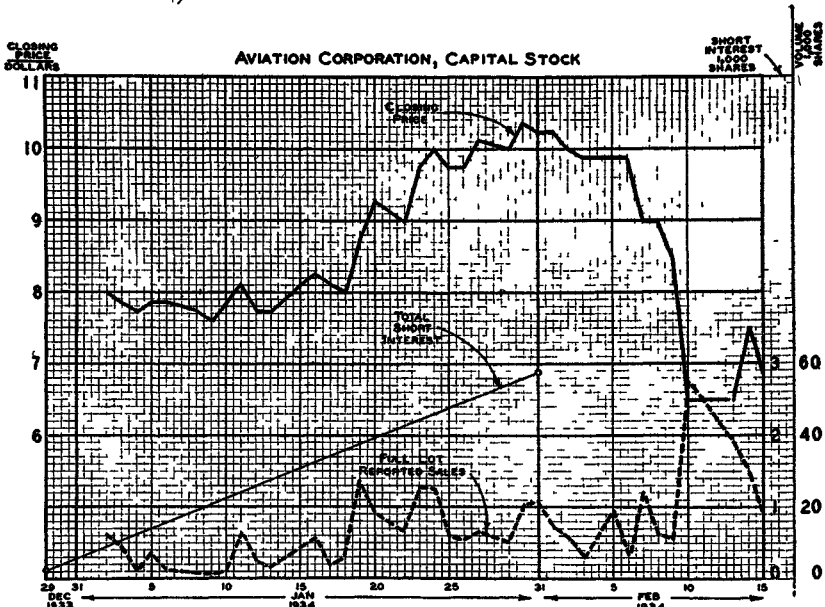
Mr. PECORA. Yes; produce them and they will be marked in evidence, or for identification, but they need not be spread on the record at this time, because I see that the documents you are going to produce are of a voluminous character. But we will introduce them in evidence and then take them up.

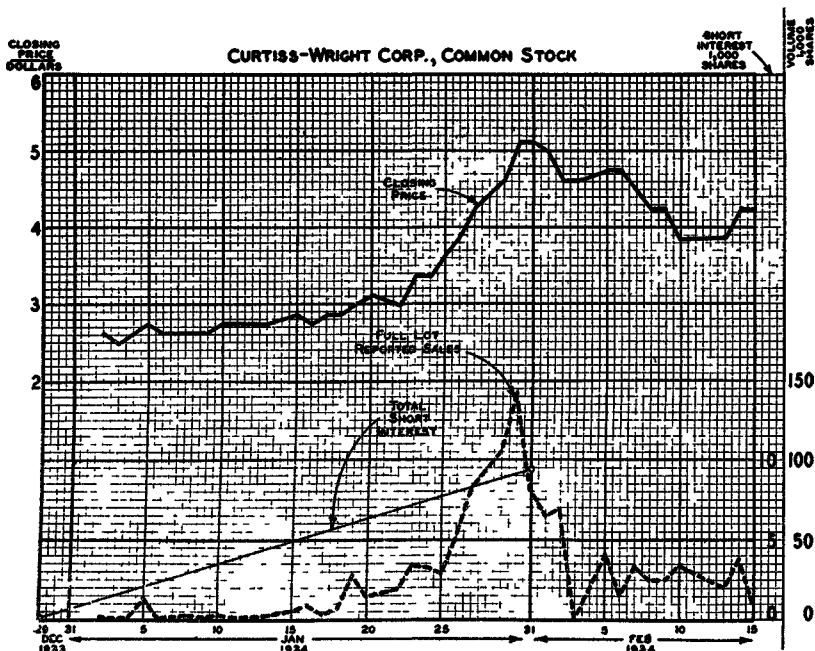
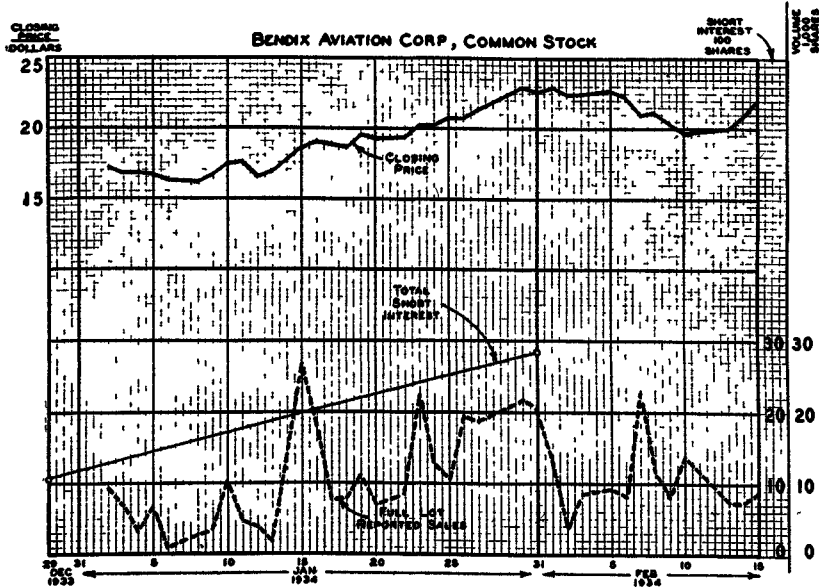
Mr. WHITNEY. Well, I have here the graphs that Senator Kean referred to.

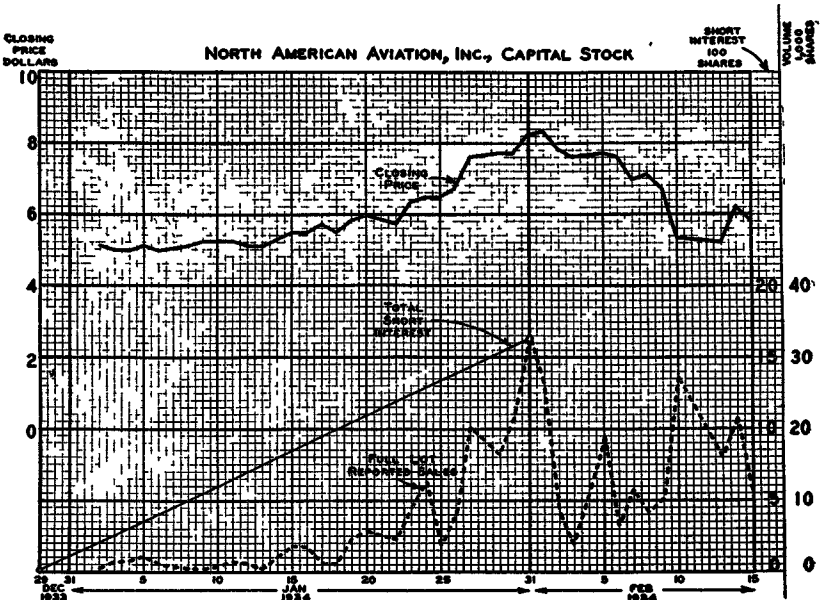
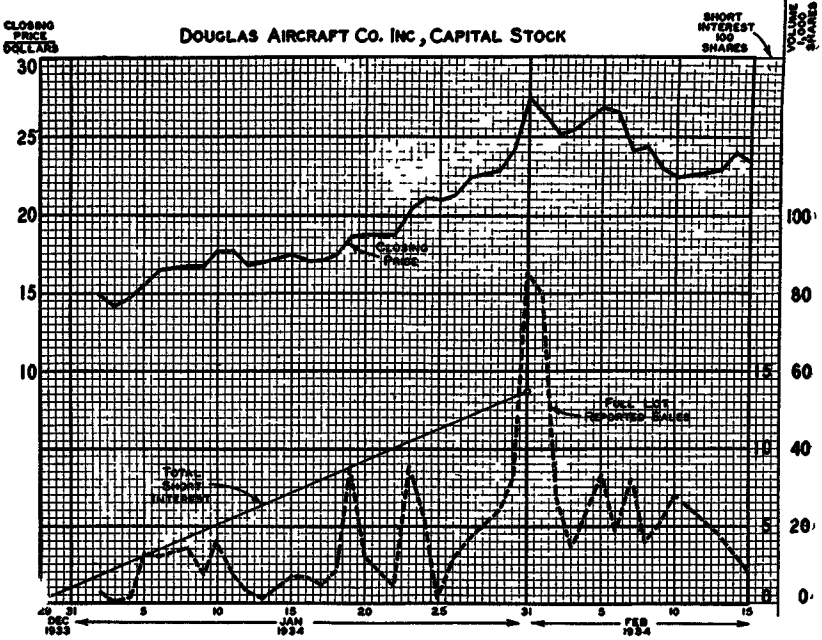
Senator KEAN. And which I asked, Mr. Chairman, be made a part of the record.

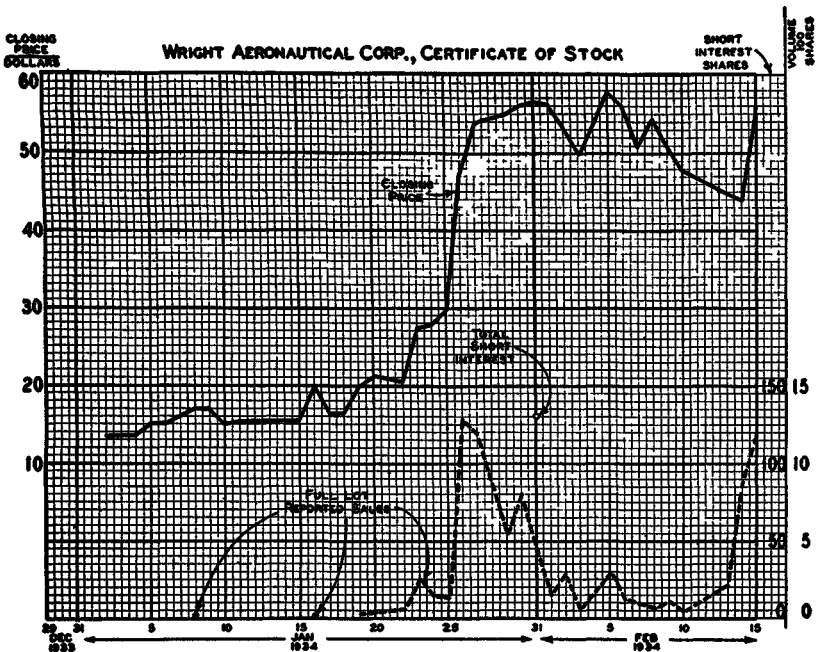
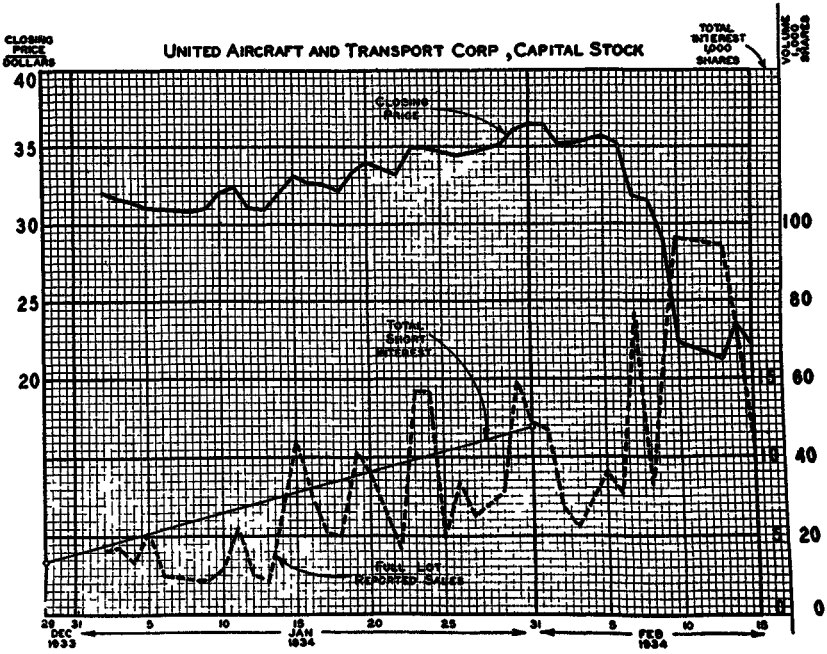
Senator ADAMS. That has been ordered.

(Seven graphs, covering the Aviation Corporation common stock, Curtiss-Wright Corporation common stock, Douglas Aircraft Co., Inc., capital stock, North American Aviation, Inc., capital stock, United Aircraft & Transport Corporation common stock, and Wright Aeronautical Corporation capital stock, as requested by Senator Kean, are as follows:)









Mr. PECORA. Proceed, Mr. Whitney.

Mr. WHITNEY. The first is the copy of the questionnaire to the members of the New York Stock Exchange, by the committee on business conduct, dated February 15, 1934, that Senator Kean has already introduced.

Mr. PECORA. Suppose that be marked in evidence.

Senator ADAMS. That has already been made a part of the record, when read by Senator Kean.

Mr. PECORA. All right.

Mr. WHITNEY. That is our no. 1-A.

Our no. 2 are the papers which Mr. Redmond has here and which are the original answers of the members of the New York Stock Exchange to this questionnaire.

Senator ADAMS. The original answers?

Mr. WHITNEY. Yes, sir; the original answers.

Senator ADAMS. How many packages have you of those?

Mr. REDMOND. I think there are 25 or more. There is one package at least for each letter of the alphabet, except I think for X.

(The large volume containing separate packages lettered A to Z, inclusive, except the letter X, were marked "Whitney Exhibit No. 2 for identification, March 5, 1934", and will be retained by the committee until decision is reached as to whether they will be printed or not.)

Senator BULKLEY. To how many members was this questionnaire sent?

Mr. WHITNEY. To all members.

Senator BULKLEY. To every member of the New York Stock Exchange?

Mr. WHITNEY. Yes; and every member had to make an answer.

Senator COSTIGAN. And did all members make answer?

Mr. WHITNEY. As to that I could not say, Senator Costigan, because some of them might be out of the country, or ill, or whatever it might be; but it was sent to all members of the New York Exchange.

Senator KEAN. I think we can assume that every member had one of them.

Mr. WHITNEY. I assume so, and that we have heard from them or from their offices in their behalf.

Senator ADAMS. You may continue, Mr. Whitney.

Mr. WHITNEY. No. 3 is a compilation showing:

(1) Total short sales in the seven stocks involved on each day from January 26 to February 9, inclusive; and

(2) The names of customers for whom those short sales were made, and the name of the stock involved, and the names of members or the firms in whose offices the accounts were carried.

Mr. PECORA. Mr. Whitney, in giving the names of customers for whom orders were executed, does your data also show the addresses of such customers?

Mr. WHITNEY. No, sir.

Mr. PECORA. Would it be possible to supplement the data included in the returns which you have there by giving the addresses of the customers?

Mr. WHITNEY. The additional questionnaire sent out by the exchange on Saturday will have that information, Mr. Pecora.



Mr. PECORA. When do you think the returns to that questionnaire will be received?

Mr. WHITNEY. They will be received, presumably, some time this week. And then compilations should be in order some time around the end of the week or early next week.

Senator KEAN. Mr. Whitney, what did you ask for in the new questionnaire?

Mr. WHITNEY. Might I get to that a little bit later, in the order of presentation I have here?

Senator KEAN. All right.

Mr. WHITNEY. I think it will give the sequence better if I may proceed in that way.

Senator KEAN. All right.

Mr. WHITNEY. I wish to state in connection with this exhibit no. 3 that we have compiled, for the benefit of Senators, the names, amounts, what the stock is, and through whom the stock was sold short.

Senator ADAMS. And is that compilation brought down to February 9?

Mr. WHITNEY. Total short sales from January 26 to February 9; yes, sir. And we have checked these as best we could. There may be some inaccuracies, but we have done it in this way in order to simplify your trouble in doing it yourselves. Now this is no. 3.

(A list of total short sales, Jan. 26 to Feb. 9, 1934, in the aviation stocks mentioned was marked "Whitney Exhibit No. 3 for identification, March 5, 1934", and will be retained by the committee until decision is made about printing same.)

Senator ADAMS. You may proceed, Mr. Whitney.

Mr. WHITNEY. No. 4 is a compilation showing the name of each customer who, during this period, sold stock long in the amount of 1,000 shares or more, and including the amount of stock involved, and the name of the member of the exchange where the account was carried. Again that was done in order to facilitate your work, and we hope there are no inaccuracies, as we have done it to the best of our ability.

(A list of aviation stocks sold long Jan. 26 to Feb. 9, 1934, was marked "Whitney Exhibit No. 4 for identification, March 5, 1934", and will be retained by the committee until it is decided whether same will be printed or not.)

Mr. WHITNEY. Exhibit no. 5 is a list of the persons who had open short positions in the seven stocks involved as of December 29, 1933, and January 31, 1934. Senator McAdoo, that gives the names of those you asked me about.

(Statement entitled "List of individuals short aviation stocks as of Dec. 29, 1933, and Jan. 31, 1934", was marked "Whitney Exhibit No. 5", for identification, and the same is held in the files of the committee.)

Mr. WHITNEY. I have here some 10 or 12 duplicates of what I have just stated, which I would be glad to hand around.

Mr. Chairman, in answer to Senator Kean, there was another questionnaire sent to all the members of the exchange on March 3, which, if you desire, we can mark as exhibit 6.

Senator ADAMS. Let it be admitted and marked.

(Questionnaire to members of New York Stock Exchange, Mar. 3, 1934, was marked "Whitney Exhibit No. 6", for identification, and the same is held in the files of the committee.)

Senator ADAMS. You might read that.

Mr. WHITNEY (reading):

NEW YORK STOCK EXCHANGE,  
COMMITTEE ON BUSINESS CONDUCT,  
March 3, 1934

*To the members of the exchange:*

The Committee on Business Conduct directs that you furnish it by noon, Wednesday, March 7, 1934, with a list, in duplicate, of all purchases, sales (indicating whether for long or short account), receipts, deliveries, and transfers between accounts made by you in the following securities between December 1, 1933, and February 9, 1934 (trade dates):

The Aviation Corporation of Delaware Common Stock.  
Bendix Aviation Corporation Common Stock  
Curtiss-Wright Corporation Class "A" stock  
Curtiss-Wright Corporation Common Stock  
Douglas Aircraft Co., Inc., Capital Stock.  
National Aviation Corporation Capital Stock  
North American Aviation, Inc., Capital Stock.  
United Aircraft & Transport Corporation Common Stock.  
Wright Aeronautical Corporation Capital Stock.

Odd lots need not be included.

In each instance please indicate the volume and prices, the members or firms with whom the purchases or sales were made, and the names and addresses of the customers for whom you acted.

Where transactions made by you are being reported by another member please state that fact and do not include a list of such transactions in your reply.

This information is to be sent in a sealed envelope addressed to the Committee on Business Conduct. Delivery should be made at the Incoming Window, Annex Department, 18 New Street, New York City.

Please note that this request calls for a reply from each member of the Exchange to whom it is sent regardless of whether or not he has any information to submit.

(Signed) ASHBEEL GREEN, *Secretary.*

I have extra copies of that.

Senator KEAN. I would like to have one.

Mr. WHITNEY. Mr. Chairman, I think that is all the information called for the subpoena, insofar as I know.

Senator ADAMS. Senator Kean, does that meet the requirements of the subpoena so far as you know?

Senator KEAN. Yes.

Senator CAREY. I understand Mr. Whitney will have some additional information, and I move that he furnish that to the committee when it is available. Am I right, Mr. Whitney?

Mr. WHITNEY. Yes. May I ask for a subpoena?

Senator ADAMS. Do you have in mind the identification of the data that are to be furnished?

Senator CAREY. It is the reply to this questionnaire just marked "Exhibit 6" for identification. I ask that a subpoena be issued for it.

Senator KEAN. I will second that motion.

Senator ADAMS. A subpoena will be issued.

Senator KEAN. I have some questions I would like to ask Mr. Whitney by and by.

Mr. PECORA. I think a direction from the chairman in open hearing would be equivalent to a subpoena.

Senator KEAN. He wants a subpoena.

Senator ADAMS. So far as the air-mail matter is concerned, that has been concluded, so far as you know?

Senator KEAN. It has been concluded as far as we can go until we study these names.

Senator ADAMS. Until the return of Mr. Pecora's investigators and the return of additional information.

Senator KEAN. Yes.

Mr. WHITNEY. Do you wish me further, Mr. Chairman?

Senator ADAMS. Mr. Pecora, did you have anything further of Mr. Whitney?

Mr. PECORA. I think not. When you get the data showing the addresses of these customers, you can turn them over to me.

Mr. WHITNEY. Mr. Pecora, the new questionnaire asks for the addresses of customers dating back considerably more than that first questionnaire, so that will be supplied under the subpoena, as I understand it. Do I understand that you wish to go into the addresses of these? They will be shown on the second—

Mr. PECORA. No; we can check up against the list that is forthcoming.

Mr. Whitney, you recall that last week I asked you or Mr. Redmond, in the course of an open hearing to produce certain minute books of certain committees of the stock exchange, and also copies of the treasurer's report, and the financial statement of the exchange and its affiliated or associated corporations for the past 3 years. Are they here?

Mr. REDMOND. Those papers were brought down to Washington last week, Mr. Pecora, and as they were not asked for, I sent them back, because they are the active books of the exchange.

Mr. PECORA. You did not tell me they were brought down here. I have been waiting for their arrival.

Mr. REDMOND. I said I would have them, and they came down that night.

So far as the minutes of the conference committee are concerned, and the special report of the committee on publicity, we raise no question at all as to their confidential nature.

As to the others, it raises a very serious question, because those minute books contain the names of third parties. In the case of the governing committee, members of the exchange who were brought up on charges and were acquitted obviously would be very greatly damaged if their names should be given broad publicity.

In the case of the minute books of the committee on business conduct, there are many instances where members were brought before the committee and questioned in regard to their financial status, which they have brought up to the requirements of the committee since that date. Obviously it would be disastrous to their business reputations if those minutes should be simply spread broadcast. Under those circumstances we would like very respectfully to raise the question as to whether the committee requires us to produce those books in open hearing, or whether they would like to have them submitted in executive session for such purposes as the committee may wish.

Mr. PECORA. Mr. Redmond, I shall be mindful of all the considerations you have just referred to. My suggestion is that the minute

books be turned over to me for informal examination, and then such items as appear therein to be pertinent and proper and relevant to the hearing being conducted by the committee will be made a matter of public record, and only such items.

Mr. REDMOND. Of course, it is entirely a matter of the wish of the committee. We raise the question of the subpoena to produce them before the committee. We simply raise the question in view of the highly confidential nature of these documents and the really disastrous effects that might follow.

Senator ADAMS. I am sure, Mr. Redmond, the committee does not want to cause anybody any injury or damage unjustly, unless there is some public interest involved.

Mr. REDMOND. That is the reason we suggested that they might be produced in executive session, so as to make sure there would be no possibility of that.

Senator ADAMS. Is it agreeable to you to follow Mr. Pecora's suggestion and have them submitted to him for informal examination?

Mr. REDMOND. We are in the hands of the committee on that. If that is the order of the committee, of course we will comply.

Mr. PECORA. Nothing will be made public except at public hearings of the committee here. I can assure you of that.

Mr. REDMOND. Could we also have a subpoena to that effect? Remember, we are dealing with the rights of third parties.

Senator ADAMS. You have been subpoenaed to produce those books, have you not?

Mr. REDMOND. Only an oral request made in open hearing. I think, for the safety of the exchange, we should have a formal subpoena, so that nobody who might be injured would have a basis for suit against the exchange, saying that it produced them without being legally required to do so. It may sound like a technicality, but I do feel that I have to protect the exchange from the possibility of suit.

Mr. WHITNEY. Mr. Chairman, many of the items covered by these minutes, with particular reference to those of the committee on business conduct, may also refer to individuals who are not even members of the exchange at all, and very serious embarrassments could arise to us if that information were made public, because it might be of great damage to those individuals.

Senator ADAMS. If the books are submitted to Mr. Pecora, and an opportunity given to Mr. Whitney and Mr. Redmond to discuss the matter with Mr. Pecora, there will be ample opportunity to protect the situation.

Mr. REDMOND. Mr. Pecora, might I suggest, first of all, that these books are very large and very cumbersome. Might I suggest that we make them available to you at the stock exchange at any time that suits your convenience?

Mr. PECORA. I do not believe that is going to facilitate matters very much, because I will be engaged down here in Washington quite continuously. I would not have access to them under those circumstances.

Senator GORE. If you have them sent down here Saturday morning, they could work on them Saturday.

Mr. REDMOND. Mr. Pecora, I may seem highly technical in this thing. I am perfectly willing to do whatever is necessary. The

wish of the committee was that they be submitted to you. There would be quite a difference between submitting the books to you and sending them, let us say, to your office, where other persons might have access to them.

Mr. PECORA. That is why I want them here, where they would be under my eye.

Mr. REDMOND. You wish us to produce them in this room?

Mr. PECORA. Yes.

Mr. REDMOND. If that is your wish, we will do anything you want.

Senator ADAMS. Mr. Redmond, as a matter of accomplishing what you have in mind, might it not be better for you to present them voluntarily to Mr. Pecora for his examination and to produce them in response to a subpoena?

Mr. REDMOND. I am afraid, Mr. Chairman, in view of the nature of the information, affecting the business life of third parties—

Senator ADAMS. The subpoena brings them before the committee.

Mr. REDMOND. That is the only justification we have for letting any person other than an official of the exchange see those documents.

Senator GORE. It seems to me to be a reasonable request.

Mr. PECORA. Suppose you produce them before the committee. They may be marked for identification, and impounded here for a period of time which will enable us to examine them informally.

Senator GORE. In response to the subpoena?

Senator GOLDSBOROUGH. I think his request for a subpoena is reasonable under the circumstances.

Senator ADAMS. When do you want them, Mr. Pecora?

Mr. REDMOND. We will have them any time you want. I think they can be here tomorrow morning.

Mr. PECORA. How about the treasurer's reports?

Mr. REDMOND. They fall under the same heading. I think the subpoena should cover them. Under the constitution of the exchange, those reports are to be submitted only to the finance committee of the exchange and the governing committee. We, therefore, feel that we must protect the officials of the exchange.

Senator ADAMS. A subpoena will be issued.

Senator COSTIGAN. Mr. Whitney, I notice that some of the names have connected with them the dates of the sales, and some have not.

Mr. WHITNEY. Would you kindly tell me to which exhibit you are referring?

Senator COSTIGAN. This has no number, but it relates to the—

Mr. WHITNEY. Is it the short sales or the long sales?

Senator COSTIGAN. Both. It relates to the report for securities during the period from January 26 to February 9. I think it is no. 3.

Mr. WHITNEY. What is the heading on the list?

Senator COSTIGAN. The total short sales of aviation stocks, beginning January 26.

Mr. WHITNEY. Yes, sir. I have that.

Senator COSTIGAN. The dates are given for the totals, apparently, but when we turn to the following pages we find no dates. Have you those dates?

Mr. WHITNEY. They are in the total reports, Senator Costigan.

Senator COSTIGAN. Which are before the committees?

Mr. WHITNEY. Which are before the committee—the originals, I mean.

Senator COSTIGAN. For instance, can you give the committee the date on which J. P. Morgan sold 4,500 shares of United Aircraft?

Mr. PECORA. That was a long sale.

Senator COSTIGAN. That was a long sale; yes.

Mr. WHITNEY. There is no short sale by them that I see here.

Senator COSTIGAN. No; that was long.

Mr. WHITNEY. January 26.

Senator COSTIGAN. In any event all the information is available to the committee.

Mr. WHITNEY. Yes, sir. It is all in the original answers which you have. Do you wish me to go along with this?

Senator COSTIGAN. No, thank you.

Mr. WHITNEY. I do not want it to appear as a matter of record that all those sales were on the 26th. It would not be so. They were spread over four dates.

Senator COSTIGAN. You mean the sales of Mr. Morgan?

Mr. WHITNEY. The sales for J. P. Morgan & Co.

Senator COSTIGAN. This is listed as "J. P. Morgan." Is it J. P. Morgan & Co.?

Mr. WHITNEY. It is in error. It is J. P. Morgan & Co. It is correctly stated in the letter from my firm.

Senator COSTIGAN. Mr. Chairman, is it the purpose of the committee to recess at this time?

Senator KEAN. I would like to ask a few questions.

Senator ADAMS. Senator Costigan, Senator Goldsborough suggested that probably the members of the committee would like to get to the floor at noon, and then after that recess until 2:30. That is up to the committee.

Senator GOLDSBOROUGH. I so move.

Senator ADAMS. Mr. Whitney, can you return at 2:30?

Mr. WHITNEY. Anything that Senator Costigan or you gentlemen say.

Senator ADAMS. We will be glad to have you back at 2:30. The committee will stand in recess until 2:30.

(Whereupon, at 11:50 a.m., Monday, Mar. 5, 1934, a recess was taken until 2:30 p.m. of the same day.)

#### AFTERNOON SESSION

The committee resumed its session at the expiration of the recess, Hon. Duncan U. Fletcher (chairman) presiding.

The CHAIRMAN. The committee will come to order.

Have you a statement that you wish to present, Mr. Kinnicutt?

Mr. KINNICUTT. Yes, sir.

#### STATEMENT OF G. HERMANN KINNICUTT, MEMBER OF INVESTMENT BANKERS ASSOCIATION, NEW YORK, N.Y.

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

Mr. KINNICUTT. Mr. Chairman and members of the committee, my name is G. Hermann Kinnicutt, from New York. I am a partner

of one of 18 houses for whom I am the spokesman this afternoon only as a partner of one of those 18 houses. Do you wish the names of the houses, Mr. Chairman?

The CHAIRMAN. You might give them. What is the business of the houses?

Mr. KINNICUTT. I have it all right here, sir, if I may read my statement.

The CHAIRMAN. Proceed.

Mr. KINNICUTT. We are here to express the views of a group of investment firms who are all members of one or more securities exchanges, who are all members of the Investment Bankers Association, who will all come under the investment bankers' code now in process of completion. We do a commission business; we act as dealers in investment securities, and at times we act as underwriters of new issues. In the business of no member of this group is any one of these three activities a dominating factor, and our business is approximately divided between these three functions.

These firms for whom I speak or their predecessors have been in business for many years—leaving out of account the three youngest members of our group, their average age is over 48 years; 12 have been in business over 30 years, 10 over 40 years, 8 over 50 years, 7 over 60 years, 3 over 80 years, and 1 actually over 90 years.

The avowed purposes of this bill are in the interests of the public welfare and the protection of the investor, and we believe there are certain sections of it that will not only fail to accomplish these purposes but will have a contrary effect. Any clause that merely does damage yet fails to accomplish the desired end you will not wish to make law.

As members of one or more exchanges, we are, of course, vitally interested in all that affects their activities. What hurts them hurts us. There are a number of clauses in this bill that in our opinion are unwise as, for example, its deflationary aspects, its effect on corporations, and their security holders, which will not or cannot register on a security exchange, and the destruction of the market which now exists for these securities, and, lastly, that the bill goes far beyond its nominal purposes. There are, however, certain specific clauses which are of particular concern to us. In the economy of time I shall confine myself largely to these, because as a group we know more about them and how they are likely to work. They affect us but they also affect very many others. I mean by "us", the many broker, dealer, and underwriter groups throughout the country, of which we are but a part, but a representative part. They concern us more vitally than they do firms engaged exclusively in a commission business.

We wish to demonstrate in the first place that the business of the distributor of securities acting as a dealer and an underwriter is not only to the benefit of the investor, but also an absolutely necessary function in the financial system of this country and is essential for the economic welfare, particularly so during this difficult period of recovery. If this can be shown and at the same time it can be demonstrated that this bill will greatly hurt or largely destroy the ability of this group to function when they are more needed than

ever, we cannot be accused of speaking purely from motives of self-interest.

As to the necessity for the dealer; it is an undisputed fact that for many years a very large proportion—probably as much as 90 per cent—of all the high-grade investment securities of this country have been placed by dealers in every State of the Union, and in their capacity as dealers, though at the same time in other directions they act as brokers.

It is also a safe statement, and one which we wish to emphasize, that by and large the most responsible of these dealers are members of some exchange. We have heard testimony that as a matter of fact there were too many dealers in 1928 and 1929 and it would be a good thing to get rid of some of them. Perhaps there were too many, but the financial difficulties of the last 4 years have already killed off a good many of them and it would certainly be unwise to now kill off the most responsible of those who are still left and leave the less responsible ones in the field.

Thirdly, it seems undisputable that an essential and absolutely necessary part of the recovery program is to transfer from the Government to private capital the heavy burden of financing industry which has taken on such staggering proportions of late. The Reconstruction Finance Corporation is today the biggest lender in this country—not from choice but from necessity, and to avoid a greater calamity. These loans must ultimately be absorbed by private capital—by savings banks, insurance companies, estates, and individuals, as earning power is restored and savings are augmented as a result of these very same loans.

We do not claim that there are no dishonest persons in the securities business. We do not claim that at times unsound practices cannot be used. We are all about to subject ourselves to the very stringent detailed requirements of the N.R.A. code for investment bankers, which, as a matter of fact, go very far toward eliminating many of the dangers of unfair or unsound practices this bill aims to cure. We do claim, however, that with very rare exceptions the security dealers of this country are honest and maintain standards of practice at least as high as those in other industries, and we definitely believe as to certain sections of this bill that the efforts to cure a lesser evil will create a greater one.

By accident, we can give you a concrete example of very recent date. While section 10 of this bill was being discussed, four of the very firms I am speaking for today, purchased from the R.F.C. a million municipal bonds of a large western city which the R.F.C. had taken some months before when conditions were such that the city could not sell elsewhere. In the past few days these four firms, through their combined distributing organizations with their knowledge of markets and of likely buyers for these bonds, have placed a portion of them and are in process of placing the balance in permanent hands. To this extent they have lightened the load of the R.F.C. and made funds again available for some similar constructive purpose. Under clause 10 of this bill, this operation would not be possible for any member of any registered exchange. This is only an isolated case of which I happen to have personal knowledge, but transactions of this nature must be taking place almost every day.



With the elimination of the distributing machinery of bank affiliates, the dealers today provide the only remaining vehicle of distribution. To illustrate the importance of this business, during 1933 when volume was at an absolute minimum, the record shows that the volume of dealer business in bonds alone, exclusive of any business on any exchange, of this group I am speaking for, was over \$1,250,000,000.

May I interject here that these figures were made up rather hastily, so do not send me to jail if I am out a million or two in my figures. I think I have underestimated rather than overestimated.

This is a substantial sum, yet obviously it is but a fraction of the business done by the large number of dealers from Portland, Oreg., to Portland, Maine. In addition the volume done on the exchanges was at least as great. By far the largest part of this amount was not in new issues but in the important and necessary readjustment of portfolios caused by changing conditions. Furthermore, in our judgment it could not have been done by brokers.

You may say, could not this have been done on a brokerage basis? To answer this not in a theoretical way, but from practical experience over many years, we say "no." If a savings bank or a trust company or an individual (if there are any such fortunate ones left) for sound reasons wants to sell, say, \$200,000 of bonds of some issue, the worst thing he can do is to go to a broker. We are not criticising the broker and he has a tremendously important function but in a case like this he is obviously keen to make his commission and so he offers the bonds wherever he has any chance of selling them and at many places where he has no chance, and before you know it these two hundred thousand bonds appear to be two millions, and obviously no one will buy. Many and many a time when I knew less, I have had my own bonds offered to me. The second or third or fourth broker was offering the bonds of an unknown seller. Except in very few and very active issues, the sound way to sell any sizeable block of bonds is through a dealer and not a broker.

We believe there is a further definite advantage in preserving the present method of operation. Investors rightly should have from their financial advisers information regarding all types of securities—both listed and unlisted—to get the best possible service, both as to values and prices.

It is definitely to the advantage of the investor to have his individual business in securities in the hands of relatively few people. This creates a greater sense of responsibility in the firm he is dealing with.

It is the part of wisdom for an investor to seek advice and service in security matters from some one person or firm, as he would from his doctor or lawyer on problems of health or law.

Furthermore, it is only in the broker and dealer combined that you can get the necessary and essential statistical information in any comprehensive way. A man acting only as a broker, neither will nor can support the very great expense of an efficient service of this kind, and will be helpless, even with the best of intent, to give any adequate information on most securities. The service and statistical departments of our group alone cost many thousands of dollars annually.

Turning to the function of the dealer in his capacity as an underwriter. You have heard testimony to the effect there was too much underwriting of new securities in 1928 and 1929. Perhaps there was. There was much too much of many other things for the good of all of us. This, however, does not answer the question as to the necessity of underwriting for refunding purposes and the legitimate capital requirements of expanding business. Little financing of any size for these purposes can be accomplished without the aid of underwriting. As an example, let us assume that a railroad finds it economically wise to electrify its lines from Chicago to St. Louis. Let us assume the completed cost will be \$50,000,000. At first blush, it might be assumed that the railroad corporation could offer its issue direct to the public without the need of an underwriting to guarantee the sale, or could employ the broker to sell the bonds to the public for a commission. There are two fallacies in this: First, the railroad is far more likely to make a mistake in the terms and price of its issue, and its reception by the public, than the dealer group with their combined knowledge and long experience of market conditions and the public demand of the moment; and for the very good reason that the dealer is backing his judgment by his own money and commitment. Secondly, though the railroad may not make this mistake and the security may be reasonably attractive to the public, both from the point of view of safety and yield, it can only be so, provided the railroad gets its full requirements and is not left with an uncompleted program and the electrification completed only half the distance between Chicago and St. Louis. Under these circumstances, the road would have an uncompleted project and an unprofitable capital investment. In other words, the public will not supply the necessary capital without the assurance created by an underwriting which guarantees the full financial needs. Lastly the dealer will not underwrite, unless he also has the means of distribution, both through his own organization and that of other dealers.

It is our judgment for these reasons that the dealer organizations throughout the country must be preserved for the public interest both in their capacity as distributors and as underwriters.

Section 10 of this bill, coupled with section 19, will bring about a complete divorce of the commission business from the dealer and underwriter business. The danger to the financial structure of the country of this segregation was clearly recognized by the Dickinson committee, from which we quote as follows:

The distributor and dealer business are closely intertwined in our financial structure and no segregation should be accomplished before we are in a position to calculate its cost and foresee its repercussions. There is not yet available sufficient information to enable it (the committee) to recommend such a far-reaching decision.

Now, as to the investor placing his money through a broker in securities, a part of which the broker as agent buys for, and a part of which he owns and sells to, his customer. Here I would emphasize as strongly as possible that there must be the fullest disclosure to the customer in what capacity the broker in each instance is acting. The customer will then have complete knowledge and give it due weight.

It seems to us obvious that where a broker—acting also as a dealer—has a customer, he is going to get some income at least whether he acts in one capacity or the other. Where he is a dealer

alone, his only profit can come from selling from his own inventory and the temptation to yield to the deplored high-pressure practices, irrespective of the needs of the individual customer, will be aggravated. We believe there is much mistaken criticism of a dealer in selling from his own inventory because it is approached from the false premise that an inventory presupposes something the dealer is "hung up" with. As a matter of fact, in the great majority of cases, his inventory is acquired because the dealer believes it is advantageous for his customer as to quality and as to price. Call a dealer a knave if he deserves it, but do not think that the dealers of this country are so stupid as to believe they can have success in the long run unless they make money for their customers instead of out of their customers. It is a truism that "good will" is the biggest single asset in any concern or industry.

Now, as to the investor's risk through carrying his account with a broker who at the same time is taking commitments for his own account. This is best answered by the yardstick of experience. The record is illuminating in the figures of failures on the exchanges, who to date are unregulated except by their own rules.

The record of the five biggest security exchanges in the United States over the past 4 years shows a percentage of failures to total memberships of three eighths of 1 percent per annum, and many of these were in no way due to causes that segregation of the broker from the dealer business would have prevented.

This may be partly due, so far as members of the New York Exchange are concerned, because of its own regulation that every 6 months every member must answer a questionnaire. Have you ever studied one of these? It requires a detailed statement of pretty nearly everything under the sun, and if every last thing is not in order, the exchange demands immediate action. Right here we would strongly recommend that every exchange should demand from its members some similar requirement.

Mr. Chairman, I have here, which I would like to put into the record, a questionnaire of the New York Exchange, in the event that you have not studied it; because I may say that being for the moment on the other side of the fence, we always look upon their questionnaire with the greatest care, to be sure that every question—and almost every question there is, is asked—is answered absolutely correctly.

The CHAIRMAN. A questionnaire by the exchange?

Mr. KINNICUTT. Yes, sir; to all of its members.

The CHAIRMAN. You do not want to put it all in, do you?

Mr. KINNICUTT. No; I am speaking of one that goes to all members of the New York Exchange.

Mr. PECORA. You want to put in evidence the form of questionnaire?

Mr. KINNICUTT. Yes, sir.

The CHAIRMAN. Very well.

Mr. KINNICUTT. This is the record by which to measure the danger to the investor from a combination of commission and dealer abusiveness in the same firm.

I want to make it perfectly clear that these failures, rare though they are, are significant only as they caused loss to the customer, because of carrying his account there.

In every problem of life there is an alternative. These failures, small in number though they are, are greatly to be deplored, but the alternative of largely crippling or destroying the responsible broker by prohibiting him from acting as a dealer or underwriter if he remains a broker is far greater.

Now, as to the results that would come from complete segregation.

Section 10 of the bill makes it unlawful for any member of a national securities exchange or any person who as a broker transacts a business in securities through a member, to act as a dealer or underwriter in securities, whether listed or unlisted. This, in effect, means that all security dealers, whether members of an exchange or not, who now act also as brokers, will be prohibited from continuing to act as dealers if they continue to act as brokers. You have already heard much testimony that the registration requirements of the bill, to obtain listing, mean that many of the securities now listed on different exchanges will no longer be listed. Another great mass of securities such as the whole list of State obligations, municipal bonds, and equipment trusts for practical purposes cannot be listed. As a matter of public policy, bank stocks and insurance company stocks should not be listed. Another great class of perfectly sound but small issues of local securities from every substantial community in the country obviously will not be listed because, aside from the cost of audits, they are only of local interest.

If we have demonstrated the value to the country of the dealer, and we feel he is more than valuable—we feel he is an economic necessity—we have next to see if he can survive if this bill becomes law.

During the past 4 years the dealer organizations which have taken years to create—at infinite cost of effort, labor, and money, and employing many thousands of people from the “white collar” class of labor which is finding it possibly harder than any other to get work—have with difficulty kept alive. In many cases they have greatly shrunken or disappeared. In transmitting to the President on November 20, 1933, the Code of Fair Competition for Investment Bankers, Hon. Hugh S. Johnson said:

It will be seen that although the volume of recorded business decreased over 90 percent in the past 4 years, the number of employees decreased but 38 percent, and the wages of employees decreased on an average only 15 percent. Possibly no other business in the country finds itself in a comparable position

Those in this business who have survived have done so primarily because of the combination of earnings from their brokerage and dealer business. This refers to both large and small organizations in the big cities as well as the small cities. The result to the dealers throughout the country is self-evident when they no longer have any income from the commission business. The great majority could not survive solely as brokers or solely as dealers. It is a rather delicate subject even among friendly competitors such as we all are, and I have not cared to ask the information, but it would be a safe guess that on their commission business alone, or on their dealer business alone, or on their underwriting business alone every firm in this group would show a loss rather than a profit. May I emphasize that we are a good cross section of the industry.

It is undisputed that there are isolated cases of unsound practices and high-pressure methods among dealers. So there are in every profession and industry, but such bad practices and high-pressure methods are far more likely to increase than to decrease under the economic pressure to keep alive if segregation be imposed by law.

Perhaps the most dangerous result of all will be that, if every member of every exchange is barred from acting as a dealer in investment securities, the dealer business will be thrown into the hands of persons subject to no control by any exchange, and extremely difficult of any control by anybody, governmental or otherwise. A big uncontrolled "bootleg" market will rapidly develop, with great danger to the public welfare, and the danger to the investor will be greatly increased rather than decreased.

We think the whole argument as to segregation can be summarized in a few sentences.

We think we have shown that the dealer as dealer is a very definite benefit to the investor and to the public. We believe we have proved that the dealer is an absolute necessity. We think we have also shown that the underwriter performs an equally necessary function.

There were two reasons advanced for segregation at hearings before this committee or before the Interstate Commerce Committee of the House. First, the temptation said to be inherent in the combination of the broker dealer functions on the part of the dealer to sell securities to his customer rather than to buy securities for his customer on a commission basis. Secondly, the danger to the brokerage customer from excessive commitments of the dealer on the underwriting or dealer side of his business. As to the first, I think that we have shown that this temptation is greatly exaggerated and that as a matter of fact if the dealer is permitted to act only as a dealer the temptation increases rather than decreases. As to the second, we have shown by actual record of the five biggest security exchanges in the United States over the past 4 years that the percentage of failures to the total memberships was only three eighths of 1 percent per annum. This is an extraordinary record.

There should be no segregation provisions such as are contained in section 10 and section 19 of the bill which would, to my mind, destroy the successful operation of the dealer-underwriter-broker functions of our financial machinery.

In conclusion, we should like to make some constructive recommendations. There are today three Federal commissions in direct charge of specific activities, and a fourth has just been recommended by the President. By this I mean the Federal Reserve Board, the Interstate Commerce Commission, the Federal Trade Commission, and the proposed Communications Commission. The securities business of the country is today a national function and we recommend that a fifth commission—namely, a Federal Securities Commission—be appointed by the President to be specifically in charge of securities exchanges.

We do not undertake to outline from whom the membership of this commission should be drawn except to say that it should have definite representation by those who are particularly familiar by experience with the securities business. In other words, our definite recommendation here is that those who know the job should have representation.

In connection with the appointment of this commission we would stress one thing as of the greatest importance and that is that the commission should be left free to operate with great flexibility. The securities business is operated under constantly changing conditions which from time to time call for different treatment. Regulations which today are wise and necessary may be most unfortunate under the differing conditions which are bound to occur.

What are wise regulations on some exchanges may be quite inappropriate under different operating conditions on other exchanges. What may be undesirable in San Francisco, New Orleans, or Toledo might be highly desirable in Boston or New York.

We think that the functions of such a Federal Securities Commission should be primarily supervisory but that it should also be clothed with mandatory powers. We believe that in the vast majority of cases this supervisory power will bring about any changes that may seem wise to the commission for we are of the definite opinion that all of the exchanges will cooperate to the greatest degree. Obviously it is the desire of the exchanges for their own preservation to eliminate all bad practices.

In the rare instances where experience might show that a definite evil had not been cured, the Federal Securities Commission could then invoke its mandatory powers.

We believe that there should be a differentiation between the margin treatment of business in senior securities, such as bonds or preferred stocks, and in common stocks or more speculative securities.

We believe as to margin requirements that greater margins should be required on the highly volatile or more speculative securities than on governments, municipals, or high-grade investment securities which have a far less fluctuating market.

We recommend that there should be no provision in the statute giving control over commission charges, or control over the closing out of margin accounts—these must be left as matters of self-preservation to the exchanges and their members.

We recommend that all exchanges be registered.

We recommend that securities listed at the time of the registration should continue to be listed provided the listing requirements are (taking into account varying local conditions) as full as those now required by the New York Exchange.

We recommend that independent audits should be required annually, but only company audits quarterly.

We recommend that all exchanges should require from their members semiannual statements of their actual positions including working capital in relation to total commitments.

We recommend that the strongest provisions be included in the act against all wash sales and matched orders.

We recommend that in all transactions there shall be the fullest disclosure in every case as to whether a dealer is acting as principal or broker.

As to the segregation provision of this bill, you have already heard our definite views. We recommend there should be no provision requiring segregation, and urge your committee, in the light of the testimony already given, to concur in this recommendation. Should your committee, however, not agree with this view, we are emphati-

cally of the opinion that the position of the Dickinson committee on this point be adopted, namely, that no segregation be required until ample time has been given for a profound study of this large problem, and we would then recommend that the members of the President's committee, including Assistant Secretary Dickinson, be called before this committee in order to give a further expression of their views on segregation.

We have prepared a memorandum in support of our position and also an analysis of the bill and we have copies available here for distribution to members of the committee and to any others who may want a copy.

I do not want, Mr. Chairman and gentlemen of the committee, in this statement to indicate by silence that we approve all the other provisions in the bill now before you. We think there are certain specific sections, in particular such as section 6, with reference to margin, and section 14 as to over-the-counter trading; and I have already referred to section 18, the method of closing out accounts, which we do not approve of.

The CHAIRMAN. Mr. Kinnicutt, have you submitted to the committee a list of the firms or individuals represented, as you suggested you would do?

Mr. KINNICUTT. I can give you those right now:

Chas. D. Barney & Co.; Callaway, Fish & Co.; Cassatt & Co.; Clark, Dodge & Co.; Field, Glore & Co.; Hallgarten & Co.; Hemphill, Noyes & Co.; A. Iselin & Co.; Kidder, Peabody & Co.; Ladenburg, Thalmann & Co.; Laurence M. Marks & Co.; G. M. P. Murphy & Co.; Riter & Co.; L. F. Rothschild & Co.; Edward B. Smith & Co.; Spencer Trask & Co.; Tucker, Anthony & Co.; White, Weld & Co.

The CHAIRMAN. Are they all members of the New York Stock Exchange?

Mr. KINNICUTT. They are members of the New York Stock Exchange, and the most of them are members of one or more other exchanges.

The CHAIRMAN. Are there any questions by members of the committee?

Senator KEAN. I should like to ask Mr. Kinnicutt this question: You would not go into a syndicate unless you believed your customers would like to buy those securities, would you?

Mr. KINNICUTT. Obviously not.

Senator KEAN. What I am trying to get at is that bankers, brokers, or securities dealers do not go into syndicates unless they believe it would be to the advantage of their customers to buy those securities, and then they take an interest in proportion to what they think their customers would take. Isn't that quite right?

Mr. KINNICUTT. Speaking personally that is always so. We many times turn down an underwriting in a syndicate because we haven't customers who will buy, or we think the price too high.

Senator KEAN. That is what I wanted to get clear on the committee's record. I wanted to bring out that you and your associates do not go into a syndicate just because you think possibly you can make a profit, but you go into a syndicate because you believe your customers want those securities, isn't that so?

Mr. KINNICUTT. Yes. Is that all now, Mr. Chairman?

The CHAIRMAN. Would it be possible, Mr. Kinnicutt, for us to meet your views if the law required that a broker or dealer or underwriter should inform his customer at the time the transaction is entered into, in which capacity such broker or dealer or underwriter is acting?

Mr. KINNICUTT. I definitely emphasized our approval of that fact; yes.

The CHAIRMAN. But they do not do that now altogether, do they?

Mr. KINNICUTT. Well, speaking only for our group, that is one of the things they are more fussy about than almost anything else. We stamp in big letters across any statement we make the fact that we are acting as dealer, or the fact that we are acting on a different basis.

Mr. PECORA. When do you give that information to the customer?

Mr. KINNICUTT. We give that information in our reports, which are contemporaneous with our transaction.

Mr. PECORA. Do you mean at the conclusion of the transaction or at the commencement of it?

Mr. KINNICUTT. In most cases before the transaction, but in all cases after the transaction.

The CHAIRMAN. It would seem to me that it should be done before the transaction.

Mr. KINNICUTT. It would be except in the very rare instances where you cannot tell from moment to moment whether you are long or short of the particular security. It would be done in 99 times out of 100 before the transaction.

Senator COUZENS. You would not object to its being made mandatory, would you?

Mr. KINNICUTT. I would not object to it a bit. I would prefer it in fact.

The CHAIRMAN. Are there any other questions by members of the committee? [A pause, without response.] If not, we are very much obliged to you, and I hope you will have a pleasant trip to Florida.

Mr. KINNICUTT. Well, I am going to your State, Senator Fletcher, and I am very sure I will have a pleasant visit.

(Thereupon Mr. Kinnicutt left the committee table.)

The CHAIRMAN. Now Mr. Whitney will resume.

#### STATEMENT OF RICHARD WHITNEY, PRESIDENT OF THE NEW YORK STOCK EXCHANGE—Resumed

Mr. REDMOND. Mr. Pecora, here is our 1934 directory.

Mr. PECORA. I thank you.

Senator KEAN. Mr. Chairman, I should like to ask a few questions of Mr. Whitney. Shall I go ahead now?

The CHAIRMAN. Well, Senator Costigan was going to ask a few questions.

Senator KEAN. I just have three or four questions, Senator Costigan, if that would be all right with you.

Senator COSTIGAN. Certainly.

Senator KEAN. Mr. Whitney, in regard to the statements you have filed with the committee this morning of any accounts selling stock, they do not show whether the trading requirements were enforced.



I mean to say that the stocks might have been bought or sold in the name of somebody else, that is, in a name by means of which somebody else filed a letter saying: So-and-so, please trade for my own account up to so much. Of course, your inquiry does not show that.

Mr. WHITNEY. Not as I remember it, Senator Kean; although the account would have to be reported as carried on the books.

Senator KEAN. Yes. It is reported as carried on the books, but if that account were carried on the books as Mr. Jones, with a letter of authority from Mr. Smith to this effect: Please allow Mr. Jones to buy or sell up to 1,000 shares and I will be responsible for it; that does not show, does it?

Mr. WHITNEY. Not as I understand it; no, sir.

Senator KEAN. Next I should like to know: These statements do not show either when the account was opened, do they?

Mr. WHITNEY. No, sir; it does not.

Senator KEAN. And it does not show whether the account, in case a person went short on the stock, whether that account has been closed out, does it?

Mr. WHITNEY. Do you mean that the stock has been repurchased against a short sale?

Senator KEAN. Yes.

Mr. WHITNEY. No, sir; it does not show that.

Senator KEAN. That is all I wished to bring out; that these statements do not show these facts.

The CHAIRMAN. Go ahead, now, Senator Costigan.

Senator COSTIGAN. Mr. Whitney, when the committee recessed a few days ago you were, so far as I am concerned, helpfully enumerating certain complaints against stock-exchange practices. In your statement given to the committee they were referred to as grave problems which had led the governing committee of the New York Stock Exchange to recommend a regulatory body constituted under Federal law. Is it convenient for you at this time to proceed with the listing of the so-called "problems"?

Mr. WHITNEY. Senator Costigan, I think that is a very broad subject. I think the exchange and the committee are working toward the same end; and as I have enumerated in that statement, to which I think you refer, more particularly did we express our desire that there should be a prevention of fraudulent practices affecting transactions on exchanges, excessive speculation, and manipulation of security prices. I think, insofar as the exchange is concerned, we have gone as far as we can see to date. But it might not hold true for tomorrow or the next day. As far as we can see to date with regard to control over our own members, we have gone as far as we can see to date. We have suggested other means to control others, who are not within our control.

Senator COSTIGAN. Referring to the enumerated difficulties specified on page 6 of your statement, what steps have you taken to control the use of advertising and the employment of customers' men or other employees by brokers who solicit business?

Mr. WHITNEY. Well, there are various rules in the constitution, which constitution is on file with this committee, with regard to those two items.

Senator COSTIGAN. Can you recall any instance in which you penalized your members for such practices?

Mr. WHITNEY. In the matter of advertising, customers' men, and—what was your other point?

Senator COSTIGAN. The employment of customers' men or other employees of brokers who solicit business.

Mr. WHITNEY. Specifically, Senator Costigan; no. But I do, without question, know of instances where the actions of employees, even of partners themselves, have been such as to warrant our demanding their removal.

Senator COSTIGAN. Have you done so?

Mr. WHITNEY. I think so without question. I mean specifically that is not under my direct control, but there is a subcommittee on customers' men in that particular regard, which is a subcommittee of the quotation committee of the exchange, which has under review matters of that kind that are being considered almost continually.

Senator COSTIGAN. Could you give us an instance for the record?

Mr. WHITNEY. I haven't one in mind; no. But I think that could be obtained easily for you if you desire it.

Senator KEAN. Senator Costigan, might I ask a question right there?

Senator COSTIGAN. Certainly.

Senator KEAN. Mr. Whitney, every customer's man must be submitted by the firm proposing to employ him to the exchange, and the exchange must approve him, isn't that true?

Mr. WHITNEY. Yes, sir; it must approve him. They have a very exhaustive questionnaire as to his business career which must be filed in the form of an affidavit. He must have had a certain experience, a sufficient experience in the opinion of the committee, before he may be so employed. And the rate of his employment is passed on by the committee. And any changes are passed on by the committee.

Senator KEAN. I think that covers it.

Senator COSTIGAN. That suggestion, of course, approaches the problem from the other end and implies that there is no reason to penalize members of the stock exchange. How about that, Mr. Whitney?

Mr. WHITNEY. As to your word "penalize", perhaps I do not understand it in the way you mean it. But firms have been forced to remove employees for improper practices when so deemed by the committee. And there is one specific case I have in mind where a partner, for a practice deemed improper by the exchange, was forced to resign from a stock exchange firm.

Senator COSTIGAN. When was that?

Mr. WHITNEY. That was within the last 2 years, I believe.

Senator COSTIGAN. Were you active with respect to that particular episode?

Mr. WHITNEY. I was conversant with it; yes, sir.

Senator COSTIGAN. You yourself used the word "penalize" in your statement with respect to circulation of rumors or statements calculated to induce speculative activity. In what sense did you use that word?

Mr. WHITNEY. Do you mean the use of the word "penalty"?

Senator COSTIGAN. Yes.

Mr. WHITNEY. That would naturally depend upon the amount of damage done or the amount of the violation. I have in mind the control of a certain gentleman for a so-called "rumor", and he was exonerated by the governing committee of the exchange because he very definitely proved his case. And I have in mind another member of the exchange, within recent years, who was brought before the governing committee and censured for his action, he having satisfied the governing committee that what he did was a matter of negligence rather than of malice.

Senator COSTIGAN. Then you have endeavored to use your powers with respect to complaints you were considering?

Mr. WHITNEY. Yes, sir; insofar as it affects our members.

Senator COSTIGAN. What, then, are the complaints enumerated by you on behalf of the governing committee which you now tell this committee call for Federal action, for a Federal supervisory board or commission?

Mr. WHITNEY. The commission of fraud, wherein we have set up insofar as up-to-date we could see proper and necessary, rules to prevent it on the part of our own members. We believe, however, that fraud might be committed by officers and directors of corporations whose stock is listed, that that is possible, or by other persons not connected with stock-exchange houses or members thereof. I think it is a very extremely difficult thing to know how to legislate against or to control dishonesty. As to excessive speculation, which I have enumerated, that we believe is in the hands largely of those in control of the credit system of the country. Again I have stated countless times, here and elsewhere, that I do not believe there is any legislation that could prevent the individual from speculating when he so sees fit. And, thirdly, as to manipulation of security prices, we have adopted rules over a period of years affecting the action of our specialists; more recently rules in that particular regard, and also rules of recent date affecting the participation in a financial way of any of our members in pools, options, joint accounts, or syndicates that might be unfair. We believe, however, that many of those particular things are without our control and therefore we believe that in conjunction with our own rules there must be regulatory governmental control in order to prevent what we cannot prevent.

Senator COSTIGAN. What I am trying to develop are the reasons which have led your governing committee to recommend regulatory Federal control.

Mr. WHITNEY. That is just what I tried to answer.

Senator COSTIGAN. I am trying to get you to enumerate those practices which you in your experience have discovered in the stock exchange and which call for a larger regulation than any which you have practiced.

Mr. WHITNEY. I have tried to answer you by just what I have said.

Senator COSTIGAN. You have nothing further to say with respect to specific illustrations?

Mr. WHITNEY. I do not think I quite understand you.

Senator COSTIGAN. Presumably there were some specific violations of ethics or of law which led the governing committee to recommend a Federal regulatory body. I am endeavoring to get you to specify

as clearly as you can, as definitely as you may, what those practices have been.

Mr. WHITNEY. Well, sir, I am afraid I am very stupid, because I have been trying to answer your questions in what I have just said. As to fraud, we have seen, and I think it has been brought out in this investigation that there have been acts committed that come at least close to the line of fraud, but over which we cannot exercise control, and therefore call for support on the part of the Government. As to excessive speculation, I believe to the best of our ability in matters which are within our control we have adopted rules and regulations to cover, and with regard also to manipulation. But I am trying to make the distinction that we have only certain power insofar as our members are concerned, which power we try to exercise, but that Federal control must be exercised upon those without our control.

Senator COUZENS. Senator Costigan, might I ask a question right there?

Senator COSTIGAN. Certainly.

Senator COUZENS. Mr. Whitney, you said a while ago that those practices which you were unable to reach were participated in, in numerous cases, by private firms where securities are listed on the market, and you are unable to reach them in connection therewith, and I think you said some cases had been presented before this committee. Can you, from your recollection, enumerate one or two of those cases that have come before this committee that you were unable to reach?

Mr. WHITNEY. I cannot, Senator Couzens, at the moment give you that answer. But, again, that is something very easy to obtain, more particularly probably from our committee on stock list.

Senator COUZENS. But, Mr. Whitney, you have kept in touch with these hearings quite thoroughly I believe, and it does not seem comprehensible to me that you cannot recall a few cases that have been submitted to this committee which you would designate as among those that you could not reach?

Mr. WHITNEY. Senator Couzens, I think a lot that has transpired before this committee had no particular bearing on stock-exchange practices.

Senator COUZENS. I am not asking you for those, but the kind that did come before this committee and that did involve stock-exchange practices. You may consult with some of your associates if you like and give us a few instances of such cases.

Mr. WHITNEY (after consulting Mr. Redmond). To answer you, Senator Couzens, I will say in all honesty that I have not read word for word the transcript of the hearings held here. But as I am reminded, I would say, and I do not remember the situation specifically, only generally, that the situation with regard to manipulations in Warner Bros. stock and in the Fox Film stock were two cases which I think come under the category we have alluded to.

Senator COUZENS. Those are two illuminating cases. Now, would you include in that category the Chase National Bank stock?

Mr. WHITNEY. That was not done on the New York Stock Exchange. It was removed from the list prior to 1929, if not well back in the year 1928.

Mr. PECORA. It was not removed on the initiative of the New York Stock Exchange, was it?

Mr. WHITNEY. I do not quite know, Mr. Pecora, why that has any bearing, but it was not; no.

Mr. PECORA. It is a fact on the record, nevertheless. Nor was the National City Bank stock removed from the New York Stock Exchange list on the initiative of that stock exchange.

Mr. WHITNEY. But there had been nothing to our knowledge improper in the case of either one of those stocks prior to their removal.

Mr. PECORA. I merely want the record to show that fact because you say those stocks were removed from the list. I want the record to show that their removal was on the initiative of the banks themselves.

Mr. WHITNEY. And on a vote of their stockholders; yes, sir.

Senator COUZENS. Pardon me for interrupting you, Senator Costigan. That was all I wanted to bring out.

Senator COSTIGAN. Mr. Whitney, have you ever known of an instance where the exercise of the function of broker and dealer by the same person has not been compatible with fair dealing?

Mr. WHITNEY. Yes, sir.

Senator COSTIGAN. Will you illustrate it by giving us the substance of such an instance?

Mr. WHITNEY. I will give you the instance that occurs to my mind, if I understand your question correctly, which was the case of a specialist some years ago: A specialist a year or two ago had orders to buy at a fixed price, and, if I remember rightly, it was at  $5\frac{1}{8}$ . He had such orders on his book, and yet he took stock for his own account at  $5\frac{1}{8}$ . And again, although my memory may not correctly serve me, I think he took 1,500 shares at  $5\frac{1}{8}$  while he still had orders for customers, and that he had sold those 1,500 shares out at a profit. That situation was discovered, and the broker was expelled from the stock exchange because he had dealt for his own account at a price at which he still had orders to buy for customers, which is contrary to the rules of the exchange.

Senator COSTIGAN. In view of that summary handling in that instance, why did your governing committee, speaking through you, say to us that you recommend that a Federal regulatory body be given authority to adopt rules governing such an instance?

Mr. WHITNEY. I had reference there to the prohibition now contained in the bill under consideration to prevent a specialist or member of the exchange having the right to act as dealer and as broker and—

Senator COSTIGAN (interposing). You say you had reference then. Are you now referring to your prior testimony?

Mr. WHITNEY. No; I was referring to what occurred just now.

Senator COSTIGAN (continuing). Or to your language which I am now reading?

Mr. WHITNEY. To the language you are reading from.

Senator COSTIGAN. How many specialists are connected with the New York Stock Exchange?

Mr. WHITNEY. Approximately 350.

Senator COSTIGAN. Did you hear the testimony given before this committee the other day by Mr. Wright?

Mr. WHITNEY. I did not.

Senator COSTIGAN. Precisely what is the social service performed by a specialist?

Mr. WHITNEY. Senator, that was gone into for some hours by the specialist the other day.

Senator COSTIGAN. I should be very happy to have your view of it.

Mr. WHITNEY. Well, may I read from my statement in that regard?

Senator COSTIGAN. You may answer the question in any way you choose.

Mr. WHITNEY. Well, I think they serve the purpose of creating a market in executing orders for customers; and if they did not exist as specialists, it would be greatly to the detriment of customers, who are the public.

Senator COSTIGAN. My recollection is that Mr. Wright testified that in a period of about 3 months, dealing only in one stock as a specialist, not including commissions, he made about \$138,000. I am interested to know what, in your judgment, is the social service he performs that justifies that compensation.

Mr. WHITNEY. To my way of thinking, that was not compensation. He bought for his own account securities that he felt would rise in price, and his judgment was correct. I see no distinction from doing that particular thing as against a man buying a piece of real estate also believing that at the end of a period of time it would augment in value, and then he sold it and his judgment proved to be correct, so that he made a handsome profit.

Senator COSTIGAN. In other words, you see no necessity for controlling any profits of specialists?

Mr. WHITNEY. I think not, sir; because you must realize that the specialist, or anybody who deals for his own account, takes a risk of losing money as well as of making money. In other words, no one's judgment is infallible.

Senator COSTIGAN. Would your answer be the same with respect to control of the practices of specialists as you have known them in connection with the New York Stock Exchange and whether there should or should not be some Federal control?

Mr. WHITNEY. It is my personal private belief that the rules of the exchange with regard to specialists are more strict and more comprehensive than with regard to any other class of brokerage business. But I have stated in all my memoranda that I have filed here that I believe there are differences of opinion in that respect with regard to the segregation of dealer and broker, and I advocate a most sincere and earnest study of that subject, so that a final determination and solution may be arrived at in case it is different from our point of view at the present time. I am quite open to any ideas. Mr. Pecora suggested the other day specialists reporting their trades for their own account to the exchange. Certainly we would be happy to see anything done it was felt in the public interest to be of benefit. I think it a very large and broad question in the financial situation, that is, the entire subject of segregation, under which specialists come.

Senator COUZENS. Mr. Whitney, how did you come to find out about this specialist who bought stock at  $5\frac{1}{8}$  for himself and then later on sold it at a higher price? How did you discover that?

Mr. WHITNEY. My memory is not as good as it used to be, Senator Couzens, and I have forgotten just how we found it out. But I believe it was through a broker who had orders for that stock, and knowing that the stock had sold at that price in some volume and he queried the business conduct committee, and they investigated the matter, and found that the specialist had done as I have told you.

Senator COUZENS. So it was a matter of chance and luck that this situation was discovered. It was discovered in that way rather than by any general audit or review or regulation that you have of auditing that specialist's account which enabled that situation to be discovered?

Mr. WHITNEY. That may be so.

Senator COUZENS. That is what I am trying to find out. I should like to have matters so arranged that they would not be haphazard; that there would be some means of audit and control rather than having it found out by some broker out in the field.

Mr. PECORA. Or by means of some customer making complaint?

Senator COUZENS. Yes.

Senator KEAN. Mr. Whitney, isn't it true that if that stock sold in any volume and was so quoted on the exchange, immediately any customer who had an order to buy or sell at that price would question his broker as to why he had not secured that stock?

Mr. WHITNEY. Yes, sir.

Senator KEAN. And therefore the broker would send the matter up to the governing committee, and they would examine into it and find out what the situation really was.

Mr. WHITNEY. Yes.

Senator COUZENS. That is on the assumption that the man is engaged all the time in speculative buying and selling. It does not take into account the casual buyer in the market, who is not watching the market from hour to hour or from day to day.

Mr. WHITNEY. Senator Couzens, I am sorry to say that I do not agree with that, because I do not think you approach it from the angle it is approached from, and that is that a broker, the representative of the commission house, say, Mr. Kinnicutt's house, as well as the others he spoke of here today, their broker on the floor of the exchange, giving orders to the specialist, is forever watching those orders, watching the tape, to see whether or not the orders should be executed; and if there is any possibility in accordance with the tape of the execution of an order, he will immediately be aware of that fact, and the broker will send in reports. And the representatives of the houses who are acting for the public are always seeking to see that the public's orders are executed, and demanding such execution from the specialist.

Therefore, I think that is a very sincere method of control exercised upon specialists in that regard.

Senator COUZENS. We may assume, then, from that statement, Mr. Whitney, that these are very high-grade men, all of them, and that only one in all of your experience occurs to you where the specialist got in trouble?

Mr. WHITNEY. I didn't say that, Senator. I do think they are very high-grade men.

Senator COUZENS. I am not disputing that, but I am saying out of 350 men who are specialists you can recall only one who violated what was proper ethics or rules of the stock exchange; is that correct?

Mr. WHITNEY. No, sir.

Senator COUZENS. Well, how many do you recall that have violated the ethics or the rules of the exchange?

Mr. WHITNEY. That I cannot say definitely, though Mr. Pecora has that in his record.

Mr. PECORA. The record we have is in substance to the following effect: That between January 1928 and October 1923, 24 members and 11 member firms of the New York Stock Exchange were suspended or expelled for reasons other than insolvency. Twenty-three members were suspended under section 7 of article 17 of the constitution of the exchange, which provides for the suspension or expulsion of members who have been guilty of conduct or proceeding inconsistent with justice and equitable principles of trade.

And then there were other penalties imposed for infractions of rules or regulations of the exchange, including such rules and regulations as involved the making of opening trades at prices not justified by market conditions, falsification of books and records for the evasion of income taxes, improper business methods in the handling of investment-trust stock, wash sales, falsification of answers to New York Stock Exchange questionnaire, placing dummy orders for unusual amount of shares in an effort to raise the bid price, supplying stock on contract which members owned without disclosing membership, failure to charge commissions.

Mr. WHITNEY. However, of those, sir, I think you have the direct answer as to how many of those were specialists, have you not, sir?

Mr. PECORA. Yes, sir.

Mr. WHITNEY. I think that was what Senator Couzens had in mind.

Senator COUZENS. Yes.

Mr. PECORA. In addition there were penalties imposed on members for various other infractions, some of which might be specified now: Using profane language to an exchange employee [laughter]; using objectionable language to another member; unjustified remarks regarding another member's trading; throwing water on an exchange employee [laughter]—

Mr. WHITNEY. I don't think these are necessarily done by specialists, are they?

Mr. PECORA. No; they were members.

Senator COSTIGAN. Did these cases result in expulsion?

Mr. PECORA. Fines principally. Throwing torpedoes on exchange floor. [Laughter.]

Senator COUZENS. May I have the answer with regard to the specialists? I would like to get the cleared up. What have you on that?

Mr. PECORA. It seems that between January 1, 1928, and September 1, 1933, specialists received warnings and disciplinary action in a total of 93 instances.

Senator COUZENS. Does that indicate whether that is 93 different specialists? If it is, it is a large percentage. If it is a repetition of the same specialists, why, there is something wrong with the exchange to permit such repetition.

Mr. PECORA. It appears that there was repetition.



Senator BULKLEY. In what period was that?

Mr. PECORA. Between January 1, 1928, and September 1, 1933.

Senator KEAN. Five years.

Mr. PECORA. For major infractions of rules there were 7 specialists expelled, 2 suspended, 3 censured, and 1 permitted to sell his membership.

Senator BULKLEY. Would a man invariably be expelled for buying stock for his own account when he had a customer's order at the same time?

Mr. WHITNEY. So far as I have ever known, Senator Bulkley. I have known no exceptions that I can think of.

Senator BULKLEY. Would he quite certainly be ejected?

Mr. WHITNEY. We believe so; yes.

Senator BULKLEY. The reason I ask that is the man that you told about a few minutes ago that bought 1,500 shares must have had some hope of getting out. Do you know how he figured it?

Mr. WHITNEY. No, I do not; but, naturally, anybody who is breaking rules or committing a crime has a hope that they are going to get away with it.

Senator BULKLEY. One thousand five hundred shares seems a rather large amount if you have confidence in catching him at even a hundred shares.

Mr. WHITNEY. It was a very active stock.

Senator COSTIGAN. How about selling for their own account at the time that they are purchasing for a client?

Mr. WHITNEY. That is allowed, sir, if under certain rules. In other words, if they are selling for their own account where the client is purchasing, they must receive confirmation on the approval of that trade by the representative of the customer.

Senator COSTIGAN. Was the case of a Miss Roberts, of New York, brought to your attention, Mr. Whitney?

Mr. WHITNEY. At various times, sir.

Senator COSTIGAN. Was her complaint investigated and acted upon?

Mr. WHITNEY. Most thoroughly; yes.

Senator COSTIGAN. What form of action?

Mr. WHITNEY. We did not grant her complaint.

Senator COSTIGAN. There was in that instance, was there not, a judgment in one of the courts of New York which seemed to support her claim?

Mr. WHITNEY. A certain part of it in which she got judgment.

Senator COSTIGAN. You felt that the judgment did not justify her complaint?

Mr. WHITNEY. Did not justify any further action by the exchange; yes, sir.

Senator COSTIGAN. I mention the case because it is already in our records

Mr. WHITNEY. It is in your records, and very full letters have been written in regard to the case to Senators of the United States.

Senator COSTIGAN. Mr. Whitney, do you claim that you can impose an order for the filing of frequent reports of corporations which have already listed their securities with the exchange? If you were to adopt a rule today would you regard it as retroactive?

Mr. WHITNEY. I believe we probably can; yes, Senator.

Senator COSTIGAN. Have you ever attempted to issue that sort of a rule?

Mr. WHITNEY (after conferring with Mr. Redmond). Perhaps I do not quite understand your question. We have sought, and I think gained, from corporations the filing of reports in accordance with our views.

Senator COSTIGAN. By voluntary action on their part?

Mr. WHITNEY. By voluntary—well, it was not altogether voluntary.

Senator COSTIGAN. Do you claim it was compulsory?

Mr. WHITNEY. We claimed that they must do it, because they were not meeting our requirements. If you have reference to whether a corporation signed an agreement with us in the past only to file annual reports and we wished to impose upon them the filing of quarterly reports, it is a question, but I do not believe we could enforce it. We have, however—I think I said it here—been striving along that end, where we believe a corporation should so file, and we have met with a very tremendous acquiescence.

Senator COSTIGAN. But you do recognize limitations on your power to deal with corporations?

Mr. WHITNEY. I think we have recognized certain limitations. Whether or not they are limitations that are subject to review by a court is perhaps another question.

Senator COSTIGAN. Do you regard the rule of the exchange to enforce its regulations on corporations which have listed their securities as inadequate with respect to newly listed securities?

Mr. WHITNEY. No, sir.

Senator COSTIGAN. You feel you have full power in such instances, do you?

Mr. WHITNEY. Yes, sir.

Senator COSTIGAN. In such cases if the corporations do not comply, what are your remedies?

Mr. WHITNEY. If they do not comply with their agreement with the exchange, our remedy is to strike the stock of the corporation from the list.

Senator COSTIGAN. Is that remedy not one which is apt to do considerable injustice to stockholders?

Mr. WHITNEY. It may do a great injustice, and for that reason we are very careful not to exercise it unless we think the provocation is entirely sufficient.

Senator COSTIGAN. Have you exercised it?

Mr. WHITNEY. We have suspended dealing; yes, sir. We have stricken in some cases. We have threatened to strike in various cases.

Senator COSTIGAN. What was the effect on the stocks in such instances? Were they depressed in price?

Mr. WHITNEY. In the cases of suspension we felt that the stock should not be traded in any longer until a thorough investigation had been made. Where they were stricken we felt there was due cause for striking. If I remember, those cases that come to my mind the stocks were selling at low prices at the time of the suspension or striking. Where we have threatened to strike at times the stocks were selling at very considerable prices.

Senator COSTIGAN. Is it not your judgment that the Federal Government can more effectively apply penalties against individuals without injuring the stock holdings of outsiders in such cases?

Mr. WHITNEY. When you say "individuals" do you mean individuals or corporations?

Senator COSTIGAN. Or corporations.

Mr. WHITNEY. No, sir; I do not.

Senator COSTIGAN. Or the officers of corporations?

Mr. WHITNEY. With respect to their own acts; yes. But with respect to the effect upon the public in regard to corporate acts, I think the exchange can act more promptly than can an administrative body.

Senator COSTIGAN. It is your judgment that it can act more promptly?

Mr. WHITNEY. Yes, sir. And, therefore, in the interest of the public.

Senator COSTIGAN. Did you also say more effectively?

Mr. WHITNEY. Yes, sir.

Senator COSTIGAN. Then your recommendation of supervisory Federal power has no relation to the problems we are discussing?

Mr. WHITNEY. Yes; it has.

Senator COSTIGAN. You prefer to leave those to the stock exchange?

Mr. WHITNEY. Well, Senator, we, I think, have taken this in three parts, this bill. One, that relating to the stock exchanges, the other relating to the use of credit, and the third referring to the imposition of rules and regulations upon the corporations of this country. The latter two we believe outside, and should be outside, of any stock exchange bill. On the first we have made the recommendations as you are aware.

Senator COSTIGAN. It is my understanding—and I trust Mr. Pecora will check with respect to this—that during the recent hearings of the committee there has been testimony indicating questionable action in the forms of pools and other manipulations, some of which have involved exchange firms and exchange members, such as E. F. Hutton & Co, W. E. Hutton & Co., Ben Smith, Redmond & Co., Ames Bros., Kuhn, Loeb & Co., and Charles Wright. If I am correctly advised—and I have not been in attendance at all the meetings, and, therefore, speak with these qualifications—may I ask what action the New York Stock Exchange has taken, now that these charges have been made public, to indicate its approval of such conduct?

Mr. WHITNEY. I think in the case of E. F. Hutton & Co. the matters are under advisement. I am not aware that there were practices indulged in by any of the others that were contrary to the rules of the exchange.

Senator COSTIGAN. Is it true that the constitution of the New York Stock Exchange forbids information being given to its members?

Mr. WHITNEY. In what regard, sir?

Senator COSTIGAN. My information is that Mr. Redmond testified the other day that there was some prohibition in the constitution against divulging information to members of the exchange.

Mr. REDMOND. I don't think so, Senator.

Senator COSTIGAN. Am I incorrectly advised as to that, Mr. Redmond?

Mr. PECORA. Perhaps, Senator, at this time you have in mind what Mr. Redmond said the other day with regard to the treasurer's report of the exchange.

Mr. REDMOND. The constitution provides specifically that the financial statement of the exchange shall be furnished to the finance committee and to the governing committee of the exchange. That is the constitutional provision.

Mr. WHITNEY. And they being elected by the members.

Mr. REDMOND. Yes.

Senator COSTIGAN. Are there special reasons for keeping such information confidential?

Mr. REDMOND. Senator Costigan, to my best knowledge that provision has been in the constitution of the exchange for a great many years. What its original purpose was I cannot pretend to state. But it has been in the constitution and has been signed by, I think, probably every member of the exchange who is a member today. It is a very ancient provision of the constitution.

Senator COSTIGAN. May I repeat the question, as to whether there are any reasons known to you or Mr. Whitney why that clause should remain in the constitution?

Mr. WHITNEY. I will answer "no." I don't know what Mr. Redmond will answer.

Mr. REDMOND. I thought you were asking me what reasons there were at the time of its adoption, Senator. I frankly do not know those.

Senator COSTIGAN. In organized circles there might be thought to be some analogy between such a provision and what has been rather depreciatingly referred to as "yellow-dog contracts", an imposition on members of conditions which keep them from free action with respect to matters of importance or deemed important by them.

Mr. WHITNEY. I imagine the business life of a member is pretty important to him, and yet he signs that into the hands of the governing committee willingly on joining the exchange.

Mr. PECORA. He has no alternative if he wants to become a member?

Mr. WHITNEY. He has not, sir, but he does not have to become a member.

Senator COSTIGAN. I think that is all, Mr. Chairman.

Senator KEAN. Mr. Whitney, on the exchange a man goes up to a specialist—and there may be two at the same time—and it may be a question of buying a hundred shares at an eighth, and he gives the hundred shares to that man instead of giving it to that man. Now, of course, that man makes a complaint, does he not, or is very apt to, that he has not been fairly treated?

Mr. WHITNEY. You mean if two men are bidding at an eighth for stock in the crowd?

Senator KEAN. Yes.

Mr. WHITNEY. And someone comes in there and sells a hundred at an eighth?

Senator KEAN. Yes.

Mr. WHITNEY. Then the seller has no jurisdiction as to who will buy that 100 shares. The other two, as I think is commonly known in brokerage circles, "match" to see who gets the purchase.

Senator KEAN. Yes, but I am talking about sometimes a broker gives a preference to one man, and that then there is a complaint, and that accounts for some of these numerous complaints that you have. Isn't that true?

Mr. WHITNEY. You mean where he is a seller, Senator, of that 100 shares?

Senator KEAN. Yes; and he gives it to one man that is bidding an eighth and ignores the other one.

Mr. WHITNEY. He gives the orders?

Senator KEAN. Oh, no; he—

Mr. WHITNEY. Sells the stock?

Senator KEAN. Yes.

Mr. WHITNEY. We cannot do it, sir, under the rules.

Senator KEAN. Isn't there sometimes a question of dispute as to whether he sold it at an eighth or whether he sold it at a quarter?

Mr. WHITNEY. Oh, yes. Yes.

Senator KEAN. Isn't that one of the complaints that is continually brought up before the board?

Mr. WHITNEY. Very often before the committee.

Mr. KEAN. And the man censured if it happens more than once?

Mr. WHITNEY. No; I would not say that that was a question of censure. It might be an occasion of complaint frequently, for adjudication.

Senator KEAN. All these sales are made by voice?

Mr. WHITNEY. Yes, sir.

Senator KEAN. The consequence is that, if there is a dispute about the sale, why, the only place they can go to is the committee?

Mr. WHITNEY. That is correct.

Senator KEAN. And therefore, any dispute comes up to the committee on any sale at all?

Mr. WHITNEY. Where there is a complaint; yes, sir.

Senator KEAN. And that accounts for a large number of these complaints?

Mr. WHITNEY. I would believe a lot of them.

The CHAIRMAN. Are there any other questions any member of the committee wants to ask?

Mr. PECORA. Mr. Whitney, may I ask on how many occasions in the past 5 years the governing authorities of the exchange have required their members to report short positions by customers in any given security or securities?

Mr. WHITNEY. I would have to get that for you, Mr. Pecora. If you desire it, I will.

Mr. PECORA. And where the governing authorities have undertaken to obtain such information what has been the purpose?

Mr. WHITNEY. Various purposes.

Mr. PECORA. For instance?

Mr. WHITNEY. Well, we have had instances where there have been reports of, I think, what started the investigation by the Senate committee on April 8, 1932, and then we asked for the short selling statistics particularly for that time, which was unusual. We ask for short selling statistics, as you know, now every month. It used to be, I believe, bimonthly, prior to that weekly, and prior to that daily. And I think there have been various special inquiries,

questionnaires as to purchases and sales in stocks, for various reasons.

Mr. PECORA. Can you enumerate the reasons?

Mr. WHITNEY. No, sir. I will be very glad to get the records if you desire them of the business conduct committee telling you in detail what questionnaires have been sent out.

Mr. PECORA. When at the time of the institution of this investigation in April 1932 the exchange made the inquiry that you have referred to, did the exchange make that information available to the committee?

Mr. WHITNEY. Yes, sir.

Mr. PECORA. And on other occasions where the exchange has acquired such information for any special purpose, what was done with the information?

Mr. WHITNEY. Why, very often, sir, it has been given to the attorney general of the State of New York.

Mr. PECORA. In cases where members of the exchange have been disciplined for such infractions of the rules as the making of wash sales has the exchange gone beyond inflicting its own disciplinary power upon the members?

Mr. WHITNEY. I think always, sir, those have been reported to the attorney general of the State of New York, so far as I know.

Mr. PECORA. Are you quite sure of that?

Mr. WHITNEY. I would not be positive. I do not, frankly, remember any such instances of recent date as to wash sales. I think there can be readily obtained from the attorney general of the State of New York the exact endeavor of help that we have offered to him at all times, and his predecessors.

Mr. PECORA. Where members have been disciplined for such reasons as falsification of records for income-tax evasion, has report of those infractions been made to the public authorities?

Mr. WHITNEY. I only know of one case, and that to the best of my knowledge was immediately reported; yes, sir.

Mr. REDMOND. To both Federal and State authorities, Mr. Pecora.

Mr. PECORA. I think Mr. Kinnicutt offered for the record here a form of questionnaire that is sent out semiannually to members of the exchange?

Mr. WHITNEY. Or more often, sir. It is the regular business-conduct committee's questionnaire.

Mr. PECORA. I don't know what was done with the form that he put into the record. Do you happen to have a copy of it?

Mr. REDMOND. I do not have a copy with me, Mr. Pecora. I think there must be one in your files. I am pretty sure it has been submitted to you.

Mr. PECORA. We took the returns of the questionnaire that we addressed to your exchange and put them into the record here. It was rather a bulky document.

Mr. REDMOND. I meant our financial business conduct questionnaire.

Mr. WHITNEY. The one that Mr. Kinnicutt referred to is the regular questionnaire of the business conduct committee which is sent out periodically to the firms under its jurisdiction.

The CHAIRMAN. That is all, Mr. Whitney.

Mr. WHITNEY. Thank you, Mr. Chairman. I appreciate your courtesy and that of the committee to us all.

The CHAIRMAN. Mr. Y. E. Booker.

**STATEMENT OF Y. E. BOOKER, VICE PRESIDENT, WASHINGTON STOCK EXCHANGE, WASHINGTON, D.C.**

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

Mr. BOOKER. Y. E. Booker; vice president Washington Stock Exchange; senior partner in the firm of Y. E. Booker & Co., Washington.

Gentlemen, I just want to speak very briefly on this bill as it affects our little Washington Stock Exchange. The two sections that affect us are section 10 and section 7.

The Washington Stock Exchange is almost purely an investment exchange. There is no speculation there that I know of. There has not been any for a number of years. So far as I know there is no margin trading there. I do not think there would be any margin trading even if we tried to do it, because there is an almost complete absence of speculative securities there.

The sales represent actual purchases by investors who buy for their own account for investment, pay for them, and lock them up in their boxes. Virtually all the active members of the Washington Stock Exchange are dealers in securities and underwriters of securities, as well as being brokers. Their present organizations have been built up to perform the functions, both of a dealer in securities and of a broker in securities, for the purchase of investment securities on exchanges.

Under section 10, as I read it, the dealers would be compelled to either give up their memberships on the stock exchange or give up their business in the underwriting of securities. Most dealers could not stand this segregation of their business. We have a lot of employees who are trained especially in one branch of it, for the stock exchange end, and in the other branch for the underwriting and distribution of securities, and if we were forced to just cut our businesses in half, it would necessitate the letting out of some of our employees, and I think, so far as the Washington Stock Exchange is concerned, we would lose the benefit of the Washington Stock Exchange for the investors of Washington.

Not only that, but it would be an inconvenience to our customers, because our clients are in the habit of coming to us for investment counsel and advice. They naturally buy and sell on exchanges through the same brokers where they buy their securities outright. In other words, if they come in to us to buy their investment securities, when they want to buy or sell a bond on the Washington Stock Exchange, they would naturally come to us. Under this bill we would not be permitted to retain our membership on the exchange, and would have to say to our clients: "We cannot buy this bond for you on the exchange" and they would have to go somewhere else. I think that would be an inconvenience to the clients. I know it would be a great hardship to the dealers, and I feel that, as our exchange is organized, we would have to close

out, because I do not think we could get enough business and enough active people to support it, if you limit it to people who are not dealers. There is virtually nobody else on the Washington Stock Exchange.

Senator KEAN. In other words, you would starve to death?

Mr. BOOKER. We are not getting rich on the stock-exchange business, but at present there is virtually no underwriting business, although we hope there will be. The two have always gone hand in hand. Dealers have always been members of the little local stock exchange.

Section 7 of the bill would also work a hardship on most of the small dealers throughout the country. I think my own case is typical. We buy bonds in New York constantly, whether they are on the exchange or off. We have to pay for them in New York. Our firm has a small capital. We find it best to keep a part of it in securities, mostly in Government bonds. We find it is very convenient to keep part of those bonds in New York, with our correspondent. When we buy a block of bonds, say \$10,000 bonds for an individual's account in New York, we instruct the broker who sells them to us to deliver them to our New York correspondent. He charges our account with that, and really loans us the money on the strength of the securities we have deposited there. The bonds are then shipped to us. We deliver them to our client, who pays for them, and we send the money back to New York. That loan stands for about 2 days.

Under section 7, no member of a national exchange can borrow money except from the Federal Reserve bank. In our case it would mean we would either have to carry a lot of cash in New York and have it idle most of the time, or we would have to go to some of our Washington banks and make a separate loan each day for each one of those transactions, put up collateral, sign a note, and 2 days after pay off the loan, get the collateral back, and repeat the process constantly. It would be a nuisance to the banks, and would be a great hardship to us, whereas under the present system it is just book-keeping. We buy the bonds, and our account is charged with them, and then within about 2 days we pay for them. The interest only runs while we actually have the loan.

The CHAIRMAN. Your objections are to sections 10 and 7?

Mr. BOOKER. They are the only two I am objecting to, because they are the two that vitally affect our little Washington Stock Exchange, and I think our little exchange is representative of a great many of the small exchanges. I think perhaps my business is representative of the business of a great many of the small local dealers throughout the United States.

The CHAIRMAN. You want to continue as a dealer and broker and underwriter?

Mr. BOOKER. It would work a great hardship on me if I did not. Not only would we lose our commissions on securities which we buy and sell on the stock exchange, but we would also lose our investment in our seat. If every dealer in Washington had to elect to remain on the stock exchange or remain a dealer, he would have to remain a dealer.



The **CHAIRMAN**. What is the price of a seat now on the Washington Exchange?

**Mr. BOOKER**. It is little or nothing. The last sale was \$200. I bought one 4 years ago, however, for \$4,000.

The **CHAIRMAN**. Do you have the same rule that the New York Stock Exchange has, that that seat shall not pass as an asset in case you should die, or in case you should become bankrupt, so that the creditors could not reach the value of the seat?

**Mr. BOOKER**. There is an insurance clause in connection with our seat. It carries \$2,000 life insurance. In case the broker dies, there is \$2,000 in a gratuity fund in the exchange to cover that feature of it.

The **CHAIRMAN**. It goes to the exchange and not to your estate?

**Mr. BOOKER**. No. It would go to my estate, but it would go to the exchange if I had any outstanding obligations which I had not met on the exchange. It is there for that purpose, to protect the other members of the exchange.

**Mr. PECORA**. What the chairman wanted to know was whether or not your exchange had a rule similar to that of the New York exchange, under which the proceeds from the sale of a member's seat would not be available to the general creditors of a bankrupt member.

**Mr. BOOKER**. I know of no such rule. In fact, I am quite sure there is no such rule, because we happened to have a similar case some time back, and I remember there was an effort made to attach the seat.

**Senator KEAN**. But is it not true that the exchange specifies that the debts of the members of the exchange to other members of the exchange shall first be settled before it goes to the general creditors.

**Mr. BOOKER**. I think that was the purpose of putting the insurance clause in there, in case the member died and he had a commitment with another member.

The **CHAIRMAN**. How many members have you?

**Mr. BOOKER**. Forty members. Of those 40 members, there are not more than a dozen who are at all active. Our exchange in years gone by used to be very active, but in recent years there has been barely a corporal's guard there, but we have tried to keep it open. Its principal function, I think, is giving public quotations to the securities listed. Some days there will not be more than two sales, but each day the list will be called, and there will be actual bids and offers. That is an actual protection to the public, to protect the public from people selling them something far above the offering price or buying it from them far below the bid price. It is also a protection and service to the Washington banks, which make loans on these local securities and which take the Washington Stock Exchange's daily quotations, which are printed in the local papers, and check the loans against them. It is not a big market, but it is better than no market, and it does show the bid and asked.

The **CHAIRMAN**. What margins do you require?

**Mr. BOOKER**. We do not do any margin business. I never have done any margin business. So far as I know, all the transactions on the Washington Stock Exchange are paid for outright. I can only speak for myself. I never have executed any other kind of an order on the local exchange.

The CHAIRMAN. Are there any questions?

Senator KEAN. What margin do the banks require on Washington stocks; do you know?

Mr. BOOKER. I think the Washington banks, or most of the investment securities on the Washington Exchange, would be perfectly willing to lend on a 25-percent margin.

Senator KEAN. Then you have established, practically, that you are operating on a 25-percent margin.

Mr. BOOKER. Yes.

The CHAIRMAN. That is all, Mr. Booker.

Mr. BOOKER. Thank you.

The CHAIRMAN. I have here a number of statements with reference to the bill, which I would like to insert in the record.

The first is a statement on behalf of the United Fruit Co., dealing with the question of the requirement of corporation reports.

The next is a communication from Mr. John K. Starkweather. He has made certain criticisms of the bill.

I have also a communication from a Mr. Donald E. Fritts. He encloses an exhibit. I will not put the exhibit in, but I would like to insert his letter in the record.

I have also an editorial from the New York Evening Post which I think should go into the record. It is entitled "A Twenty Billion Dollar Stock Orgy."

I have also an editorial from the St. Louis Star-Times, entitled "Mr. Whitney's St. Louis Aids."

There is also a letter from Mr. S. L. Bernstein.

(The communications will be printed at the conclusion of today's proceedings.)

The CHAIRMAN. Is there anyone present who wishes to be heard? Is Mr. Leonard present? He has asked to be heard. (No response.)

If there is no one present who desires to be heard, we will take a recess until 10:30 tomorrow morning.

(Whereupon, at 4:10 p.m., Monday, Mar. 5, 1934, an adjournment was taken until tomorrow, Tuesday, Mar. 6, 1934, at 10:30 a.m.)

WASHINGTON, D C , *March, 2, 1934.*

The United Fruit Co. and its wholly owned subsidiaries carry on business in many countries of the world. It operates extensive banana, sugar, coconut and cacao plantations in the various countries of Central America and the islands of the West Indies. It also operates in these countries railroads, commissaries or stores, hospitals, and many other smaller commercial enterprises. In the United States, Canada, and all the countries of Europe it has large selling organizations and it operates approximately 100 ships, plying between the countries of Central America and the United States, Canada, and Europe.

It will be apparent, therefore, that it is impossible for the United Fruit Co. to make interim statements of the kind proposed by the pending stock exchange control bill. The statements of great international companies such as the United Fruit Co are by the nature of the business itself the consolidated statements of a large number of wholly owned associated companies and it cannot assemble for the purposes of such statements the necessary facts in any practical way. The business is carried on in so many countries and with so many various steamship lines, railroad companies, and governments and the operations are in many different kinds of money with fluctuating exchanges and various relations which can only be wound up and closed at the end of the year. The matter of taxes alone in the various countries can only be prorated by guesses as to what the total net earnings are going to be at the end of the year.

It is also impossible for a company doing a seasonal business to file satisfactory reports of the type contemplated by this proposed bill. In a seasonal agricultural business the expenses are chiefly incurred in one part of the year and the earnings almost wholly in another part of the year. It is, of course, farical to contemplate making a statement which has any significance except at the close of the year, that is to say, when a complete cycle of events has taken place.

In some businesses it is comparatively simple to make a correct monthly, quarterly, or semiannual report. In other businesses the cost of making inventories and revaluations would be so excessive that to demand them monthly would tend to destroy the business, and yet it might be a reasonable requirement in those businesses to have statements filed quarterly.

Again, you have certain businesses the nature of which precludes the possibility of any accurate statement of operations or trial balances being made except at the end of each year. It is not impossible for the United Fruit Co to make an estimate of its condition quarterly. It is absolutely impossible to make any statement that any officer of the company will be willing to sign as an accurate one. Too much of it would be guesswork, and we have received information within the last few days that we will not be able to find any certified accountant prepared to certify to quarterly statements of the United Fruit Co of the kind required by the bill as it now stands.

This is from no desire to hide facts. It comes solely from the impossibility of determining facts in this world-wide business, chiefly agricultural. We issue informal estimates each quarter, making it clear that it is an estimate and not an official statement of condition. We take the public into our confidence to the extent that they may have the opinion of those administering the company's affairs as to what we believe is the situation. That is to say, we share our "best guess" with the public, but neither we nor anyone else can certify under oath or otherwise that our estimate is correct. That fact cannot be determined until the end of the year. No law can alter this fact. All such a law will mean so far as we are concerned is that we cannot continue to have our stock listed on the exchanges. This means that the provisions as they stand are unreasonable because there cannot be any company in the United States more anxious than is this company to live up to its legal and moral obligations in respect to fair and honest dealings with its shareholders and the public.

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GULF STREAM APARTMENTS,  
*Miami Beach, Fla.*

Memorandum summarizing certain objections to the proposed "National Securities Act of 1934", as outlined in a recent conversation with Hon James M. Landis

As we read the proposed bill, it would not be possible for the bond house to be an underwriter and at the same time do business with the public directly as a dealer or broker, provided it were doing any business through stock-exchange brokers.

Recognizing as we do the thought underlying this provision, nevertheless we would point out that very few houses will have the capital or the established business sufficient to warrant their confining their activities to pure underwriting. The results to be expected in my opinion will be (1) a tendency to drive all new underwriting of importance into the hands of a few large houses, principally in New York, of the general type of Morgan and Dillon, Read; (2) to make it difficult if not impossible for the small or purely local industries to finance themselves, as such underwriting houses are not interested in this type of security; and (3) to eliminate from the local security houses throughout the country a type of business which contributes largely to their success and which they are best qualified to handle.

As we read the bill further it would prevent the same security house from acting in the capacity of both dealer and broker. It would be our judgment that this provision was written into the bill having in mind certain abuses in the stock market and that it was not aimed at the investment-bond business. If put into force, however, it would in my opinion put out of business a very large number of smaller firms, which like my own are not interested in nor involved in speculative activities, but solely in the distribution to investors of municipal, railroad, and corporation bonds. In the normal course

of our business we are called upon to make bids for our own account for bonds in which we are interested, and to buy or sell for customers' account others in which we have no interest. We may on the same day participate in an underwriting or purchase group which is bidding on issues of municipal bonds.

There is no possible objection on our part to advising our customers clearly on each transaction in which capacity we are acting, but to confine us to one or the other exclusively would make it extremely doubtful whether we could continue in business and, in any event, would greatly reduce the value of the service we render to the investing public. We fail to see that the investing public is harmed by our acting in this dual capacity in separate transactions or even in the same one, provided the customer knows our position.

Most of the smaller firms do not have, under present conditions, enough pure brokerage business to support their organizations; neither can they possibly carry enough different issues on hand on a dealer basis to satisfy every need of their customers as to variety and amount, on either basis, therefore, they would, under the bill, stand to lose substantial parts of the profits on which they depend for their existence.

A typical example of what is involved may be cited. A customer approaches us to sell a block of bonds, needing his funds promptly. Bids cannot be located for the entire block, so we sell what we can on commission and tell our customer we will either continue his order or take the bonds for our own account at the same net price and take our chances of retailing them. The customer elects to sell them all and gets his money when he needs it. As we read the bill, such a transaction would be illegal, as we have acted as a combination of dealer and broker. We cannot see why this is not only a perfectly honest but also a very useful service.

We believe the authors of the bill have overlooked the essential character of the bond business, if (as we doubt) this provision was intended to affect our business. There is not a natural market at all times for more than a small percentage of bond issues. Even the largest and best-known issues are at times difficult to sell in blocks except over a period of time. The service of the bond house lies in its knowledge of prospective buyers and their presentation of the issues in far more than mere name. This takes time, effort, and expense, and if it were not for houses like ourselves which, knowing their business and their markets, are willing to take the risk involved in buying outright for resale when immediate bids are not available, a large part of the marketability of bonds would disappear or their markets would be seriously hampered.

We know of no pure bond houses which are not forced at times to act in both capacities to serve banks, insurance companies, and individuals, and we believe it is an essential service in the bond market. We agree that the customer should know at all times in which capacity we are acting, and should be in a position to instruct us if he so desires as to his wishes in this regard. We do not believe, however, that the structure of the investment-bond business should be torn down, as we believe this bill would do, as a corollary of a measure aimed at stock speculators, certain of whose transactions appear as dubious to us as to you.

JOHN K. STARKWEATHER,  
STARKWEATHER & Co, INC.

SAN FRANCISCO, March 1, 1934

HON. DUNCAN FLETCHER,  
United States Senator, Washington, D C

DEAR SENATOR FLETCHER: The enclosed figures conclusively demonstrate what happens when credit is expanded under the present lax margin requirements.

Another strong argument that should support supervision and regulation would be to ascertain the value of securities that have been admitted to trading which are either valueless or selling at a small fraction of their price at the time they were admitted.

Piracy on the high seas of finance must be doomed.

You represent the United States of today. This opportunity to serve us transcends in importance. Billions of dollars have been needlessly lost. The facilities and methods previously employed must be restricted.

Any stock exchange legislation, not too severe, decisively correcting abuses so abundant and harmful in the past is hailed by me, a customer's man, as placing my position on a much higher and more respected plane.

Sincerely yours,

DONALD E. FRITTS.

[From the New York Evening Post]

## A TWENTY-BILLION-DOLLAR STOCK ORGY

American Founders Corporation and subsidiaries, \$424,450,000

Bethlehem Steel Co and subsidiaries, \$539,100,000

Electric Bond & Share and subsidiaries, \$809,685,000

Standard Oil Co of New Jersey, \$17,672,520,000

No, gentle reader, these huge amounts do not represent dividends or capitalization or anything else which appears in reports to stockholders or on auditing sheets. They have nothing whatever to do with the businesses for which the companies were organized

These millions and billions of dollars were poured into the stock market in the hysterical days of 1929. One after another, a score of the biggest industrial combinations in the country went wild, like so many excited speculators, and with their eyes on the tape threw their stockholders' money into the boiling market—which thereupon boiled the more violently.

And did the governors of the stock exchange, impressed with a sense of public responsibility, refuse to allow this money to be received? Did they suggest to the speculating companies that they should not use their funds as if they were chips in a poker game? Did they hint that the market was already running away with itself? Not so that you could notice it.

A little regulating in the mad year of 1929 would not seem to have been altogether out of place.

Richard Whitney, president of the exchange, is solicitous for investors.

"There are literally millions of our citizens", he tells the Senate investigating committee, "who own or are interested in listed securities. The vast majority of them are investors and not speculators." Let us accept these statements literally. Let us accept the further statement that these millions of people "are all interested in the maintenance of a public market for securities."

What kind of public market are they interested in and what kind do they have a right to? A public market which, when it is already dizzy with its inflated figures of values, can be made still dizzier by the dumping of billions of dollars from companies which have forgotten what they were organized for? Is that the kind of market which Mr Whitney would provide for the millions of "investors and not speculators" for whom he is so solicitous?

The interest of these investors, he says, "is a real one." It is, indeed. And just because it is real it needs the protection which so far it has not received from Mr. Whitney or his fellow governors. Mr Whitney raises an objection against almost every provision of the stock exchange regulation bill. But he is strongly in favor of regulation which will make no appreciable difference in the present practices and which would not prevent a repetition of the 1929 boom and the subsequent crash.

To leave regulation of the stock exchange in its own hands would be not unlike permitting drug addicts to regulate the narcotic trade.

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ELIZABETH, N J, *March 2, 1934*

HON DUNCAN U FLETCHER,  
*Washington, D C*

DEAR SENATOR: Your work on the investigating committee of the stock market is one deserving of praise and admiration for the stand you have taken. Do not let any of the Wall Street pirates get away from being severely regulated by law.

In my estimation the stock exchange was one of the large contributors to our present depression, having robbed millions of people of their money who today are floundering around in a helpless condition, having bought securities on recommendation of the Wall Street crook.

I am enclosing a clipping from the New York Evening Post which is of interest and no doubt is a true interpretation as to how the Wall Street crowd cares about investors.

Yours very truly,

S P BOFF.

[From the St. Louis Star-Times]

## MR. WHITNEY'S ST. LOUIS AIDS

A sample of the way stock-market propaganda works is found in the quick response of the St. Louis Chamber of Commerce to the SOS sent out by Richard Whitney, president of the New York Stock Exchange, who called upon corporations and industrial groups to oppose the Fletcher-Rayburn bill regulating the security markets. Evidence that the directors of the St. Louis Chamber of Commerce accepted Mr. Whitney's arguments off-hand, without putting them to any test of validity, is found in the following climactic declaration against the bill:

"We do not believe it to be prudent or constructive to require banking institutions to exact a 60-percent margin or that members of licensed exchanges not be allowed to loan on or trade in unlisted securities; thereby destroying the marketability of a great number of sound securities, thus causing irreparable harm to investors and corporations, further liquidation and deflation, together with restriction and curtailment of credit at a time when credit should be expanded."

If Mr. Nardin or any of his fellow directors had taken the trouble to telephone to leading St. Louis brokerage houses holding memberships in the New York Stock Exchange he would have learned that they do not now, and have not for years, made loans on unlisted securities. He could also have learned, by consulting newspaper files or the records of the bankruptcy court, that loans on unlisted securities were made by the defunct Steinberg and Lorenzo Anderson brokerage firms, both New York Stock Exchange houses.

Of course, the directors of the St. Louis Chamber of Commerce would not have painted this picture of impending disaster if they had known that the standards they denounced are the existing standards of solvent St. Louis brokerage houses, and that the standards they defended were the standards of brokerage houses which went into bankruptcy with the loss of millions to St. Louis people.

Apparently the directors, when they adopted this resolution, did not know that the 60-percent-margin requirement of the Fletcher-Rayburn bill, as applied to banks, relates only to collateral which the borrower has fully owned for less than 30 days. In other words, it is merely a precaution to prevent the shifting of speculators' loans to banks, and does not relate to business credit at all.

To judge from this resolution, the chamber of commerce directors simply swallowed the part of Richard Whitney's \$2,000,000 propaganda which was brought in by the letter carrier. That propaganda now goes back to Washington as the voice of St. Louis business.

Some provisions in the Fletcher-Rayburn bill seem to put an unwarranted expense upon industrial corporations, but that calls merely for the perfecting of details. What Mr. Whitney and his friends are aiming at, and what they are calling upon chambers of commerce to aid them accomplish, is to knock out effective Government control and continue the stock-market game of the insiders robbing the public.

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ST. LOUIS STAR AND TIMES,  
March 1, 1934.

HON. DUNCAN U. FLETCHER,  
United States Senate, Washington, D. C.

DEAR SENATOR FLETCHER: I am sending you an editorial showing how Mr. Whitney's propaganda worked in St. Louis.

Yours truly,

IRVING BRANT.

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FEBRUARY 27, 1934.

SENATOR FLETCHER

EDITOR: Stock exchange houses are advising their clients to wire Senators and Congressmen to protest against the Fletcher bill to correct stock manipulation.

Fortunately for the proponents of this bill, Mr. Pecora throws the "alcohol pool bomb", showing that the old game of rigging the market and trimming the suckers is still in high favor.

Before wasting telegrams, pool-room clients ought to read Collier's, February 24, "Sour Mash", by Flynn. It might change their minds regarding the virtues of the New York Stock Exchange and its agents elsewhere.

S. L. BERNSTEIN.

49 FOURTH, SAN FRANCISCO, CALIF.





# STOCK EXCHANGE PRACTICES

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TUESDAY, MARCH 6, 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), Goldsborough, and Kean.

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; Roland L. Redmond, counsel to the New York Stock Exchange; also R. E. Desvernine, counsel to Association of Stock Exchange Firms.

The CHAIRMAN. The committee will come to order. Is Mr. Babbage present?

Mr. BABBAGE. Yes, Mr. Chairman.

The CHAIRMAN. Please come forward to the committee table.

## STATEMENT OF RICHARD G. BABBAGE, NEW YORK CITY, ATTORNEY AT LAW, REPRESENTING THE REAL ESTATE BOARD OF NEW YORK

The CHAIRMAN. Mr. Babbage, please state your name, residence, and business.

Mr. BABBAGE. My name is Richard G. Babbage. My residence is 555 Park Avenue, New York City. My profession is that of lawyer, and I represent in this hearing the Real Estate Board of New York, of 12 East Forty-first Street.

The CHAIRMAN. We will be very glad to have your views about the bill under consideration, S. 2693. Just proceed in your own way.

Mr. BABBAGE. The Real Estate Board of New York is a corporation organized under the laws of the State of New York, having its place of business at 12 East Forty-first Street, New York City. Its membership of 2,348 is made up of owners of New York City real estate and of management agents and brokers. It is the representative real-estate association of the Borough of Manhattan in said city.

As a result of an investigation, we find that the stock-exchange tenants occupy at least 5,000,000 square feet of space in the city of New York. At an average price of \$3 per square foot, this would produce a rental of \$15,000,000. In this space there are employed

over 35,000 employees, who, it is reasonable to suppose, receive an average salary of \$1,500 a year, which would make the aggregate salaries amount to \$52,500,000.

Another great class interested in this real estate are those who hold the mortgage securities issued against it. It is impossible to state the number, but these securities are held by savings banks, life-insurance companies, and individuals in all walks of life.

Anything that affects the value of real estate affects these owners and holders of mortgages. A serious vacating of space at the present time might cause the rentals to be insufficient to carry the properties.

That, Mr. Chairman, is what I base my request on to appear before you, because anything that would destroy the industry in securities in New York would very gravely affect our real estate, and we owners of real estate are passing through a period of depression when a change of that kind might have a very, very serious result.

The real-estate board having given consideration to the provisions of the proposed bill is of the opinion that the act would greatly deflate the securities industry, if it would not destroy it. All the interests, therefore, represented by the real-estate board would sustain a very serious loss in connection with the devaluation of their properties.

We do not contend that the stock exchange does not need regulation but we do contend that it is unnecessary to pass a law which would be so serious in its effects that it might destroy that organization. We have the impression on reading the act that its draftsman was not so much concerned over curing the evils in the exchange alone but was seeking to bring around governmental operation of the industry and of the listed corporations, and to make it so difficult and expensive for them to carry on business that the industry would be dissipated. An act of this character should be drafted by some unprejudiced person. It is to be hoped that the act, when amended, will be the result of a competent, intelligent, and sympathetic draftsmanship and will be confined to its alleged purpose of curing the evils instead of fixing absolute governmental control upon the stock exchange and the corporations listed on it. The provisions making it difficult and dangerous to do business under the act and imposing unnecessary expense should be eliminated.

The different provisions of the act have been subject to so much discussion that I shall not attempt to take them up again with the committee. To sustain the foregoing statements, I will call attention, however, to one or two of them, which, I think, illustrate the general character of the act.

The provision in relation to proxies is so written that it would be practically impossible to hold a corporate meeting under it. The requirement for filing a statement with a list of stockholders and the later requirement that you are to send a copy of that statement to every stockholder from whom you desire a proxy, is entirely impracticable and out of line with all corporate practice. It is elementary that the purposes of the meeting are stated in the notice of meeting and that the proxies should enable persons holding them to vote for any question that can be legally brought before the meeting. It is necessary in order to obtain a quorum that some system of obtaining proxies should be adopted.

The other provisions, forbidding the disclosure of any confidential information, which is intended to prevent officers of corporations from giving to some favored few information which may affect the value of the stock, will do away with the great improvement which has taken place of late years in relation to the contact of officers of corporations with their stockholders. This contact should be encouraged and, in my opinion, the stockholder should be furnished with all information in relation to the corporation's activities that he may desire. Under this provision, however, the officers of a corporation, especially those against whom the section is aimed, will find a ready excuse for not furnishing a stockholder with information, except through public statements, while the confidential information is carried in some indirect way to the favored few. Any information that an officer may give in relation to his company is liable to have some bearing upon the value of its stock and might, therefore, be held to be confidential.

The provision in relation to registration is also extremely onerous. Why should a corporation agree to comply with the law? It has to comply with the law, if the law be constitutional. The documentary evidence which will have to be produced in connection with the registration of a corporation would incur a heavy burden especially as the officers of today would become responsible if there were any inaccuracies in the accounts of past generations. It is a very serious thing for a corporation to agree to comply with any rules that a public body may hereafter promulgate.

We, therefore, call these matters to the attention of the committee and the serious damage which may be done to the interests represented by us, and we trust that the committee in its wisdom may confine the proposed bill to remedying such evils as may exist but not to approve in its final form an act which will be so rigid and severe that the industry of our public exchanges will be crippled or destroyed.

I feel very strongly, Mr. Chairman and gentlemen of the committee, in relation to that disclosure of confidential information. I think it is extremely necessary that stockholders be given access to their corporation, to their directors and officers, in order to obtain all information they may wish to know about in regard to their company, and any law which would cause an officer to say that he could not give information because he was forbidden by law to do so, or that he feared to do so because of what he construed the law to be, would be very unfortunate indeed.

The CHAIRMAN. You say that stock exchange tenants occupy so much space, and that the rental from such tenants amounts to about 15 million dollars a year?

Mr. BABBAGE. Yes, sir.

The CHAIRMAN. What property is included in that?

Mr. BABBAGE. That means all the different office buildings in New York City.

The CHAIRMAN. Owned by the stock exchange as well?

Mr. BABBAGE. No; not owned by the stock exchange. But stock-exchange firms rent their quarters in the different office buildings?

The CHAIRMAN. You mean stock-exchange members?

Mr. BABBAGE. Yes, sir.

The CHAIRMAN. But you say stock-exchange tenants. What do you mean by that?

Mr. BABBAGE. Well, I mean persons connected with the stock exchange.

The CHAIRMAN. Those who are members of the stock exchange, and persons of that sort?

Mr. BABBAGE. I mean brokerage firms and their brokerage offices throughout the city of New York.

Senator KEAN. The New York Stock Exchange does not own any building that is rented to brokers for their offices, does it?

Mr. BABBAGE. Except their own exchange building, for their purposes. I was merely speaking to show you gentlemen that anything that would affect the stock exchange as an industry would have very grave effect on innumerable other people who have built up their lifework around it.

The CHAIRMAN. The stock-exchange building itself is owned by a realty company, as I understand it.

Mr. BABBAGE. Well, I am not familiar with that. It is probably owned by some company connected with the New York Stock Exchange.

Senator KEAN. But in that particular building there are no offices of brokers, as I understand.

Mr. BABBAGE. Well, I know that there are certain firms of brokers in the stock exchange building. There are several buildings there, whether you take the New York Stock Exchange or not, that there is an office building, a sort of annex to it at the corner. And I know there are a number of brokers there. But I am not familiar with the details. I was not so much concerned with the people who may be in the stock exchange, because that building is largely occupied by stock-exchange tenants. But if you should diminish the tenancy of those connected with the stock exchange, brokers for instance, say, by 50 percent, it would mean that a building which is now productive would then become unproductive.

The CHAIRMAN. That would depend on whether or not the New York Stock Exchange continued to do business as it has heretofore done.

Mr. BABBAGE. Yes, sir. They are all closely related.

Senator KEAN. It is also true that stock exchange firms have many branch offices all over the city.

Mr. BABBAGE. Yes; and that is included in my figures.

The CHAIRMAN. Well, I think there is no idea of abolishing the stock exchanges.

Mr. BABBAGE. Well, sometimes we can do a thing unintentionally, I mean by indirection, which we would not do directly, and it is to guard against the committee doing anything that might indirectly bring this around that I take the privilege of appearing before you.

The CHAIRMAN. And we are very glad to hear from you.

Mr. BABBAGE. I feel that we ought to speak up in these matters in case we have anything to say.

The CHAIRMAN. That is entirely right.

Mr. BABBAGE. And I thank you gentlemen.

The CHAIRMAN. Very well, if that is all.

(Thereupon, Mr. Babbage left the committee table.)

Senator GOLDSBOROUGH. Mr. Chairman, with the consent of yourself and the committee I should now like to offer a letter from Mr. Michael S. Haas, president of the Associated Mutual Savings Banks of Baltimore. And I might say that these banks are entirely mutual, and have no stock issues whatever, and have deposits aggregating approximately 20 million dollars.

The CHAIRMAN. The letter will be made a part of the record.

METROPOLITAN SAVINGS BANK,  
Baltimore, March 5, 1934.

HON. PHILLIPS LEE GOLDSBOROUGH,

*United States Senate, Washington, D C.*

MY DEAR SENATOR GOLDSBOROUGH As you are fully aware, the mutual savings banks of Baltimore enjoy a long and outstanding record of useful service to the people of Baltimore. They have afforded a means for safekeeping the savings of people of small means and at the same time furnishing an available supply of funds for investment in mortgage loans for the building of homes.

In order to adequately protect and diversify the investment of their depositors' savings, these Mutual Savings Banks for many years have also been purchasers of large amounts of high grade investment bonds. Many of these bonds are the public securities of states, counties, and municipalities, as well as large amounts of equipment trust certificates and underlying railroad and public utility obligations, which are not listed on any exchange for obvious practical reasons.

The purchase and sale of such bonds are made through recognized security dealers, many of whom in order to render better facilities to their clients are also stock-exchange members. These dealers through their knowledge of investment conditions and through their contacts with other dealers and institutions in different parts of the United States are enabled to locate and determine whether their customers are best served in the execution of such transactions on the stock exchanges or through the over-the-counter markets.

Frequently it is much more advantageous to institutions such as our mutual savings banks to deal with such security dealers when they are acting directly as principal in the transactions. Our experience is that it is decidedly to the interest of institutions such as ours, and therefore our many depositors, to be able to handle such transactions through recognized security dealers whose combined facilities enable them to render either dealer or broker service.

Naturally the mutual savings banks are not interested in fostering speculation in securities, and unquestionably practices have developed that justify correction and a regulation of these speculative activities, but it is certainly obvious that serious consideration should be given to the effects of that portion of the Rayburn-Fletcher bill which provides for segregation of the dealer-broker business and its effect on the investment transactions of the mutual savings banks, which are truly representative of the thrifty people of small means.

Very truly yours,

MICHAEL S HAAS,  
*President Associated Mutual Savings Banks of Baltimore*

The CHAIRMAN. We will now hear Mr. Frank R. Hope.

#### STATEMENT OF FRANK R. HOPE, PRESIDENT OF THE ASSOCIATION OF STOCK EXCHANGE FIRMS, NEW YORK CITY

Mr. Hope, you want to be heard on S. 2693, I take it?

Mr. HOPE. Yes, sir.

The CHAIRMAN. You may proceed.

Mr. HOPE. Mr. Chairman and gentlemen of the Committee: I speak on behalf of the Association of Stock Exchange Firms, a voluntary association of substantially all member firms of the New York Stock Exchange. Our members are the house partners and

therefore the persons in the New York Stock Exchange business who are in constant and immediate contact with the customers and the public.

It is for this reason that we are so particularly concerned with this bill which we have analyzed particularly from the point of view of our relations as brokers acting on behalf of our customers in executing their orders on the exchange. The stock exchange, as such, is the place and instrumentality through which we operate and which is necessary for the clearance of our transactions and, therefore, we are fundamentally concerned with any regulations of stock exchanges to the extent that they may limit or interfere with our ability to render efficient service to our customers.

In order to save your committee's time, and as requested by your chairman, I will not again discuss matters already fully presented to you but desire leave to file with the committee the analysis which our association has made of the entire bill as introduced. Furthermore, representatives of the various phases of the stock exchange business have appeared or will separately appear to present the peculiar problems incidental to the particular phase of the business in which they are engaged and, therefore, I will not specifically discuss their separate problems.

Mr. Whitney made a proposal to the House Committee on Interstate Commerce, on behalf of the New York Stock Exchange, suggesting the creation of a stock exchange coordinating authority; and, on behalf of the Association of Stock Exchange Firms, I endorsed that proposal. Mr. Whitney's proposal conceded the principle of governmental regulation. The regulatory body which he suggested seems to us a sound, workable, and efficacious body which could as a practical matter exercise efficient and effective supervision over the stock exchanges, especially because it provides for coordination with the other branches of the Government having jurisdiction over finance and credit. The very nature of the brokerage business makes such coordination essential. The entire credit and financial structure of the country is fundamentally involved and affected. Without presuming to urge upon Congress the selection or creation of any particular body, as the regulating body, we must clearly point out that whatever regulatory body might be selected it should, as a matter of its basic structure, be equipped with a personnel experienced in matters of credit and finance.

Although some form of regulation of stock exchanges might be deemed in the public interest, we must particularly point out that no such form of regulation can be considered except one which will permit the efficient functioning of the stock exchanges and the brokerage business as a means of supplying a broad market place where the public can freely deal in securities. We wish to express our desire to cooperate in any effort to develop a form of regulation which will correct alleged abuses which have arisen in stock exchange business without so restricting that business that much of its usefulness as a means for facilitating legitimate business in securities will be lost. With that in mind, the analysis of the bill which we have submitted must be considered, for, although the bill is entitled and is intended primarily to regulate the stock exchange business, it would seem not to be limited to that matter but to have three fundamental parts of almost equal importance. They are:

1. To regulate certain stock-exchange practices.
2. To restrict and control the granting of credit on investments.
3. To control many of the practices of the corporations themselves, their officers, directors, and stockholders.

Any bill, such as the one before you, which embodies fundamental provisions respecting these three phases of business goes far beyond the express purpose of stock-exchange regulation; and in fact becomes by its far-reaching provisions, a vehicle for the regimentation of credit and corporate practices. The effects of the bill are so fundamental upon existing financial and corporate practices and so drastic and far-reaching that every consideration must be given to its content and possible consequences.

The direct supervisory control given to the Federal Trade Commission by the bill should be carefully considered in connection with the so-called "Roper report." In that report it was contemplated that the governmental agency exercising supervision over security exchanges would primarily have power to interfere with an exchange only in the event of certain improper conditions arising in respect to the operation of the exchange and the conduct of its members or because of an exchange's failure to adequately prescribe and effectively carry out the principles established by law. Until such conditions arose, the operation, control, and management of the exchange and the responsibility therefor would be primarily that of the exchanges themselves and their officials. The bill, however, would subject the exchanges to such rigid and minute direction in its management and affairs that the discretionary control and immediate responsibility which would remain in the exchanges under the Roper report would be lost. The governmental regulatory body, as well as an exchange itself, must have elasticity and discretion, even if somewhat restricted, so as to practicably meet situations as they arise. This is a serious consideration when the nature of the functions of exchanges and the requirements for prompt action is considered.

The bill has many desirable purposes. To the extent that it establishes uniform practices corrective of alleged abuses and elevates the trading standards of all exchanges and all members of exchanges to the highest practicable level, requires full disclosure to the public of all material facts necessary to a reasoned judgment as to value and outlaws manipulative practices against the public interest, it must be sponsored. But, as pointed out in our brief and as here discussed, it unnecessarily and dangerously exceeds these necessary objectives and for all practical purposes attempts to regiment credit and business generally and in many respects is impracticable and unworkable. The desired objects can be attained without unintentionally destroying a useful and necessary business if a full consideration of the technique and operations of the business is relied upon.

The Association of Stock Exchange Firms, a voluntary association of substantially all the members and member firms of the New York Stock Exchange, respectfully submit to the Committee on Banking and Currency of the Senate the following memorandum which is an analysis of the proposed "National Securities Exchange Act of 1934", as set forth in Senate Bill No. 2693.

This memorandum is only intended as a brief analysis and explanation of the possible effect of the bill entitled "National Securities Exchange Act of 1934." It does not challenge the advisability of regulation nor is it to be understood as an attack on the bill as such. The bill is, however, so fundamental in its effect upon existing financial and corporate practices and so drastic and far-reaching that full consideration must be given to its contents and possible consequences. To help make these clear is the sole purpose of this memorandum and it must be so interpreted.

The two bills presented in Senate and House are identical and are designated as bills to provide for the registration of national securities exchanges operating in interstate and foreign commerce and through the mails and are to prevent inequitable and unfair practices on such exchanges and for other purposes. The references to sections will therefore refer to each bill.

Section 1 is entitled "Short title" and merely gives the name of the bill as the "National Securities Exchange Act of 1934."

Section 2 is entitled "Regulation of Exchanges Using the Channels of Interstate Commerce and the Mails Necessary in the Public Interest."

This section attempts to set forth conditions purporting to sanction and justify regulation of stock exchanges primarily under the power of Congress to enact regulations for interstate and foreign commerce and through the use of the mails. It is more in the nature of an argument than a statutory enactment. The conditions recited primarily tend to describe a national interest; but they are fundamentally different from those that have heretofore been relied upon to describe an interstate commerce transaction. In other words, national interest and interstate commerce are not synonymous; and the fact that the matters regulated affect the public as a whole is itself not sufficient to justify regulation of such matters as interstate commerce. For a discussion of the organization, functions, and place of stock exchanges in the financial structure and their relation to and effect upon interstate commerce and all related legal problems we refer to the study entitled "The Extent of Federal Power to Regulate Stock Exchanges and Stock Exchange Firms" and the supplement thereto prepared by Mr. Raoul E. Desvernine, counsel for the Association of Stock Exchange Firms.

The bill, however, exceeds its express purposes of exchange regulation and investor protection and in fact becomes by its far-reaching provisions a vehicle for the regimentation of credit and corporate practices through the medium of stock-exchange regulation. To illustrate, it vests in the Federal Trade Commission the power to control collateral loans and interest rates; to prescribe the forms of reports, balance sheets and earning statements and methods of accounting in the appraisal or valuation of assets and liabilities, and in determining depreciation, and so forth, to be employed by corporations whose securities are registered on any exchange; it dictates the conduct of officers, directors, and stockholders of corporations; it requires annual and quarterly reports, balance sheets and profit-and-loss statements (certified by independent public accountants), as well as monthly reports and statements of sales or gross income of all corporations whose securities are registered on



any exchange; and gives absolute regulatory power over all securities, registered or unregistered. The Federal Trade Commission is given an indirect but potentially effective directional control over the investment of all capital.

Section 3 is entitled "Definitions."

The definitions do not need specific consideration here but must be considered from time to time in relation to the provisions to which they apply.

The definition of "interstate commerce" should, however, be specially considered. The proponents of the bill attempt to justify its constitutionality primarily as an exercise of the power of Congress over matters of interstate commerce. Therefore the constitutionality of the bill depends largely on whether the matter regulated actually is interstate commerce. This is a question for the courts to decide; and Congress cannot by its own fiat or by merely extending the meaning and scope of its delegated authority beyond interpretation judicially arrived at endow itself with jurisdiction or power not conferred by the Constitution. Therefore, the validity of the definition will depend on such constitutional limitations.

The only securities which are exempted from the bill (subsection (10) of this section), are "direct obligations guaranteed as to principal or interest by the United States." It is not clear from this language if it is intended to only include guaranteed obligations and to exclude direct obligations. Furthermore, State, municipal, and bonds of quasi-governmental bodies, such as port authorities, and so forth, are not exempted, which will result in an impairment of the value of these obligations and will result in the forced sale of many of such securities now held as collateral.

Section 4 is entitled "Prohibition of the Use of Channels of Interstate Commerce and the Mails to Unregistered Exchanges."

Unless the exchanges are actually instrumentalities of interstate commerce and subject to direct regulation under the commerce clause, Congress probably has no power to require compliance with detailed regulations as a condition of the right to use the instrumentalities of interstate commerce or the mails. It is a well-established principle that Congress cannot regulate matters outside its jurisdiction merely by passing a statute which in form is a type of statute within the power of Congress.

The mere fact that one or more isolated transactions of an exchange might require the utilization of an instrumentality of interstate commerce does not ipso facto, and cannot ipso jure, make the entire exchange and all its facilities and all its transactions subjects of interstate commerce. To attempt to thus reach out and even embrace "any person, directly or indirectly", is to completely destroy all and every intrastate act or transaction. If a New York corporation having all its business in the State of New York should utilize the mails in writing a letter to Chicago, the use of this single instrumentality of interstate commerce does not make it generally and all its intrastate business and transactions subject to interstate commerce regulation.

Section 5 is entitled "Registration of National Securities Exchanges."

Apart from the questions of legality the following considerations respecting the practical operations of the proposed requirements for registration should be considered.

The most outstanding characteristic of the proposed form of regulation is that the Federal Trade Commission is to be granted detailed and complete supervisory power over all the transactions on the exchanges and that as a condition of registration, an exchange must agree to abide by any future rule or regulation made by the commission. In this connection it should be pointed out that the Roper report contemplated that the governmental agency exercising supervision over security exchanges would primarily have power to interfere with the exchange only in the event of certain improper conditions arising in respect to the operation of the exchange and the conduct of its members. Until such conditions arose the operation, control, and management of the exchange, and the responsibility therefor would be primarily that of the exchange itself and its officials and governors. The present proposal gives the Federal Trade Commission power from time to time to change all rules and requirements, including the power to prescribe regulations for the election of officers and committees of the exchanges; for the suspension or disciplining of members, and so forth, thus substituting itself to the fullest extent in the place of the private management of the several exchanges.

This is a real problem because it renders the present exchanges absolutely impotent to effectively and efficiently act; it deprives them of all self-government and implies the principle that the Government will in fact run, not alone supervise, the exchanges.

Most careful consideration should be given as to what body should be given such powers and to the special and expert knowledge and technical skill of the personnel. The Roper report signaled the importance of this.

Control of the Federal Trade Commission would tend to centralize the financing and management of all security investment in the Federal Trade Commission without reference to the other governmental departments and agencies having similar and concurrent jurisdiction. Confusion and conflict in policy and regulation would result. It would seem that some means of coordination with the Treasury Department and the Federal Reserve System would be indispensable. The broad powers over the entire credit and financial system of the country given, directly and indirectly, by the provisions of this bill must be self-evident.

Subdivision 4 (d) of this section should be considered, for it appears to require the expulsion of a member of an exchange for any infraction of the rules. No discretion is apparently granted to the exchange or to the Commission, and there are no provisions for reinstatement or other adjustments of penalty or variation taking into consideration the relative gravity of the offense. This is particularly arbitrary in view of the fact that violations of the rules may occur through mistakes without any wrongful intent or any gross negligence on the part of the member. It is difficult to conceive of why a person should invest substantial amounts in a business from which he may be arbitrarily expelled permanently and without recourse or the right of reinstatement.

Also subdivision 4 (f) prevents an exchange withdrawing its registration except on rules that the Commission may from time to time provide. This means that if any group wishes to organize an exchange they must in advance sign an agreement to abide by any changes in the rules for the conduct of that business that the Commission may at any time in its own discretion establish and that they cannot withdraw from the business except on the permission of the Commission.

Section 6 is entitled "Margin requirements on long accounts."

Subdivision (a) of this section makes it unlawful for any person who transacts a business in securities through the medium of a member of an exchange to extend credit on securities unless the securities are registered on an exchange. Banks throughout the country, particularly outside the city of New York, extend the service to their depositors of forwarding orders for the purchase and sale of securities and to that extent engage in the business of securities through the medium of a member of an exchange. This section would, therefore, prohibit any such bank from making any loans on unregistered securities. The effect of this on the banking business, the extension of credit, and the people as a whole is tremendous for they would either lose the facilities of the banks in getting credit on unregistered securities, which include the shares of stock and bonds of thousands of small corporations (unless, of course, all such securities were registered), or it would make it necessary for persons living outside the great metropolitan centers to establish direct connections with those centers in order to invest their funds. The difficulties caused by this subdivision on all parts of the country, outside of New York cannot be overestimated.

The effect of this section is also extremely deflationary. To the extent that it increases the margin requirements or makes any of the pledged securities illegal collateral it requires calling of the loans. This will be caused even in cases where the borrower is in good financial condition, because it prevents the putting up of any securities other than registered securities and a person with large holdings of State and municipal obligations, bank stock, insurance stock, or stock of small corporations which are not registered cannot use them as collateral even though they would be entirely satisfactory to the lender. A person only having unregistered securities available, no matter how valuable they may be, could not protect his equity by using them as collateral and would be compelled to a forced liquidation, thereby sacrificing his entire equity.

Conversely, a broker cannot accept unregistered securities to augment a customer's collateral and in a rapid price decline might thereby be obliged to suffer a loss by a forced sale without the possibility that now exists of protecting his loan by receipt of any collateral. This might even cause the broker's insolvency.

The effect of making unregistered securities ineligible as collateral would greatly reduce the market value of such securities. To outlaw by one stroke the legality of State and municipal obligations and bank shares, insurance shares, equipment trust certificates, and other presently unlisted securities as collateral for exchange firms and also as above pointed out for many banks, can only tend to make such securities less desirable and attractive for investment purposes

and will impair the credit value of all such unregistered securities. To that extent securities worth billions of dollars will be frozen as a basis for credit in the country at a time when credit is most needed.

In considering the effect of these provisions the assumption cannot be made that the securities presently listed on exchanges will be registered under the act and thus made eligible for collateral. The restrictions placed by these bills upon corporations which register their securities and the officers, directors, and principal stockholders of such corporations may result in many listed securities not being registered.

This discrimination against unlisted securities will operate unfairly against hundreds of thousands of small corporations which are locally owned throughout the United States. It should be particularly noted that, insofar as this section is concerned, brokers may arrange for, and actually extend, loans to customers secured by real property, chattels, and commodities—the only restriction being that, if the loan is secured by securities, the securities must be registered. This distinction seems wholly arbitrary.

The same subdivision (a) also prevents a member of an exchange from arranging for any credit for a customer except on registered securities. This restriction is not confined only to the usual transactions between the broker and customer, but would prohibit a member from assisting a person who happens to be a customer in obtaining any loan whatsoever from any third party unless the securities given as collateral are registered securities.

The effect of these requirements for collateral will undoubtedly render ineligible much of the collateral now pledged throughout the country. This will necessitate calling of loans as above pointed out and to the extent that the collateral, although adequate under normal conditions, cannot be liquidated under these forced conditions, losses will result to banks throughout the country. Collateral maintained for loans throughout the country has not been maintained on a level which will permit a forced liquidation by nationwide governmental action, without causing such a drop in the market value of the securities to be liquidated that the realizable value of such securities will probably be reduced below the amount of the loans.

Subdivision (b) of this section prohibits brokers lending an amount exceeding 80 percent of the lowest price at which a security has been sold in the preceding 3 years, or 40 percent of the current market price, whichever is higher. This provision seems clearly unsound, for depending on the course of the market it would require brokers to obtain margins varying between 25 percent (which is less than the minimum margin now required by the New York Stock Exchange) and 150 percent of the debit balance. The latter figure is clearly excessive. It would create a volume of cumulative selling by those unable or unwilling to bring their margins up to the new requirements. Every decline in price would precipitate further liquidation. It would force liquidation of a large amount of credit outstanding today in banks against security collateral. In round figures, brokers' loans are \$1,000,000,000 and bank loans to customers against security collateral about \$3,500,000,000. It is certain that the margin of all these loans is substantially less than 150 percent of the amount due—particularly when unlisted securities are elim-

inated from consideration. The effect of fixing such margin requirements will obviously require additional margin or will cause terrific deflation of such loans. As unregistered securities cannot be accepted, this seriously reduces the available supply of additional collateral to comply with such demands, and the effect of these requirements would, therefore, undoubtedly start a Nation-wide deflationary movement. The fact that such liquidation need not be completed for 7 months does not change the fundamental effect of the margin requirements. Liquidation on such widespread scale to be completed by the specified time would have to be started long before its completion was required.

Inflexible margin requirements throughout the country would also add to the serious effect of this provision, because a drop in the market prices of a registered security might make it ineligible for loans throughout the country unless additional collateral was put up. Certainly a general market drop would, because of the rigidity of the margin requirements, cause liquidation throughout the country and would probably cause cumulative selling, resulting in stock-market panics each time there was a comparatively slight general reaction.

It is true that the Commission is given right to change margin requirements above the requirements specified in the statute. The amounts specified are such as may cause serious difficulty under the present conditions; but even assuming subsequent adjustment to those conditions and the development of requirements more drastic even than those, it is difficult to conceive of how the Commission would have sufficient time to change rules so as to establish the flexibility, and elasticity needed to meet constantly and suddenly changing conditions.

A further error in these mandatory margin provisions lies in the fact that they do not discriminate between high-grade investment securities and highly speculative issues which fluctuate greatly and are of less certain value as security. In the last analysis the determination of what constitutes a sound margin involves questions of opinion as to the evaluation of actual and potential values and therefore requires the exercise of experienced and trained judgment in the appraisal of conditions which change from day to day. No fixed legislative formula can be used as a substitute for such a judgment and appraisal.

The power granted to the Commission by this section to adjust loan values, gives the Commission power to expand and contract credit. It can, by increasing margin requirements, immediately cause the liquidation of loans throughout the country. (It cannot reduce requirements because the statutory limitations although exceeding the present requirements are specified as minimum.) All margin accounts could be automatically forced to liquidate. Furthermore, arbitrary distinctions could be made between different classes of securities. This, of course, may not have been contemplated, but to give to any governmental agency such complete arbitrary control over the credit structure of the country is such a drastic step that it should be considered with the utmost care, and adopted only if it is absolutely certain that there is little chance that the power can be mistakenly used.

Subdivision (c) attempts to prevent all banks or other persons from extending credit on listed securities and purchased by the borrower within thirty days of the date of the loan, except on terms identical with those which must be required by brokers. This unquestionably and in addition to the conditions above pointed out, extends the unsound margin provisions of the bill to our entire banking system, and emphasizes the deflationary influences which will probably be put in motion by the bill.

Subdivision (d) give the Commission right to establish rules as to the notice and method of closing accounts. This means that the Commission, in an endeavor to protect the borrowing public might require such length of notice and procedure for foreclosing loans as would make the security of little value. In other words, marketable securities have been taken as collateral in many cases because the lender is able to realize on his collateral promptly, and thus avoid loss. If some third party can dictate the terms on which the lender can exercise such right, the certainty of the realizable value of such collateral is diminished, and the attractiveness and safety in attempting such collateral for loans will be impaired. The further fact that these rules can be established after the loan has been made greatly increases the uncertainty and introduces another deflationary element, because it removes a large part of the collateral now relied upon for a tremendous volume of credit.

Section 7 is entitled "Restrictions on members' borrowing."

Subdivision (a) of this section would have a most far-reaching effect which was probably not intended. It prohibits a member from borrowing on any registered security from any person other than a member of the Federal Reserve System.

This would prevent loans from special or general partners, and many other forms of special or emergency borrowings from others where even registered collateral is to be given as security. In emergencies, frequently hurried loans are imperative and can only be obtained from individuals thoroughly familiar with all the circumstances of the existing, and in many cases local and peculiar, conditions of the credit situation, and without having the time to clear a banking transaction. This may have serious effect by eliminating important sources of help at times when they are most needed, and may thus precipitate additional deflationary forces when they are most dangerous. The bill prevents a firm requiring such emergency loans from securing them with sound collateral, registered or unregistered, which it might have available from any source as can be done at present. To so unqualifiedly confine borrowing to the Federal Reserve System may therefore deprive members from emergency relief with serious consequent dangers to everyone.

This provision also prevents many normal and customary personal loans and the utilization of private credit. Any such step results in the collectivization of all financial relationships between individuals into a Government-controlled banking system and restricts some of the private uses of private capital and therefore should be most carefully considered.

These borrowing restrictions may also cause the closing of many branch brokerage offices and thereby the forcing of local business into the large metropolitan centers.

Subdivision (b) limits the aggregate indebtedness of members to a percentage, based on the "net current assets" employed in their business. Considering the fact that "net current assets" are not defined, it is a grave question as to whether that method is the sound basis for determining the credit responsibility and risk of any such member. The commission could from time to time by classifying assets as current or otherwise thus cause the liquidation and insolvency of firms whose practices it did not like.

Section 8 is entitled "Prohibition Against Manipulation of Security Prices."

This section is directed primarily against "wash sales", fictitious transactions, and pools, which are in many respects already prohibited by the rules of the New York Stock Exchange and the laws of several States. However, some of its subdivisions would appear to go very much further and to cause much greater damage than any possible benefit that could accrue.

Subdivision 4 makes it unlawful for any broker to give information that the price of a security is likely to rise or fall partly because of the market activity of certain individuals if he believes that the person may purchase securities on the basis of such information. Widespread circulation of such information might have some harmful effects, but it is not seen what purpose is gained by prohibiting a broker from giving such information personally to his customers. To forbid a broker to so advise his customer might be depriving the customer of information useful to him in the protection of his interests.

Subdivision 5 makes it unlawful to give information which in the light of circumstances is misleading, if the broker giving such information has reason to believe that the person to whom it is given will rely upon it in the purchase of securities. The broker is granted the defense that he acted in good faith, but to put the burden on him to justify every statement and to give every customer the right to put his broker to the proof of every statement made, can only result in the refusal of cautious brokers to give any information whatsoever. Certainly this cannot be in the public interest.

The liabilities imposed are severe and would undoubtedly be used by unscrupulous purchasers, when they made an unfortunate purchase, as a means of forcing some settlement or contribution from the broker. They would have nothing to lose and everything to gain. They could engage in speculative purchases and could keep the benefits if the purchases turned out successful. If they were unsuccessful they would try to recover from their broker because of something they claimed that they had heard him say, and if they could not recover, possibly force a settlement because of the drastic penalty provisions.

There is moreover nothing in this section which limits the type of information to which this subdivision refers to being matter specially within the knowledge of the broker. The liability might be based on misinformation which was being generally circulated and to which the customer had just as good source of information as the broker himself. Nor is there any requirement that the mistaken information have any relation to the purchase of the security or its market value.

This liability of the broker would probably drive much of the business from responsible houses to unreliable brokers willing to gamble on such liability and to give any advice to their customers on the chance that they could evade liability.

The measure of damages exacted by this section between the price paid and the last price for which such securities shall have sold during the 90 days preceding and the 90 days following such purchase seems entirely arbitrary. There is no reason why such penalty as that should be exacted. The price of the stock 90 days preceding a transaction has no relationship to the transaction whatsoever, and the price 90 days following is entirely too long. It gives an added opportunity to an unscrupulous person to play against the broker for 90 days without assuming any risk whatever himself. This is particularly true when the customer can wait for 2 years without bringing any action and still bring suit for damages against his broker.

The restrictions of this section against the giving of advice and the heavy liability provisions hereinbefore discussed also will render practically obsolete the business of investment counsel and may tend to eliminate the possibility of people desiring to invest getting any practical advice from those more experienced. The result may thus be to put a greater difficulty in the way of the small investor in his efforts to make a real investment which will not exist in regard to the wealthy investor who may have statisticians and assistants in his service to make his personal surveys.

Subdivision 7 requires reports as to pegging being given to the Commission as well as to the exchange authorities. This adds to the complications and details of the operation of a delicate mechanism such as the stock exchange and the credit structure of the country. With the other provisions for supervision and control, many of the provisions for detailed information and reports should be sufficient if the information and reports were filed with the exchange authorities and not both with the exchange and in Washington.

Subdivision (9) forbids any person to effect by use of the facility of any exchange any transaction whereby a put, call, straddle, or other optional privilege is acquired.

Subdivision 9 (i) will result in the absolute elimination of any transactions with warrants, and subdivision 9 (iii) will likewise make impossible any transactions in convertible bonds.

Section 9 is entitled "Regulation of the Use of Manipulative Devices."

This section gives the Federal Trade Commission blanket control over short selling, stop-loss orders, and the right to establish rules for the use of "any device or contrivance" in connection with the purchase or sale of any security. The danger of putting in the hands of anybody not in intimate and immediate contact with minute-to-minute developments the power to change rules affecting matters having such direct effect on the entire stock market situation as short selling is extremely dangerous and may lead to results entirely different from what is contemplated. The elimination of stop-loss orders is undoubtedly against the public interest. The last subdivision of this section giving them control over devices and contrivances might be construed to mean almost anything.



Section 10 is entitled "Segregation and Limitation of the Functions of Broker, Specialist, and Dealer."

This section forbids a broker from also being a dealer or an underwriter. It completely divorces the commission business and the investment banking business of the issuance, underwriting, and original distribution of securities, and would, therefore, be extremely harmful outside of New York City where, because of the small volume of business, a dealer in securities must, of necessity, act as both broker and dealer. There are few, even in the large metropolitan centers, and none outside, who could possibly live on only one of these branches of business alone and who could command enough business to justify their keeping in operation as only a broker or a dealer.

One of the most striking effects of this section is that it absolutely prohibits the existence of the odd-lot house, which is the only efficient means that modern exchange facilities have developed whereby the small investor may purchase shares of stock in lots of less than the minimum unit of trading without paying exorbitant premiums. Furthermore, it might well increase the cost to a small investor ten-fold above the present level if the basic unit of trading were eliminated. Small units of trading would not fairly reflect the true market. The reporting of quotations on such a multitude of small trades in different numbers of shares and the clearance thereof would impair and retard the entire mechanical efficiency of the exchange. Moreover, if the purchaser of small lots is restricted by the elimination of the odd-lot dealer, the small investor's market is put out of existence and he is required to be a speculator in a larger number of shares. Why the useful service of odd-lot houses should be prohibited is not understandable. It is possible that it was not realized that the odd-lot houses conduct their transactions as dealers and not as brokers. However, the fact remains that they are members of the exchanges and deal as members in their negotiations with other members and purchase and sell odd-lots from such other members. They do not receive commissions. Section 18 (c) indicates that the continuance of the odd-lot house is contemplated, therefore the wording of this section is either a mistake or put in through a misunderstanding of the nature of the odd-lot business.

This section will also absolutely prohibit floor trading. This phase of the stock-exchange business accounts for a considerable volume of transactions and thereby promotes marketability of securities and liquidity of credit. Before it is summarily dismissed the possible effect of such action, particularly under present conditions, should be carefully considered.

This section also gives the Commission blanket control over specialists and absolutely prohibits a specialist from executing a market order. The effect of such latter prohibition might result much more to the hardship of the investor than to the specialist or to the speculator. The extremely important and necessary position that the specialist plays in the market cannot be too carefully considered. The effect on the operation of the market as a whole through drastic action along these lines will be great for, even though there may be, in extremely isolated cases, abuses in connection with the opera-

tion of specialists, they are important in maintaining the present market liquidity and stability.

There is also the possibility that this section prevents a stock-exchange member from investing in securities for his personal account. In other words, a stock-exchange member could only buy and sell shares on commission for others. This may not be intended but is a possible interpretation of the restriction of members acting as dealers in securities. In view of the serious liabilities imposed for violation of the bill, it is doubtful if an exchange member would be willing to take a chance on his possible right to invest in securities for his account and thus to the extent that the commission business does not provide adequate income may force stock-exchange members to withdraw from the brokerage business in order to be able to invest their personal capital in income-producing securities.

Section 11 is entitled "Registration Requirements for Securities."

There is nothing to indicate whether these requirements apply only to securities to be registered in the future or whether a relisting of all presently listed securities is required. The possible effect of this must be fully considered. The enormous expense entailed in relisting all these securities and collecting and furnishing data would be tremendous. In fact, one corporation recently, in order to qualify a single bond issue for \$15,000,000 under the Securities Act of 1933 before the Federal Trade Commission, reports that it was required to spend approximately \$250,000 therefor. It is not inconceivable that the Federal Trade Commission would require somewhat similar data for registration on exchanges, and one should consider the expense of these requirements if every outstanding security presently listed on an exchange must go through somewhat similar procedure.

Furthermore, some of the issues may be denied registration under the new requirements and under the provisions of the bill practically at the discretion of the Commission. This might have serious effect on the credit situation of the country, the credit of corporations whose securities are presently listed, and the value of such securities in the hands of the public.

This section also requires that the registration information must be filed with the Federal Trade Commission, in addition to being filed with the stock exchange. Furthermore, the information must be filed at least 30 days before the registration becomes effective. If the bill goes into effect on October 1, 1934, the mass of information required from all the corporations having presently listed securities must be filed by September 1, 1934. It would be difficult, if not impossible, to compile adequate information even if the rules as to what would be required were immediately issued. How any single commission could digest all that information in 30 days and decide what securities were to be registered and what not is a practical problem to be considered in the drafting of the legislation.

A restriction in this section affecting the corporations themselves is that they must file an undertaking to abide by all future rules and regulations of the Federal Trade Commission and agree not to lend funds in any money market or to any person who transacts business in securities except in accordance with the regulations of the Federal Trade Commission. By this and some of the following provisions this bill ceases to be a regulation of stock exchanges and becomes in effect a bill completely subjugating every business to the

absolute discretion of the Federal Trade Commission over most of, if not all, the important phases of its operation.

Furthermore, when a corporation has once qualified for registration and agreed to abide by the rules of the Commission it is bound to do so forever and cannot withdraw from registration except "upon such terms as the Commission may fix."

A corporation registering its securities is also required to furnish in addition to data as to its organization, financial structure, etc., particulars regarding material contracts of its directors and officers and principal security holders and also those regarding remuneration to others than directors or officers exceeding \$20,000 per annum, and particulars respecting bonus and profit-sharing arrangements and management and survey contracts. Furthermore, financial statements are required not only for current years but also for preceding years and must be certified by independent public accountants. As is generally provided throughout the bill, the Federal Trade Commission is entitled to demand such other information and take such other steps as it deems advisable.

Section 12 is entitled "Annual Quarterly and Monthly Reports" and requires the filing with the exchange and with the Commission of such information and documents as the Commission may require. The blanket nature of the information and the frequency with which it can be required is left entirely with the Commission. The full effect of this section is made more evident when it is considered in connection with section 18 (a) and (b), which specifically authorize the Commission to prescribe the methods to be followed in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion and various other phases which seriously affect the management policy of a corporation.

Section 13 is entitled "Proxies" and prevents the solicitation of any proxy in respect of registered securities unless prior to the solicitation the person to exercise the proxy shall file with the Federal Trade Commission a statement setting forth the purposes of the proxy, the person to exercise it, his relations to and interest in the security and the names and addresses of persons from whom proxies are being required. Literally construed this would require every corporation sending proxies to its own stockholders to send each of them a list of the names and addresses of all stockholders. The provision is also contained that such further information can be required in such form and detail as the Federal Trade Commission may require.

Section 14 is entitled "Over-Counter Markets."

This section attempts to make it unlawful for any person to use the mails or any instrumentality of communication or transportation for the purpose of making or creating or enabling another to make a market for any security without complying with the rules of the Federal Trade Commission. The extent of the control given the Federal Trade Commission under this section is difficult to visualize. Many informal arrangements which are used in small communities for the exchange or sale of real-estate mortgages and other local securities would thus all be brought under the direct and blanket control of the Federal Trade Commission. Whether the restrictions of this section will add another element in the deflation of registered securities and the encouragement of bootleg trans-

actions by removing all legal right to conduct informal places for the exchange of securities is an important practical problem to consider. Its effect on unregistered securities in the large cities will undoubtedly be great, but its effect on the smaller cities will probably be even greater.

Section 15 is entitled "Transactions by directors, officers, and principal stockholders."

This section may have a place in a national corporation act, but it has no place in a bill purporting to regulate security exchanges. It restricts transactions by officers, directors, and also any stockholders who hold more than 5 percent of the class of stock of which they are stockholders; and requires all such persons to file monthly reports of changes in their holdings of the stock of the corporation, whether such holdings be of record or be beneficial. This would bring under the restriction of this section a broker in whose name there was registered more than 5 percent of a corporation's stock who might not own or have a beneficial interest in a single share. It also makes it unlawful for any such person to purchase any registered security of his corporation with the intention or expectation of selling the security within 6 months; and any profit which he makes, if he should sell the security within that period, must be paid over to the corporation. It also prevents any such person from selling short any securities of the corporation. It also makes it unlawful for any such person to disclose any confidential information affecting a registered security of the corporation, and not necessary to be disclosed as a part of his corporate duties. Any profit made within 6 months in respect to such security by any person to whom such information shall have been disclosed shall be paid by such person to the corporation.

The effect of these restrictions cannot be fully visualized but they have definite possibilities of seriously limiting the registering of securities by corporations. The credit value of the holdings of many stockholders may be seriously diminished through the restrictions on unregistered securities, because of these and other burdens thrown on the corporations and the officers and directors. If the burdens are as great as seem possible many corporations may not register their securities, for the benefit which the corporation receives from such listing may be small compared to the burden placed upon the corporation to maintain such registration.

Section 16 is entitled "Accounts and Records, Reports, Examinations of Exchanges, Members and Others."

This section gives blanket power to the Federal Trade Commission to examine all records of every exchange and the members thereof, and to send persons to make such examinations, all at the expense of the person being examined. This again gives power to the Federal Trade Commission without limitation, and even takes away the customary limitation on most actions that the person taking it must consider the expense. Here the Commission does not even have to think of that.

Section 17 is entitled "Liability for Misleading Statements."

The broad liability imposed by the bill makes this section particularly burdensome and puts tremendous advantages in the hands of a speculator to cover himself from bad speculation through endeavor-

ing to force recovery from his broker for alleged misstatements. The nature of this right has been discussed hereinbefore.

Section 18 is entitled "Special Powers of the Commission", and has been partially discussed hereinbefore in connection with section 12. It again gives the Commission broad powers over reports and information and gives the power to the Commission to subpoena witnesses, administer oaths, and so forth. The Commission is authorized to investigate and publish information concerning any facts which it may deem necessary and proper.

Particular attention should be called to the part of subdivision (c) which gives the Commission power to prescribe the time and method of making settlements, payments, and deliveries, and the time of calculating margin requirements, and the time and method of closing out undermargined accounts. The control of these matters by a commission which is entirely outside the control of the persons conducting the matters regulated is likely to cause extreme damage to the business. The possibility of the Commission preventing closing out of margin accounts for a certain length of time which might be alleged to be in the interest of the investor, has been hereinbefore discussed. The great danger of such requirements and the prevention of freedom of contract in respect to them cannot be overestimated. It should also be pointed out that under this same subdivision the Commission is given the right to fix interest rates and charges and may summarily suspend trading in any registered security or even close the exchange itself. The dangers from these blanket delegations of authority also cannot be overemphasized.

Section 19 is entitled "Liability of Controlled Persons" and contains drastic provisions making every person who controls another through stock ownership, agency or otherwise liable for the acts of the controlled person as if such acts were his own. What is meant by a controlled person is not described and, therefore, the full effect of this section cannot be understood. There are many liabilities established for individuals by the bill, and to what extent an individual is a controlled person within the meaning of this section is difficult to understand.

Sections 20, 21, 22, 23, 24, 25, and 26 provide for various procedural and penal matters.

Section 27 provides for the validity of certain contracts.

Section 28 is entitled "Foreign Exchanges" and gives the commission power to restrict transactions on exchanges out of the United States. The effect of this section on American securities which have already been listed on the leading European and other exchanges should be carefully considered, for although the purpose of the section may be to prevent evasion of the bill by merely conducting the security transactions outside the exchange, the effect may be much greater.

Furthermore, this section applies only to brokers and dealers and, therefore, all individuals who are not brokers and do not come within the classification of dealers, may conduct any of the prohibited transactions on foreign exchanges.

Conclusion: From the foregoing, the bills may be seen to have three fundamental characteristics of almost equal importance: (1) to regulate certain stock exchange practices; (2) to restrict and con-

trol the granting of credit and investment; and (3) to control many of the practices of the corporations themselves, their officers, directors, and stockholders.

All these important subjects are by these bills placed under the supervision and control of the Federal Trade Commission, whose functions were confined (as its name would indicate) to the administration and enforcement of the Sherman Anti-Trust Act, the Clayton Act, the Federal Trade Commission Act, and related laws, all of which concern trade and commercial practices. Its personnel has been chosen for these special purposes. To so suddenly invest this body, however efficient it may have been in its own field, with the broad and absolute control over the delicate financial mechanism of the banks, corporations, stock exchanges, and the general markets for securities, to say the least, requires the most cautious consideration.

It should be further remembered that the Federal Trade Commission, in addition to its original duties, was, by the Securities Act of 1933, given control of the issuance of new securities. It thus has recently been given drastic control of new financing by the corporations of the country; but these bills now propose in addition to give it jurisdiction over the market for and trading in outstanding securities and also give it jurisdiction over many of the related credit transactions of the entire banking system of the country and of many corporate practices.

If this proposal is carried out, the Federal Trade Commission can, through its control of so many of the varied phases of the financial and economic life of the country, restrict the operation of and even destroy corporations that incur its displeasure. The Federal Trade Commission does not have to convict a corporation of any particular illegal transaction, but can regulate it out of existence by control of credit, restrictions on new financing, removal of its securities from exchanges, and so forth, without in any way justifying its motives or the soundness of its judgment. Although the bill provides for judicial review by appeal to the courts from the decisions and orders of the Federal Trade Commission, it must be appreciated that many such orders and decisions of far-reaching and fundamental effect would be primarily administrative orders involving the discretion of the Commission and might thus not be subject to review by the courts in a manner sufficient to present the full controversy for judicial review. Furthermore, immediate action, absolutely required by the very nature of the subjects involved, is impossible, and delay will prove a denial of justice.

Furthermore granting to the Federal Trade Commission the proposed broad control over financial matters further causes confusion and conflict in that it separates from the normal financial branches of the Government control over some of the most important phases of the financial and credit structure of the country. To so separate control of different parts of the financial system of the country in several independent branches with no coordination established between them presents much possibility for confusion, conflict, and disorder.

The CHAIRMAN. We are very much obliged to you, Mr. Hope. Do the members of the committee wish to ask any questions?

Senator KEAN. I do not.

Senator GOLDSBOROUGH. I do not.

The CHAIRMAN. All right, Mr. Hope.

(Thereupon, Mr. Hope left the committee table.)

The CHAIRMAN. Is Mr. Legg present?

Mr. LEGG. Yes, Mr. Chairman.

The CHAIRMAN. Please come forward to the committee table.

**STATEMENT OF JOHN C. LEGG, JR., OF THE FIRM OF MACKUBIN, LEGG & CO., BROKER-DEALERS, BALTIMORE, MD., AND MEMBERS OF THE NEW YORK, BALTIMORE, AND WASHINGTON STOCK EXCHANGES**

The CHAIRMAN. You desire to be heard on this bill, do you?

Mr. LEGG. Yes, sir.

The CHAIRMAN. Please state your name, place of residence, and occupation.

Mr. LEGG. My name is John C. Legg, Jr., of Baltimore, a member of the firm of Mackubin, Legg & Co., broker-dealers, members of the New York, Baltimore, and Washington Stock Exchanges.

The CHAIRMAN. You may proceed in your own way.

Mr. LEGG. Mr. Chairman and gentlemen, I represent 18 broker-dealers of Baltimore.

Attendance at 5 hearings before the Interstate and Foreign Commerce Committee of the House, followed by attendance at 9 hearings before the Banking and Currency Committee of the Senate, leads us to believe that most of the sections of the National Securities Exchange Act of 1934 have been adequately discussed, but also leaves us in doubt as to whether there is a clear understanding of a few sections upon which we desire to comment.

We do not come with apologies for the profession in which we are engaged. We know that our business is essential and any regulations which would seriously hamper its normal operations would unfavorably affect the public. Those interested in securities must, of necessity, have someone to whom they can turn for advice. My own firm, in association with two other banking firms, just completed what I believe to be one of the largest refunding operations of its kind ever attempted in the United States. A plan was worked out with the assistance of the Reconstruction Finance Corporation for the refunding by two large surety companies of approximately \$80,000,000 of bonds secured by mortgages which had been guaranteed by those surety companies. Seven hundred and eighty security dealers located in 45 States and the District of Columbia cooperated with us in this plan, and more than 39,000 certificates of deposit were issued to 29,395 investors. The significant fact of this achievement is that thousands of bondholders relied upon the advice of those dealers to the extent of approximately 94 percent of the bonds affected.

This is only one illustration of what is constantly going on throughout the country; investors depending upon their local dealers for advice and counsel. Years of experience, constant study, and the expenditure of a substantial part of gross earnings on statistical departments are necessary to give adequate service to clients.

The cost, time, and expense involved precludes any but very substantial investors from maintaining adequate statistical organizations, making it necessary for smaller institutions and investors to seek the advice of security dealers.

The representatives of recognized stock exchanges scattered throughout the United States have testified here that an overwhelming majority of their members are both brokers and dealers in securities.

To our mind the first sentence of section 10 is especially objectionable. It is necessary for a "broker" and "dealer" to combine their two functions in the smaller financial centers, and the smaller the city or town the more necessary this becomes if the "broker-dealer" is to have sufficient revenue to afford the overhead costs essential to provide the character of service desired by the investing public. In this bill there is a clause which does not allow an investment banking house to have any affiliation with the brokerage business, meaning the selling or buying of securities for their clients, either on a cash or part-cash basis. This bill, if unchanged, will force out of business the great majority of the bond and brokerage houses in the smaller financial centers, which in the aggregate number more than 6,000 firms, employing many thousands of people. Merely to act as dealer and underwriter and distributor of new issues would not bring them enough income to keep their businesses going. Who, then, would remain to underwrite and distribute new securities and perform the useful function of dealing in securities now outstanding?

Conditions of the securities markets may be such that at one time most activities in securities would be centered in the brokerage department of a broker-dealer while at another time the major activities are confined to the investment and over-the-counter departments, and only occasionally are conditions of the securities market such that all departments are active at the same time. The right to exercise both functions tends to keep the income from the business at a more uniform level than would otherwise be the case, which permits the broker-dealer to employ an average force much larger than if he is permitted to act as broker only, and in doing so, gives much better service to his clients.

It may be roughly estimated that of all transactions in bonds only 10 percent is made on the New York Stock Exchange, the remaining 90 percent being made on other exchanges and on over-the-counter markets, which are largely "dealer" transactions.

Very careful consideration should be given to the position in which the buyer of unlisted securities would be placed by segregation. Billions of dollars of securities—including State and municipal bonds—are traded in only "over-the-counter." If the broker-dealer retains his membership in an exchange he is prevented from exercising his latter function—that of dealing in securities—and so his clients who buy or sell such securities are forced to transact their business elsewhere—with a nonmember—a person unregulated except as the Federal Trade Commission may at some future date prescribe.

The Dickinson report and statements made here by Mr. Corcoran emphasize the difficulty in formulating effective control of "over-the-counter" markets. In what possible way can this segregation



be called a safeguard for the public? The activities of the broker-dealer as a member of a recognized exchange are under supervision, and his methods scrutinized. On the other hand, if we interpret the proposed law correctly, the nonmember dealer will be comparatively unregulated.

In February 1933 the bond market was completely demoralized. A sale of as few as 5 bonds would often cause a decline of several points from the last recorded sale. Bids at times were so far below last sales that frequently the stock exchange authorities would refuse to allow a sale to be made at the market but would fix a minimum price. Such action by the exchanges helped to stabilize the markets, but did not help the banks and insurance companies to raise the funds demanded by their depositors and policyholders. Frequently a broker-dealer would act as broker for his bank or insurance company customer and sell on the exchange as many bonds as the market would take at a fair price, and then in his capacity as dealer would negotiate with his client and purchase the balance of the block and through his own sales force distribute them.

A similar operation comes about through the function of broker-dealer in distribution of stocks and bonds through options on securities which are worthy of recommendation to his clients. We have in mind a block of stock held in a bank loan. Careful investigation convinced the broker-dealer of the merits of the stock. A circular was issued, and through their sales organization they distributed a substantial block of the stock. As broker they were able to stabilize the market by purchasing such stock as was offered for sale on the exchange and sell such stock as was wanted while the distribution was going on.

We believe the question of segregation which involves over-the-counter transactions is grave enough in its possibilities of harm to both the investing public and the broker-dealer and his employees to justify the appointment of a committee to study every phase of the proposed segregation.

Section 6 (a), Margin requirements on long accounts, may possibly have been designed to protect brokers, but would work serious hardships upon small corporations throughout the country and upon owners of their unlisted securities by destroying their collateral value. The burden of registration requirements under the act may force many small- and medium-sized corporations to remove their securities from listing on exchanges in smaller financial centers, thus aggravating the situation.

The drastic and rigid margin requirements under section 6 (b) would in all likelihood prompt further substantial liquidation of securities. Those responsible for the writing of this bill, no doubt, were largely influenced by the revelations made before the Banking and Currency Committee of the Senate, and, as is often the case, when concentrating upon abuses and their correction the suggested remedy may do an incalculable harm. Will the proposed commission at all times in the future be better able to regulate the amount that can be safely loaned on a given security than broker-dealers and the banks from whom they in turn borrow?

We believe that the volume of credit used by stock exchange members can be regulated under the Banking Act of 1933. The

effective curb to undue speculation is the curtailment of credit. Prices of stocks cannot be advanced inordinately unless the purchases can be financed. Officers of banks with their knowledge of security markets who pass upon collateral loans, when acting solely in the interest of the depositors and stockholders, are able to place proper loan values on collateral offered. Thus unwise and destructive speculation can be better regulated.

It is our belief that the reasons for regulating stock exchanges and their members arose from the disclosures developed by the investigations of the Banking and Currency Committee of the Senate in the past 2 years. We believe that the overwhelming majority of the members of the New York Stock Exchange are in whole-hearted sympathy with your desire to eradicate any practice detrimental to the best interests of the public and believe if the governors of the New York Stock Exchange had been more fully advised of the feeling in different parts of the country toward practices that some regarded as detrimental to the best interests of the public, that remedial measures would have been adopted sooner.

If, as we recommend, the management of the exchanges is to be left to the exchanges with such regulation as Congress decrees, we believe the opinions of the various parts of the country should be expressed through representation on the Board of Governors of the New York Stock Exchange by members located in various parts of the United States.

We are convinced that the day-to-day management of the New York Stock Exchange must be conducted by governors available for immediate decisions. For that reason it may be inadvisable to enlarge the governing committee to a point where it would be difficult to obtain a quorum, but the out-of-town members selected could be formed into an advisory committee to meet frequently with the governing committee.

Following our belief that the proposed regulations are suggested as a result of the disclosures of certain practices on the New York Stock Exchange we presume the regulations suggested are for the purpose of eliminating such practices and respectfully suggest that the regulations be confined thereto and not extended to affect other functions of broker-dealer business to the detriment of the general public.

With that in mind we suggest changes in several sections under the heading "Definitions." Section 3, subdivision 4, to read:

The term "broker" means any person engaged in a business of effecting transactions in securities for the account of others, for which service a commission is charged

The definition as given in the bill could be interpreted to include banks and trust companies that buy securities for the account of others.

Section 3, subdivision 5 to read:

The term "dealer" means any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise, the chief purpose of which is to give investors a service that will enable them to buy or sell securities, whether listed or not, which cannot be purchased or sold to better advantage on a national securities exchange. A dealer also may be an underwriter and distributor of securities

We urge the elimination of section 6 for reasons previously given.

We urge the elimination under "Restrictions of members borrowing", section 7 (a).

To prohibit a member of a national securities exchange from borrowing from any person other than a member bank of the Federal Reserve System would work an extreme hardship on broker-dealers located outside of the principal financial centers. In the ordinary conduct of business broker-dealers find it necessary to carry open accounts with their correspondents in the financial centers where the larger stock exchanges are located. If broker-dealers are denied the privilege of carrying such accounts with their broker correspondents, they could only use a member bank of the Federal Reserve System to clear their transactions. Even if practical, this would naturally incur another charge to be passed on to the public.

We suggest a change in the heading, "Segregation and limitation of the functions of broker, specialist and dealer", on page 21, to read "Segregation and limitation of the functions of broker and specialist."

It has been stated before your committee that the segregation of "broker" and "dealer" was to give greater security to the clients of brokers, reciting the failure of four New York Stock Exchange firms, chiefly because of their "dealer" commitments. Compare the remarkably low percentage of failures of private banking firms to other failures and we believe you will agree that there is no apparent need to prescribe such stringent regulations as would destroy the necessary part of our financial structure as would be the result of the proposed segregation of broker and dealer.

We strongly urge the elimination of the first sentence of section 10.

We appreciate the opportunity you have given us to appear before you and express our views on the pending legislation.

The CHAIRMAN. Can you suggest any modifications of sections 6, 7, and 10 of the bill, to which you have made reference?

Mr. LEGG. On page 5 I brought out our opinion about section 6 of the bill.

The CHAIRMAN. You want to eliminate it entirely, do you? Can you suggest any modification that you think might improve the situation?

Mr. LEGG. Well, I would not presume to do that. I think that margin requirements must be left to stock exchange regulations, and be flexible enough to keep us from selling our clients out without notice, which we would have to do under this bill as drawn.

Mr. PECORA. Mr. Legg, prior to October of 1929 wasn't the matter of margin requirements left solely to the judgment of stock exchanges and their individual members, with the result of a tremendous inflation of security prices due to the speculative mania that was encouraged by the undue extension of credit on margin?

Mr. LEGG. The requirements were left to brokers, but I do not think that resulted in undue inflation. Brokers had their own rules for margins, and I know that my house, and almost every other conservative house, had very stiff margin requirements.

Mr. PECORA. Do you recognize that prior to October of 1929 there was excessive speculation in securities?

Mr. LEGG. Yes, sir.

Mr. PECORA. Don't you think that that excessive speculation was prompted, in part at least, by the use of the margin requirements that were imposed by brokers on their customers?

Mr. LEGG. I cannot agree that the margin requirements were easy. I can only speak for the conservative houses with which I associate, and I know that our requirements were not low requirements.

Mr. PECORA. What were they?

Mr. LEGG. It depends of course upon the stock. In the case of a great many stocks—

Mr. PECORA (interposing). What would you say was the average at that time?

Mr. LEGG. It would be impossible for me to say. Let us take United States Steel before it had its big boom, and one might carry it possibly for 15 points. But there were a great many other stocks that I would not carry at any margin.

Mr. PECORA. You say on page 8 of your memorandum:

We suggest a change in the heading "Segregation and limitation of the functions of broker, specialist, and dealer", on page 21 to read "Segregation and limitation of the functions of broker and specialist"

Was it your purpose to suggest to the committee that there be a segregation limitation of the functions of broker and specialist?

Mr. LEGG. No, sir. Our intention in suggesting that was to eliminate the dealer from that regulation.

Mr. PECORA. But you do think there ought to be a segregation of the duties or rights as between brokers and brokers who are specialists? Or to put it in another way, the bill as proposed would prevent a specialist who is a member of an exchange from trading for his own account. Do you approve of that principle?

Mr. LEGG. Mr. Pecora, my relations with the stock exchange are purely as a member for the purpose of the facilities of the stock exchange. I have been a member of the exchange since 1916, and have probably never been on the exchange 20 times in my life. I have great confidence in the management of the New York Stock Exchange, and I think the evidence which they have given here in reference to specialists would certainly be more illuminating to you than anything I might say about them.

Mr. PECORA. From the standpoint of your experience would you say that specialists should be permitted to trade for their own account?

Mr. LEGG. My experience with specialists has been nil.

Mr. PECORA. Then you have no opinion on it?

Mr. LEGG. No.

Mr. PECORA. On the first page of your statement occurs this sentence:

Those interested in securities must, of necessity, have someone to whom they can turn for advice

Do you make that statement as a part of your argument that broker-dealers should not be required to segregate their duties? You recognize, don't you, that customers of brokers often turn to brokers for investment advice, and even for advice on stocks they might want to speculate in?

Mr. LEGG. Frequently.

Mr. PECORA. Don't you recognize that in such a situation a broker who is also a dealer is placed under the temptation of recommending transactions in securities in which that broker as dealer is also primarily interested?

Mr. LEGG. I think that circumstance would arise very, very seldom, speaking again for my own group.

Mr. PECORA. Wouldn't it arise in all cases where a broker-dealer is asked for investment or speculation advice by a customer?

Mr. LEGG. I think not, because it is very infrequent that broker-dealers are interested in an obligation for their own account. That has certainly been true for the past few years.

Mr. PECORA. Well, in the instance where a broker-dealer has an interest in securities, don't you think he is placed under the temptation of recommending, when his advice is sought by a customer, securities in which he is interested as dealer?

Mr. LEGG. I certainly would not think it would be a temptation. I think the broker-dealer would know from his customer what the customer needed.

Mr. PECORA. Well, he might be tempted to feel, because of his interest in securities, securities in which he has an interest or an underwriting, that that very security might be the one which his customer needs and might advise him accordingly.

Mr. LEGG. I think that can be done honestly.

Mr. PECORA. There is no question about that. But we also know by evidence presented to this committee that brokers, who have an interest as optionees in certain securities they were trading in, recommended the purchase of such securities to their customers, although in their own confidential reports, based upon a survey of the issuing company, they regarded the security as a purely speculative one at the same time they were advising their customers on the basis of investment.

Mr. LEGG. Well, I mentioned in my brief when speaking of options:

A similar operation comes about through the function of broker-dealer in distribution of stocks and bonds through options on securities which are worthy of recommendation to his clients.

Mr. PECORA. Who is going to determine that?

Mr. LEGG. The broker-dealer.

Mr. PECORA. Exactly, and if the broker-dealer has an interest in the security as underwriter or sponsor that might tincture the advice he gives his customer, might it not?

Mr. LEGG. I cannot get your point, Mr. Pecora. I am thinking about the broker-dealer who is doing an honest business, who investigates a stock or bond, issues a circular and puts his recommendation on it. It certainly, as you say, tinctures his advice, because he believes it is the thing for his client.

Mr. PECORA. But it might tincture it because he believed it would be in his own interest to prompt its sale.

Mr. LEGG. You and I are not speaking of the same kind of broker-dealers.

Senator KEAN. Isn't it also true that, if a man comes into an office and says he has so much money to invest, that you give him a list of securities, some of which you may be interested in and

some of which you are not interested in, and that when you submit that list to him you say: On these we would not charge you any commission, because we own these securities?

Mr. LEGG. Yes, sir.

Senator KEAN. Therefore it is at the option of the purchaser. You try to give him all the facts that you have in regard to that investment; after you have made a study of that security you try to give him all the facts in regard to that proposed investment, so that it is his choice after knowing all the facts that you have worked up and put before him, I mean it is his choice as to whether he will buy that security or not.

Mr. LEGG. That is right.

Mr. PECORA. One of the biggest purchasers of securities that this country had was the National City Co., was it not?

Mr. LEGG. Yes.

Mr. PECORA. Are you familiar with the testimony introduced before this committee with regard to the troubles of that securities selling company?

Mr. LEGG. I would not say I was familiar with it. I have read it over now and then in the papers.

Mr. PECORA. I think if you were familiar with that testimony you would find out one of the purposes of the provisions of this bill that you take exception to.

Mr. LEGG. Mr. Pecora, naturally your investigations have brought out the bad part of this business.

Mr. PECORA. It is only the bad part that it is sought to eliminate through the bill, not the good part.

Mr. LEGG. Yes. I am sure that every decent thinking person in my business wants to help you to eliminate such practices. We, speaking for the small broker-dealer are penalized in your efforts to regulate the few people even though it is the large people whom you have investigated and who have offended. That is the reason I ask that your efforts be confined to regulation of offenders and not spread throughout the country to the 6,000 broker-dealers who are doing a legitimate business.

Mr. PECORA. If you can find out any way by which Congress can determine what particular firms are liable to err in the future as they have in the past, that might be done; but I do not know any way by which that can be done. Do you?

Mr. LEGG. I do not know any way that it can be done, but I know what this bill will do to the honest broker-dealers throughout the country in your attempt to regulate the other side.

Mr. PECORA. It simply puts them in a position where they will continue to do business on a basis of good faith.

Mr. LEGG. No; I do not think we can continue to do business if you segregate the broker-dealer.

Mr. PECORA. Why can you not continue to do business as a dealer?

Mr. LEGG. Because there is not enough money in any one branch of the business, Mr. Pecora.

Mr. PECORA. That affects your private interest; it does not affect the public.

Mr. LEGG. It does affect the public.

Mr. PECORA. I do not think so.

Mr. LEGG. Because I can serve the public better as a broker-dealer than I can as either one individual.

I am sorry that Senator Goldsborough did not take the opportunity to read a letter that the Mutual Savings Banks Association in Baltimore wrote him yesterday, for the record.

The CHAIRMAN. I think that has been put into the record this morning.

Mr. LEGG. I am sorry that Mr. Pecora has not had the benefit of that.

Senator GOLDSBOROUGH. I have it in my hand, and I will ask that it be read.

Mr. LEGG. This letter is dated March 5, 1934, and addressed to Hon. Phillips Lee Goldsborough, United States Senate, Washington, D.C.

I might say, before I read this letter, that the mutual savings banks in Baltimore have deposits of approximately \$200,000,000 [reading]:

MY DEAR SENATOR GOLDSBOROUGH: As you are fully aware, the mutual savings banks of Baltimore enjoy a long and outstanding record of useful service to the people of Baltimore. They have afforded a means for safe-keeping the savings of people of small means and at the same time furnishing an available supply of funds for investment in mortgage loans for the building of homes.

In order to adequately protect and diversify the investment of their depositors' savings, these mutual savings banks for many years have also been purchasers of large amounts of high-grade investment bonds. Many of these bonds are the public securities of States, counties, and municipalities, as well as large amounts of equipment-trust certificates and underlying railroad and public utility obligations, which are not listed on any exchange for obvious practical reasons.

The purchase and sale of such bonds are made through recognized security dealers, many of whom, in order to render better facilities to their clients, are also stock exchange members. These dealers, through their knowledge of investment conditions and through their contacts with other dealers and institutions in different parts of the United States, are enabled to locate and determine whether their customers are best served in the execution of such transactions on the stock exchanges or through the over-the-counter markets.

Frequently it is much more advantageous to institutions such as our mutual savings banks to deal with such security dealers when they are acting directly as principal in the transactions. Our experience is that it is decidedly to the interest of institutions such as ours, and therefore our many depositors, to be able to handle such transactions through recognized security dealers whose combined facilities enable them to render either dealer or broker service.

Naturally the mutual savings banks are not interested in fostering speculation in securities and unquestionably practices have developed that justify correction and a regulation of these speculative activities, but it is certainly obvious that serious consideration should be given to the effects of that portion of the Rayburn-Fletcher bill which provides for segregation of the dealer-broker business and its effect on the investment transactions of the mutual savings banks, which are truly representative of the thrifty people of small means.

Very truly yours,

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President Associated Mutual Savings Banks of Baltimore

Senator GOLDSBOROUGH. The savings banks belong entirely to the depositors?

Mr. LEGG. Yes, sir.

Mr. PECORA. That makes a rather favorable argument for regulation, because—

Mr. LEGG. I do not take it from the letter. I take it that it would mean the service which was rendered by the broker-dealer.

Mr. PECORA. I do not see why a dealer has to be a broker in order to give better service.

Mr. LEGG. That gentleman has had 30 or 40 years' experience in the purchase of securities, and that is his opinion.

Mr. PECORA. Do you mean to say that the mutual savings banks of Baltimore could not effect their transactions in the sale of securities through dealers who were not brokers, just as they do through those that are brokers?

Mr. LEGG. But the president of this association is stating that he thinks they can do it to better advantage through a combination house.

Mr. PECORA. I do not think he says they can do it to better advantage through a combination house.

Mr. LEGG. A broker-dealer, he calls them.

Senator GOLDSBOROUGH. I would like to ask a question. On page 6 of your memorandum, Mr. Legg, you referred to the fact that you are convinced that the day-to-day management of the New York Stock Exchange must be conducted by governors available for immediate decisions; but I understand that you also suggest that you think it would be wisdom that there should be formed an advisory committee to meet frequently with the governing committee?

Mr. LEGG. Senator, those two paragraphs do not jibe very well. It was written probably a little hastily. We had thought that the opinion of the investing public throughout the United States could be more adequately presented to the governors of the New York Stock Exchange if those out-of-town members had a duty or an obligation to confer with the governors. As it is now we do not see the governors from one year's end to the other. I do not criticize the governors for not sensing these opinions throughout the country, any more than I censor ourselves for not bring it to the attention of the governors. But there should be something done to get these things to the governors and there should be an obligation to bring it to them.

Senator GOLDSBOROUGH. My purpose in this question was to emphasize what you had said, because it seemed to carry some merit, at least to my mind.

Mr. PECORA. Is it your opinion that the bill takes the day-to-day management of the stock exchanges out of the hands of their governing committees and vests it in the Federal Trade Commission?

Mr. LEGG. That is the way I would read the bill, and fear it.

Mr. PECORA. You apparently are not familiar with the statements made to this committee by Mr. Corcoran at the opening of these hearings last week?

Mr. LEGG. Yes, sir; I heard Mr. Corcoran's statements.

Mr. PECORA. Have you read the bill?

Mr. LEGG. Yes, sir.

Mr. PECORA. Could you point to the provisions in it that in your opinion divest the exchange authorities of the power of self-management?

Mr. LEGG. There are a lot of things in this bill that you do not read. The Federal Trade Commission reserves to itself the right to adopt and prescribe such rules and regulations in the future as it desires. With that it certainly could take over the management of not only the exchange, but a great many other things.



Mr. PECORA. Do you think that it means that the governing authorities of the exchanges are divested and also divested of their power of self-management?

Mr. LEGG. I would fear it, from the bill. I think you would agree with me that the management of the stock exchange must be left in the hands of those who are available for emergency. I pointed out—

Mr. PECORA. I do not see anything in the bill that operates to deprive them of that day-to-day management and operation.

Mr. LEGG. I pointed out the 1933 bond market. I do not know whether you were as close to that as we were, but that was a very uncomfortable time. The assets of banks and insurance companies were being dissipated by the reduction in market values which were not justified by the small amount of securities which were offered. I saw several occasions when we had market orders to sell small blocks of bonds when the stock exchange would refuse to allow a client to sell at the bid price. It was so much below the last sale that they arbitrarily fixed a minimum price. It needs somebody on the stock exchange to take that kind of action.

The CHAIRMAN. At the time you speak of there was local management by the stock exchange itself. Nobody interfered with that.

Mr. LEGG. No; and they took action, Senator. If they had not, we would have seen bond prices very much lower than they were on very small liquidation.

The CHAIRMAN. We are much obliged to you, Mr. Legg.

Mr. REDMOND. May I place myself at the table, Mr. Chairman, in case I wish to ask any questions?

The CHAIRMAN. Yes.

#### STATEMENT OF HON. WILLIAM CLARK, PRINCETON, N.J., UNITED STATES JUDGE FOR THE DISTRICT OF NEW JERSEY

The CHAIRMAN. Please state your name, residence, and profession.

Judge CLARK. My name is William Clark. I live in Princeton, N.J. I am United States district judge for the District of New Jersey. I think that inasmuch as you have witnesses here who represent the stock exchange, I would like to appear as representing the victims of stock-exchange speculation.

The CHAIRMAN. We are very glad to hear from you, Judge.

Mr. PECORA. Do you mean that you are attempting to speak for the general public?

Judge CLARK. That is my idea, Mr. Pecora.

Mr. Chairman and Senators, I have accepted your committee's kind invitation to impose on their time for one reason only. I have strong feelings on the subject of the margin section of the proposed bill. I believe that section does not go far enough. I believe that the stock exchange should be put on a cash basis. Those feelings and that belief are not manufactured for this occasion, nor are they simply the result of cloistered thinking by an enfeebled intellect. In 10 years on the Federal bench, I have had personal observation of the tragic consequences of margin trading in three respects.

First: I have had to send men to prison because they had used the money entrusted to them by poor depositors to "protect" their

margin accounts. The district attorney for my district advises me that about one half of our national bank embezzlements in the last 5 years are the result of stock speculation.

As far back as 1931 the Department of Justice, Bureau of Investigation, informed me, for the purposes of a speech which I was making, that the average for the country generally runs as high as 60 percent.

If you examine the records of bonding companies and of prosecutors' offices you will, I think, find that officers in State institutions and public officials have been equally inclined to use other people's money for investment in the stock exchange. The judicial function of punishment is always heartrending to exercise. In the case of certain classes of crimes, the nature of the offense and of the person committing it leaves the emphasis on the necessity for protecting society. To sentence a drug peddler is one thing; to punish a leading citizen of the community for betraying the neighbors who trusted him is quite another. Furthermore, in dealing with the professional criminal one has the feeling that the causes of his erring (environment, inheritance, physical and mental condition, and so forth) are deep rooted in any civilization and yield only gradually to elimination. In the case of the bank officer, however, there is obviously only one cause: His inability to resist the insidious temptation of following the crowd in seeking what looks like safe and easy money.

Second. There has been since 1929 an increasing number of suits in my court on insurance policies where, under the terms of the standard policy, the issue was: Accident or suicide? The company has been, therefore, obliged to establish motive, and in nearly every instance the motive has been "wiped out in the stock market." The number of these cases caused me to inquire of insurance executives about the causes of suicide under straight-life policies. The answer was again mostly stock-exchange speculation. The situation became so serious, I am informed, that the companies considered abrogating the 1-year incontestable clause in their policies. Sometimes this first and second respect can be combined, because the particular bank officer or public official prefers death to dishonor and anticipates the court with a pistol. We had such a case in Princeton, where I live, 2 years ago. The cashier of one of our banks killed himself, and it was discovered that a local brokerage office (it has now folded its ledgers and departed) had covered his margins with about \$100,000 of the bank's money and about \$50,000 of the local churches for good measure.

Third. In 1930 and 1931, I conducted with the aid of the Yale Law School and the Department of Commerce, what we called a "bankruptcy clinic"—we examined a large number of persons who had filed petitions in the New Jersey court for the purpose of discovering the whys and wherefores of their unfortunate condition—hoping that we might be able to chart the seas instead of just salvaging the wreck. We were shocked to find the large number of individuals, both business men and wage earners who had taken a fling in the market as a sideline, with, of course, fatal results.

My knowledge of these things led me to the conclusion that margin trading in an unconscionable number of cases led to either death, dishonor, or distress. I have been endeavoring for several years

now to impart that conclusion to the stock-exchange authorities themselves. Through the newspapers, in speeches, and even through personal correspondence, I have endeavored to suggest that they would be wise to alter a system that fostered such dreadful results. You gentlemen who have experienced the cooperative spirit of the exchange will not be surprised to hear that I did not accomplish much except perhaps qualify myself in their regard for a place in the United States Senate.

In fact, I was met by the same plaintive cry (it reminds me of a sort of financial Mother Carey's chicken) that you must be pretty sick of "The stock exchange is a market place." One has heard this so often that one almost expects to see the floor brokers becomingly draped in white aprons and to smell fish instead of stocks. One might suppose that Shakespeare's famous phrase had ended the argument by giving a name. The stock exchange is not a market place any more than margin trading is per se gambling.

The stock exchange is a very important institution in our economy and should be governed according to sound principles of political economy. One of these principles is undoubtedly that it should be a place where stocks can be bought and sold. Another is that it not be a place where people are tempted to indulge in unreasonable risks. Clearly, if everyone could purchase stocks for the asking and without the humiliating necessity of putting up some cash, the number of transactions would increase and multiply and the widow and orphan could sell or buy every split second. (I might digress to remark how curious it is that tears for the widow and orphan appear wherever a utility or stock exchange goes on the operating table.) Equally clearly, a margin transaction involves a real risk. It is not gambling in any technical sense. It is simply a purchase money mortgage with a chose in action (the stock) as security. Because that security is very volatile in its nature it is subject to wide and rapid fluctuations. Because it is subject to those wide and rapid fluctuations, the mortgagor purchaser is always in danger of having to bolster the impaired security and if he can't, of being foreclosed out of his purchase money.

We must, it seems to me, arrive at a social balance between these conflicting values. The widows and orphans can afford to wait a few hours to get their money for their securities in order that others of their fellow human beings may not be widowed or orphaned (for dishonor is a worse form of death) or forced into poverty because their loved ones have succumbed to the temptation of unreasonable risks. How is the social balance to be reached? In my very humble judgment by putting, as I said in the beginning, the stock exchange on a cash basis.

It would not be too much to say that among the most obvious of the much talked about causes of the much talked about depression is the abuse of credit. You gentlemen have seen it in your investigation of foreign loans and in your investigation of a few banks. You have not seen as much as I have, perhaps, of the great American institution of instalment selling. During the glad gone days it was fashionable to exalt that system. Personally I never could see the soundness of buying anything but necessities until the money was in the bank. It costs more, it is subject to the whim of fate

and it only anticipates enjoyment at the expense of thrift. However that may be, we who investigated the 1,000 bankruptcies I have spoken of, had ample opportunity to observe the economic effect of the unbridled instalment mania of the last decade. The instalment houses, like the stock brokers, point with pride to the fact that they lost nothing. That is no doubt true. It is the poor fools that fall for the blandishments of both that have done the losing.

No one will maintain that stocks are necessities in the sense that shelter, covering, food, and transportation are essential to human welfare. There seems no good reason accordingly why stocks should not be paid for by money that has first been saved, rather than the saving should come out of the rise or fall of the market. That is certainly true in all cases where the mortgagor purchaser is not in a credit position to meet the fluctuations of his security.

Who determines that mortgagor purchaser's credit position? As things are now, the one man least fitted to do so—the broker. Least fitted for two reasons. He has not the capacity or the incentive. The business as at present constituted, is not conducive to the development of inherent talent. The floor trading could certainly be carried on by Western Union messengers and it has been even suggested that a pari mutual system could be worked out. The office work is largely routine and the chief difference between a bad broker and a good broker seems to be in his ability to make friends—a beautiful quality, surely, but sometimes expensive for the friends. In France a member of the Bourse has to be both a chartered accountant and a member of the bar.

Worse than lack of capacity, the incentive of the stock broker is towards the abuse of his power to extend credit. His temptation is, of course, to ignore the credit position of his customer. He makes first some interest on the money he loans, and then he earns the livelihood by the number and size of his transactions. As long as he has enough to cover during the time needed for him to sell out, he does not care whether the customer must dip into the till to put up more margin, or kills himself, or loses his home because he can't. It is true he may lose his customer, but he is comforted by Barnum's aphorism. The stock and commodity broker are the only go-betweens I know of that exercise the credit function. Their stake is not in the use of credit in the interest of the community or its members, but in, naturally, lining their own pockets with as many commissions as possible. They immediately become unable to estimate the wisdom to the particular individual and through him to society of any credit line.

I have avoided discussing the gambling instinct and its suppression as relates to the stock exchange. We are all of us lazy, and we would all like to make some money without working for it. We have not been as a Nation very successful in the legislative suppression of instincts. I am only suggesting that if we want to make money without working for it, by operating in the stock market, we should either have the cash in our jeans or we should borrow it from some source which is both more or less expert in the exercise of the credit function and which has no bias in favor of exercising rather than refusal. Such a source manifestly exists in the banking system, which, whatever its past mistakes, must have a vital interest

in the economic wisdom of all of us and must govern their loans by an honest desire to build up the country rather than by the wish to have a new crop of the "something-for-nothing boys" every few years.

I have also not dwelt upon the fatal effects of the abuse of credit by the stock brokers on our whole economic life. To do so seems hardly necessary after what we have just been through. A people can scarcely base its investment policy on borrowing to buy stocks whose value arises principally because everyone is borrowing to buy them and benefit by it. We have sown margin trading and are now reaping the depletion.

I hope I have not been presumptuous, gentlemen. I have seen with my own eyes what margin trading has done to its victims. It has not been a pleasant sight. I hope that the Congress will have the courage and wisdom to put an end to it.

May I close with two warnings? First, the stock-exchange authorities have attempted to arouse the country to some chimera of the nationalization of industry. Very patriotic, if true; but let me assure you that the real interest lies in the margin provision because that is where the money is. Second, they are professing great concern for the small investor, as they euphemistically term him. I even read that your committee was contemplating modifying the margin requirements for the small investor's protection. The word should have been "destruction." The interest of the stock exchange in him, after what has happened, reminds me of the interest of a much older wolf than the big bad one in a little girl with a certain-colored hood.

The CHAIRMAN. Judge, do you see any economic dangers in this bill?

Judge CLARK. As to what section, Senator?

The CHAIRMAN. As to any part of it. I lay the whole bill before you to see if you can find in the whole bill dangers that will bring injuries to business and bring about bad economic conditions.

Judge CLARK. Of course, Senator, I have not considered as carefully the other sections of the bill as I have the margin section. I can only say that my impression is that the opponents of the bill have tried to twist the language to give it an unfavorable interpretation. I am sure that the draftsmen of the bill for your committee have certainly no intention to harm business, and that if those sections that they object to, as far as business is concerned, can be shown to harm it, I think the language will be narrowed.

I might add one thing, Senator. I have been amazed at the apparent criticism of the margin section. The newspapers to some extent, and the people generally, seem to act as if that was a revolutionary innovation. The fact is of course that in nearly every other country in the world margin trading does not exist.

I have here a book on the stock exchange, and it says this, reading one short paragraph [reading]:

In London margin trading of the kind and to the extent prevalent in New York is unknown. Brokers do not require margin of customers trading "for the account" or on the "term-settlement" basis. This fact contributes to the more personal relationship existing between broker and customers, mentioned in the general discussion of "term settlement" above. Credit for carrying securities is customarily arranged, not through margin accounts with brokers, as in New York, but by means of bank loans.

Mr. PECORA. Judge, from what book are you reading?

Judge CLARK. Stock Market Control.

The CHAIRMAN. Do you feel, Judge, that there ought to be some supervision or regulation by Federal authority of stock exchanges?

Judge CLARK. Apparently, Senator Fletcher, that seems to be the only recourse, does it not?

The CHAIRMAN. Some of us feel that way.

Judge CLARK. I think everyone can agree—I should imagine that everyone could agree—that our system of Government makes it wise that the Government not step in where people eliminate their own abuses. I have assumed that the reason that this bill has been offered is that such abuses have not been corrected.

The CHAIRMAN. Have you any questions, Mr. Redmond?

Mr. REDMOND. There are one or two questions that I would like to ask, Mr. Chairman.

Senator KEAN. I have a question or two

Judge CLARK. Do you want to wait until Senator Kean has asked the questions?

Senator KEAN. No; never mind.

Mr. REDMOND. Oh, I beg your pardon, Senator. I thought the chairman asked me if I wanted to inquire.

Senator KEAN. Go ahead, Mr. Redmond.

Mr. REDMOND. In regard to the English method, you appreciate that they have no margin accounts because they do not require margins? In other words, they go to the full extent of not even asking a customer to put up margin. Would not that entail a greater degree of speculative activity?

Judge CLARK. Mr. Redmond, I have not personally made an examination of the operation of the London Stock Exchange. I have assumed that the committee would be given the benefit of testimony as to the practices of all foreign exchanges. I should think the committee would want such information.

Mr. REDMOND. I thought you made the statement——

Judge CLARK. I read from this book [indicating].

Mr. REDMOND. But you made the generalization that margin accounts as we know them do not exist in any other country in the world; and I was just wondering whether that was literally true.

Judge CLARK. I read from this book.

Mr. REDMOND. Do you know anything about the practice in France?

Judge CLARK. I have not personally studied it; no.

Mr. REDMOND. You made some statement as to the qualifications of a man in order to be a member of the French Bourse. Of course that might apply to the official bourse, but it does not apply, does it, to what is known as the *Coulisse*, who are the active brokers in Paris?

Judge CLARK. I understand, without going into a discussion of the matter in detail, that the persons I referred to were the agents de change.

Mr. REDMOND. The official bourse numbers 70 people, but the main market is carried on, is it not, by what is commonly termed the *coulisse*, which is a separate organization in the bourse, and which is much larger and contains the active stocks?

Judge CLARK. If you care to have me submit a thorough discussion of comparative stock-exchange practices I would be glad to do it.

Mr REDMOND. Judge Clark, you made the statement, and I simply wanted to find out and develop the facts before the committee.

I have no further questions.

Senator KEAN. We have in New Jersey, and also in New York, a large number of companies which have taken mortgages on property all over the State, and all over New York City, and issued certificates against them. You are familiar with those companies, are you not?

Judge CLARK. Some of them seem to be in the hands of receivers.

Senator KEAN. Every one of them has failed, so far as I know, or has practically failed. Now, that was an investment which was supposed to be the safest that you could obtain, was it not? I mean to say, the charities in New York and in New Jersey bought these certificates and they were recommended as the safest that one could possibly invest in. They have all gone; they are all in trouble. You did not include them in your statement. They are entirely outside of the stock exchange.

Judge CLARK. But, Senator Kean, I think there are very unfortunate things that have happened to the whole investment structure. I do not think anybody can deny that. I was only devoting myself to one particular part of it. I think it might be said—maybe unjustly, but still it might be said, perhaps—that the stock-market collapse, which some people think was due to the excessive speculation, brought about the general economic condition and brought about the unfortunate condition in which these companies find themselves.

Senator KEAN. Perhaps it might be said that their collapse brought about the other.

Judge CLARK. Is it not, chronologically speaking, sir, correct to say that the stock market touched off the others?

Senator KEAN. I do not think so. I think perhaps the stock market started a little bit sooner than the others, but they all went down together. Here are these investments in mortgage bonds, in homes, and everything else. A great many people committed suicide because they were about to lose their homes; and the reason they were about to lose their homes was that they had bought their homes and had a mortgage on them.

Mr. PECORA. In other words, bought them on margin?

Senator KEAN. Bought them on margin, if you choose. But are you going to stop all the building and loan associations so that people cannot buy a home on a building loan? Would you stop them so that they cannot get a mortgage on anything?

Judge CLARK. Of course, Senator, is there not a distinction between a mortgage on real estate and a mortgage on stock? Real estate is not as volatile as stock. If I lose my home by foreclosure it does not immediately and to such a great extent affect the market for other stocks.

Senator KEAN. It affects the market for homes in the neighborhood, because you have a record just the same as you have on the stock exchange. You have made a record that that house in that block has sold for that amount of money, and that calls everyone's attention to it that owns a house with a mortgage in that block.

Judge CLARK. I think it does have some effect; yes.

Senator KEAN. I would like to make the statement for the record that in the London Stock Exchange they do not require margin, but their stocks are payable every 2 weeks. They have a settlement and they pay a commission. When the drop in the market came it took more than a year, certainly, for the London Stock Exchange to settle their commitments. It was much worse than the stock-exchange conditions in New York, because they settle from day to day.

Judge CLARK. I was of the impression, Senator Kean, that the events in the London Stock Exchange did not compare with ours. Maybe I was wrong.

Senator KEAN. That is partially true, because the volume of business that they do is not to be compared with ours. But as far as they went, their situation was very unfortunate.

I have nothing further.

The CHAIRMAN. I think the record might show that on October 1, 1929, stocks listed on the New York Stock Exchange were selling at \$87,073,000,000. On July 1, 1932, stock was selling at approximately \$15,663,000,000, a loss of \$71,440,000,000. That grew largely out of the speculative mania that culminated in October 1929, did it not?

Judge CLARK. Yes, sir; I should certainly suppose it did.

The CHAIRMAN. Statistics further show that the value of bonds on the New York Stock Exchange on October 1, 1929, was \$49,456,000,000, and on July 1, 1932, \$48,000,000,000. It is further shown that in 1929 the value of all the properties in the United States was estimated at \$452,000,000,000; 4 years after that at \$252,000,000,000—in other words, a loss of about 40 percent on the value of all property in the United States. The income of the United States, taking the whole country, has dropped about one half in the last 4 years.

Senator KEAN. Judge, you have no figures in your mind as to the total amount of these mortgage companies, have you?

Judge CLARK. You mean, the ones that are unsuccessful?

Senator KEAN. They are all unsuccessful, I think. They run to a great many hundreds of millions of dollars, do they not?

Judge CLARK. I would imagine so.

Senator KEAN. I think more than a billion dollars of these mortgage companies that have issued certificates on first mortgages, that these charity organizations bought and everybody else bought—

Judge CLARK. I would very much like at perhaps some other time, Senator, to suggest what should be done. Some of them have been in my court; but I do not understand that they are within interstate commerce. I am afraid that it would have to be taken up with the individual States. I think, undoubtedly, Senator Kean, there have been great abuses.

Senator KEAN. If you will look over the charities of New York and New Jersey, and also the endowment funds, you will find that a large part of their investments have been in these mortgage certificates or mortgages; also life-insurance companies. All these companies have invested tremendously in these mortgage certificates covered by first-mortgage bonds, and they are all of them either wiped out or in the hands of receivers or in trouble.



Judge CLARK. Is not that partly, Senator Kean, because of the speculative management of those companies? I know of a large savings bank in Newark, with which you are familiar, and of which I happened to be manager. I asked the president the other day how many of his mortgages were in default. They have, of course, a very large amount of mortgages. He said, less than 1 percent. They have managed well. Whereas, the mortgage certificate company in Newark is in the hands of a receiver. I examined their list of mortgages the other day, and I certainly would not have invested in them.

The CHAIRMAN. Of course this depreciation in values extended to real estate as well as to all other kinds of property.

Senator KEAN. I believe it got down to Florida, didn't it, Mr. Chairman?

The CHAIRMAN. Somewhat; but Florida is coming back. Everyone wants to get down there now to buy. So there is a change in that situation.

Judge CLARK. There was an article to that effect in the paper just the other day, Senator. I do not know whether you noticed it.

The CHAIRMAN. It is quite true. People who have land which they acquired in the boom days are not very anxious to sell it now. There is a good deal of demand for it.

Aside from that, people who hold certificates and mortgages on real estate are not entirely wiped out. There is something left there for most of them. With stocks and that sort of thing they are gone absolutely.

Judge CLARK. With stocks you are out the window. With mortgages you have some chance.

Senator KEAN. I hope they all come back.

Mr. REDMOND. Judge Clark, may I ask you one more question?

Judge CLARK. Certainly.

Mr. REDMOND. You referred to the excessive amount of credit on the stock market. The chairman has just mentioned—

Judge CLARK. I do not think I used the word "excessive." But let that go.

Mr. REDMOND. The chairman has mentioned the total valuation of stocks on the New York Stock Exchange in October 1933. If you will remember the figure of brokers' loans, it was about \$8,500,000,000, which represented slightly less than 10 percent of the market value. Do you think that 10 percent is an excessive amount to borrow against property?

Judge CLARK. I do not think I used the word "excessive." I will look at my statement again and see. My objection to the brokers loaning money is that they have an incentive to loan; they are not impartial. I may be that in certain cases they are able to overcome that temptation; I do not know.

Mr. REDMOND. But you doubt it?

Judge CLARK. My judgment, from what has passed, is that they are not able to overcome it.

Mr. REDMOND. That is all.

The CHAIRMAN. Thank you, very much.

**STATEMENT OF ALFRED L. BERNHEIM, NEW YORK CITY,  
DIRECTOR OF THE SECURITIES MARKETS SURVEY OF THE  
TWENTIETH CENTURY FUND, INC.**

The CHAIRMAN. State your name, please, and your address and occupation, for the record.

Mr. BERNHEIM. Alfred L. Bernheim, 27 West Eighty-sixth Street, New York City. I am director of the Securities Markets Survey of the Twentieth Century Fund.

The CHAIRMAN. Do you wish to be heard on this bill, Mr. Bernheim?

Mr. BERNHEIM. Yes, sir.

The CHAIRMAN. We will be very glad to hear you. You may proceed in your own way.

Mr. BERNHEIM. I am appearing before the committee in my capacity as director of the Securities Markets Survey Staff of the Twentieth Century Fund, Inc. The staff has recently completed a nonpartisan scientific study of the security markets from the point of view of the interests of the American public. A digest of the findings of the staff and their recommendations, for Federal regulation of the markets, published in book form under the title "Stock Market Control", by the D. Appleton-Century Co. of New York, has been formally submitted to the members of the committee and its special counsel.

The statement I am about to make has been drafted on the basis of the findings and recommendations of the staff, as summarized in this volume. It is endorsed by the other editors who were associated with me in the preparation of the book: Evans Clark, director of the Twentieth Century Fund; J. Frederic Dewhurst, the fund's economist, and Margaret Grant Schneider.

At the outset I want to say that I am in full accord with the basic purpose of the National Securities Exchange Act of 1934 which, as stated in section 2 of the act, is the regulation of security exchanges in order to eliminate manipulation and control of prices and, in general, to prevent the volume of speculation in securities from reaching excessive and harmful proportions. The point of view I represent, as developed after several months of intensive study of security markets, is summarized in the following words in the recently published digest of the findings and recommendations of the Security Markets Survey staff:

Security exchanges render certain economic services which are essential under a capitalistic economy. However, excessive and uncontrolled speculation, especially when accompanied by manipulation, not only makes the price we pay for these services out of proportion to their value, but it also may result in a positive disservice to investors by distorting security values. It follows from this that public policy requires that speculative activities be brought under such control that they will add to and not detract from, the value of the functions which security exchanges are designed to perform, and so that such activities will no longer create credit disturbances and other maladjustments throughout our economic structure.

This quotation makes it clear that the general conclusions reached by the staff of economists who conducted the survey of security exchanges on behalf of the Twentieth Century Fund, coincide with those which were apparently in the minds of the framers of the

“National Securities Exchange Act of 1934.” I am appearing before you to advocate the principles and objectives of the act. I believe that the prompt enactment of these principles and objectives into law is a matter of urgent importance to the economic welfare of the Nation—especially to the proper working of the Nation’s banking and credit system and the flow of commerce between the States. I am of the opinion, however, that the bill could be improved, strengthened, and brought into closer conformity with its own declared purposes by certain changes which I beg leave briefly to bring to your attention.

#### GENERAL ANALYSIS

I can best summarize my views at the outset by saying that, in my opinion, the bill as drafted lays too heavy a hand of Federal control upon some of the activities of the markets and of corporations whose securities are bought and sold in them, while other activities are either left without control by the Federal Government or subject to undefined and unpredictable regulation at the discretion of the Federal authorities. If the bill were to be passed as drafted I believe the result might be the strangulation of some useful and beneficial activities which play an important part in the economic functioning of the markets, while other practices, which seriously interfere with the proper performance of the markets’ functions, would be left unrestricted.

Let me be more specific. The bill, for example, could be so administered as to subject the organized exchanges to such complete domination, even in the routine details of their administration, by the Federal Trade Commission that the quick and effective responsibility of the exchange authorities might be seriously impaired. I believe that as a matter of broad policy certain minimum requirements of exchange practices should be clearly set forth in the statute and then that the enforcement of these provisions be made the responsibility of the exchanges themselves, with penalties provided if they or their members should fail in their duties and obligations.

On the other hand, the bill completely exempts the corporation whose securities are not listed on the exchanges from the requirements as to accounting and reporting and the security transactions of officers which are—and I believe on the whole wisely—imposed upon those concerns whose securities are listed.

#### EXCESSIVE POWER VESTED IN FEDERAL TRADE COMMISSION

A few examples will illustrate what seem to me to be unmistakable instances of undue and unwise grants to an administrative agency of what amounts to legislative power.

One. In relation to margin requirements on long accounts, the bill provides in section 6 (b) that—

The Commission may by rules and regulations prescribe lower loan values as may be deemed appropriate in the public interest or for the protection of investors during any stated period of time or in respect of any specified class of securities

Two: In relation to the regulation of the use of manipulative devices, the bill, in section 9 (c), makes it unlawful for any person—

To use or employ \* \* \* any device or contrivance which, or any device or contrivance in a way or manner which the Commission may \* \* \* find detrimental to the public interest or to the proper protection of investors

Three: Section 14 makes it unlawful for any person to create an over-the-counter market—

without complying with such rules and regulations as the Commission may prescribe as appropriate in the public interest or for the protection of investors

These three provisions, as well as others in the bill, obviously bestow wide discretionary power upon the Commission, but the grant of sovereignty is made all-embracing and absolute in section 18—"Special Powers of Commission." Here, in substance, the Commission is given the authority to "make, amend, and rescind" any rules and regulations which, in its own discretion, it finds necessary in order to effectuate the purposes of the act.

It is, of course, necessary to give an administrative agency sufficient latitude to enable it to carry out efficiently the duties with which it is charged. We do not suggest that in this instance the Federal Trade Commission should be tied to the letter of the provisions appearing in the bill as it reads, or that the bill should be elaborated and extended so as to include a full set of rigid rules and regulations covering all contingencies. On the other hand it seems to us unwise to give virtually unlimited power to an administrative agency, not only to interpret and put into effect the will of the legislature but, beyond that, to assume to a certain extent legislative prerogatives. I cannot endorse a dictatorship such as the bill sets up, even though I am as firmly convinced as are the authors of the bill that security exchanges must be brought under thorough-going Federal regulation.

#### EXCESSIVE LIABILITIES AND PENALTIES PROVIDED

Section 8 (a) prohibits certain manipulative practices. Section 8 (b) provides as follows:

(b) Any person who participates in any act or transaction in violation of subsection (a) of this section shall be liable to any person who shall purchase any security, the price of which may have been effected by such act or transaction, and the person so injured may sue in law or equity in any court of competent jurisdiction to recover the difference between the price he paid for such security and the lowest price for which the security shall have sold on the Exchange during the ninety days preceding and the ninety days following such purchase, and such additional damages, if any, as the person suing may prove that he sustained as a result of any such transaction

Section 8 (c) establishes a similar liability at the sales end of the transaction, namely it gives the seller the right to sue, under certain circumstances, for an amount representing the difference between the price he actually received and the highest price at which the security in question sold during the 90 days preceding, and the 90 days following, the date of sale. Of course, the same person may sue over both the purchase and the sale price.

Under these sections a person may incur only a small loss and yet have a cause of action extending into thousands of dollars. Thus he may have bought 100 shares of stock at \$50 per share and sold

at \$49, losing \$100, plus commissions and taxes, but he may sue for, say, \$3,100, if during the 6 months' period the price of the stock ranged between a low of \$40 and a high of \$70.

A provision of this sort invites blackmail and nuisance suits. Every person who has taken a flyer in the market and has been disappointed in the results will be in a position to sue, or threaten to sue, some one who may have been buying or selling the same security during the 6 months' period.

If it is hoped to do away with the abuses listed in section 8 (a)—and without question they should be eliminated—by making perpetrators liable for heavy damages, then the bill should be amended so that the plaintiff in an action cannot benefit to an extent disproportionate to the damage he has suffered. A defendant against whom a judgment is rendered could be made liable, for punitive purposes, as now provided in the bill, but the plaintiff should be entitled to nothing more than the actual loss sustained, plus certain expenses such as lawyers' and accountants' fees to an amount stipulated by the court the remainder of the judgment, if any, going to the Government.

Section 17—"Liability for Misleading Statements"—presents a similar example of a situation conducive to indiscriminate and wholesale lawsuits, threats of suits, and even blackmail. The deliberate issuance of false or misleading statements should be severely penalized, but a person who as a result has sustained only a small loss should not be a potential beneficiary to the extent of a sum which may be hundreds of times the amount of his loss.

The fines and penalties prescribed in section 24, while no doubt justified in some cases, would be too severe if applied to their full limits to any but the most flagrant offenders. The bill should make some broad classification of offenses to avoid the danger of unjustifiably heavy sentences.

Activities left unregulated: In sharp contrast to the stringency of the provisions I have just discussed is the absence of any, or of sufficiently definite, provisions in respect to other trading and corporate activities which, in my opinion, call for Federal control.

Consider, first, the corporations whose securities are not listed on the exchanges. As I have pointed out before, the bill as drafted leaves them completely out of the picture of Federal regulation, not only as to their accounting and reporting practices but also as to the transactions of officers and directors. To get a perspective on the extent of the area of corporate activity left unregulated by the bill, it must be remembered that the number of companies whose securities are not listed is many times larger than the number with listed issues. To impose excessive burdens on the listed companies and none at all on the others would appear to tempt companies to limit dealings in their securities to the unorganized markets.

In the preparation of our recommendations the security markets survey staff of the fund was most particular to lay an even hand of regulation over all corporations engaged in interstate commerce and over all areas of the markets. We suggested that this be accomplished by the passage of a Federal incorporation law and by specifying in the Securities Exchange Act itself regulations which, as far as practicable, apply with equal force both in and out of the exchanges.

So much for my more general comments on the bill. May I now consider the measure section by section?

Mr. PECORA. Mr. Bernheim, would you mind if I asked you a question in reference to the last statement you made, wherein you recommend the enactment of a Federal incorporation law? Have you any notion that such a law could be enacted speedily?

Mr. BERNHEIM. Mr. Pecora, we could not, in the nature of our work, consider the possibility of the speed of the enactment of such law. We have analyzed the situation, and we feel that it calls for a Federal incorporation law. I do not know anything about the situation as to legislation or possibilities of legislation.

Mr. PECORA. If such an enactment would be long deferred, don't you think some other vehicle could be created by Congress to take care of the abuses that you speak of in this statement, before a Federal incorporation law could possibly be enacted?

Mr. BERNHEIM. I certainly do not suggest that this legislation should be held up until such time as a Federal incorporation law should be passed. I am merely pointing out the desirability, and I believe the absolute necessity, for a Federal incorporation law in order to accomplish the purposes of the act.

Now, the detailed analysis:

Section 5 (a) (1):

This section provides that each exchange undertake to comply and to enforce, as far as is within its powers, compliance by its members and by issuers, with any provision of the bill and any amendment thereto and any rules and regulations made or to be made thereunder.

This is too sweeping in respect to its binding force upon exchange members to abide by provisions, rules, and regulations not in existence at the time an exchange applies for registration. Section 5 (d) is subject to similar criticism.

Section 6 (a):

This section provides that no members of a security exchange and no person who transacts a business in securities through the medium of such member may extend or maintain credit upon any security not registered upon a national security exchange—that is to say, upon an over-the-counter security.

This disqualifies thousands of securities of substantial merit which have splendid records of price and earning stability. Many public utility bonds and common and preferred stocks, banks, and insurance company stocks, guaranteed railroad stocks, industrial stocks and bonds, and State, county, and municipal bonds would become worthless as collateral for loans in exchange transactions, although the issuers are sound and substantial enterprises or political divisions; while any security—as long as it were listed on some national security exchange—would be eligible for credit under the bill. Furthermore, there is nothing in the bill itself to prevent a broker from lending as much as he sees fit on real estate, mortgages, chattels, or even the unsecured notes of his customers.

The meaning of the phrase, "any person who transacts a business in securities through the medium of any such member", is not clear. It should be defined so as to avoid confusion regarding the extent of the application of section 6 (a). As it now stands this phrase is subject to the entirely plausible interpretation of including any bank

which buys or sells any securities on behalf of its depositors through the medium of a member of a national security exchange. Under this interpretation, unlisted securities would not be eligible for loans at such banks. The effects of this would, we imagine, go beyond what the framers of the bill have in mind.

It is difficult to grasp the intent behind section 6 (a). If it is to bring pressure upon issuers to apply for listing of their issues, then it should be borne in mind that many unlisted issues are for one reason or another unsuitable for listing on an exchange, and would not be accepted by a conscientious exchange acting solely on its own initiative. If the purpose is to encourage trading and investing in certain issues and to discourage activity in others, then the question arises as to what the basis of classification should be. Why should such issues as, for example, the Newark Gas Co. first 6-percent bonds of 1944, which enjoy the very highest rating, not be eligible for a loan just because they are not listed, while, on the other hand, many bonds of railroads in receivership can be used as collateral merely because they appear on the list of some security exchange.

Section 6 (b) :

This section makes it unlawful for any member of a national security exchange or any person who transacts a business in securities through the medium of any such member to maintain or extend credit on a registered security in excess of 80 percent of the lowest price at which such security has sold during the preceding 3 years, or of 40 percent of the current market price, whichever is the higher.

I believe that the principle of relating collateral loans solely to market values is essentially unsound, no matter at what point the margin is set. This method permits a pyramiding process—higher loans as prices are rising and accelerates liquidation when prices are dropping. This is particularly true under the alternative devices provided in the bill which, it appears to me, will serve to permit pyramiding during the late stages of a bull market when it is most dangerous, while it will impede the flow of credit into the market during the early stages of recovery when, if ever, speculation in stocks is helpful.

It is my opinion that only by relating loan values to the earnings applicable to the collateral can these unfortunate results be prevented. In the report of our findings we recommend that this principle be adopted, and we suggest that, tentatively and experimentally, the maximum loan value of a share of stock be twice the aggregate net earnings applicable to it over the 5 years preceding the date of the loan, not to exceed, however, 60 percent of the current market price.

I have had prepared a table which shows for four prominent stocks—F. W. Woolworth Co., United States Steel Corporation, American Telephone & Telegraph Co., and General Motors Corporation—the maximum amount that could have been borrowed against one share of each according to, first, present New York Stock Exchange regulations for debit balances both above and below \$5,000; second, the alternative provisions of the bill for this committee; and, third, the recommendations of the Twentieth Century Fund staff. Three points of time are used for the comparison :

September 3, 1929, nearly the peak of the bull market; June 1, 1932, approximately the low point; February 1, 1934, a convenient point in the present upswing. It must be borne in mind that our comparisons are hypothetical, since, had the margin requirement of either the bill or the Twentieth Century Fund been in force in 1929, prices presumably would not have reached the heights they did.

I present at this time charts showing graphically the loan relationships of the different plans for each of the four stocks studied. The numerical data are contained in exhibit 1.

The CHAIRMAN. Very well, those will be incorporated in the record of your statement.

(The charts and data exhibits submitted by Mr. Bernheim will be found in full at the close of his statement, in the printed record only.)

Mr. BERNHEIM. Summarizing the charts and the table, the following facts stand out:

1. At the peak in 1929:

(a) The fund's margin provisions were very much more conservative than those of the New York Stock Exchange in each instance.

Senator KEAN. What was the amount of margin required in 1929 under the bill?

Mr. BERNHEIM. We assume that the bill was in effect in 1929?

Senator KEAN. Yes; I say assume the bill was in effect in 1929, what would be the margin required in 1929?

Mr. BERNHEIM. It is shown on my exhibit 1. Under the bill the margin on Woolworth for September 3, 1929—rather the loan value—would have been \$30.80, and at the time the market price of the stock was \$99.50. That would have been based at that time on the current market price, 40 percent.

Senator KEAN. And that would have been 40 percent of the current market price?

Mr. BERNHEIM. Of the current market price at that time.

Senator KEAN. So that you could have borrowed 60 percent out of it, is that right?

Mr. BERNHEIM. You could have borrowed under the bill 40 percent, \$38 and some fraction of a dollar.

And under the plan of the Twentieth Century Fund, which would relate the loan value to the earnings applicable to the stock, you could have borrowed only \$29.

Under the present regulations of the stock exchange, had they been in existence since 1929, a customer of a brokerage house, said customer carrying a debit balance under \$5,000—

Senator KEAN (interposing). Over?

Mr. BERNHEIM. Over; he could have borrowed \$77, and under, he could have borrowed \$66.

Senator KEAN. When all the banks were asking 30 or 35 percent margin, how do you figure he could have borrowed \$77?

Mr. BERNHEIM. He could have borrowed that from the brokerage houses. We are not discussing in here what might have been borrowed if he had dealt with the banks.

Senator KEAN. Most of the brokerage houses that I know required the same margins as the banks did.



Mr. BERNHEIM. The margins that are here given for the brokerage houses are about as stringent as the stock exchange ever demanded, as far as I know.

Senator KEAN. Did they not demand 30 percent in 1929?

Mr. BERNHEIM. This would be over 30 percent for debit balances under \$5,000.

Senator KEAN. No, no; I am talking about over \$5,000. Under \$5,000 they required the whole thing to be cash, did they not?

Mr. BERNHEIM. No, sir; not to my knowledge, Senator. Those are the requirements at the present time, and as far as I know, they were no more stringent in 1929 than they are at present.

Senator KEAN. Certainly they were 30 percent; most houses were 30 percent or more in 1929.

Mr. BERNHEIM. On debit balances?

Senator KEAN. On debit balances.

Mr. BERNHEIM. This would be more than that, I think.

Senator KEAN. Your figures are wrong, I think.

Mr. BERNHEIM. If the purchase price were, let us say, \$100 a share—

Senator KEAN. Then they could borrow 70?

Mr. BERNHEIM. If they borrowed 77—

Senator KEAN (interposing). No.

Mr. BERNHEIM. If they could borrow \$70—

Senator KEAN (interposing). They could borrow up to \$70, that is all.

Mr. BERNHEIM. According to the information we had they could borrow more, and some brokerage houses considerably more, because these regulations were not in effect in 1929.

Senator KEAN. I think the testimony is that they put them in effect in 1929. Isn't that right?

Mr. PECORA. What is that, Senator?

Senator KEAN. That they put into effect that they had to have over 30 percent margin?

The CHAIRMAN. August 1933.

Mr. PECORA. That was August 2, 1933.

Mr. REDMOND. It is true, though, Senator Kean, that the ruling of the exchange in 1929 was that the margin had to be sufficient so that the securities would carry themselves. Therefore, in effect, the exchange requirement meant at least the same amount of margin as the banks were currently demanding.

Senator KEAN. The bank was 35?

Mr. REDMOND. The banks carried margins which varied, depending upon the nature of the security in 1929.

The CHAIRMAN. Proceed, Mr. Bernheim.

Mr. BERNHEIM. The second relationship is:

(b) The Fund's margin provisions were appreciably more conservative than those of the bill in three out of the four instances.

(c) The bill's margin provisions were more conservative than those of the New York Stock Exchange in each instance.

2. At the bottom in 1932:

(a) The Fund's margin provisions were slightly more conservative than those of the New York Stock Exchange in each instance.

(b) The Fund's margin provisions were slightly more conservative also than those of the Fletcher-Rayburn bill in each instance.

(c) The bill's margin provisions were very slightly more conservative than those of the New York Stock Exchange for debit balances over \$5,000 in 3 out of the 4 instances, and the same in 1 instance. They were less conservative in each instance when comparison is made with the exchange's provision for debit balances under \$5,000.

3. During the recovery in 1934.

(a) The Fund's margin provisions were more liberal than those of the bill in each instance.

(b) The Fund's margin provisions were, however, more conservative than those of the New York Stock Exchange.

(c) The bill's margin provisions were much less liberal than those of the exchange in each instance.

It is plain from the above comparisons that during a period of recovery the loan values suggested by the Fund staff would be more generous and therefore less hampering to general reviving than those proposed by the bill. On the whole, loan values as recommended by our staff related as they are primarily to earnings and only secondarily to market values, would be subject to fluctuations less violent than loan values as now regulated by the stock exchange or as proposed in the bill. This relative stability in credit resources available for trading should be reflected in greater stability in market prices of securities.

Mr. PECORA. Mr. Bernheim, might I interrupt to just ask a question there? How long did it take, tell us, to establish the loan values under the plan proposed by the Twentieth Century Fund?

Mr. BERNHEIM. For what, for all listed stocks?

Mr. PECORA. Yes.

Mr. BERNHEIM. I do not think I could answer that question. I think it would take a considerable period of time.

Mr. PECORA. You mean by that perhaps several years?

Mr. BERNHEIM. I don't think it should take several years to cover the listed stocks; no, sir. I think it would take about a year, perhaps a year and a half. And, frankly, my own feeling is that you should not in this case perhaps wait until loan values could be established, but that this should be the goal to aim at, and that gradually loan values should be transferred whenever you have covered, let us say, an industry, so that you can have a comparison of stocks and put that industry on a somewhat uniform accounting basis. I do not think it would be necessary to wait until you had covered all your listed stocks. I think you could make some changes month by month as you were ready for it.

Mr. REDMOND. Mr. Bernheim, could I ask you one or two questions to develop the way this plan would work? Would you have to wait until the end of each year before you would change the loan value?

Mr. BERNHEIM. You might be able to work it on the basis of quarterly or semiannual reports, but I don't think it would be necessary, because the effect of a change for a single quarter or half year would not be appreciable.

Mr. REDMOND. In effect then you would really come very close to establishing a loan value that would remain substantially unchanged for a 12-month period?

Mr. BERNHEIM. It would if you disregard quarterly and semi-annual earnings. It would not change for the year. Then if you wanted to take into consideration quarterly or semiannual earnings, the loan value would change twice at the end of each quarter.

Mr. REDMOND. Have your staff considered at all the effect of this provision on, say, industries that have had a particularly bad time during the depression, like the railroads?

Mr. BERNHEIM. Yes. We came to the conclusion that it would not be wise to have an absolutely rigid rule; that after some study, after considerable study, it will be necessary to devise, let us say, credits and debits for other matters besides earnings, but that essentially earnings should be the base on which loan values were to be fastened, but there could be some credits given and debits.

Mr. REDMOND. In other words, this is more or less the principle to be applied without being actually written into the law as a definite mandate, that not more than twice the aggregate of the last 5 years' earnings should be established as to the loan value. I am just trying to find out.

Mr. BERNHEIM. I think that we should go beyond establishing this as a principle, but I think that perhaps there should be a waiting period. As I suggested before in reply to Mr. Pecora's question, you would have to wait 6 months or a year and make studies of the effect of this suggestion, and then perhaps devise for either groups of stocks or individual stocks certain differentials to be applied for certain circumstances, and those could be made administrative rules and regulations.

Mr. REDMOND. Would you not have to develop those almost immediately? For instance, take a wasting industry where your income may reflect actually the wastage of the property. There your formula in regard to income would have to be revised or you might get an unduly high credit.

Mr. BERNHEIM. You certainly would have to take great care that what was a distribution of capital was not considered income in determining your loan value.

Mr. REDMOND. Of course, that is nearly always, isn't it, a question of the discretion of the board of directors?

Mr. BERNHEIM. It is perhaps a question of accounting methods plus some discretion, I presume.

Mr. REDMOND. Therefore, it is a question of making good, whatever is in the capital account?

Mr. BERNHEIM. At least we could put the companies within the industry on a comparable basis.

And another thing that I think must be kept in mind, Mr. Redmond; we have suggested here that the loan values are to be maximum.

Mr. REDMOND. Yes.

Mr. BERNHEIM. In other words, the market price would to some extent take care of exaggerated earnings.

Mr. REDMOND. I am thinking of the case where the market price might reflect other factors, like a great concentration of holding,

where there might be a demand which might drive the price up fairly rapidly. Your loan limitations here would be on earnings?

Mr. BERNHEIM. Essentially on earnings; yes. But they would have to be the true earnings. You would have to attempt to determine what the true earnings were applicable to the security.

Mr. REDMOND. What would you do with new enterprises?

Mr. BERNHEIM. I think you would have to devise certain special rules for new enterprises. Perhaps if there were mergers of previously existing enterprises, you might be able to compute the earnings that would have accrued to this company had the merger taken place some years before. Or you might perhaps, in some cases, have to reduce your period of time. Instead of a 5-year period reduce it for new enterprises to 2 or 3 years.

Mr. REDMOND. There are constantly new enterprises for which there would be no past history.

Mr. BERNHEIM. Yes. Of course, it might be advisable not to apply it for credit purposes to entirely new enterprises. Naturally you would want to have some experience, and for the new one you would have no experience and no record and no history.

Mr. REDMOND. And not give them any value—

Mr. BERNHEIM. Until perhaps they had been in existence and shown some stability and earning power for a period of time.

Mr. REDMOND. Would that not tend to interfere with the flow of capital into industry? I am thinking of the other side of the picture now.

Mr. BERNHEIM. I think it would interfere more with the speculative interest in the issues. I do not think the investor purchases securities and then immediately seeks to borrow on them.

Mr. REDMOND. Is it not true that a large part of the capital for industry has always been raised by borrowing money? That is our credit system in the last analysis, isn't it, Mr. Bernheim?

Mr. BERNHEIM. The money naturally comes from somewhere.

Mr. REDMOND. And there must be some borrowing?

Mr. BERNHEIM. Well, you mean the original underwriting, that the underwriters borrowed?

Mr. REDMOND. No; I am speaking of actual distribution to investors. They do not always buy outright.

Mr. BERNHEIM. I think it depends upon the times. I suppose what you say was very true in 1928 and 1929, and I think that was one of the very unfortunate aspects of the situation; that investors, and speculators also, extended their credit resources as far as possible and wanted to get in on every new issue. And I think we therefore had overissuance, and if that were made difficult it might perhaps be very beneficial.

Mr. REDMOND. I think we might all agree on the fact that it might be wise to devise something that would make it more difficult, but would not your formula practically amount to a prohibition? Is there not some midposition that would allow capital to flow into industry with some use of credit?

Mr. BERNHEIM. I think most of the new corporations that are being floated or have been floated were based upon previously existing companies whose earnings could be computed. They were incorporated or they were merged or consolidated in some way or other.

Mr. REDMOND. But very often it would be impossible to use the old figures, would it not? I mean you would get a merger in which a part of one business is merged with another going concern. What part of the income of the first unit should be attributed to the new one would be very difficult to determine.

Mr. BERNHEIM. I do not pretend to claim that there would not be difficulties.

Mr. REDMOND. Yes.

Mr. BERNHEIM. And I think that the administrative agency would have to be given some discretion within the general principles.

Mr. REDMOND. In effect it would be giving wide discretion to this administrative agency, with a mandate to establish this principle as its guiding principle in formulating the loan values of stocks?

Mr. BERNHEIM. I think that over a period of time you could gradually get down to a body of rules and regulations and precedents which would cover a very large proportion of issues. And, then there would be a small section—I think it is necessary to admit that, that there would be a small section of corporations which would have to be governed by discretion solely.

Mr. REDMOND. Yes.

Mr. BERNHEIM. Or ruled out from any loan value entirely.

Mr. REDMOND. I just wanted to develop the problems connected with this formula.

Mr. PECORA. Mr. Bernheim, in order to apply the principle or formula for determining loan values that you advocate, would it not be necessary for the regulatory body or body entrusted with the power to fix those loan values to have the sort of information from corporations that the Fletcher-Rayburn bill in effect calls for with regard to their condition?

Mr. BERNHEIM. Yes, indeed; it would be necessary. And I think that that would be one of the valuable byproducts of such a law.

Mr. PECORA. In framing the principle or formula with regard to the creation or establishment or ascertainment of these loan values that you recommend, was it your purpose—when I speak of your purpose I mean the purpose of yourself and others associated with you in this enterprise—to fix a certain minimum loan value representing a certain percentage of the market value of securities?

Mr. BERNHEIM. You mean in addition to the principle of basing loans on earnings?

Mr. PECORA. That is, the formula that you have advocated here for determining and fixing loan values, is it or is it not so drawn as to require a minimum margin requirement of a certain percentage of market value?

Mr. BERNHEIM. I still don't quite understand your question, Mr. Pecora.

Mr. PECORA. Did you strive in formulating this principle of ascertaining loan values to have those loan values based upon a minimum percentage of the market value of the security?

Mr. BERNHEIM. No; maximum percentage.

Mr. PECORA. Maximum?

Mr. BERNHEIM. We provided that in no case, no matter what earnings were, should anyone be permitted more than 60 percent of the market value, and then, of course, banks and brokers would have discretion to lend less if they wished to in any case.

Senator KEAN. Mr. Bernheim, I would like to ask you some questions. In the first place, I would like to ask you what experience you have had in markets, in securities, and what is your history? I do not happen to know your history. I would like you to describe yourself a little bit.

Mr. BERNHEIM. I have not been in the securities business, and my contacts with securities have been partly as one of the great investing and speculating public, and to some extent as a student of economic matters, and primarily during the past 5 or 6 months as the director of this research project which was carried through by the Twentieth Century Fund.

Senator KEAN. Who is the Twentieth Century Fund?

Mr. BERNHEIM. The Twentieth Century Fund is an endowed institution which was founded largely through the efforts of Mr. E. A. Filene, of Boston, and has a board of directors of some 5 or 6 other gentlemen whose names I can let you have.

Senator KEAN. I have those names.

Mr. BERNHEIM. And it does research work in economics, and also contributes to the support of other organizations doing work in similar fields.

Senator KEAN. What is your experience in research work?

Mr. BERNHEIM. I have been doing research work of one sort or another—

Senator KEAN (interposing). In the first place, where were you educated?

Mr. BERNHEIM. I went to Columbia College. I was born in New York and went to school in New York at the College of Columbia. After that I went in business for a period of about 5 years.

Senator KEAN. What kind of a business?

Mr. BERNHEIM. I was a tanner in Hoboken, N. J. And about 1920 or '21 I became interested in economic research, and I joined an organization—

Senator KEAN (interposing). Your experience as a tanner—

Mr. BERNHEIM (interposing). Was not very helpful as to securities.

Senator KEAN. Your experience as a tanner—the price of hides in 1920 was—what was it, 50 cents? Went up to 50 cents a pound, or something like that.

Mr. BERNHEIM. I don't remember. I got out when hides were about at the top.

Senator KEAN. You were lucky. Now a calf's hide is worth something like \$2 or \$2.50, as against \$30 or \$40 at the time you got out. So that that has been a greater depression than any of these stocks.

Mr. BERNHEIM. I don't remember that the price was ever quite as high as you just quoted, Senator, but I know it was higher than at the present time.

Senator KEAN. Well, go ahead with your story, after you got through tanning.

Mr. BERNHEIM. Oh, my personal story?

Senator KEAN. Yes.

Mr. BERNHEIM. After that I joined an organization known as the Labor Bureau, Inc., which devotes—which is still in existence—and devotes its time to research in the field of labor problems, cost of living, and financial analyses of corporations and studies of indus-

tries and price trends, matters of that sort. I left the labor bureau temporarily to assume the——

Senator KEAN (interposing). Who supports the labor bureau?

Mr. BERNHEIM. It is supported by its clients, by fees from its clients.

Senator KEAN. Who are its clients?

Mr. BERNHEIM. Well, they are largely labor unions, and to some extent cooperatives or educational institutions and in some cases it does work for employers and employees jointly. It handles arbitrations and matters of that sort. It was organized about 1920 as a New York corporation and is still in existence as such.

Senator KEAN. And then you joined——

Mr. BERNHEIM. I went temporarily to the Twentieth Century Fund to conduct this survey.

Senator KEAN. And your survey in this bill was what would happen to all the little towns in the United States where the banks and perhaps little local companies that the people want to buy their securities for investment in, under this bill they would be absolutely precluded from borrowing from the local banks, would they not?

Mr. BERNHEIM. In this bill?

Senator KEAN. In this bill.

Mr. BERNHEIM. In the Senate bill?

Senator KEAN. Yes.

Mr. BERNHEIM. As I understand the bill, they could not borrow on an unregistered security through a member of a security exchange or anyone doing business through such member. Is that correct? You are more familiar with it than I am. But they could borrow, I presume, through anyone, a bank that is not a member of a securities exchange or did not do business through any such member.

Senator KEAN. Yes, sir; but suppose that you happen to be a broker in New York and you want to buy a house and you got some local securities which the bank knew were perfectly good and you wanted to borrow at your local bank to buy a house. You could not do that under the bill?

Mr. BERNHEIM. I presume you could not

Mr. PECORA. Probably buy the house subject to a mortgage.

Senator KEAN. And then have the mortgage foreclosed and wiped out.

Mr. PECORA. That is what happens to margin customers every day in the year.

Senator KEAN. Yes.

Mr. BERNHEIM. Of course, as I pointed out in my analysis, Senator, I do not see why you should not be allowed to borrow on some unlisted securities of some class and category.

Senator KEAN. That is all I have.

Mr. PECORA. Mr. Bernheim, is it not a fact that your proposal for margin requirements is based upon and would provide for a minimum margin of 40 percent of market price?

Mr. BERNHEIM. Oh, the minimum might be lower. The maximum would be 60 percent. The minimum might be very much lower than 40 percent. If a company had an unfortunate record of earnings and no other factors were taken into consideration, the loan value might be a good deal less than 40 percent.

Mr. REDMOND. Mr. Bernheim, have you available any figures, on the same comparable basis as you have given in your report for Woolworth & Co. and American Tel. & Tel. and General Motors, for typical railroads, steamship companies, and coal companies?

Mr. BERNHEIM. No; we have not made any other analyses as yet. We prepared this hurriedly when we knew we were coming down here.

Mr. REDMOND. Yes.

Mr. BERNHEIM. And we naturally took what we considered four of the most representative companies from the point of view of their investment interest.

Mr. REDMOND. And four of the most successful, too?

Mr. BERNHEIM. Well, it depends upon what period of time you cover. If you consider United States Steel during the past 3 years, I don't think you could characterize it as being very successful. Of course, in the past it has been. You could pick out a lot of companies that have been more successful since 1929 than either Steel or Woolworth.

Mr. REDMOND. General Motors and American Tel. & Tel. and Woolworth, are all rather exceptional are they not?

Mr. BERNHEIM. In some respects they are exceptional, but I think primarily because they are very large and there is a great investment interest in those companies. They have many stockholders, and they are I think to a large extent investment stocks.

Mr. REDMOND. So is American Car & Foundry, and yet I assume that—

Mr. BERNHEIM (interposing). It was.

Mr. REDMOND. It still is, isn't it?

Mr. BERNHEIM. I don't think so.

Mr. REDMOND. One of the great stocks of the old days?

Mr. BERNHEIM. In the old days, yes, sir; not any more.

Mr. REDMOND. It has still a large number of stockholders?

Mr. BERNHEIM. Well, I suppose—I know the experience they undoubtedly had. They did not get out in time, so they are involuntary investors.

Mr. REDMOND. True, but that often happens to be the case whether it is a real-estate transaction or stocks or anything else?

Mr. BERNHEIM. I am afraid it is; yes.

Mr. REDMOND. But you haven't any data available for what I would consider—

Mr. BERNHEIM (interposing). We have none available at the moment, no sir; except on these four companies.

Mr. REDMOND. Would it be possible to get the data on something like New York Central Railroad or some of the typical big railroads?

Mr. BERNHEIM. Yes; it would be quite possible to work that out. It takes some length of time, because you have to take into consideration the changes in capitalization, both in respect to earnings and in respect to market price. You have got to go very carefully over the past history to see that you are not led astray by any additional issues of stock that have been made. But it can be worked out. If you would like to have that worked out, when I get back



to New York, if you suggest a few other stocks to us we would be very glad to send you the results.

Mr. REDMOND. I make the suggestion to the committee that it might be well to have a cross section, so to speak, of the listed securities, rather than just a few outstanding industries, and certainly the outstanding public utility of the country.

Mr. PECORA. Suppose you suggest two or three issues.

Mr. BERNHEIM. We will prepare it and mail it down to the committee this week or the first of next week, if the committee would be interested in getting that.

Mr. REDMOND. Suppose I talk to Mr. Bernheim after the meeting is over, Mr. Pecora, because I want to choose companies that are fairly representative, and not just choose those that have been outstandingly successful.

The CHAIRMAN. Very well. Proceed, Mr. Bernheim.

Mr. BERNHEIM. Section 6 (c): This section makes it unlawful for anyone not a member of an exchange to lend on securities registered on a national security exchange to an amount in excess of what a member of a registered exchange may lend, unless the borrower certifies that he acquired and paid for the collateral in full more than 30 days prior to the making of the loan.

Strictly interpreted, this section would govern certain types of loans which presumably it is not intended to cover, such, for example, as private loans between two individuals, or loans by corporations to employees or customers under a stock-purchase plan. The section should be clarified and perhaps modified.

What is more important, however, is that it be clearly realized that the 30-day clause would permit pyramiding of purchases. Assume that a person with \$10,000 purchases 100 shares of stock at \$100 a share. Thirty days later he takes these 100 shares to a bank and obtains a loan of, say, \$7,500 with which he now buys 75 additional shares at \$100. After another month he again goes to his bank, and on these 75 shares he now borrows \$5,625 and makes a further commitment of 56 shares. If this process is repeated for a total of 12 successive 30-day periods, the purchaser of 100 shares of stock for cash on January 1 of one year, will, on January 1 of the following year own approximately 390 shares of stock and owe his bank approximately \$28,000. An original \$10,000 in cash is now represented by more than \$39,000 in stock. It has, of course, taken the speculator a year to build this pyramid but he has succeeded in the end.

A picture of the process is presented in one of the graphs, and the detailed figures are contained in exhibit 2. If the framers of the bill propose to reduce the amount of money that can be borrowed on securities in order to reduce the volume of speculation, they should consider whether section 6 (c) does not provide a loophole that may nullify this purpose.

Section 6, as a whole, combined with section 7 (a), is rather peculiar in that it permits a nonmember of a national security exchange, provided that he does not do a business in securities through a member, to borrow on unregistered securities any sum which a lender is willing to advance.

Section 8 (a) (3): This section makes unlawful any transactions in a security on a national security exchange—

for the purpose of raising or depressing the price of such security or securities or for the purpose of creating or with the expectation that there will be created a false or misleading appearance of active trading in such security or securities, or a false or misleading appearance in respect of the market for such security or securities

The above prohibition is commendable as to its goal but, in our opinion, is unrealistic and unenforceable. To prove "purpose" or intent which are essentially subjective in their nature, would seem to be an almost hopeless task. As the result of our own study of security markets we are inclined to believe that pools cannot be controlled by direct prohibition as readily as they can through control of the weapons they use and by exposing them—and the security markets in general—to the greatest possible amount of honest and intelligent publicity.

This section prohibits any dealer, broker, or member, or anyone in their employ, to—

disseminate \* \* \* information to the effect that the price of any security or securities registered on a national securities exchange will or is likely to rise or fall partly or wholly because of the market activity of any one or more persons, if the person disseminating such information has reason to believe that the circulation or dissemination of such information on his part may induce the purchase or sale of any such security in the expectation of such market activity

Like the previous section, this one embodies a salutary idea, but it is obviously so difficult to enforce and so easy to evade as, in all probability, to be meaningless in practice.

Section 8 (a) (5): The same thing can be said about this section, which makes it unlawful:

To circulate or disseminate information regarding any security registered on a national securities exchange which statement is, in the light of the circumstances under which it was made, false or misleading in respect of any matter sufficiently important to influence the judgment of an average investor, if the person disseminating such information has reason to believe that the circulation or dissemination of such information on his part may induce the purchase or sale of such security, and does not prove that he acted in good faith and in the exercise of reasonable care had no ground to believe that the statement was false or misleading

There are certain other objections to this section besides difficulty of enforcement. In the first place, it subjects to an exceedingly heavy liability, and places a heavy burden of proof upon, any person who says anything about a registered security—no matter how honest and well-intentioned that person may be—which happens to mislead the average investor. In the second place, it sets up the concept of an average investor—an animal as mythical as a chimera.

Section 8 (a) (8): This section makes it unlawful for any person to—

acquire substantial control of the floating supply of any security registered on a national securities exchange for the purpose of causing the price of such security to rise on the exchange because of such control of the floating supply

This, in my opinion, is another of those provisions which are vague, tenuous, and difficult to enforce. Except for a very few stocks, no one knows what the floating supply of an issue is, although, of course, it is quite possible, as we ourselves have suggested, to compile periodic statistics on the extent of floating supply. There

is the further difficulty, however, of determining what "substantial control" of floating supply is.

Section 8 (a) (9): This section prohibits all transactions involving puts, calls, straddles, or other options.

This is too sweeping a prohibition. Under certain circumstances options perform a legitimate function. Furthermore, there are outstanding today in the hands of the public options and warrants, many of which are traded in now on the organized exchanges.

Section 9 (a): This section prohibits short selling—

except in accordance with such rules and regulations as the Commission may prescribe \* \* \*

In the absence of knowledge as to what rules and regulations the Commission will prescribe, it is difficult to pass judgment on this section. I should like, however, to read our general conclusions on short selling reached after careful consideration of a mass of factual data. [Reading:]

Our study of short selling has led us to the conclusion that while this practice fails in large measure to perform the useful function which its proponents claim for it, it also does not in the aggregate cause the havoc to the general price structure with which its opponents charge it

In any discussion of short selling it should always be borne in mind that it is the speculative excesses on the long side which create a condition of the market where short selling can become a disturbing factor. Long buying and short selling are complementary aspects of the same problem—speculation—and to attempt to solve this problem by an attack on only one of its dual aspects does not promise fruitful results. Yet while it is common to extol those whose activities result in driving prices upward, it is almost universal to condemn their speculative counterparts who strive to produce the opposite effect.

As we see it no moral question is involved either in long buying or short selling, but only one of utility. To the extent that speculation on either the long or short side aids the security markets in the performance of their functions, to that extent only should speculation be countenanced.

In view of the fact that short selling is relatively unimportant we do not believe that, as a general technique, it requires further regulation than now exercised by the New York Stock Exchange. We believe, however, that there is need of more rigorous control in respect to short selling of individual issues at particular points of time, especially where engaged in suddenly and in large amounts. Under such circumstances short selling has a pronounced and depressing influence upon prices.

Section 10: This section covers the general subject of the segregation and limitation of the functions of broker, specialist, and dealer. It contains several provisions which I should like to discuss.

One of these is that no member of a national security exchange may act as a dealer in, or underwriter of, securities. I interpret this to mean that no member may buy or sell securities for his own account or for the account of his firm. While the fund staff endorses the principle of the separation of the broker from the dealer function, I believe that, following the general London practice, an exchange member should be permitted to function either as broker or dealer.

I do not see any valid reason for prohibiting a nonbroker exchange member from buying and selling securities for his own account, that is to say, from trading and speculation, as long as trading and speculating may be indulged in freely by nonmembers. In permitting margin trading, the bill, ipso facto, puts its stamp of approval on speculation in securities, for margin trading is the essence of stock

speculation. Sure the committee does not believe that the nonmember is better qualified as a speculator than the member. Furthermore, if exchange members may not deal in stocks, the odd-lot business, as at present conducted, can no longer be carried on. The committee should consider whether it wishes to bring about this result.

It is unlawful under section 10, furthermore, for—

any person who as a broker transacts a business in securities through the medium of any such member to act as a dealer in or underwriter of securities, whether or not registered on any national securities exchange.

The question arises whether the principle of segregation should be extended—as it is here—to such persons as banks which, while not actually in the brokerage business, do execute orders for the purchase and sale of securities for their depositors through the medium of national security exchange members. In a small community, in particular, the bank may be the only institution through which a resident can conveniently consummate a transaction in a security; yet, in accordance with section 10, the bank that performs this function may not act as a dealer in, or underwriter of, securities, or, under a strict interpretation, may not even be allowed to purchase and sell securities for its own account.

Another specific provision of section 10 is that a specialist may execute only fixed-price orders; that is to say, may not execute market orders. In view of the fact that according to the bill a specialist will be permitted to function only as a broker and will not be permitted to act as a dealer, there seems to be no purpose to this prohibition. It should, therefore, be eliminated since its presence would tend to interfere with the efficient execution of orders.

This section further makes it unlawful for a specialist—

to disclose to any other person information in regard to orders placed with him which is not available to all members of the exchange

The fund staff concluded that it is impossible to enforce a prohibition against disclosing orders, and it therefore prefers a requirement to the effect that orders on the books of a specialist should be available to every member of an exchange.

Section 11: In our opinion the purposes of section 11 could be better effectuated by a Federal incorporation act in respect to corporations in interstate commerce than by this indirect and uncertain method.

Section 11 (c) (I): The first part of this section provides for—

an undertaking by the issuer to comply with and so far as is within its power to enforce compliance by its officers, directors, and stockholders with the provisions of this act \* \* \*

I do not believe that a corporation has any power over its stockholders and therefore consider it meaningless to require an undertaking by an issuer to attempt to enforce compliance with the provisions of the act by stockholders.

Section 15: This section as a whole deals with transactions of directors, officers, and principal stockholders. Insofar as its provisions are sound, and insofar as they apply to corporations engaged in interstate commerce, they should, in my opinion, be embodied in a Federal incorporation act. I question whether that part of section

15 which pertains to owners of securities, who are not officers or directors, is practicable and enforceable.

Section 15 (b) (1) : This section provides that an issuer may sue any of its directors, officers, or certain owners of its securities, for profits derived by them as the result of a purchase and subsequent sale within 6 months of a security of the issuer, the profits being calculated on the basis of the difference between the highest and the lowest price at which the security sold during the 6 months' period.

While I deem it highly desirable to stop directors and officers—and if possible, large stockholders also—from speculating in the stocks of their corporation, I am afraid that the provisions of section 15 (b) (1) will result in wide-spread violations, subterfuges, and evasions. Our own recommendations provide merely for prompt publication of all transactions by directors and officers in the securities of their own corporation. I believe that publicity will cure the worst of the evils surrounding the stock-market operations of “insiders”, and I am of the opinion that our recommendation could be effectively enforced through corporations and their transfer agents.

Section 15 (b) (3) : forbids the stockholder—

to disclose, directly or indirectly, any confidential information regarding or affecting any such registered security not necessary or proper to be disclosed as a part of his corporate duties

While heartily approving of the purpose of this section, I am of the opinion that it will prove largely meaningless, because it will be virtually impossible to enforce.

Section 28: This section in effect makes it unlawful for any broker or dealer to consummate a transaction in an American security in a foreign security exchange except in accordance with rules and regulations of the Commission. While it is proper for the bill to provide safeguards against the flight of the securities business from the United States, it should be borne in mind that section 28 can be evoked to prevent arbitrage transactions between this and foreign countries, a trading technique which, under ordinary circumstances, can scarcely be considered harmful.

I have briefly commented upon some of the major provisions of the National Securities Exchange Act of 1934.

To repeat what I said at the outset of this statement, I am thoroughly in sympathy with the objects which the act seeks to achieve—to bring speculation in securities under control, to reduce its volume, to eliminate manipulation, to prevent fraud, to put an end to the advantages enjoyed by “insiders”, to make available to investors information about issuers and issues, and, in general, to standardize, regulate, and control the business conducted on and through security exchanges.

My criticism is not directed to the purposes of the act but to some of the methods by which the bill proposes that these purposes are to be achieved.

I believe that it confers too much discretionary power upon the Federal Trade Commission and that the grant of such extensive power by the legislature to an administrative agency is not wise.

I believe that it imposes liabilities and penalties which, on the whole, are excessive and some of which are likely to result in blackmail and wholesale litigation, and which, in addition, will stimulate evasion and subterfuge.

I believe that it errs in leaving certain activities unregulated.

I believe that in several respects it is unenforceable and unrealistic.

In spite of these criticisms, however, I am convinced that the bill is based on sound principles. Suitably amended, it should prove to be a highly beneficial piece of legislation.

Thank you very much.

Mr. REDMOND. Mr. Bernheim, just for the sake of the record, have the trustees of the Twentieth Century Fund approved this report?

Mr. BERNHEIM. No, sir; they have not taken any action on the report.

Mr. REDMOND. I see.

Mr. BERNHEIM. As I understand it, the trustees of the fund are in the same relationship toward a research project as are the trustees of a college. They do not assume personal responsibility, and in this case, due to the great haste of the final preparation of the report, they did not even have a chance, as far as I know, to make a careful study, and in some cases to make any study, of the findings and conclusions.

But I do not want to speak for the fund. Mr. Clark, the secretary of the fund, is here, and if you want to ask him that question, he can give you a much better answer than I can.

Mr. REDMOND. I just wanted to establish that for the record.

Mr. BERNHEIM. But they have not assumed the responsibility. That I am quite sure.

Mr. PECORA. The trustees of the fund do, however, assume responsibility for the employment of the research men?

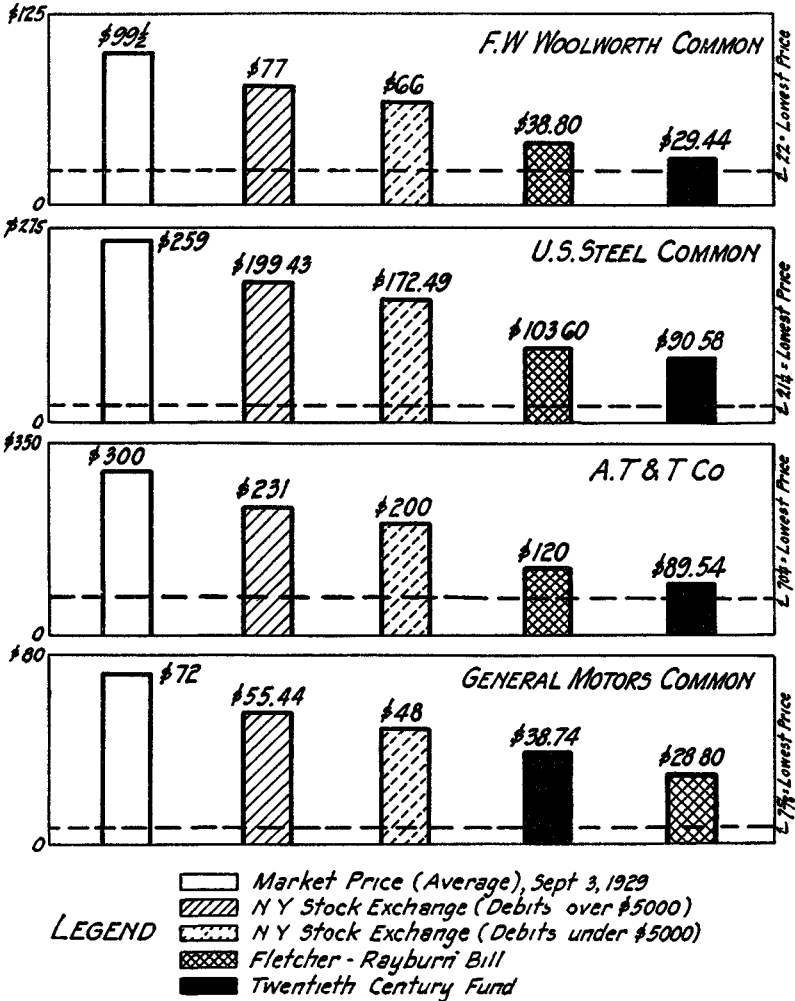
Mr. BERNHEIM. They authorize the project, appropriate the money, and from that point on I do not know just exactly what they do. I was engaged through the secretary of the fund. Now, whether it was his discretionary authority to engage me or whether he was empowered to do so by the trustees, I do not know, but he is right there, Mr. Pecora, if you wish to go into that at all. Mr. Clark is here.

Mr. PECORA. Mr. Evans Clark, secretary, is here?

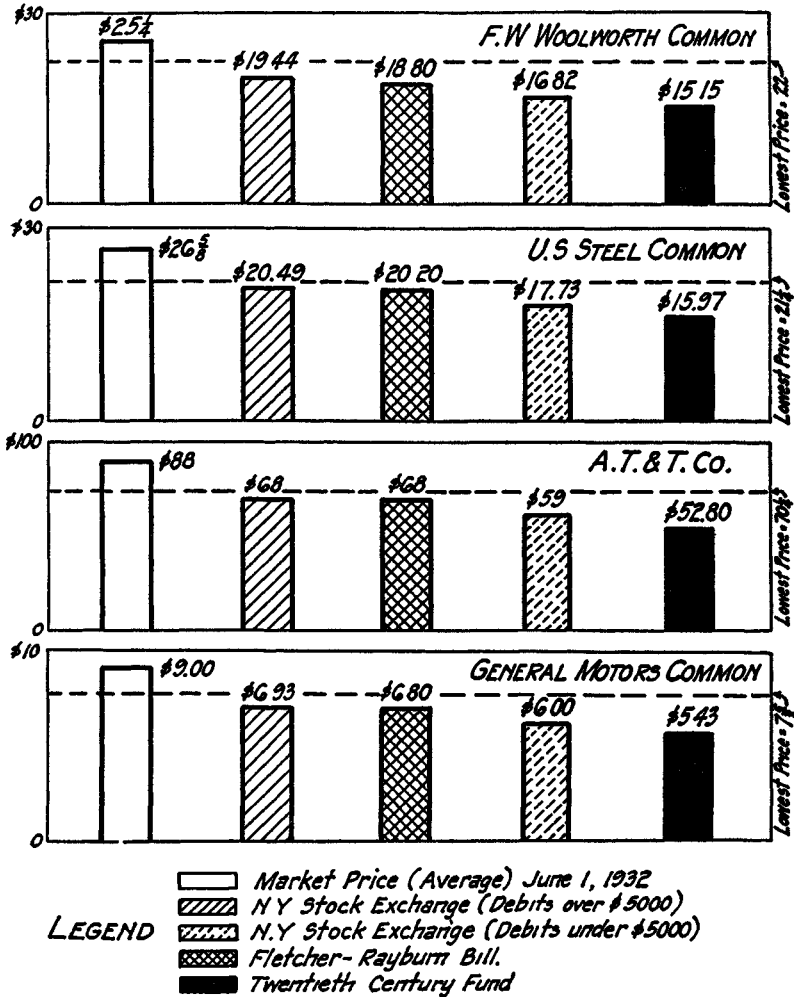
Mr. BERNHEIM. Yes; he is here, and he can answer those questions much better than I can. Do you want him?

The CHAIRMAN. Mr. Clark.

**MAXIMUM LOAN VALUES OF FOUR COMMON STOCKS  
AT PEAK OF BULL MARKET (SEPT. 3, 1929)**



**MAXIMUM LOAN VALUES OF FOUR COMMON STOCKS AT APPROXIMATE BOTTOM OF BEAR MARKET (JUNE 1, 1932)**





**MAXIMUM LOAN VALUES OF FOUR COMMON STOCKS DURING EARLY PHASE OF RECOVERY (FEB. 1, 1934)**

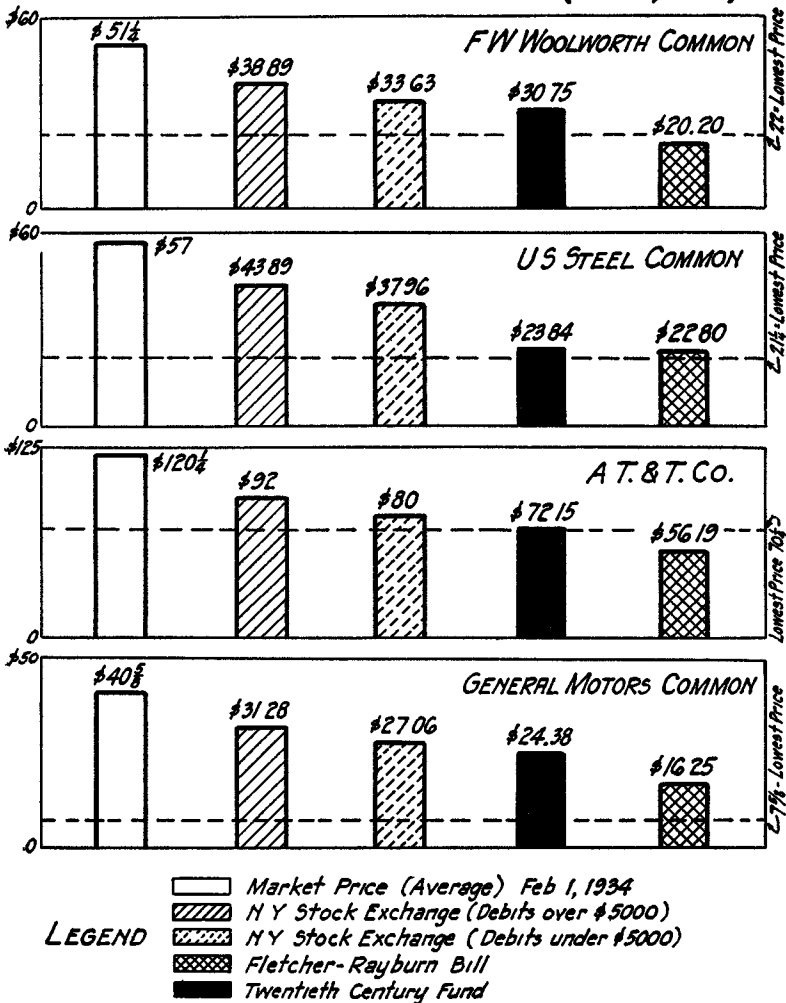


EXHIBIT I—*Loan values of four common stocks compared with market values*

## F W WOOLWORTH COMMON

	Sept 3, 1929	June 1, 1932	Feb 1, 1934
Market Price (average).....	\$90 $\frac{1}{2}$	\$25 $\frac{1}{4}$	\$51 $\frac{1}{4}$
Loan values			
Twentieth Century Fund.....	a 29 44	b 15 15	a 30 75
Fletcher-Rayburn Bill.....	b 38 80	c 18 80	b 20 20
New York Stock Exchange (debits under \$5000).....	66	16 82	33 63
(debits over \$5000).....	77	19 44	38 89

## U S STEEL COMMON

	\$259	\$26 $\frac{1}{2}$	\$57
Market Price (average).....			
Loan values			
Twentieth Century Fund.....	a 89 58	b 15 97	a 23 84
Fletcher-Rayburn Bill.....	b 103 60	c 20 20	b 22 80
New York Stock Exchange (debits under \$5000).....	172 49	17 73	37 96
(debits over \$5000).....	199 43	20 49	43 89

## AMERICAN TELEPHONE AND TELEGRAPH COMMON

	\$300	\$88.	\$120 $\frac{1}{4}$
Market Price (average).....			
Loan values			
Twentieth Century Fund.....	a 89 54	b 52 80	b 72 15
Fletcher-Rayburn Bill.....	b 120	c 68	c 56 19
New York Stock Exchange (debits under \$5000).....	200	59	80
(debits over \$5000).....	231	68.	92

## GENERAL MOTORS COMMON

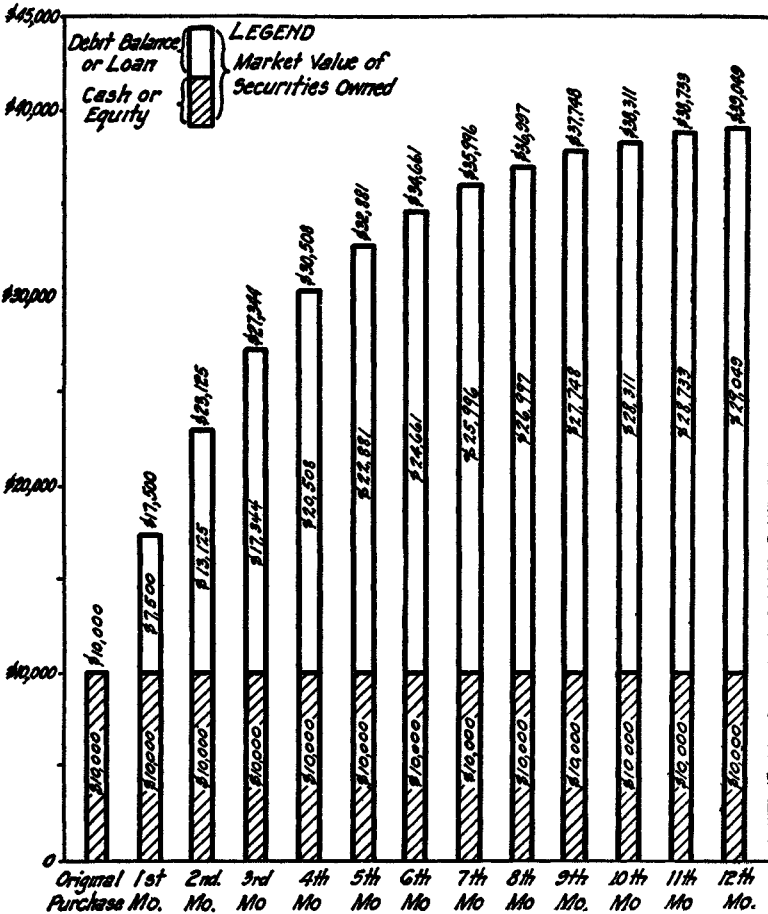
	\$72	\$9.	\$40 $\frac{1}{2}$
Market Price (average).....			
Loan values			
Twentieth Century Fund.....	a 88. 74	b 5 43	b 24 38
Fletcher-Rayburn Bill.....	b 28 80	c 6 80	b 16 25
New York Stock Exchange (debits under \$5000).....	48.	6	27 06
(debits over \$5000).....	55 44	6 93	31 28

a Based on earnings adjusted for changes in capitalization

b Based on current market price

c Based on lowest price for preceding three years, adjusted for changes in capitalization.

**POSSIBLE PYRAMIDING IN ONE YEAR UNDER SECTION 6 (C) OF FLETCHER-RAYBURN BILL.**  
 (ASSUMING LOANS OF 75 % OF MARKET VALUE)



**EXHIBIT II—Possible pyramiding in one year under section 6 (C) of Fletcher-Rayburn bill (assuming loans of 75 per cent of market value)**

	Cash	Loan	Debit balance	Value of securities owned
Jan.....	\$10,000			\$10,000
Feb.....	10,000	7,500	7,500	17,500
Mar.....	10,000	6,625	13,125	23,125
Apr.....	10,000	4,219	17,844	27,344
May.....	10,000	3,164	20,508	30,508
June.....	10,000	2,373	22,881	32,881
July.....	10,000	1,780	24,661	34,661
Aug.....	10,000	1,335	25,996	35,996
Sept.....	10,000	1,001	26,997	36,997
Oct.....	10,000	751	27,748	37,748
Nov.....	10,000	563	28,311	38,311
Dec.....	10,000	422	28,733	38,733
Jan.....	10,000	316	29,049	39,049

**STATEMENT OF EVANS CLARK, EXECUTIVE DIRECTOR TWENTIETH CENTURY FUND, NEW YORK CITY**

The CHAIRMAN. Mr. Clark, you are secretary of this Twentieth Century Fund?

Mr. CLARK. Executive director is my title.

Mr. PECORA. Could you tell the committee very briefly, Mr. Clark, the circumstances under which the survey that has been referred to by Mr. Bernheim was undertaken and carried out by the fund or on behalf of the fund?

Mr. CLARK. Yes; I will be glad to. The project was originally suggested by an executive committee of the fund, and the outline of the research we had in mind was then suggested to the executive committee and to the full board, and was approved, and the money necessary to carry it on was appropriated by vote of the board. Since then, as Mr. Bernheim said, the trustees have not taken any action one way or the other on the findings. Just as he said, they have in the past and they do now have the same relationship to the findings of the technical staff as a board of college trustees do. They do not interfere in any way.

The CHAIRMAN. So the board has not acted on this report made by Mr. Bernheim?

Mr. CLARK. That is correct, Senator.

The CHAIRMAN. That is all, then. We will take a recess until half past two.

(Accordingly, at 1:08 p.m., a recess was taken until 2:30 p.m. of the same day.)

**AFTERNOON SESSION**

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

The CHAIRMAN. The committee will now come to order, please. Mr. Butcher, we will hear you.

Mr. BUTCHER. Thank you, Mr. Chairman.

**STATEMENT OF HOWARD BUTCHER, JR., PHILADELPHIA, PA.,  
VICE PRESIDENT OF THE PHILADELPHIA STOCK EXCHANGE**

The CHAIRMAN. You may proceed State your name, residence, and occupation

Mr. BUTCHER. My name is Howard Butcher, Jr., Philadelphia. I am vice president of the Philadelphia Stock Exchange.

The CHAIRMAN. Do you wish to be heard on this bill, S. 2693, Mr. Butcher?

Mr. BUTCHER. If you please, sir.

The CHAIRMAN. Very well. You may proceed in your own way.

Mr. BUTCHER. Mr. Chairman and gentlemen of the committee, the Philadelphia Stock Exchange desires to cooperate to the fullest degree in any proper effort to prevent any abuses affecting the stock market and to restrain unwise or excessive speculation.

Its governing committee believes, however, that this proposed legislation imposes regulations, restrictions, and prohibitions, which vitally affect the existence of exchanges throughout the country, which gravely injure the business of a vast number of brokerage houses in every section of the country, which impair the credit facilities of individuals and of industry everywhere, and which tend by reason of their severity and the limitations placed upon Federal authority, to defeat many of the purposes of the Act.

The act as drawn gives to the Federal Trade Commission complete domination of every stock exchange in the country, through powers of management affecting every single activity of a stock exchange, including the admission, supervision, and expulsion of its members, the election of its officers, the appointment of its committees, its rules for the conduct of business, and all its brokerage practices.

The domination the act gives to the Commission, the manner in which the regulatory power of the Commission is made effective and the penalties imposed by the act upon an exchange, its officers and its members for violations of the rules and regulations of the Commission must inevitably weaken the authority of the governing bodies of security exchanges, discourages all initiative and substantially impair the functioning of an exchange in the marketing of securities.

The requirements of the act with respect to accounts, records, reports, and examinations of members of national securities exchanges impose undue burdens, including the exercise of inquisitorial powers which are capable of grave abuse.

The requirements with respect to registering of securities upon a national security exchange, the obligations imposed upon the issuer of a registered security and the penalties imposed upon officers and directors of corporations whose securities are registered on a national security exchange, make registration prohibitive in the case of many corporations, and unduly burdensome in respect of all issuers of securities.

The prohibition upon members of an exchange with respect to the extension or maintenance of credit to or for a customer on any securities not registered upon a national securities exchange, making all unlisted securities ineligible as collateral in margin accounts is an unreasonable limitation upon investors in connection with their

margins in brokerage accounts, and unfairly discriminates between brokers and other lenders of money in the amount of credit which can be advanced upon unlisted securities.

The minimum margins established in the proposed act are unsound in principle and unworkable in practice. They attempt to set up a rigid formula for a subject which requires a very flexible rule.

The act imposes unnecessary restrictions and arbitrary limitations upon borrowing by members of national security exchanges.

The provisions of the act which prohibit any member of an exchange and any person who as a broker transacts a business in securities through a member of the exchange from acting as a dealer in or underwriter of securities would in effect deprive purchasers and sellers of listed stocks in amounts of less than 100 shares of the benefits of a market on the exchange; would eliminate methods of trading which have become an essential part of every important market for securities; and in respect of many brokers and brokerage houses throughout the country would compel them to cease business.

The provisions of the act with respect to "over-the-counter" market activities in unlisted securities, giving to the Federal Trade Commission power to control all dealings in unlisted securities, would in conjunction with other provisions of the act, practically destroy the market for unlisted securities insofar as the control of the Commission is applicable, and stimulate to an enormous degree the business of the completely unregulated "over-the-counter" markets.

The penalties both civil and criminal provided in the act are excessive and unreasonable.

The enactment of the bill in its present form will gravely affect the entire credit system of the country, and will seriously prejudice not only all stock exchanges and brokers and dealers in securities, but all banking institutions, industry, and all investors.

Such regulatory legislation as is deemed necessary should provide for a regulatory body or authority conversant with the technical problems connected with the operation of stock exchanges, with power to require within reasonable limitations the adoption by stock exchanges of rules and regulations for preventing practices which unfairly influence the price of securities or unduly stimulate speculation.

May I say a few more words informally, Mr. Chairman?

The CHAIRMAN Yes. You may proceed.

MR. BUTCHER. It is estimated that there are approximately 200,000 employees of stock-exchange firms or of securities dealers in the United States, with an estimated pay roll of probably well in excess of \$300,000,000. Many of these men, of course, are paying income taxes, and many other taxes, including State, city, county, and otherwise. If this bill is enacted in its present form, it is my very definite opinion, and I should like to express it politely, of course, but as firmly as I may, that these men would become unemployed almost immediately. It would immediately, or almost immediately, certainly within less than 30 days, produce a frozen condition in the matter of securities that would perhaps be even worse than now exists in the case of real estate.

It is estimated that there are about 11 million citizens, men and women, who hold stocks and/or bonds in the United States; and that there are probably another 15 million people who are directly interested through life-, fire-, and accident-insurance companies in the liquidity of the securities market. There are 25 million people, therefore, it is estimated, and in my opinion many more, who would be very seriously affected by the passage of this bill in its present form.

It is furthermore my opinion that no one act could be done at this time by Congress which would more seriously slow down, if not stop, recovery, which we are all anxious to have brought forward as rapidly as possible, as would the passage of this bill.

This bill contemplates, apparently, the inclusion of most directors of the larger corporations, and their officers, the holders of 5 percent of their securities, and the brokers, in a group against which it is proposed to apply penalties. It is proposed to put these men, many of whom have honorable records over two generations, into a special class, an unholy class, so to speak. It would be a serious reflection upon those men and upon their integrity. It would mean that a majority of those men having honorable records would be placed in a group of men who are to be considered as undeserving the confidence and respect of the Nation. The very fact that this bill is being considered by this committee and a committee of the House of Representatives has already had a very serious effect in slowing down a great many actions that those men would otherwise have taken.

It seems to me that the bill does not take into consideration what President Roosevelt has repeatedly said, that we must go forward in a united group, that we must fight the depression, that we must make a united effort toward recovery. And I do not believe there has been any group of men who have responded more readily and more thoroughly than stockbrokers to that desire expressed by the President. It is certainly our earnest wish to help, but if we are going to be deprived of the officers down to the rank of sergeant, in this army that is expected to go forward in the fight against depression, and ask the army to go forward without those officers, there will be, I am afraid, very little motion. If you are going to eliminate those men I have mentioned, the officers and directors of the larger corporations from reasonable and just consideration, and I want to say to you very firmly that I feel this bill is unjust, a very grave and serious set-back to recovery must inevitably follow.

Mr. PECORA. What are those directors to be eliminated from that you are now speaking of?

Mr. BUTCHER. It seems to me that a man who is now a director of any corporation would, in event of the passage of this bill, of necessity have to resign his position prior to the passage of the bill.

Mr. PECORA. Why?

Mr. BUTCHER. Because if he did not, then through the inadvertence of some clerk somewhere, he would become immediately subject to a \$25,000 fine and/or a 10-year jail sentence.

Mr. PECORA. For doing what?

Mr. BUTCHER. For violating, perhaps entirely unwittingly, some provision of the rules and regulations of the Federal Trade Commission, which is to have authority under this bill.

Mr. PECORA. What provisions do you find in the bill that such director might violate unwittingly?

Mr. BUTCHER. I should think that any one of probably 12 or 14 different provisions—well, I haven't them by heart, of course, but any one of probably 12 or 14 different paragraphs of the bill would bring a man under very serious penalty, or might very readily do so.

Mr. PECORA. I wish you would be more specific about it.

Mr. BUTCHER. Any unintentional misrepresentation of fact, even to a very slight degree, would bring a man under the penalties of the bill. Now, I have been a governor of the Philadelphia Stock Exchange for many years, and certainly I would not act as a governor of that exchange nor as a director of a corporation if this bill were enacted. And I think you will find, with all due respect, it would compel a group of men to act as directors very similar to the men who now act as straw men in connection with real-estate mortgages.

Mr. PECORA. To act as what?

Mr. BUTCHER. As straw men in connection with real-estate mortgages.

Mr. PECORA. What do you mean by that?

Mr. BUTCHER. Men would have to act only if they had no means and might not be unduly perturbed about a possible jail sentence.

Mr. PECORA. Are you referring to the provisions of section 15 of the bill, entitled: "Transactions by Directors, Officers, and Principal Stockholders"?

Mr. BUTCHER. That is certainly one of the sections.

Mr. PECORA. Don't you think the practices aimed at in section 15 are harmful practices?

Mr. BUTCHER. Mr. Pecora, I believe if you and I were to sit down together for a very few minutes we would arrive quite quickly at a conclusion as to the undesirable things which now exist.

Mr. PECORA. Well, take the undesirable things referred to in section 15 of the bill, or the things which are sought to be prohibited by section 15 of the bill, would there be any dispute between you and me in regard to the proposition as to whether or not the practices there aimed at are unwholesome, undesirable and unethical?

Mr. BUTCHER. Mr. Pecora, I am not familiar with this thing by heart. I have read the bill several times carefully but have not got it by heart. I will say that am in accord with you very largely, if not perhaps entirely, as to what should be eliminated. But I am very much opposed to the manner in which it is sought in this bill to eliminate those things. As a matter of fact I have devoted a very material part of my working life, for the past 12 or more year, trying to eliminate some of the very things mentioned in paragraph 15 of the bill. At the same time I think the bill defeats itself. I offer that thought very respectfully, but I fear the bill as framed would defeat itself.

Mr. PECORA. Section 15 is the one that seeks to prohibit certain specific acts or transactions by directors, officers, or principal stockholders. If you can find anything there that you think should not be prohibited, I wish you would point it out instead of making a blanket attack upon the provisions by saying it would cause directors to resign. Furthermore, let me call your attention to section



24, which prescribes penalties for violations. You are fearful that directors may be sent to jail for unwitting violations. Section 24 of the bill specifically says:

Any person who wilfully violates any provision of this act or any rule or regulation made thereunder—

becomes subject to the penalties prescribed in the bill. That is something far different from an unwitting or innocent violation, isn't it?

Mr. BUTCHER. That is what that language appears to say, but—

Mr. PECORA (interposing). It not only appears to say it, but it does say it, because the word "wilfull" is in there, and it has a very definite meaning and connotes something that is done wilfully.

Mr. BUTCHER. Don't you yourself think that if you were a director in a corporation you would resign if this bill were enacted into law?

Mr. PECORA. I will say to you that I think this: That directors would find it convenient to resign in event their sense of duty to their stockholders involved a betrayal of their trust by means of which such directors might profit. We have had many notable instances during our hearings here of directors doing that, including transactions by bank directors and/or officers.

Mr. BUTCHER. Mr. Pecora, I want to say that I am heartily in accord with you in the fact that a great many of those actions were what I would call, in the vernacular, entirely out of bounds. I have no sympathy with a great many of those actions, and I feel that I am very much in accord with you in what you wish stopped along that line, but I do want to say as to this bill—

Mr. PECORA (interposing). Well, what we wish to have stopped is set forth in section 15 of the bill so far as they may be applied to officers and directors of corporations.

Mr. BUTCHER. But I very respectfully feel that you will be defeating the very thing under that section that you are attempting to reach.

Mr. PECORA. You are now merely making a dogmatic statement to that effect. How would the purpose of the bill be defeated? First let me ask you: Do you admit that these evils should be exterminated; I mean the evils referred to in section 15 of the bill?

Mr. BUTCHER. I believe that every one I can now recall should be prevented.

Mr. PECORA. All right. How are we going to exterminate them?

Mr. BUTCHER. I do not believe that you can ever legislate 100-per-cent honesty in human beings.

Mr. PECORA. No; that is admittedly impossible until the millenium arrives or until human nature entirely changes, but that same argument would apply to any legislation that is designed to prevent crime. The fact that our laws against kidnaping has not prevented kidnaping is no argument for repealing the laws

Mr. BUTCHER. Not in my opinion; no.

Mr. PECORA. And the fact that our laws defining murder to be a crime has not succeeded in preventing all murders is no reason for repealing those acts, is it?

Mr. BUTCHER. Not in my opinion, but as to this bill—

Mr. PECORA (interposing). It seems to me you are making an argument predicated upon that theory.

Mr. BUTCHER. Oh, no.

Senator KEAN. Mr. Butcher, isn't this bill something like the eighteenth amendment, and we found out that did not prevent violations, and it had to be repealed so that we could get law enforcement; isn't that so?

Mr. BUTCHER. I am entirely in accord with that thought, Senator. Now, Mr. Pecora—

Mr. PECORA (interposing). Well, I don't know how a sumptuary law can be compared to the enactment of the sort that is proposed here.

Mr. BUTCHER. I am not technically familiar with the law as you are, Mr. Pecora, but—

Mr. PECORA (interposing). Well, one deals with morals and the other deals with habits.

Mr. BUTCHER. Mr. Pecora, I take off my hat to you as a man who has been a very capable prosecuting attorney, but this is not as I see it—and I am a layman and not a lawyer, although I feel very deeply about it, and in what I say, if I may seem unduly serious, I mean to say in all courtesy and politeness; but I feel that in your desire, which I share, to stop these things is a proceeding much like the farmer who had four sons and who said he would not give any of them an education because he was not going to have a forger in his family, that he wasn't going to allow any one of them to learn how to write. And so it is that I say by this bill you are going to defeat what you are trying to carry out.

Mr. PECORA. How are we going to defeat the laudable purpose that you admit the bill has. How does the bill do that?

Mr. BUTCHER. It would operate in that way to this extent—and I want to say that I have talked recently more to stockholders than to business men—I am satisfied it would mean that certainly nine tenths, if not all, of the board of governors of the Philadelphia Stock Exchange, which I represent here, would immediately resign. Now, there is a group of men I have intimate knowledge of. They are a straight, square-shooting, forward-looking group of men, good citizens, and—

Mr. PECORA (interposing). Why would they resign?

Mr. BUTCHER. Because they could not afford, and I could not afford, to face the provisions of this bill, which would bring them into constant litigation. We would be constantly defending all sorts of actions, of blackmail suits, for instance. We would be in danger all the time of the action of the Federal Trade Commission, of something being brought up against us, which in the ordinary course of business I would say since 1790 has been straightforward and all right. It is a very cleverly written bill but it would in the end defeat the things you would like to carry out and that I would like to carry out.

Mr. PECORA. You are as I understand in accord with us in regard to the laudable purposes of the bill and the necessity for preventing the existing evils which the bill seeks to exterminate.

Mr. BUTCHER. I am in accord with you, as I said in my opening paragraph, to prevent any abuses affecting the stock market and to

restrain unwise or excessive speculation. But it seems to me the bill goes further than that, and—

Mr. PECORA (interposing). In order to prevent excessive speculation you have to control the extension of credit more or less, don't you?

Mr. BUTCHER. Extension of credit should be controlled more rather than less, perhaps, but not in this way as I see it.

Mr. PECORA. In what way would you propose to control it?

Mr. BUTCHER. I would very much prefer to see it done through the Federal Reserve banks. I do not believe the object you have in mind would be accomplished by trying to control it in this way.

Mr. PECORA. Then if the power sought to be vested in the Federal Trade Commission with regard to control of credit were vested not in the Federal Trade Commission but in the Federal Reserve Board, you would approve of it?

Mr. BUTCHER. I should like to read that paragraph very much more carefully than I can recall it from memory in order to answer that question, but there was very little in those paragraphs that I approved of. The bill, it seems to me, would defeat its own end. You spoke just now of the objects of the bill, and I frankly say to you that I do not know the objects of the bill.

Mr. PECORA. Mr. Butcher, you made a rather impassioned extemporaneous statement to the committee with regard to the effect any kind of bill would have upon officers and directors of corporations who might feel that its potential penalties are such as to cause them to resign. And the argument you made was that they would be subject to the penalties of the bill for unwitting violations. I have pointed out to you that section 24 of the bill, which provides the penalties, would not cover an unwitting violation, that the penalties of the bill only apply to persons who may willfully violate the provisions of the bill. I am just wondering what other portions of your argument in opposition to the bill might have been based upon a misconception of the actual provisions of the bill.

Mr. BUTCHER. May I reply to that?

Mr. PECORA. Certainly. That is what I want you to do.

Mr. BUTCHER. It is my opinion, yes; it is my considered opinion, sir, that within 1 week more or less before this bill becomes a law, if it is to be enacted, 98 percent of the directors I speak about, and all governors of stock exchanges, will resign. That is my considered opinion. Now, I am not a technical lawyer, and I cannot argue successfully which particular provision of the bill it applies to more than another, but let me say this: In the fantastic requirements of the margin paragraph of the bill, and I am familiar with the margin business, having been in the brokerage business for 33 years, although I have lots to learn and am learning every day, but in the case of a market that comes four or five times a year, an active market—that is, up and then down and up again—that even with only 12 or 15 margin accounts I do not see how it would be physically or financially possible for my firm to keep those margin requirements in accordance with this bill. I would therefore, if I kept my firm open, be violating a provision of the bill when I simply would be doing that which in the ordinary course of business we have been doing right along entirely within the law.

Mr. PECORA. Don't you know that the bill provides the Federal Trade Commission may adopt such rules and regulations with regard to the manner and method of closing out margin accounts as in its judgment should be adopted?

Mr. BUTCHER. Do I understand that—

Mr. PECORA (continuing). And that members of exchanges who violate the rules and regulations of the Federal Trade Commission with regard to closing out margin accounts would not be deemed to be guilty of any violation of the literal provisions of the bill with regard to inflexible marginal requirements?

Mr. BUTCHER. Mr. Pecora, I have said that as to marginal requirements under the bill—and as I have already said, I have been in the margin business for a number of years—I believe it would be physically impossible for me, earnestly and honestly as I would try by quadrupling our margin group in our office, to comply with the provisions of the bill in an active market. Now, as to what rules and regulations the Federal Trade Commission might give out, I don't know. They might easily this afternoon—

Mr. PECORA (interposing). Why not credit them with the desire to promulgate such rules and regulations as would be fair and reasonable and as would be well calculated to carry out the provisions of the statute generally?

Mr. BUTCHER. Mr. Pecora, I want to say to you—

Mr. PECORA (continuing). Why assume that the Federal Trade Commission in functioning under this bill is going to divest itself of all common sense?

Mr. BUTCHER. I have a great deal of respect for the Federal Trade Commission, and they certainly have my best wishes, but in my opinion it would be physically impossible for that group of men, with a bill like this as their text, to issue and carry out reasonable and common-sense requirements.

Mr. PECORA. Well, I would be disposed to think that if the Federal Trade Commission felt the same way about it they would be down here before this committee urging that same contention. But I do not think we have heard from the Federal Trade Commission to that effect, have we, Mr. Chairman?

The CHAIRMAN. No.

Senator KEAN. The Federal Trade Commission has never been trained in these functions, have they, Mr. Butcher?

Mr. BUTCHER. To my knowledge they know nothing about the stock-exchange business. And the people who wrote this bill I am satisfied, with all due respect to them, have had no experience in the stock-exchange business. To you, Mr. Pecora, my hat is off as a prosecutor, but even you, I believe, have had no stock-exchange experience.

Mr. PECORA. I have never been in a broker's office in my life.

Mr. BUTCHER. Well, I hope you will come into my office sometime.

Mr. PECORA. I have never had any experience in the matter of trading. I am a lawyer and not an investor or speculator. But, Mr. Butcher, you don't know, do you, whether or not persons who had the task of writing this bill consulted and obtained the opinion of experts, men of experience in the stock market, including brokers?

Mr. BUTCHER. I believe they did, sir.

Mr. PECORA. Well, I can assure you that they did.

The CHAIRMAN. Isn't it a fact that your real objections to this bill are based on apprehension, not on the provisions of the bill but the apprehension of harm that may come out of it? You cannot specify any provisions of the bill that would bring about all this disaster you mention, but you apprehend that that may follow, and the result is that you are not in favor of any legislation although you admit the existence of abuses that ought to be corrected.

Mr. BUTCHER. Senator Fletcher, I am not only apprehensive but am scared to death. [Laughter.]

Mr. PECORA. Mr. Butcher, do you remember the hue and cry raised by the banking fraternity some 20 years ago over the possibility of the enactment of the Federal Reserve bill?

Mr. BUTCHER. I can remember back much more than 20 years, Mr. Pecora, but I do not remember that apprehension.

Mr. PECORA. Do you recall the opposition presented by bank officials to the enactment of the Federal Reserve bill?

Mr. BUTCHER. I was not closely in touch with that.

Mr. PECORA. Well, they predicted all sorts of dire evils that would happen in event of the passage of that bill.

Mr. BUTCHER. May I reply to Senator Fletcher's remark about my not wanting any legislation?

The CHAIRMAN. Certainly.

Mr. BUTCHER. In the last paragraph of my memorandum, I say: Such regulatory legislation as is deemed necessary should provide for a regulatory body or authority conversant with the technical problems connected with the operation of stock exchanges, with power to require within reasonable limitations the adoption by stock exchanges of rules and regulations for preventing practices which unfairly influence the price of securities or unduly stimulate speculation.

The CHAIRMAN. In other words, you want the stock exchanges to regulate themselves.

Mr. BUTCHER. Far from it. I did not say so in that paragraph, if you please.

Mr. PECORA. Then who should regulate them in your opinion, if not themselves.

Mr. BUTCHER. I believe that a commission specially formed for that purpose, with plenary powers and with knowledge of stock exchange matters, a commission that can study the matter carefully and that would give the thing little by little a try-out, would restore some of the confidence that has already been restored, would permit the very useful functioning of the present to go forward in this time of great need.

Mr. PECORA. The claim has been made here repeatedly by almost everybody that the rules and regulations which the stock exchange may adopt for the conduct of the business of its affairs can only apply to the members of the exchange. You recognize that to be a fact, do you not?

Mr. BUTCHER. The member of the board of governors of the Philadelphia Stock Exchange, I have no jurisdiction over the members of any other exchange.

Mr. PECORA Or of any nonmember, whether he is a broker or a market operator or speculator Your rules and regulations apply only to your own members.

Mr. BUTCHER. They have very far-reaching effects in some respects, but, generally speaking, I would say you are right, sir.

Mr. PECORA. Many of the evils this committee has found to exist in stock-market practices and customs flow from the act of nonmembers who would be outside the pale of influence or binding force and effect of rules and regulations of the exchanges themselves. Hence, if the activities of those persons are going to be placed under the ban effectively, they have got to be placed under a ban which will have to be pronounced by a body having the power to declare the ban, and the power to enforce penalties for violations. That power, it seems to me, is in the Congress of the United States and nobody else.

Mr BUTCHER. The Congress of the United States has great power, sir, and I have a great deal of respect for its power and its wisdom. You used the expression "common sense." I see no common sense, sir, in destroying the stock exchanges in order to reach some of these nonmembers.

Mr. PECORA. You are assuming that all stock exchanges are going to fold up their tents and pass out as soon as this bill is enacted.

Mr BUTCHER. I am not assuming that. I am making that as a very serious statement, based on my considered opinion.

Mr. PECORA If I were inclined to speculate on my judgment, I think I would speculate against that.

Mr BUTCHER In your position, I guess you would have to, would you not?

Senator KEAN. I have a question I would like to ask you. Were you familiar with the situation on the 4th of last March, the banking situation?

Mr BUTCHER. Generally speaking, very familiar.

Senator KEAN. We have heard here that people thought that great disaster might follow the organization of the Federal Reserve banks. Was it not the run on the Federal Reserve bank that practically caused the bank holiday on the 4th of March?

Mr BUTCHER. That was the immediate cause, as I understand it, sir.

Mr PECORA. Senator Kean, you do not argue, do you, that the Federal Reserve law should be repealed?

Senator KEAN. No; I do not argue that. I argue that the Federal Reserve banks ought to be strengthened. I argue that—

Mr. PECORA. Perhaps 20 years from now there will be persons coming to Congress, if this bill becomes law, who will think that its provisions ought to be strengthened and the powers of the Federal Trade Commission increased.

Senator KEAN. Perhaps; but I say that the danger that some people estimated in the Federal Reserve bank was realized on the 4th of last March, when they practically had to declare a bank holiday all over the country owing to the condition of the Federal Reserve bank.

Mr. PECORA. It was not due to any provisions of the Federal Reserve law. That was due to fundamental economic conditions that were generally prevalent, was it not?

Senator KEAN. It was due largely to the Federal Reserve bank's condition, and the fact that it was not strong enough to stand the tremendous strain that was put upon it.

The CHAIRMAN. It was due to some mistaken administration, but no one can say that the Federal Reserve System has not been of great benefit to the country.

Senator KEAN. I do not say that for a minute. It has, undoubtedly.

The CHAIRMAN. I have heard Senators on the floor of the Senate predict all sorts of disaster and distress if that bill ever passed.

Senator KEAN. That was not I.

Mr. BUTCHER. Mr. Chairman, I wish to express my appreciation for your courtesy in hearing me, and Mr. Pecora's courtesy. I still hope for a visit. [Laughter.]

Mr. PECORA. If I am ever in Philadelphia I will drop into your office.

The CHAIRMAN. I will bet you do not go out of business. [Laughter.]

Mr. BUTCHER. You propose, then, not to have this bill passed, I take it, sir? [Laughter.]

**STATEMENT OF LEWIS J. STERN, PARTNER OF FRANK B. CAHN & CO., MEMBERS NEW YORK STOCK EXCHANGE**

The CHAIRMAN. Please state your name, place of residence, and business.

Mr. STERN. Lewis J. Stern; partner of Frank B. Cahn & Co., members of the New York Stock Exchange.

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

Mr. STERN. No. I am a partner in a member firm.

The CHAIRMAN. You are engaged in the brokerage business?

Mr. STERN. Yes, sir.

The CHAIRMAN. How long have you been engaged in that business?

Mr. STERN. Since 1928.

The CHAIRMAN. You wish to discuss this bill. We will be glad to hear your views about it.

Mr. PECORA. What was the firm name?

Mr. STERN. Frank B. Cahn & Co.

The proposed stock exchange legislation may be broadly divided into four parts:

First. Criminal legislation dealing with the offenses against sound morals, such as the rigging of markets, dissemination of false information, breaches of trust by those holding fiduciary positions, and kindred offenses.

Second. Segregation of the business of brokerage from that of issuer and dealer in securities, the desirability of which is highly controversial.

Third. Full and detailed publicity of corporation accounts necessary for intelligent action in the purchase and sale of securities. This is usually recognized as desirable.

Fourth. The regulation of the flow of credit into marginal operations.

The first suggestion meets with universal assent—it represents the difference between right and wrong, and makes wrong criminal.

The fourth classification—marginal credits—is surrounded with extreme difficulty, and it is this section that is here discussed.

Marginal trading is a tremendous factor in the maintenance of the liquidity of those intangible assets, generally known as stocks and bonds; but, in addition, it is of surpassing importance in its function of assistance in raising capital, not only of existent railroad, public utility, and industrial corporations, but also for the establishment of new enterprises which employ labor and consume capital goods. To impede unnecessarily, by drastic restrictions, the delicately adjusted markets for securities will stagnate efforts made by the National Government in its extensive program for national recovery. To speak colloquially, it will throw a monkey wrench into the machinery of recovery so recently erected. That the machinery of the stock exchanges has been abused, none with intellectual integrity will deny for a moment, but in the correction of these abuses, meticulous care should be taken not to destroy the budding public confidence that has been nursed with such solicitude.

In connection with the use of credit is marginal trading, there are two elements: First, the rapidity of the flow; second, the volume. Too little attention has been given to the time element existing in the movements of all securities prices. An advance in price, based on merit, is not objectionable, unless it is so precipitate as to foster undue speculation with a resultant abrupt collapse.

The percentage of margin, and the basis of selling price for its calculation, under the submitted legislation is so high, and so inflexible, that as has often been pointed out in these hearings, it would destroy the liquidity of present issues, and would make extremely difficult the raising of capital for both old and new enterprises. It is apparently assumed that a large margin, in itself, is more or less of a guarantee against substantial loss, and yet, the time factor, as will be subsequently illustrated, may be of such importance that a small margin is better protection at one period than a large margin is at another.

An apt illustration of this theorem is presented by a study of the fluctuations in American Commercial Alcohol in the month of July 1933.

American Commercial Alcohol advanced from a level of 30 to approximately 90 in less than 3 weeks. Its subsequent history shows that a buyer who advanced \$7.50 a share as margin, or 33½ percent of the debit, on stock purchased at \$30, was never in jeopardy. It would have been unnecessary, at any time, to deposit additional margin in order to protect his position in the stock. Continuing our illustration of "time element" being an essential factor, assume that 3 weeks later, when the stock rose at \$90 a share, a purchase was made with a margin of 60 percent of the purchase price, or \$54 a share. A debit balance of \$36 a share would result with a margin of 150 percent of the debit. Within 4 days a decline more abrupt than the advance ensued, and the purchaser saw his \$54



per share margin entirely dissipated. Meanwhile, the purchaser at \$30 a share, with his \$7.50 a share deposit, found his margin intact. This illustration is not based upon fancy or fiction, but upon actual facts involved in the market gyrations of this issue.

This case is presented to illustrate that, in itself, a percentage margin, if figured from a market price as a basis of computation, is an illusory protection. A study of the history of market fluctuations in various stocks confirms the view that the real problem is involved in marginal requirements which will prevent credit money from flowing into securities at too rapid a rate. The amount of credit money that enters the security market is not the supreme factor, but rather the rapidity with which securities loans are swelled. No one would presume to have the prescience to predict that a total volume of 8 billion dollars of brokers' loans would be too large a volume 25 years hence, but one would have no hesitancy in stating that the expansion of brokers' loans to such a figure in the next 12 months would represent a speculative bubble which should be prevented.

It may be stated as a fact that the public is attracted to unwise speculation by the rapidity of the upward movement in an issue, or a group of stocks. The psychology created by such a situation is the anxiety on the part of the public to participate in the profits of a speculative movement; the average person never feels sure that a fundamental advance is taking place in securities until a rapid movement in many issues has already taken place. Even presuming that the actual trader has made his commitment at a relatively low price, the rapidity of the movement engenders a desire to use his speculative profit, so quickly acquired, to enlarge his commitment, either in the same stock, or in other issues. It is by this method that "inverted pyramids" are created. This speculative furor is fomented by the fallacy that the market quotation at any specified time is a sound basis for computation of credit. The inescapable conclusion is reached that any system of marginal computation, founded upon percentage of the current price of an issue has, in a rapidly advancing market, the inherent weakness of encouraging pyramiding.

If a system is inaugurated which will limit the credit on an initial purchase to a reasonable loaning value, and prevent the unrestricted use of further credit now made available by the rapid advances, we will have eliminated a very large percentage of the untoward effects that inordinate speculation has on our economic system, because we will then have put under control the rapidity of the flow of credit money into securities markets.

The theory of the plan presented is that the maintenance of a specific level for a stock entitles it to a greater consideration in connection with its loan value. As an illustration:

Assume that an issue sells for 11 months at \$10 a share, and then, in the next month, advances rapidly to \$50 a share, the value therefore of the stock, for loan purposes, should not be more than the average price during the 12 months; that is, 11 months times \$10 plus one month at \$50, divided by 12, or \$13 a share. Now suppose this stock maintains for another period of 1 month, a stability of

\$50 a share, at the expiration of the second month's maintenance of a price of \$50 a share, the computation for loanable value will be 200 divided by 12, or \$16 a share; the 200 being 10 months at 10, plus 100, representing 2 months at 50. If it maintains its value at \$50 a share for 1 month more, it will be 240 divided by 12, or 20, and if it maintains the value for another month, you will have 280 divided by 12, or \$23 a share.

It will be noted that the buffer of safety on the initial rise to 50, will be approximately \$37; in other words, on this initial rapid rise, the marginal requirements, at the advanced price, will be \$37 a share. This will deter manipulation and unusually rapid upward movements with the danger not only to the specific stock, but also to the entire market fabric which is entailed thereby. It is to be noted that the \$40 advance will be unusable for credit purposes in rapid pyramiding.

Referring once more to the action of American Commercial Alcohol, on the day before the rapid advance started, the market price was approximately 40. The loan value, under the proposed system, would have been \$22 per share. A few days later, when the stock was selling at 90, the loan value would have increased to approximately \$23 a share, and the purchaser, at a price of 90, would have had to advance a margin of \$67. This marginal requirement would have had so prohibitive an effect on the advance that the issue would have been extremely unattractive as a speculative medium. It would have been practically impossible for the stock to have ever reached that price in so short a time, and the subsequent collapse, with the necessarily disastrous effect, would have been avoided.

There are two distinct advantages to the plan herein discussed :

First The possibility of a rapid advance is minimized owing to the rapidly increasing marginal requirements. A trader would hesitate to purchase a stock at \$50 a share which has advanced so rapidly that it requires 37 points to margin it and would, in preference desire to go into the market and buy a stock which is stabilized and requires less margin. It would remove the incentive to rapidly mark up stocks.

Second. The other advantage of this plan is that when general level of stocks is low the small operator would have the marginal ability to purchase a reasonable quantity of stocks, without exorbitant margin. Let us refer to 1914, when Europe dumped literally millions of shares of stock on our markets. Under the proposed bill the capitalist, who already has for over 30 days millions of securities in his safe-deposit vault, would be enabled to borrow on these securities, or even on his open paper, and purchase cheap securities in the open market to his heart's content, while the small man in America would be denied reasonable opportunity to take advantage of such a situation. To require the man of moderate means to pay 60 percent of the market price of a stock in cash, no matter what the level may be or what the occasion may be, is so prohibitive that it denies "an equal opportunity to all." It is putting a premium on large capital to the disadvantage of the man of ordinary means.

The plan proposed, in addition to automatically preventing a straight line move upward in the market, does not deny to the American public, as a whole, the opportunity to share in the development

of the United States and participate in a growing prosperity. The small man's opportunity to acquire capital should not be unduly circumscribed to the advantage of those who already have large means. The more the public is denied the right to participate, on a sound basis, in the markets, the more generally large capitalists will be free from competition in acquiring the securities of the best railroads, public utilities, and industries of our country.

The question now arises how to translate this marginal plan into practical operation. It is submitted that an arrangement may be effected by which a code of conduct, together with a marginal plan, such as is here suggested, can be incorporated in the N R A codes, and the constitutions of all exchanges; with an additional provision that the marginal requirements, at all times, shall be subject to alteration and change by a special committee, composed of the Secretary of the Treasury, Chairman of the Federal Reserve Board, with the President of the United States as the third member of the Board, with the right of veto in addition to directing affirmative action.

Under such a plan, American institutions would not be impeded in raising capital for new enterprises and expansion purposes; unbridled speculation would find itself in check, and, above all, the man of moderate means would have the same opportunity to participate in the advantageous development of the United States as would be afforded to the rich.

A flexible situation would be created, adaptable to the exigencies of any particular time.

The adoption of a margin of 60 percent of the purchase price means the eventual concentration and control of all securities of public companies in a few hands.

The CHAIRMAN. I understand you are opposed to any law with reference to fixing margins.

Mr. STERN. No. I am definitely not, sir. I propose to put a loan limit upon securities beyond which a broker or a bank may not go.

The CHAIRMAN. What limit?

Mr. STERN. The average price for the preceding 12 months, or 6 months—whatever the study of it will indicate to be the best time limit.

The CHAIRMAN. They can loan the full amount of the average price?

Mr. STERN. No; they may not loan more than the average price I believe in leaving the percentage part to the discretion of the individual lender, for his own protection. I think you have one real object in all this marginal study, and that is to prevent credit flowing into the securities market at such a rate that it builds up a snowball.

The CHAIRMAN. Brokers generally do not object to a flow of credit, do they?

Mr. STERN. A lot of them do not, but they should.

The CHAIRMAN. I agree with you there, but generally their interest is the other way. With reference to the small man, the man of small means, do you know what proportion of small men, or men of moderate means, who deal in stocks on the exchanges come out winners?

Mr. STERN. I know a very small percentage of them come out winners, but that is no reason why they should have to continue to do that.

The CHAIRMAN. What percentage of men of moderate means dealing in margins on the stock exchange succeed?

Mr. STERN. As traders?

The CHAIRMAN. Yes.

Mr. STERN. Very few of them; but a lot of them as investors, Senator.

The CHAIRMAN. I mean, taking the average run throughout the country of small people, people of small capital, who want to go into the stock exchange and trade on small margins, how many of them lose out?

Mr. STERN. I should say by far the largest percentage of them lose out, but, if I may say so—

The CHAIRMAN. About 1 in 5 succeed?

Mr. STERN. I do not think that many.

The CHAIRMAN. Not that many?

Mr. STERN. No.

The CHAIRMAN. Then, what is the use of worrying ourselves to take care of those people, 1 in 5 of whom succeed, the rest of them lose all they have?

Mr. STERN. I believe you can fix the situation so that the other 4 out of that 5 are not going to lose all they have. You are going to protect them against themselves by not letting them get in on a rapidly advancing market on a small amount of margin. In other words, of you take 60 percent of the purchase price, as provided in this bill, in the case of a stock that is selling, we will say, at 50, he is entitled to 20 as a loan value. If that stock should double to 100 next week or next month, it will be entitled to twice as much as its loan value. My claim is that that method is entirely wrong, in that it allows credit to build up at the same rate at which the stock rises.

The CHAIRMAN. The suggestion I am offering is this. Would it not be pretty good legislation if we should save these four people out of five who are losing money all the while, from further losses?

Mr. STERN. I do not think that is the problem, Senator Fletcher. I think the problem is to stop credit expansion at a rapid rate. In other words, a man goes into the market and buys the stock, and next month it is up \$20, and he goes to his broker and says, "Let me have a thousand dollars. I want to buy an automobile." That man is pyramiding just as surely as the man who buys more stock, because he is using credit and creating credit that goes into industry to stimulate enterprise on something that is very intangible.

The CHAIRMAN. How would you regulate this flow of credit?

Mr. STERN. By not permitting margins to rise as fast as stocks rise. I would penalize the rise in stocks. I think the down movement will take care of itself. Increase the margins in direct proportion to the rate at which the stock goes up.

The CHAIRMAN. We are very much obliged to you.

**STATEMENT OF EUGENE E. THOMPSON, PRESIDENT OF ASSOCIATED STOCK EXCHANGES, WASHINGTON, D.C.**

The CHAIRMAN. Mr. Thompson, please state your name, place of residence, occupation or business, and for whom you appear.

Mr. THOMPSON. Eugene E. Thompson; president Associated Stock Exchanges, Washington, D.C.

Mr. Chairman and gentlemen of the committee, I am here as the president of the Associated Stock Exchanges. Eighteen of the principal exchanges of the country outside the city of New York comprise the membership of this organization, as follows: Hartford Stock Exchange, Hartford, Conn.; Baltimore Stock Exchange, Baltimore, Md.; Philadelphia Stock Exchange, Philadelphia, Pa.; Washington Stock Exchange, Washington, D.C.; New Orleans Stock Exchange, New Orleans, La.; Buffalo Stock Exchange, Buffalo, N.Y.; Cleveland Stock Exchange, Cleveland, Ohio; Pittsburgh Stock Exchange, Pittsburgh, Pa.; Columbus Stock Exchange, Columbus, Ohio; Cincinnati Stock Exchange, Cincinnati, Ohio; St. Louis Stock Exchange, St. Louis, Mo.; Minneapolis-St. Paul Stock Exchange, Minneapolis, Minn.; Salt Lake Stock Exchange, Salt Lake City, Utah; Los Angeles Stock Exchange, Los Angeles, Calif.; Los Angeles Curb Exchange, Los Angeles, Calif.; San Francisco Stock Exchange, San Francisco, Calif.; San Francisco Curb Exchange, San Francisco, Calif.; Detroit Stock Exchange, Detroit, Mich.

We have been requested to represent, in addition to our own members, other exchanges as follows: Louisville Stock Exchange, Louisville, Ky.; Seattle Stock Exchange, Seattle, Wash.; Richmond Stock Exchange, Richmond, Va.

At the beginning, I should like to have the record show, because everything I shall say here will be based upon this premise, that the local stock exchanges represented in our group, individually and collectively, are receptive to rational and constructive criticism. If out of these hearings and deliberations there shall be evolved ideas or plans for strengthening the exchanges in their proper field and in their legitimate purposes, I can promise you that they will be cordially welcomed and will be given careful and conscientious treatment whether or not this or any other bill reaches the statute books finally.

I do not need to admonish you gentlemen that you cannot destroy and moreover, that you cannot restrict the primary and legitimate activities of the stock exchanges without interrupting very seriously and perhaps disastrously the gigantic work now in progress of reconstructing the business, industrial, and economic structure of the country. We have always had stock exchanges. There were stock exchanges, called market places, long before there was a United States. They are essential and vital to the business life of this or any other progressive nation, as much so in their particular sphere as are banks or other institutions of fiduciary responsibility to the public.

We are opposed to the pending bill in its present form because we have not been convinced that it meets the requirements of rational legislation. Undoubtedly there are many things in the bill which

are good, but as a whole the measure is built upon a foundation, except for the intentions it represents, which is so insecure and rickety, so hastily thrown together, that the results cannot be otherwise than futile and mischievous.

That which is offered in this bill is unworkable. Let it go to enactment, as now framed, and you will have wrecked the stock exchanges as institutions; but the damage will not have ended there, for you will have turned the corporate securities business of the greatest industrial country in the world out of orderly channels and into the keeping of securities racketeers and bootleggers; and I think you will agree with me when I say that we have had quite enough already of this gentry in the United States.

Your bill, gentlemen, whether you wish it or not, or whether you like it or not, is aimed at the heart of national recovery.

It is the solemn judgment of our group of local stock exchanges that this proposed legislation, if passed without drastic redrafting, will result in a law so restrictive that the market places for corporate capital, so necessary to the country's economic welfare at all times and so doubly necessary at the present time, will discover themselves so hampered and thwarted in their proper functions that it will be impossible for them to retain their vitally important position in the industrial and economic scheme and set-up of the United States. Business in this country cannot survive without market places for capital stock, and by market places I mean, of course, stock exchanges.

I am not here with a blanket defense of stock-exchange practices. The exchanges have to deal with conditions and circumstances as diverse and ramified as is human nature itself. They cannot always be right; but neither could a Federal governing agency always be right. The human equation in the situation will not permit of that under any circumstances. The practices—the basic practices, at least—of the exchanges should be understood before condemnation; but unfortunately this appears not possible in the midst of a clamor and onrush of public sentiment which seemingly has rallied around misunderstanding and fallacy, rather than around fact and logic.

The exchanges have been maligned far beyond their deserts in the agitation which has led up to the situation confronting us today. After all, the exchanges were and are, as I have said, mere market places for approved securities—nothing more than that. They exist for an important legitimate purpose. They are controlled by men of proved worth in their respective communities and in the country. These men are actuated in their affairs by thoughts of the public interest as are all other patriotic citizens. I know of no other character of business in the country to which so much time is given and energy and effort exerted in the public interest as in the management and conduct of the business of the stock exchanges.

In those memorable days previous to the catastrophe of 1929 the exchanges—the market places—were open for business, and business came to them, as we all know, in avalanche proportions. That which occurred has been characterized as a speculative orgy. But were the exchanges responsible for this? I submit that they did not create the conditions in this country any more than they created

the conditions in foreign countries, which caused the banks, savings institutions, insurance and utility companies, and other large corporations to be loaded down with vast amount of unemployed money. An analysis of the conditions prevailing at that time will disclose that the cause of the economic misadventure cannot be rightfully laid on the doorstep of the exchanges. The exchanges as such did nothing to create the desire on the part of the holders of money and credit everywhere to put to work the funds which were in their keeping. They were not responsible for the concentration of the financial resources of the country at places of availability for speculation. They did not fix interest rates for brokers' loans. These things were of the nature of conditions precedent to anything of an unusual character that transpired within the exchanges themselves.

It is the opinion of our group that the provisions of this bill, as now drawn, will retard the free flow of corporate capital to such an extent that great and irreparable harm will be done. It must be obvious to all who have studied even superficially into the situation that the stock exchanges, under their own guidance and by their own rules and regulations, have constituted one of the mightiest of all the factors in the bringing out of funds for the corporate development of the country's industrial resources.

The growth of these resources has been due only in small part to private capital. The magnitude of many of the projects and enterprises requires that the capital for their creation and maintenance shall be raised in corporate form. There is no other way. It so happens, even as these deliberations are in progress, that corporate capital is needed in vast amounts for the refunding of maturing obligations. When the general business conditions have improved, even larger amounts will be required to continue the development of our industrial, agricultural, and commercial resources. If corporations are to be denied the advantages of an open public market for the raising of capital, it is very likely that the government itself will be compelled to set up an authority to care for maturing obligations, else there will be defaults in stupendous aggregates on maturing obligations during the coming twelve months. The stock exchanges heretofore have been a potent force in the enabling of corporations to raise capital; but there are grave fears that this bill will not be conducive to the maintenance of a free and open market for the flow of this needed capital. Instead of being a measure for the protection of the investor in corporate capital it may prove to be the most damaging legislation of its character that Congress has ever enacted.

Within recent years there have been wide-spread reactions reflected in public opinion against the Government engaging in private business or controlling the conduct of private business. This bill is another step in that direction. It has gained some friends and support because it purports to be a measure for the protection of the public against fluctuations in the values of securities; and in this respect, as in other respects, it strains at a futility if not at an impossibility.

The present reaching out by Congress to establish Government control of the Nation's industries, through legislation such as that now proposed, is a matter for the gravest concern. Practical and

accepted habits and customs, the outgrowth of the experience of the ages, are about to be discarded in the present instance to make way for the theories and experimentations of persons who rarely have been in personal contact with the exchanges and who know about the problems involved only through the fact that they are opposed to all things which are conventional or institutional and have a vague idea that the exchanges are within this category.

You may say, as has been said here, that the "sky did not fall" when other drastic regulatory ideas, vigorously opposed, were written into law by the Congress. That may be true. Nevertheless, legislation of this character tends to lead the country in a direction opposite to that which was contemplated by those who gave us our basic form of government. The evil is cumulative and pernicious. I do not recall that the sky fell in Russia when communism placed its grasp of steel upon the throats of the people of that country. Are there any of us here who would care to live in Russia?

There is much anxiety and unrest on the part of securities owners as to the next move that may be made; and if this bill should be passed and signed by the President, there will be certain to follow an avalanche of selling—or efforts to sell—such as we have never before witnessed. I hope the committee will not interpret this statement as being of the nature of a threat. It is not intended as such. It is merely a statement or a prediction or a warning as to a result which many of us, who have been students for years of the human tendencies in connection with securities markets, feel is inescapable.

Investigations of stock-exchange practices by Congress, lasting over a year, have brought to light only a comparatively small number of practices deserving of condemnation. We offer no defense for bad practices. The exchanges do not want them any more than you want them.

Since the beginning of the inquiry by the Senate Banking and Currency Committee, in my capacity as president of the Associated Stock Exchanges, I have visited the principal stock exchanges of the country. On these visits I conferred with the governing officers of the various organizations. Among these gentlemen I found a very earnest desire on the part of all to consider those things which have been intelligently and advisably criticized. But that is not all. The exchanges have recognized the desirability of uniform practices insofar as they can be made compatible with local conditions; and in this situation long and salutary strides also have been made. I tell you these things, so that you will know that we have not been standing still, nor have we drawn about us any cloak of pretended righteousness as a protection against just and constructive criticism.

We desire an opportunity to call attention to the several matters uppermost in our minds, and these, with your permission, we will deal with by sections.

Section 3, item 5, page 5: The term "dealer", meaning "any person engaged in a business of buying and selling securities for his own account, through a broker or otherwise", should be more clearly defined as to what is intended. Engaging in a business of buying and selling securities for one's own account is susceptible of various interpretations.

Mr. PECORA. I might interject here, Mr. Thompson, that consideration is being given to that very thing.



Mr. THOMPSON. Thank you.

Section 6, subsection (a): The prohibition designed to estop a member of a national securities exchange, or any person who transacts a business in securities through the medium of any such member, either directly or indirectly, from extending or arranging credit to or for any customer on any securities not registered upon a national securities exchange, would tend to restrict many transactions on the local exchanges. It should be borne in mind that there are stocks of numerous banking institutions, insurance companies, public utilities, and other high-grade corporations which are not listed upon any exchange. In addition, there are large numbers of Federal farm-loan bonds, joint-stock land bank bonds, Home Owners Loan Corporation bonds, and the obligations of States and their political subdivisions, as well as many others that are not or cannot be listed. Local exchange brokers would find the restrictions against loans on securities not listed upon an exchange to be very burdensome, and its effect would not only be harmful to the small broker, but the restriction would be a gratuitous discrimination against unregistered securities.

Mr. PECORA. May I interrupt you there?

Mr. THOMPSON. Certainly.

Mr. PECORA. Do you think that granting the Federal Trade Commission the right and power to exempt certain securities now unlisted in the operation of the present provision which you have referred to might meet the criticism you have just offered?

Mr. THOMPSON. In very large part.

Senator KEAN. Just before you go on—because I must leave very shortly—let me say that I have read over this list of stock exchanges that you have submitted here. Do those stock exchanges have the same rules and practices that the New York Stock Exchange has?

Mr. THOMPSON. I would not say, Senator, that they have the same rules. I think they follow the general line, as far as they can be adapted to their conditions.

Senator KEAN. Would you say that they have the right to call upon their members to say who had traded in air stocks during the period that we have been considering here?

Mr. THOMPSON. I think the governing committees of any of those exchanges could obtain that information.

Senator KEAN. Do you think you could obtain the information for this committee?

Mr. THOMPSON. I shall endeavor to do so. I do not know of any exchanges where air stocks are being traded in at the moment; not on the local exchanges.

Senator KEAN. I think they are traded in.

Mr. THOMPSON. I am sure if there are any particular ones we would be very glad to ask for them, Senator.

Senator KEAN. I would like the committee to ask by wire if air stocks are traded in on those exchanges and, if so, whether they will ask their members to submit to the committee the amount of trades.

Mr. PECORA. In other words, have the members of those exchanges responded to a questionnaire generally like the two questionnaires sent out by the New York Stock Exchange?

Senator KEAN. Yes; if air stocks are traded in on those exchanges.

Mr. THOMPSON. The same dates as requested of the New York Stock Exchange?

Senator KEAN. Yes.

Mr. THOMPSON. I will endeavor to obtain that for you.

Mr. PECORA. Have you copies of the questionnaire of the New York Stock Exchange?

Mr. THOMPSON. I have not.

Mr. REDMOND. I think I have extra copies down at the hotel.

Mr. PECORA. We probably can find some around here to give this gentleman.

Mr. THOMPSON. To deny the use of such issues for credit purposes manifestly would be not only a discrimination against the securities themselves, but it would be, if you will permit the expression, unfair and unsound legislation.

It would appear that a nonmember broker, if he were doing no listed business, could extend credit in full on unlisted securities, and this obviously would create an unfair and extremely dangerous practice by forcing holders of such securities to seek credit and trade with brokers who are not members of any exchange; and under these conditions, it hardly is necessary to point out, the country soon could be overrun by securities loan sharks and securities bootleggers.

Section 6, subsection (b): This subsection provides certain restrictions as to marginal transactions, and presumes to establish, at the moment the law becomes operative, a margin ratio which may be out of all proportion to the needful protective requirements under other conditions than those presently prevailing, or, for that matter, under any future conditions. True, the commission is given power, when deemed appropriate in the public interest, to establish lower loan values, which could mean only higher and not lower marginal requirements. We submit that the maker of the loan should be a better judge of the loan and the collateral than could be a disinterested person, or even a Government body empowered to establish at a specific time the values and ratios. Then, too, if it should be determined that a bank handling business for its customers comes under the classification of dealer, which is possible under the wording of the bill, the bank would be compelled to abide by the same marginal requirements as those provided for a broker.

Many insurance companies, industrial companies, and other organizations requiring liquidity of capital frequently enter the loan markets when they have surplus funds which they may not care to invest permanently. It is not uncommon for such funds to be placed through the medium of one who is a broker. Under this section it is not difficult to apprehend the likelihood of loans being diverted to Canada and other foreign countries.

There is also in this clause a discrimination definitely in favor of persons of wealth who may have paid for their securities in full more than 30 days prior to the making of loans; whereas the person of moderate means is denied these advantages because he has not the capital with which to pay for his securities 30 days prior to seeking a loan. A drastic deflation of accounts will take place if this becomes effective.

Section 6, subsection (d): It is provided here that the commission shall by rules and regulations prescribe the times and the specific

methods for calculating values for purposes of loans, the times at which initial and subsequent payments shall be made by the customer, the notice to be given to the customer, and the method to be followed in protecting the broker or dealer in closing out an account. Through operation of rules and regulations which have not yet been determined upon but which later are to be promulgated and made a part of the law itself, this section may prove harmful to a broker carrying accounts by barring him from taking the steps necessary to protect himself against loss; and also the customer might be injured by the creation of an additional indebtedness.

It would appear that there is a distinct conflict or inconsistency as between subsections (d) and (b), in that subsection (b) definitely says what the marginal requirements for a loan shall be, unless the commission shall prescribe a lower loan value. The relationship existing between customer and broker thereupon, under the provisions of this section, will be separated by a barrier which would make the broker a mere automat and give him no latitude in assisting his customer in the event of an active declining market; and thus many persons would be forced to suffer losses which otherwise could have been saved.

Section 7, subsection (a): This item apparently prohibits a broker from carrying accounts for dealers, a practice which at present is common among local exchange members.

Loans could not be obtained on registered securities except from member banks of the Federal Reserve System. And here again we have a serious restriction against which the local exchanges strongly protest. The provision removes the opportunity which always has been open to brokers in the smaller centers to borrow from private sources.

Section 7, subsection (b). This subsection would operate unfairly against the smaller houses throughout the country, although they may be completely solvent, by automatically reducing the amount of business they can transact to accord with the amount of capital presently at their disposal. In addition it restricts the growth of their businesses unless it be possible for them to raise additional capital, which is obviously difficult to do under existing conditions. It accomplishes nothing except to put a premium on capital, and thus further centralize money power. The past records of brokers clearly show this subsection to be too drastic.

Section 7, subsection (f). There should be amendments here to make it possible to handle routine business involved in the delivery of securities sold in order to cover the normal delay in deliveries due to distance from the exchange upon which the business is transacted. Referring to lines 1, 2, and 3, page 15, there should be an explanation here as to what is meant by "crediting of interest on account of loan." The language now carried in the bill indicates that interest must be computed and credited by a broker when he has used certificates which he is carrying to make delivery against other certificates, of the same stock, which he has sold for a customer at a distant point and which certificates are in transit. The question arises as to whose stock was used or "loaned" and to whom the credit should be given. The door of confusion is opened here, and also the door of discrimination.

Section 8, subsection (a), item 3: In lines 5 and 6 the bill uses the words, "or a false or misleading appearance in respect of the market for such security or securities." We submit that the execution of an order for a customer in which the broker causes false or misleading appearances in respect of the market has no place in this bill. We cannot too vigorously oppose this entire section. The civil penalties which are intended to protect persons, who have been intentionally misled in the recovery of damages, opens the door wide not only to those who have suffered losses, but also to those who may claim to have suffered losses when in fact they have suffered no losses at all.

Section 8, subsection (a), item 7: There should be a clearer definition of what is meant by "pegging", "fixing", or "stabilizing." The language is susceptible of various interpretations. There are times when stabilization is helpful. The Government itself believes in the principle of pegging or stabilizing. It may be found that, for example, an investor is ready to buy all of a certain stock or bonds obtainable at a fixed price—perhaps at a concession from the prevailing market. Under this section he could only do this by disclosing his intent to the exchange and to the commission, and by such disclosure he would run the risk of defeating the accomplishment of the investment. Other reasons could be cited for objecting to the language of this section.

Section 8, subsection (a), item 8. This item deals with the practice of acquiring the floating supply of any particular security for the purpose of causing its price to rise on the exchange, through control of the floating supply. The local exchanges strongly protest the language of this section. It is not uncommon for a member of a local exchange to buy all of a floating supply of a stock, in some cases causing the price to rise very perceptibly. It should be observed that the execution by a broker of an order to buy at the market on some of our local exchanges cannot result otherwise than to force a rise where there is only a limited amount of the stock for sale, which is frequently the case.

A broker may be given an order to buy, say, 100 shares of a certain bank stock, or an insurance stock, or a high-grade preferred stock, or an inactive high-grade industrial common stock, not knowing the intention of the customer, and then upon attempting to make the purchase find that only limited offerings are available; but the customer insists that he wants the stock, which compels the broker to bid up the stock or else take the offerings which are available, and this immediately causes the price to rise. The language of the bill mentions merely the acquisition of the "floating supply" for the purpose of causing the price to rise. There isn't a broker in the country who could ever know where he stands with language such as is used here.

Section 8, subsection (a), item 9. It appears that this provision was designed to put an end to trading in "puts", "calls", and other purely speculative options or privileges. But the language is such that it involves another very important matter in the affairs of members of local exchanges. It has occurred frequently that a member of a local exchange, in the handling of large blocks of securities to close an estate, or being confronted with the necessity

for liquidating sizable loans or other holdings, has found it impossible to distribute the securities on the exchange and is required to find a private purchaser. The amount of work necessary to handle a transaction of this kind often goes far beyond the ordinary commission which is governed or fixed by the rules of the exchange upon which the security is listed. An attempt to sell larger blocks of stock on an exchange than is warranted by the local market, without giving due consideration to local financial conditions, might prove not only a futile experiment but a very disastrous one. When more securities are forced upon the market than it is capable of absorbing, there is just one answer—declining prices.

If we grant that "puts", "calls", etc., for speculative purposes are wrong, we submit that legitimate options or privileges are required and are necessary in most lines of business.

Mr. PECORA. Do you grant that puts and calls are wrong?

Mr. THOMPSON. I say, if we do grant it.

Mr. PECORA. Do you grant it, as a matter of fact?

Mr. THOMPSON. I am open-minded about it. I have explained it just a little later, so it probably will throw a little light on it.

Mr. PECORA. All right.

Mr. THOMPSON. It will be found that options are a necessary part of the work of a broker. It is a customary practice, and is just as legitimate and proper as any other branch of the brokerage business. Therefore, this section should be revised so as to permit options under proper conditions. Consideration should not be overlooked of the fact that corporations in raising new capital must frequently issue rights to their shareholders to purchase new securities, in order to provide the corporations with increased capital. Under the language of this provision it readily could be construed a violation of the law where corporations have engaged themselves only in the legitimate function of increasing their capital.

Section 8, subsections (b), (c), and (d): We are unalterably opposed to subsections (b), (c), and (d) of this section because they provide penalties, over and above fines for violations of the law, which we submit have no place in a regulatory measure. The liability for losses is too arbitrarily fixed to meet the demand of fair play and justice, and the opportunity for blackmail is too apparent for safety. That which is established by this wording will subject every broker to continued, unlimited, and unjust liabilities and will weaken the entire structure of the brokerage business.

Section 9, subsection (a): We believe that short selling occupies a proper and legitimate place in the securities market, and unless the commission shall be directed to prescribe rules and regulations that will permit short selling we are opposed to this subsection. Under any circumstances a short sale should be more clearly defined than at present in the bill. The powers given to the commission under the present wording of this subsection cannot but be the means of regulating the course of the market.

Section 9, subsection (b): Stop-loss orders are essential in order to limit losses and as a protection against further losses not only to the broker, who may be carrying an account under the required margin, but to banking institutions having loans upon stocks and bonds as collateral and wishing to protect themselves against a loss.

If the subsection is to remain in the bill, we suggest that in line 19, after the word "stop-loss", there be inserted the words "which does not close out an existing commitment."

Section 9, subsection (c): This subsection is so vague and inadequate for the purpose evidently intended to be accomplished that it should be stricken out in its entirety. To allow it to remain leaves in the hands of the commission a weapon with which that body might determine upon anything as being detrimental to the public interest or to the proper protection of investors.

Section 10: We particularly direct your attention to this section, because it will destroy the means of livelihood of hundreds of brokers, members of local exchanges, who now act both as a broker and as a dealer in, or underwriter, or distributor of securities. It will drive many brokers out of business. The amount of business done by many brokers on the local exchanges is not alone sufficient to enable them to maintain their organizations, and to deprive them of the privilege or right, which they have always enjoyed, of acting also as a dealer in, or underwriter, or distributor of securities would be treating them most unfairly with no compensating benefit to the public at large. Quite a few of the smaller stock exchanges undoubtedly will be forced to close if the harsh treatment provided in this section is meted out to their broker-members.

It is impossible to be a strictly local broker and not handle local investments. This section would paralyze the local markets. As brokers we insist that we have a right—an inherent right, a perfectly legitimate right—to operate as brokers and dealers. The regulations of all the local exchanges are, we believe, ample to prevent a broker from acting as a dealer in the execution of any orders wherein the broker is required to act as agent on a commission basis. The functions of dealers and brokers, respectively, are easily differentiated in the conduct of business. Not only do the stock exchanges have stringent rules covering this matter, but most of the States have laws of agency and principal. This section, if enacted into law, will drive business in considerable volume away from the protection of the regulated national stock exchange member to the unregulated, unlisted dealer, with damage to the national stock exchange member and the investor alike.

Should the section be permitted to stand, we direct your attention to lines 14 to 16 inclusive on page 21 of the bill, wherein it is stated that it shall be unlawful for any members of a national securities exchange to act as a specialist unless registered as such. If it is possible to do business under this bill, we submit that it is essential to have specialists to conduct the business of brokers on the exchange. Specialists have a peculiar and particular function which, we believe, is not generally understood and is usually misunderstood. We fear that this prohibition against specialists was drawn without due consideration of the problems of local exchanges. In line 20 on page 21 it seems that the words "fixed price orders" should be more clearly defined as to what is actually meant. The language as now used would appear to require that after rules and regulations are prescribed by the Commission, specialists will then be prohibited from making a transaction except on an order giving a definite fixed price. Such a restriction as this will prevent the investor from

giving what is commonly known as a market order and will restrain him from making a purchase at anything other than a definite price. Also may I direct your attention to one of the important functions of a specialist, which is that he must execute stop-loss orders, such orders being usually for the purpose of preventing further losses.

Stock-exchange regulations covering the operations of specialists are very stringent and can be quickly invoked.

Section 11, subsection (a): This provision makes it unlawful for any person to effect transactions in any securities on a national stock exchange unless a registration is effective as to such issue in accordance with the provisions of this act and the rules and regulations made by the Commission thereunder and unless such security or securities have been issued.

Consideration should be given to the proposition that, as this subsection in requiring registered securities to be issued would of necessity force the initial trading in rights and additional issues of registered securities to be conducted on an unlisted basis, it would seem logical that they should be traded under the control of and on the national securities exchanges where the primary security is traded in. Provision should, therefore, be made for such trading under proper protective provisions.

The subsection provides certain requirements to be complied with by a corporation before the securities may be registered with a national securities' exchange. These requirements place upon the exchanges the burden of forcing compliance by corporations with this whole section. We submit that it is not fair to the exchanges to make them members of the policing authority of the Commission.

We further submit that this section will cause the delisting of many corporate issues, and as these delistings occur, the public will have no protection from unregulated markets such as they enjoy today, even though the Commission is empowered by section 14 to make rules and regulations governing unlisted trading.

In particular we direct your attention to article 2 of subsection (c), lines 19 to 23, page 24, of the bill. Corporations here are required to furnish certified independent public audits for preceding years (the number not stated). It may happen that corporations applying for listing on the local exchanges have not had certified public audits for previous years, and to obtain such audits the expense would be prohibitive. It may also be that in some cases the audits are not obtainable; and then, too, it may be a new corporation without audits.

Lines 21, 22, and 23, page 24, require that such other information be furnished as the Commission, by rules and regulations, may require as necessary or appropriate for the public interest or for the protection of investors. This language makes it impossible to know just what the Commission may or may not require. In this same subsection, line 5, page 25, attention is drawn to the authority vested in the Commission to make rules requiring the Commission's approval for the removal of any securities from listing. This might prove a detriment to the public interest in case the exchange itself should find it expedient to act forthwith in the suspension of trading in any securities listed thereon in order to prevent fraud, misrepresentation, or manipulation, or for various other causes that might

arise. The power of removal from trading or listing, or both, should inherently rest with the exchange.

Mr. PECORA. Don't you think the Commission might be in position to act promptly upon the request of the exchange to strike an issue from its list?

Mr. THOMPSON. It may. It is doubtful. I say it is doubtful in the sense that it might not look at it in the same light that the exchange would; that is all.

Section 12, subsection a, article 2: We doubt the ability of many corporations to furnish quarterly balance sheets and profit-and-loss statements by independent public accountants. Such requirements would mean that corporations whose securities are registered and listed on the exchanges would be compelled almost continuously to employ independent auditors, and thus there would be placed such a burden and expense upon the smaller corporations listed upon the local exchanges as to force them to withdraw their securities from listing. The expense for such work would hardly seem to be justified.

Mr. PECORA. By that you mean to suggest that there should be no regulation whatever for corporations whose securities are listed, to furnish auditors' statements?

Mr. THOMPSON. I am very strongly of the opinion that there should be audited statements at least once a year, and I have been an advocate and we have recommended to our local exchanges that they exact reports quarterly from the corporations; not insisting, however, that they be certified independent auditors' reports.

Mr. PECORA. Would not independent audits be preferable?

Mr. THOMPSON. I hardly think it is fair to many of the small corporations. Some of them have very limited capital compared with the capital of larger corporations. The time required to get up these audits is very long in some cases.

Mr. PECORA. For small corporations?

Mr. THOMPSON. Not for small ones; but if we are going to furnish these independent audits of all corporations listed on the exchanges, there is going to be quite a big business in the auditor's line, and it would be difficult to get them to come in just when wanted, perhaps.

Mr. PECORA. This section is not intended to boom the auditors' business.

Mr. THOMPSON. It unfortunately will, I am afraid.

Mr. PECORA. It is intended to obtain more reliable information for stockholders and the investing public.

Mr. THOMPSON. I am heartily in favor of anything that will give the public more information, but at the same time I feel very strongly that if the small corporations listed are required to go to the expense of quarterly audits—

Mr. PECORA. What about semiannual audits?

Mr. THOMPSON. I heartily favor quarterly audits, but I do not think it is possible to get it done. I do not think they will stand the expense. As to semiannual audits, quite naturally the burden would be very much less. I would like to see it if it can be done.

Mr. PECORA. You do not mind these interruptions, do you?

Mr. THOMPSON. Not at all.



In article 3, of this subsection, we hold that "monthly reports, including, among other things, a statement of sales or gross income", may prove exceedingly misleading and the purpose for which the information was intended defeated by a wrong interpretation which could easily be placed upon such monthly figures. If this clause is enacted there should be a clear definition of what is required in the monthly reports besides sales or gross income.

Section 13, subsection (a): This requires that, before the solicitation of proxies "in respect of any security registered on any national securities exchange" there shall be filed with the Commission certain information among which shall be a list of the names and addresses of the persons from whom proxies are to be secured. This would mean, if the section is literally interpreted, that, whenever proxies are sent out by a corporation for the usual annual meeting, the corporation must furnish a list of its shareholders and their addresses to all stockholders. Attention is directed to the enormous expense burden that this will place upon some of the larger corporations.

Mr. PECORA. That criticism would be obviated, would it not, if the requirements were limited to the furnishing of a list of shareholders and their addresses to the regulatory body?

Mr. THOMPSON. Yes, sir.

Section 13, subsection (b), line 12, page 27: It might prove exceedingly difficult for corporations to obtain quorums for annual meetings if brokers carrying stock for customers are required to obtain specific authorization for each proxy. If this section should stand, could not the word "specific" be eliminated so that a general written authorization will cover all requests for proxies?

Mr. PECORA. Would not that keep the door open to most of the abuses now in existence?

Mr. THOMPSON. It may. I grant you it would not close it at all.

Section 14. Should this section stand, it becomes more than a possibility that the market for unlisted securities will be completely destroyed. The provision clothing the commission with power to prescribe whatever may be appropriate in the public interest for the protection of investors in what is known as "over-the-counter markets" is so vague, misleading, and lacking of definition that it should be removed from the bill.

This section also gives the commission power over brokers and dealers in State, county, and municipal bonds as well as Federal farm loan, joint-stock land bank, Home Owners' Loan Corporation bonds, and the stocks and bonds representing many other high-grade investments.

Mr. PECORA. In preceding portions of your statement you call attention to what you claim to be provisions of the bill which discriminate against listed securities in favor of unlisted securities. When you reach the section of the bill which purports to give the Federal Trade Commission the power to deal with unlisted securities, you object to it.

Mr. THOMPSON. We do in this respect, Mr. Pecora. We feel that there are quite a number of unlisted securities which by their very nature cannot be listed. Let us take, for instance, as an illustration, the serial bonds of a city, and so on—

Mr. PECORA. Don't you think that that part of the objection might be met by a provision giving the Federal Trade Commission the power to exempt certain securities of the sort that you have referred to?

Mr. THOMPSON. Yes; in part, but there are many other securities. There are securities of very high grade, insurance stocks and bank stocks, and of many industrial concerns of exceptionally high grade, that are traded in today by brokers who are members of recognized exchanges.

Mr. PECORA. The power vested in the Federal Trade Commission to declare such exemption would meet that criticism, would it not?

Mr. THOMPSON. Yes.

Section 15, subsection (B), article 2, lines 20 and 21: In restricting the delivery of securities by directors, officers, or principal stockholders to within 5 days of sale the bill makes no allowance for Sundays or holidays. In the event of sales in the East from the Pacific coast, or on the Pacific coast from the East, or other remote places of the country, the 5 days' limit is too short. Also, should a holder of securities be out of the country and wish to sell on the prevailing market, under the 5-day clause he is barred from doing so.

Mr. PECORA. He would not be barred if he had his securities under the control and custody of someone in the community.

Mr. THOMPSON. But if he attempted to come home to obtain his safe-deposit box, he would.

Mr. PECORA. I mean, a person could very easily take some necessary precautions to protect himself from the harshness of any such provision.

Mr. THOMPSON. Ordinarily; but there are many cases that arise where a person is out of the country and who makes up his mind to act in a hurry.

Mr. PECORA. But he could leave his securities in such a custodianship as to make them easily available to the person in whose custody they are left to execute the order to sell.

Mr. THOMPSON. Ordinarily that would be true, but I do know of instances that have arisen where persons out of the country have desired to sell their securities held in their safe-deposit boxes. A very perceptible rise in the securities was made known to them after they had left the country, and it caused them to make up their minds that they wanted to dispose of them.

Mr. PECORA. You know the custom has grown up and developed of persons leaving their securities for safe-keeping in the hands of banks and trust companies?

Mr. THOMPSON. Yes; but there are a number of persons who keep them in safe-deposit boxes just the same.

Mr. PECORA. If they contemplated going out of the country, they could make proper arrangements. It is open to every person to relieve himself of that so-called "hardship."

Mr. THOMPSON. Perhaps that would be a precaution that everyone would not take.

Mr. PECORA. If he would not take it, it is his own fault.

Mr. THOMPSON. It should also be taken into consideration that on the Pacific coast transactions are made in securities from Honolulu and Alaska where it is not possible to obtain delivery, to the place where the transactions are made, within the 5-day limit. San Fran-

cisco exchanges have a substantial volume of business in the pineapple and sugar stocks from Honolulu and canning stocks from Alaska and Honolulu.

Section 16: The expense of examination provided in this clause is unfair. Most of the exchanges and some of the States now conduct examinations. The securities business is subjected to a greater taxation on the character of business transacted than probably any other business in the country.

Section 17, subsection (a), page 32, line 2: The words, "influencing the judgment of an average investor", we submit, is language too vague and inadequate to determine just what is the judgment of the average investor. In the penalizing clause the door is wide open for those who are prone to blackmail, and the burden of proof is placed upon the broker.

Section 17, subsection (e): It would seem that the broker, by this subsection, must face a continuing liability, as either a purchaser or a seller of securities who has discovered a violation of this section of the law will have a right of action against the broker at any time within 2 years "after the discovery of the violation." What is meant by the word "discovery" as used in this connection? How can an ordinary citizen, may I ask, discover that a law has been violated in the sense that he, thereupon, will become both the judge and the jury in the matter? And if the citizen is to be authorized to exercise judiciary prerogatives, why not go the whole route and authorize him to assess punishment?

Mr. PECORA. Don't you think that argument is far-fetched?

Mr. THOMPSON. It may be. On the other hand, it is possible.

Mr. PECORA. The word "discovery" used here has its counterpart in many statutes involving civil remedies.

Mr. THOMPSON. It may be.

Mr. PECORA. I do not know of any cases in which courts have found difficulty in determining just what was meant by the term in a statute.

Mr. THOMPSON. You can readily see, Mr. Pecora, that 5 or 6 or 7 years from now you can discover that something has been violated.

Mr. PECORA. It has already been suggested, and as far as I know it has found favor, that there be a further limitation, that such an action must be brought within 6 years.

Mr. THOMPSON. There should be a time limit.

Section 18, subsection (A): The extending of authority to the commission to make "such rules and regulations as it may deem necessary or appropriate to carry out and to implement, administer, and enforce the provisions of this act, including the rules and regulations governing the form and content of registration statements and reports for various classes of exchanges, members, securities, and issuers, and defining accounting, technical, and trade terms used in this act" is a power which we feel Congress, even if constitutional to do so, which is doubtful, should not delegate to a commission of any kind or form. There is the power in the commission also to rescind and change its rules and regulations. To pass this authority on to a commission, in this instance, is to place those doing a brokerage business in a class by themselves where they shall have no rights whatever, not even the right to be heard when the commission is

formulating the rules and regulations which are to become part of this law. We protest the broad powers conferred upon the commission in this provision.

Subsection B of this same section, among other things, provides that the commission shall determine the method to be followed in the preparation of accounts, in the appraisal of assets, liabilities, and so forth, all of which can go a long way toward compelling corporations to give to their shareholders, and to the public, such statements as may be misleading and in serious conflict with previous practices. Under subsection A of this section the commission can step in and operate an exchange at any time. We submit that this subsection should be entirely eliminated.

Mr. PECORA. Are you not in favor of uniform systems or methods of accounting?

Mr. THOMPSON. Absolutely.

Section 20: This section provides, among other things, that whenever the commission shall be of the opinion that any person "is about to violate any provision of this act" and when any person is "about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this act, or of any rule or regulation prescribed under authority thereof", the commission may proceed against such person in any United States court to enjoin him and prosecute him for having an intention, which may be nothing more than a suspicion or an inference. We strongly protest the language contained in this section.

Mr. PECORA. Don't you think it is well to try to lock the stable door before the horse has been stolen sometimes?

Mr. THOMPSON. I think perhaps it might well to do so. That is an old saying and that is very well stated, but at the same time what an intention will be is pretty hard to determine. I may have some ideas about a matter, but I have no intention of doing anything whereby I would be forced to defend myself in the courts.

Mr. PECORA. Courts are every day called upon to determine with what intent an act is done.

Mr. THOMPSON. Let us not put anything more on the courts of that kind. I think we have too much of it now.

Mr. PECORA. The courts are not complaining.

Mr. THOMPSON. Section 22: If the information required by the commission is to be made available to the public, we believe the benefit to be derived by the public will be barred by the prohibitive cost of such information. Thus we base upon the cost of information available to the public by the Federal Trade Commission under the Securities Act, these costs varying, I understand, from \$40 to \$60 per issue of securities.

This in the event that the information is to be placed open and available for the public to see, in the commission.

Section 24: Lines 24 and 25, page 43, makes use of the words "false and misleading in any matter sufficiently important to influence the judgment of an average investor." The question of who is and what constitutes an average investor is one difficult of determination even by Congress. The liability under this clause is so unreasonable and the penalties so severe that instead of making the bill one of regulation it becomes an opening for persecution.

Section 27, subsection (b): Many exchanges today hold listing contracts and agreements with corporations. Some of these contracts covering the listing requirements and agreements between the exchanges and the corporations have been in force for years. Consideration should be given to such long-standing contracts and relations.

Section 28: This section discriminates against brokers and dealers in favor of the individual, enabling the individual to purchase securities direct from foreign countries but forbidding a broker or dealer from making such purchases. This section will encourage investors to place their orders direct in foreign markets.

Section 29: We vigorously protest against a tax of any kind whatsoever being levied upon the exchanges, or the brokers engaged in business thereon, for the purpose outlined in this section. The business of buying and selling securities is already bearing a greater proportion than is its share in the way of Federal taxes; and the revenue derived by the Government, if it is necessary to have a regulatory measure, is more than ample to bear any expense involved in the enforcement of the act.

Mr. PECORA. The tax that you refer to is one and five hundredths of 1 percent?

Mr. THOMPSON. Yes. I might say, in addition to the tax levied by the Federal Government, there are some of the States that also levy a tax equal to that of the Federal Government upon the securities business.

Section 30: The way is cleared by this provision for the employment by the Commission of persons either with or without the peculiar qualifications necessary to the handling of delicate relationships, who frequently no doubt will consider it necessary to step into situations involving the very confidential relationships or understandings already existing or to exist between brokers and customers. No protection is afforded here either in the development or the maintenance of relationships of this character, which are considered so valuable and are so highly prized by both brokers and customers. Yet an incompetent employee of the commission, who is in his position without sanction of the broker, but whose compensation is paid in part by the broker, may find himself in a position where he can either by ignorance or design wreck business associations of this kind which have lasted for years.

The burden of expense upon the broker, particularly the small house, provided for in this section is likely to prove prohibitive.

Then I have the figures showing the number of transactions in shares of stock on the local stock exchanges outside of New York from 1929 to 1933 by the year and the total.

(The tabulations submitted by Mr. Thompson appear in full at the conclusion of his statement in the printed record only.)

Mr. PECORA. Have you any statistics that you could include showing the market value of securities listed on these various exchanges?

Mr. THOMPSON. No; I have not, Mr. Pecora. One of these is the same information as to the par value of bonds. The next one gives as of February 19, 1934, the total numbers of shares and the total par values of bonds listed upon the local exchanges outside of New York.

The general impression is that the National Securities Exchange Act will only affect the New York Stock Exchange. Never was there a more erroneous impression. I submit herewith tables showing that there are listed on stock exchanges outside of the city of New York 2,140,015,288 shares of stock and \$10,960,816,255 par value of bonds and that the volume of transactions for the past 5 years, as officially reported by the local exchanges, reached a total of 750,549,338 shares and \$199,663,557 par value of bonds respectively.

Mr. PECORA. Mr. Thompson, where did you get the notion the general impression is this bill affects only the New York Stock Exchange?

Mr. THOMPSON. I do not get the notion, Mr. Pecora. It is the general impression that prevails. It was aimed at the New York Stock Exchange.

Mr. PECORA. There is nothing in the act that says that.

Mr. THOMPSON. I did not say so. I am talking about the general impression that prevails. I did not say the act said so.

Mr. PECORA. I have moved among different classes of persons, and this is the first time I have heard that thought advanced.

Mr. THOMPSON. Many of the provisions of the bill seem to be aimed more particularly at the operations on the larger markets, say the New York Stock Exchange.

Mr. PECORA. All the markets.

Mr. THOMPSON. Yes, sir; but many of the provisions of the bill are applying to the local conditions throughout the country, which are not in the same class as the larger national market in New York. The present bill would seem to be predicated upon the mistaken premise that corporations and stock brokers will somehow contrive to continue their normal functions despite the drastic regulations imposed by the measure. I respectfully submit, on the contrary, that corporations will immediately and in great numbers remove their securities from listed trading to avoid the burdens the act seeks to impose upon them, and the public thereby will not only fail to obtain the results hoped for from the act but automatically the market for these securities will be thrown upon the street or upon the over-the-counter market, thus depriving the corporations and their securities owners of the admitted and certain benefits of a regulated market.

Mr. PECORA. Mr. Thompson, aren't you mindful of the fact that under section 14 the Commission will have the power to prescribe rules and regulations governing transactions in the over-the-counter market?

Mr. THOMPSON. I am not unmindful of that, Mr. Pecora. I am rather of the opinion that if the bill is enacted in the present wording, corporations will simply remove the stock from listing and let it fall in whatever course it will.

Mr. PECORA. What reasons have you for that?

Mr. THOMPSON. Because of the expense involved in it.

Mr. PECORA. What expense?

Mr. THOMPSON. The expense upon the corporation and requirements of adhering to the regulations.

Mr. PECORA. What expense?

Mr. THOMPSON. Well, the expense, first, in the certified public audits.

Mr. PECORA. You have already indicated that you are in favor—

Mr. THOMPSON. I am.

Mr. PECORA. Of having audited statements.

Mr. THOMPSON. I am in favor of it, but I will grant you that corporations will not stand the expense.

Mr. PECORA. You think that they would forego the advantage of having their securities listed in order not to meet the expenses of the cost twice a year?

Mr. THOMPSON. On the local exchanges they would, I think.

Mr. PECORA. Do you think the stockholders would sanction such action?

Mr. THOMPSON. I do.

Mr. PECORA. And have them dealt in in the over-the-counter market?

Mr. THOMPSON. I am not talking about where they shall be dealt in, because if the Commission prescribes certain rules and regulations under this bill they may not be dealt in at all.

Mr. PECORA. Corporations then, in order to avoid the expense of an audited statement twice a year, would prefer to destroy the liquidity of their own securities by withdrawing them from a market entirely? Is that your fear?

Mr. THOMPSON. Our premise in this matter is based upon four quarterly audited reports and this memorandum is drawn upon that statement. Now, what will happen if there are only two, I do not know. Certainly the burden is much lighter.

But I do say that to comply with the matter of soliciting proxies, is another expense; I could not enumerate them all to you at the moment, but there are certain expenses in there that the corporation will have if its securities are listed.

The CHAIRMAN. And yet you think they ought to make these semiannual audited reports?

Mr. THOMPSON. I should like to see quarterly reports, Senator. I stated that several times. But I do not see how it is possible to force corporations to go to the expense of quarterly audits. There are many corporations on our local exchanges with a capitalization of three or four or five hundred thousand, or six hundred thousand, some of them a million, and a great deal more, but we have many small corporations.

In the same manner I am confident that many if not a majority of brokers, particularly those who are members of local exchanges, will be unable, if not unwilling, to comply with the provisions of the act and that as a result the local exchanges themselves will cease their existence.

We may presume that the members of the Federal Trade Commission, as at present organized, have been carefully selected and are wise and prudent in the execution of their duties and responsibilities. Nevertheless, entirely too much power is placed in the hands of the commission by the terms of this measure. The stalking menace of bureaucracy is apparent in the bill's general purport and in

all its passages. The exchanges will have no equal voice in the conduct of their own affairs—the regulatory features are too rigid and too unwieldy to permit of that, even if the Commission were not vested, as it is under the bill, with authority so broad that it can regulate if it likes or it can take things into its own hands and actually administer the business of the exchanges. More than that. The Commission by the bill is given power to restrict and control the credit system and it is given control of corporations regardless of whether or not they are engaged in interstate commerce.

Mr. PECORA. How do you think the bill gives the Commission power to control corporations?

Mr. THOMPSON. It gives the Commission power to control the kind of statements that they shall issue, appraise the assets, the liabilities, and many other things that are mentioned there in the bill.

Mr. PECORA. Then you think that the provisions giving the Commission the right to call for certain statements, prescribing the form and content of such statements, is equivalent to the power to operate the business of the corporations?

Mr. THOMPSON. I cannot see how it would be possible for a corporation to go along and conduct its business the way we will assume it has been running if the Commission comes in and sets up certain rules and regulations that it must abide by in order to have its securities listed on the exchange.

Mr. PECORA. What are the rules and regulations that you have reference to that the Commission could adopt?

Mr. THOMPSON. Well, we have already mentioned several of the expense matters that they go to. The bill goes further, Mr. Pecora, and states that they shall determine the appraisal of the assets, the liabilities.

Mr. PECORA. That goes back to the determination or the adoption of a uniform system of accounting, doesn't it?

Mr. THOMPSON. Not necessarily.

Mr. PECORA. Well, I think it does.

Mr. THOMPSON. Not at all.

Mr. PECORA. I think that is exactly what is aimed at.

Mr. THOMPSON. I cannot agree with you on that.

Mr. PECORA. Merely because the Commission is given the power to determine what shall be the form and content of the statement of condition is, to my mind, rather a tenuous basis upon which to say the Commission is thereby given the right to control the corporation. You might just as well say that the bookkeeper or the person in charge of the bookkeeping of the corporation has a greater voice in the operation of the business than the president and other executive officers or the board of directors.

Mr. THOMPSON. Mr. Pecora, if you have a plant appraised at a million dollars and the Commission comes along and sets up a method by which you shall appraise that plant—they say that you cannot allow this and that—you may find that you have an appraisal of \$250,000 before you are through.

Mr. PECORA. You know the kind of abuses that are indulged in because we have no uniform system of accounting?



Mr. THOMPSON. That is quite true. I agree with you.

Mr. PECORA. Don't you think those abuses should be eliminated?

Mr. THOMPSON. I think they should be, but I do not believe they should be blamed on the stock exchanges.

Mr. PECORA. Then let us see if they cannot be by the adoption of a uniform system of accounting. The Income Tax Department requires form of income-tax statements that corporations and individuals must make. Do you think that that puts the Internal Revenue Bureau in a position of running the business of those corporations and individuals?

Mr. THOMPSON. No; but the Federal Trade Commission is given very much broader power than the income tax department is in the administration of this measure.

Mr. PECORA. Not merely because it is given the right to determine the form and content of statements. I think that is a very far-fetched conclusion.

Mr. THOMPSON. It is a safe assumption that few if any among the country's population even so much as dreamed that the law which put the Reconstruction Finance Corporation into operation would some day give that body control over the banks. Yet that came about, as we all know. Was this an expectation of Congress when the R.F.C. legislation was under consideration? If the answer to this question is in the negative, as I think it must be, then another question might properly be asked: If the Congress itself doesn't know what it wants, why leave the matter to a Commission for experimentation?

A government by bureaucracy means a government removed from the people. It means regulating the spirit of incentive out of the lives of individuals. We have heard the statement made here that the bill allows for flexibility of action. If there is flexibility of action in this bill, then by all its earmarks it is flexibility for the regulators and not for the regulated.

It is not conceivable that Congress should pass a bill so drastic as this one is in its opposition to established business principles, and so destructive of established financial market.

The last several days in this room we have heard expounded a philosophy—a sort of applied philosophy—vague to most of us but eloquent nevertheless, which is designed seeming to put the business interests and the country itself on notice that the customs and practices in our particular line of endeavor, which of our knowledge were built upon the solid rocks of experience and common sense, are no longer to guide us in the future in the United States. Whence comes this philosophy? What is its genesis? Does it spring from the minds of the men of our Nation who make up the generations that have devoted lifetimes to the study of the problems related to the operation of the stock exchanges? Do these young gentlemen fresh from the colleges who have learned about the exchanges from their own theses, and by long distance, actually have a better insight of what is necessary and advantageous to the public welfare in this connection than do those who have gained their knowledge and wisdom through circumstances of close contact with the problems themselves?

Pass this bill, declared one of the measure's proponents in this presence, and the stock exchanges no longer will be private clubs.

Mr. PECORA. You have heard the argument made that the stock exchange is a private club and hence should be without the power of State or Federal regulation?

Mr. THOMPSON. I have heard it made right here in this room.

Mr. PECORA. You have heard it made by the representatives of stock exchanges, too?

Mr. THOMPSON. No; I have not.

Mr. PECORA. Well, I have; not only here, but before the New York State Legislature, when efforts were made to regulate the exchanges in New York.

Mr. THOMPSON. I think there is nothing in that kind of talk. At best it is a specious argument. How many times have you and I heard the United States Senate referred to as the most exclusive club in the world? There is a great deal about the bill itself and about the support of its provisions here and elsewhere that savors of amateurism. It strains hard at the unattainable. It seeks to carry us to a Utopia by heading us in the direction of the Tower of Babel.

I have said that the stock exchanges are merely market places. They are that, and they are much more than that. They are human institutions. Their dependence is the public itself. Their ears are always close to the ground. They are susceptible to public sentiment and public pressure in a peculiar sense and to a greater degree than is perhaps any other widespread business enterprise in the country with the possible exception of the United States Government itself.

True, as has been intimated in some quarters, we may not have all the knowledge and all the wisdom which is necessary in the conduct of our business; but this bill would indicate that that neither those of us who are now in temporary control of the exchanges nor those who have preceded us in this capacity have ever had or will ever have any knowledge, or wisdom, or decency, or patriotism. There is a trite old saying to the effect that the proof of the pudding is in the eating thereof. We might try out this bill on the American people. But I say to you solemnly that the outcome and the result will only be contemplated through the wreck of the stock exchanges as institutions and through further financial and industrial chaos everywhere in the United States.

As a final word, let me say that the stringent provisions of this bill as now written will operate to defeat the very purposes which are sought to be accomplished. It would without doubt seriously impair if not actually destroy the value of securities markets, and thereby deprive the Federal Government and some of the States of the enormous revenues now derived from taxation on sales and transfers of securities; it would throw thousands out of employment, and it would deprive the commercial life of the Nation of those essential functions of the stock exchanges which no less a person than the President of the United States recognized when, in his very recent message to the Congress he said, in part:

It is my belief that exchanges for dealing in securities and commodities are necessary and of definite value to our commercial and agricultural life

I have spoken, as you understand, for the local exchange. Pass this bill, and you will have destroyed not only the local exchanges but all stock exchanges.

Mr. PECORA. Mr. Thompson, you have been good enough to quote the President of the United States in his very recent message to the Congress. You might also bear in mind his suggestion that "speculation with other people's money should end."

Mr. THOMPSON. I am not unmindful of that, Mr. Pecora. I am in accord with you that speculation with other people's money should end.

That is all, Mr. Chairman.

The CHAIRMAN. Then you are opposed to any legislation looking to Federal supervision or regulation?

Mr. THOMPSON. I am opposed to any Federal legislation looking to the regulation of stock exchanges wherein the stock exchanges do not have some voice.

The CHAIRMAN. I do not understand that all voice of the stock exchanges would be eliminated under this bill.

Mr. THOMPSON. I would understand that the voice of the stock exchanges would be eliminated under this bill as to the regulation; yes, sir.

Mr. PECORA. On page 4 of your statement you say:

In those memorable days previous to the catastrophe of 1929 the exchanges, the market places, were open for business, and business came to them, as we all know, in avalanche proportions. That which occurred has been characterized as a "speculative orgy"

Do you think that that characterization is wide of the fact?

Mr. THOMPSON. No; I do not.

Mr. PECORA. Then you ask the question:

But were the exchanges responsible for this?

In asking that question do you think the exchanges had no responsibility whatever for this "speculative orgy"?

Mr. THOMPSON. Mr. Pecora, that is a very difficult question to answer just in that way. I will say to you that I cannot lay to the doors of the exchanges the blame for the—just as you term it, "wild speculation", the large speculation.

Mr. PECORA. The reason I asked you the question was because later on, on that same page, you say:

An analysis of the conditions prevailing at that time will disclose that the cause of the economic misadventure cannot rightfully be laid on the doorstep of the exchanges

Mr. THOMPSON. Yes, sir; I maintain that position.

Mr. PECORA. In reading that I would gather the inference that your conclusion is that the exchanges had absolutely no responsibility for any part of this speculative orgy. That is why I asked you the specific question you now say is a difficult question to answer.

Mr. THOMPSON. Well, it is a difficult question to answer in that way, Mr. Pecora. I say the exchanges themselves had no responsi-

bility, if I had to answer your question directly. I should like to qualify it, however, if I were going to answer it in your way, and say that possibly more stringent regulations on the part of the exchanges might have operated to curtail the large amount of trading. I do not think it would have had anything to do with the question of the rise in prices.

Mr. PECORA. Then at least to the extent that those more stringent provisions were not adopted by the exchanges they were derelict?

Mr. THOMPSON. Well, I would not say that, because we are living in a day when we are learning year by year by experience.

Mr. PECORA. Well, it is because of the experience of 1929 and the time that has elapsed since then that the necessity seems to have arisen for a bill of this character.

Mr. THOMPSON. And may I say to you, Mr. Pecora, that I mentioned several times here that we are ready and willing to cooperate in anything that is constructive, where we will have some voice. But I am unalterably opposed, and I think my exchanges are opposed, to any bill of any kind, shape, or form which does not give us a voice.

Mr. PECORA. The exchanges all this while have had every voice and the sole voice.

Mr. THOMPSON. I cannot say that.

Mr. PECORA. And the result of that is evidenced by the shrinkage in security values that the chairman called attention to earlier today.

Mr. THOMPSON. I do not think that the exchanges can be blamed for the decline in securities values.

The CHAIRMAN. What you mean by saying the exchanges should have some voice is really the exchanges should control?

Mr. THOMPSON. I do not say that, altogether. If there is to be a public regulatory body, if that is decided upon by the Congress, I would feel that the exchanges should have some voice in the matter of their own regulation.

The CHAIRMAN. All right. We are very much obliged, Mr. Thompson. We will take a recess now till 10:30 tomorrow morning.

(Accordingly, at 4:47 p.m., an adjournment was taken until 10:30 the following morning.)

THE VOLUME OF TRANSACTIONS IN PAR VALUE OF BONDS LISTED ON EXCHANGES OUTSIDE OF NEW YORK CITY

	1929	1930	1931	1932	1933	Total
Baltimore.....	\$8,001,200	\$6,417,500	\$3,048,100	\$2,140,200	\$2,137,500	\$21,744,500
Boston.....	11,118,745	5,539,376	3,363,800	1,911,600	1,169,800	23,103,321
Buffalo.....	1,747,100	2,240,400	1,524,600	928,900	797,600	7,238,600
Chicago Stock.....	4,975,500	27,462,000	12,480,500	10,597,000	1,483,000	56,948,000
Chicago Board of Trade (Stock Dep't).....		53,500	281,000	283,500	196,100	814,100
Chicago Curb.....	966,500	2,538,200	963,675	73,400	422,500	4,964,275
Cincinnati.....	30,000	68,000	220,000	134,500	168,500	621,000
Cleveland.....	1,490,100	883,050	222,250	71,900	84,000	2,761,300
Detroit.....	(1)					
Hartford.....	(1)					
Los Angeles Stock.....	779,500	2,800,500	623,500	148,000	151,000	4,502,500
Los Angeles Curb.....	(1)					
Louisville.....	44,000	22,000	19,000	4,000	8,000	97,000
Minneapolis-St Paul.....	778,500	110,000	127,400	18,950	15,600	1,060,550
New Orleans.....	2,834,000	2,941,000	2,075,000	1,661,000	2,438,000	11,949,000
Philadelphia.....	6,087,074	5,882,125	11,089,222	3,948,602	1,560,188	28,537,211
Pittsburgh.....	115,000	284,000	100,000	43,000	119,000	661,000
Richmond.....	265,100	527,500	847,300	502,100	519,500	2,661,500
St Louis.....	2,021,000	2,244,000	190,000	194,000	161,000	5,530,000
Salt Lake.....	(1)					
San Francisco Stock.....	3,384,500	2,457,500	2,381,000	1,530,000	854,500	10,607,500
San Francisco Curb.....	767,500	2,533,500	1,938,500	349,000	423,000	6,011,500
Seattle.....	1,151,200	800,400	170,200	3,000	(1)	2,124,800
Washington.....	2,395,200	1,603,200	1,624,200	1,011,200	1,122,100	7,755,900
Total.....	48,911,719	67,407,851	44,009,247	25,553,852	13,780,888	199,663,557

<sup>1</sup> No bonds

THE VOLUME OF TRANSACTIONS IN SHARES OF STOCK LISTED ON EXCHANGES OUTSIDE OF NEW YORK CITY

Baltimore.....	\$1,312,270	\$743,565	\$510,773	\$350,350	\$635,753	\$3,552,711
Boston.....	25,075,468	15,413,305	12,462,142	10,299,561	13,672,390	76,922,866
Buffalo.....	4,832,045	2,865,925	1,831,004	610,078	274,377	10,113,429
Chicago Stock.....	82,216,000	69,747,500	34,404,200	15,642,000	18,288,000	220,297,700
Chicago Board of Trade (Stock Dep't).....	890,775	1,466,185	1,667,147	1,155,643	1,657,024	6,836,774
Chicago Curb.....	6,643,201	6,047,935	3,856,194	840,200	3,136,400	20,522,930
Cincinnati.....	1,643,130	762,533	527,392	321,867	288,127	3,543,049
Cleveland.....	2,007,110	779,056	519,460	407,463	488,281	4,201,370
Detroit.....	11,434,665	5,065,720	3,843,225	2,775,956	4,092,518	27,212,084
Hartford.....	3,280,000	2,300,000	1,680,000	1,100,000	1,800,000	10,130,000
Los Angeles Stock.....	15,406,993	9,171,442	5,450,543	3,068,749	3,228,819	36,328,546
Los Angeles Curb.....	37,775,806	11,082,275	8,310,729	3,106,601	5,922,176	66,197,487
Louisville.....	23,700	30,500	1,250	1,000	700	57,150
Minneapolis-St Paul.....	730,424	559,252	487,074	323,062	363,162	2,462,974
New Orleans.....	345,000	128,000	116,000	52,000	95,000	736,000
Philadelphia.....	35,520,785	27,224,794	10,589,837	6,592,342	7,614,522	87,652,280
Pittsburgh.....	5,328,923	3,542,446	1,625,014	1,551,958	2,409,566	14,457,907
Richmond.....	22,315	29,621	21,717	14,014	12,377	100,044
St Louis.....	1,318,000	548,000	380,000	165,000	145,000	2,556,000
Salt Lake.....	30,455,056	19,429,889	10,315,075	3,468,282	8,637,020	72,305,322
San Francisco Stock.....	19,188,822	15,262,932	9,875,057	7,068,715	8,129,554	59,515,080
San Francisco Curb.....	12,983,565	4,840,286	2,470,066	1,401,017	2,099,054	23,793,988
Seattle.....	481,718	293,955	145,231	15,393	415	930,712
Washington.....	99,831	57,093	41,543	9,038	11,433	218,935
Total.....	296,985,602	197,402,209	110,829,673	60,330,186	83,001,668	750,549,338

*Number of shares of stock and par value of bonds listed on exchanges outside of New York City as of February 19, 1934*

Exchange	Shares	Par-value bonds
Baltimore.....	14,397,097	\$593,317,018
Boston.....	298,767,489	3,542,913,710
Buffalo.....	33,401,000	126,000,000
Chicago Stock.....	258,174,589	1,049,903,000
Chicago Board of Trade (stock department).....	63,265,198	1,578,400
Chicago Curb.....	165,241,937	337,278,587
Cincinnati.....	39,224,286	140,353,000
Cleveland.....	28,299,810	26,937,650
Detroit <sup>1</sup> .....	118,691,000	-----
Hartford <sup>1</sup> .....	16,602,191	-----
Los Angeles Stock.....	180,549,744	396,500,000
Los Angeles Curb <sup>1</sup> .....	43,402,851	-----
Louisville.....	143,255,000	4,153,500
Minneapolis-St Paul.....	5,009,758	11,360,000
New Orleans.....	147,000	233,000,000
Philadelphia.....	134,377,531	2,224,328,626
Pittsburgh.....	60,213,161	74,925,000
Richmond.....	2,309,312	90,041,714
St Louis.....	10,761,000	122,774,000
Salt Lake <sup>1</sup> .....	118,482,946	-----
San Francisco Stock.....	156,150,366	990,814,500
San Francisco Curb.....	224,700,000	554,000,000
Seattle.....	4,686,682	27,454,600
Washington.....	19,905,340	143,182,950
<b>Total.....</b>	<b>2,140,015,288</b>	<b>10,690,816,255</b>

<sup>1</sup> No bonds listed

# STOCK EXCHANGE PRACTICES

WEDNESDAY, MARCH 7, 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), Adams, Goldsborough, Walcott, Townsend, and Kean.

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; Roland L. Redmond, counsel to the New York Stock Exchange; and R. E. Desvernine, counsel to Association of Stock Exchange Firms.

The CHAIRMAN. The committee will come to order, please. Mr. Leonard, we will hear you now.

## STATEMENT OF FRANKLIN LEONARD, NEW YORK CITY, A MEMBER OF THE FIRM OF LEONARD, CUSHMAN & SUYDAM

The CHAIRMAN. Mr. Leonard, will you state your name, place of residence, and occupation?

Mr. LEONARD. Senator Fletcher, my name is Franklin Leonard, of 25 Broad Street, New York City, a member of the firm of Leonard, Cushman & Suydam.

The CHAIRMAN. You may go ahead with your statement.

Mr. LEONARD. I received a telegram from the San Francisco Mining Exchange requesting me to appear here on their behalf, I suppose, because some years ago I was a member of that exchange.

I find that a letter has been placed in the record written by the president of the San Francisco Mining Exchange, in which he referred to mining as mentioned in Mark Twain's *Roughing It*, and in which he spoke of the possibility of a mine becoming a hole in the ground and a hole in the ground becoming a mine.

Now, all that would not be pertinent here were it not for the fact that my investments in mines, which are traded in at San Francisco, are exceedingly great and mine operations out there will be tremendously affected if the stock exchanges engaged in dealing in mining stocks in San Francisco and others are interfered with to the extent that they may not be able to continue business.

Kindly permit me to point out that in States like California the corporation commissioner's office has proceeded with regulatory

measures, and our exchange in San Francisco fully cooperates with the office of the corporation commissioner of the State and proceeds to do business.

It seems to me, point one, that regulation of exchanges should be left to the States rather than to be made national.

It seems to me, point two, that under the circumstances it is quite ridiculous to talk about a \$500,000 penalty, or something of that kind, on exchanges when there are many small exchanges in this country which actually could not pay a very small proportion of such fine.

Now, will you permit me to state that for 13 years I was counsel for the second largest exchange in this country, namely, the New York Curb Exchange; that prior to that time I had been counsel for a large number of mines and mining companies. At the present time I am the president of the Sutro Tunnel Coalition, which owns 30 or more mines upon the Comstock Lode, and which is endeavoring to obtain financial assistance for the purpose of development operations on many of its various properties.

Now, in going before the Federal Trade Commission it has come to my notice that that Commission in its fact-finding studies has found it necessary to take 7, 8, or 9 weeks continually asking additional questions in order to bring about a situation under which the Federal Trade Commission may proceed intelligently to act.

I assure you that at the present time there are two or three hearings proceeding down there, one of which has just been completed, and I assure you that it would be of great interest to this committee, or I believe so at any rate, I mean this Banking and Currency Committee of the United States Senate, if you would permit me to file as a part of my statement, a certified copy of the testimony taken and some of the proceedings which took place down there in that connection.

Please understand that I am not in any way criticizing or attacking the Federal Trade Commission. I am merely pointing out that a vast amount of time is lost on the part of these small people who are attempting to obtain, from speculators if you will, or by borrowing, promotion money for the purpose of developing their properties. And these small people are not able to proceed and to obtain funds within any reasonable period of time.

And, mind you, gentlemen of the committee, they could not do it at all without the general assistance of the exchanges.

Now, there has been a new exchange formed in the State of New Jersey, and I wish to say one word about that, because it so happens that my son was made vice president of it, and he asked me, if the opportunity presented, to suggest that that exchange can only deal in securities listed upon other exchanges. It cannot proceed to list stocks itself for the reason that it is only a small exchange, an exchange which is just starting out, and—

Senator TOWNSEND (interposing). Where is that exchange located.

Mr. LEONARD. It is located in Jersey City, in the State of New Jersey. Now, there are a great many reasons why there must be a mining exchange in the State of New Jersey. The principal reason, however, is the fact that the State of New York has placed a transfer tax upon sales, transfers, or deliveries of stock, which tax absolutely precludes the low-priced stocks from being dealt in.



To illustrate: Take the stock of a company in which I have invested upwards of \$200,000. The stock of that company was selling at par in the month of May and also of June of this year, and at one eighth and one fourth over par, and then—

The CHAIRMAN (interposing). You mean last year.

Mr. LEONARD. Last year, I meant; yes. But when this State tax became effective the result of the situation was that the market for those stocks could not be continued in the State of New York, and it became necessary for the directors of the company to list its stock in San Francisco. That stock had been listed upon the New York Curb Exchange, regularly listed there, for 14 years, and all of its stock was outstanding, and the stock was then enjoying an excellent market. But—

Senator TOWNSEND (interposing). What was the stock?

Mr. LEONARD. Do you want me to give the name of it?

Senator TOWNSEND. Yes.

Mr. LEONARD. It was the stock of the Comstock Tunnel & Drainage Co. The stock of that company was formerly listed upon the New York Stock Exchange, I mean years ago, the stock of its predecessor company. But the point that I want to bring to your attention is, that the market for the stock having been destroyed in New York, and this little mining exchange having been started in Jersey City, they placed our stock on their list. We did not ask to have the stock listed, that is, we did not request them to list the stock, but they began trading in it there because it was listed in San Francisco, and had been listed upon the New York Curb Exchange. Am I speaking too loudly, Mr. Chairman?

The CHAIRMAN. No. Go ahead just as you are.

Senator WALCOTT. I think you might very well keep you voice down. We can hear you very easily. Do not raise you voice so high.

The CHAIRMAN. You do not talk too loud for me. I can hear you very well when you are talking just as you are now.

Mr. LEONARD. Now, under those circumstances, Senator Fletcher, you can see the necessity for these small exchanges. And I want to say that before allowing my son to join that exchange in Jersey City I inquired about it, and I found upon their board of governors seven men in whom I had entire confidence. They did not have money but they had moral credit. They were the men who started that little exchange in Jersey City.

Furthermore, at the present time the securities department of the attorney general's office is checking up to ascertain that it is being conducted properly. And I contend that under the general supervision of the securities department of the attorney general's office of the State of New Jersey there can be no danger to the public in speculating or investing in the small stocks that are traded in there, in the event they are approved.

Now, at former times I have represented the Salt Lake Exchange, and I have represented other exchanges.

And I want to say right here, Mr. Chairman, that I had hoped Mr. Pecora would be present when I appeared, because I expected he might ask me some questions. But he was absolutely familiar with the work which I conducted as counsel of the New York Curb

Exchange, during its formative period, for 13 years, and during 8 of those years Mr. Pecora, was in the district attorney's office in New York. Judge Swann, as district attorney, and Mr. Banton, as district attorney, with Mr. Pecora in the office, knew that during all of that period not one member of the New York Curb Exchange was ever under indictment. The whole situation was a development of a small and new exchange from the rabble in the street until it resulted in exchange memberships having a price placed upon them amounting to \$253,000.

Now, there is another instance where a situation develops which makes it absolutely dangerous to an exchange to be compelled to proceed—

The CHAIRMAN (interposing). I do not quite understand that statement, Mr. Leonard. You say the New York Curb Exchange developed to the point where it was worth \$253,000. What do you mean by that statement?

Mr. LEONARD. I meant to say that when we first organized the New York Curb Exchange and obtained a charter by that name the formation was made by signing the constitution but with no payment. Eighty-six men signed the constitution of the New York Curb Exchange. Afterward seats on that exchange sold at \$100 in 1911, and at \$250 in 1912; and then when the financing took place and the building was constructed a price was placed upon seats of \$5,000. And then during the past 10 years, up to 1929, the advance in the price of memberships of the New York Curb Exchange proceeded from that point of \$5,000 until they had sold as high as \$253,000.

The CHAIRMAN. I see. And before that Curb was organized it had done business out in the open, as I understand.

Mr. LEONARD. Yes; out in the open; in the street. And I was one of the original persons connected with it; in fact, I was the attorney that held the street, if you will permit me to say that. The Curb remained in the streets of New York for 17 years due to a decision made by Mr. Justice Guy, of the Supreme Court, which was affirmed in the appellate division, and afterward in the court of appeals. But I do not wish to go into that matter now, or to take up the time of the committee with it.

The CHAIRMAN. That is not necessary here.

Mr. LEONARD. But the whole thing shows that the development of a legitimate exchange is made very often from small beginnings.

Senator KEAN. Mr. Leonard, I should like to ask you some questions right there: I remember very well when the curb exchange was started. It was started by clerks of a few brokers meeting out on Broad Street and exchanging whatever they had to buy or sell. Isn't that right?

Mr. LEONARD. Yes. That would be beginning about in the nineties, do you mean?

Senator KEAN. Yes.

Mr. LEONARD. Yes; that was in the '90s.

Senator KEAN. And from that point it gradually grew so that there was a crowd out there in the middle of the street.

Mr. LEONARD. Yes.

Senator KEAN. Blocking traffic, but at the same time trading in various unlisted stocks.

Mr. LEONARD. Well, Senator Kean, we were able to prove that we were not blocking traffic when we came to court. [Laughter.]

Senator KEAN. Perhaps so. Next, I remember very well standing before a window in my office in New York and looking down at the curb exchange, and also down Wall Street, and suddenly I heard a great explosion. And I saw the people go down that way [indicating], and I saw the people from the curb exchange rush up to Wall Street, and then they turned and rushed back again. That was the explosion which occurred in front of the subtreasury and which killed a lot of people.

Mr. LEONARD. Killed 36 people, yes.

Senator KEAN. Killed 36 people, you say?

Mr. LEONARD. Yes, sir.

Senator KEAN. And injured many more. And the members of the curb exchange seemed to be very brave until they got up to the corner of Wall Street, and then they became afraid there would be another explosion, and they all ran away again.

The CHAIRMAN. What year was that?

Mr. LEONARD. I do not recall exactly. But, Senator Kean, I fear you are referring now to the curb boys very much as witnesses always did in court. If a fellow was arrested, for instance, for speeding he would give a fictitious name, and say he was a member of the curb market. [Laughter.] But there was something else there: We were trying to run a legitimate and well-organized market. So time having proceeded, from 1893, to which Senator Kean referred, on up, over a period of years, those clerks grew and finally it became an independent market, and 86 young men, who were of considerable standing, formed the curb exchange.

But I want to say to you gentlemen that before forming it they sent me to the New York Stock Exchange to ascertain if it would be entirely agreeable—and this is the first time that this point has ever been put on a public record—there was a gentlemen's agreement made by me with Frank K. Sturgis, the chairman of the law committee of the New York Stock Exchange, in which it was provided that the curb exchange might organize, that it might house itself, and that it might proceed with its business.

Now, under those circumstances, when I came in as secretary and counsel of the New York Curb Exchange—and I want to pause right there to mention that the first year of its organization there were 640 decisions rendered—at that time seats on the curb were \$100, and I encouraged my friends, especially in the produce exchange and other exchanges, to join this curb exchange. And I might comment at this point just to say that the man who sold his seat for \$253,000 was Frank Reinicke, who during the war, when the exchange was closed, sold his seat to me for \$50 because he needed the money and did not have a cent. I then said to him, "Frank, these seats will be more valuable one of these days"—How do you do, Mr. Pecora.

Mr. PECORA. Good morning, Mr. Leonard.

Mr. LEONARD. And I turned it into a loan, and sold him back his seat in a short time, after getting him a job.

Now, gentlemen of the committee, that general policy was carried out right straight along in the matter of the New York Curb Exchange.

Mr. Pecora, I might explain to you that the reason I am mentioning the curb exchange when I am here testifying really on behalf of the San Francisco Mining Exchange, is that a man naturally goes back to his old love, to his first love, I suppose, and I want to make this point: More than half, I think more than 70 percent, of the stocks dealt in upon the New York Curb Exchange are not listed but they are admitted to trading under very careful supervision and management.

Now, supposing that this bill should make it impossible for any stocks upon a national-securities exchange that are not listed, to be dealt in. Eighty percent probably—and they will have to tell you how much, but probably 80 percent of all the trading on that exchange is in stocks which are not regularly listed.

Now, it seems to me that we ought to keep in mind the absolute advantages of an organized local exchange in the various cities in order to bring together those who wish to make a market in securities and help to develop the various properties which are promoted locally.

I do not propose to take up any more of your time, or to go into detail upon the objections we have to offer. I believe I could offer 21 quite serious objections to the bill, but believe I have heard nearly all of them stated and covered here already.

But I want to urge upon you Senators that if you are to have a body which is to supervise exchanges, that such body should not be a commission of the United States, no matter how high and wonderful its standing, which is overloaded now with a tremendous amount of work which it is not able to swing into action without additional help, and which if made a fact-finding body without review by the courts is bound to result in terrific injustice, not only to all the exchanges but particularly to the small exchanges.

My experience is that mining is Greek to them, and yet the great mining industry of this country is entitled to the utmost consideration here in Washington. It was the output of the Comstock lode, from mines which I now own and control through our various operations and companies, that made it possible for the Government to resume specie payments. It is a matter of history that the Comstock lode is entitled to a tremendous amount of credit for the recovery from the previous great panic.

Now, I want to point out that gold and silver properties are the ones which now must receive attention from one end of the country to the other. I bought gold stocks in 1929. I bought gold properties in 1926 and 1927, but all those properties were purchased pursuant to the advice of engineers, and I want to assure you that one of the reasons why I am not active in Wall Street, and one of the reasons why I have retired from the practice of law after 40 years at the bar in New York, is that I want to devote the rest of my life to the development of legitimate gold and silver mining properties through legitimate small exchanges of the West and the East.

I thank you, gentlemen of the committee, for hearing me.

The CHAIRMAN. Now, Mr. Leonard, in reference to the operation of these small exchanges, how do you account, for instance, for stock listed on the Chicago exchange and having no bid and no offer,

with no market there at all, being able to find a market developed on the Curb in New York? Does that happen very often, and if so, what is the cause of it?

Mr. LEONARD. That happens sometimes, Mr. Chairman. But it will be the other way round if they continue these taxes and the price of a stock is low; you will find bids and offers in Chicago but not on the Curb. But I wish to answer your question more directly, Mr. Chairman, if I may?

The CHAIRMAN. Yes, I wish you would please do so.

Mr. LEONARD. It is very often the case, Senator Fletcher, that the market may not be found where the bid may be. Now, suppose that the people who are interested in the stock live in New York, and the most of those interested in my stock do live in New York. Therefore, if they decide they want to sell, the offerings are made in New York, or the bids come there, and are shipped to Jersey City now because they are on the Jersey City Exchange. Say that the selling in New York day before yesterday was at the price of 50, but that the buying in San Francisco, or the price there was 56. Now, that was not a fair and proper market. But that will readjust itself because they will have arbitrage. Some smart broker will buy the stock in New York and sell it in San Francisco and make the difference in arbitrage. It just happened that there were no selling orders on the San Francisco Exchange, and no buying orders in New York at that moment. That occurred on Monday of this week. Does that answer your question, Mr. Chairman?

The CHAIRMAN. Yes. The suggestion to my mind was that it would be better to have Federal control over, or supervision over that situation, which would correct such differences.

Mr. LEONARD. Well, Senator Fletcher, you do not mean to say that you think you could by Federal control fix prices of stocks in the different parts of the country, do you?

The CHAIRMAN. No; I do not think that. But with all exchanges subject to the same regulation it would help, as I thought.

Mr. LEONARD. Well, it would help in some ways. And I wish you to understand that I am not opposed to regulation, that I am not opposed to anything that will interfere with wrongful manipulation of stocks. In fact, that is one thing I have had to fight all my life. However, if you will permit me to say this, Senator Fletcher, a thing I have said to many legislative committees before this: The boys of the curb market were the most honest men in the world as a coterie. Now, I admit that they had just the opposite reputation, but it was not justified. And there was good reason for their conduct and action: All of those young men on the curb hoped some day to have enough money so that they might buy memberships on the stock exchange. Therefore, they were very particular to keep their record clear and to make their contracts good. And there was never one single thing done by any of the rank and file of the curb membership that could be criticized in any way as irregular or improper.

Now, gentlemen of the committee, there is the situation.

Senator ADAMS. Then if the curb exchange was the most honest group, of course, that puts the New York Stock Exchange on a little lower level.

Mr. LEONARD. Now, Senator Adams, I think you are trying to be a little facetious. But the point is that so many members of the New York Curb Exchange have gone into the New York Stock Exchange that I am one of those that say that the curb exchange is running the stock exchange instead of the stock exchange running the curb.

If you gentlemen want to check up on it you will find a great many members of the board of governors of the old Curb Exchange now on the stock exchange. I am not trying to be facetious, either, Senator Adams, but I want to say that the strong men, the active traders, the men who know how to trade, are very apt to have been those who have had their experience for a period of years upon the Curb Exchange. They go there as young men and if they are able they go to the stock exchange.

The CHAIRMAN. Here is a situation it would be well to call to the attention of the committee as well as to yourself, Mr. Leonard. I have a letter from the vice president of the Chicago Stock Exchange, written to the president of the Tri Utilities Corporation, in which he says:

One of the things the Chicago Stock Exchange expects when securities are listed here is that those applying for the listing will keep up a market. By keeping a market we mean to keep bids in those securities at all times on the exchange.

Now, in reply to that letter the Tri Utilities Corporation stated that there had not been any trading in the stock for some time, but that those who had those securities could find a market for them on the Curb in New York. He says, for instance:

We note your statement that there have been no sales of this stock for several months. We call your attention to the fact that transactions in this stock occur frequently on the New York Curb Exchange, and that anyone wishing to dispose of stock can do so in New York. The fact that sales occur in the New York market also make the stock available for use as collateral.

Well, now, without going into details, the ultimate result of all this, of keeping up a market and operations in stock exchanges and on the curb in New York, finally culminated in a receivership for the Tri Utilities Co., and the final result was a dividend of the receivership issued in January of 1933 of less than \$9,000, which was paid to creditors with aggregate claims of about \$20,000,000, exclusive of the common and preferred stockholders. And the amount of the common and preferred stock outstanding was in excess of \$15,000,000, which amount was a total loss. That was the result of the operations in the Tri Utilities Co.'s stock. The effort was to keep up a market on the Chicago Stock Exchange, and they were not able to do that, and a market developed on the New York Curb Exchange, and those stocks were sold in that way. But the stockholders lost \$15,000,000, being every dollar they had put into the stock; and the creditors only got \$9,000 out of \$20,000,000 of claims.

Mr. LEONARD. Well, Mr. Chairman, that is one of those extreme utilities cases. I have been contending right straight along that people should look to the gold stocks rather than to some of these utilities.

The CHAIRMAN. Mr. Pecora, have you any questions to ask Mr. Leonard?

Senator ADAMS. Just one minute. To what extent do the mining exchanges with which you are directly connected, contribute to the furnishing of money for mining development; and to what extent are they merely places of speculation?

Mr. LEONARD. They do not definitely and personally as exchanges contribute anything and never have, but—

Senator ADAMS (interposing). I meant indirectly, of course.

Mr. LEONARD. The exchanges are merely markets for the trading in securities. Now, I can illustrate that by pointing out that when we first began to list stocks upon the curb exchange, when it first began to operate, three certain mining companies from Porcupine, Canada, were brought there. They were prospects, but I pointed out that if the exchange showed, by what was filed in its archives, and which are always open to the public, that they were only prospects, then the public had notice that they were prospects and could obtain the information. Therefore those Porcupine stocks, which today of course are out of existence, yet that camp has produced upwards of 30 million dollars since that time.

Now, anyone who had bought those original stocks and had carried them along through the different reorganizations, might have had a great fortune in proportion to the amount of his original investment.

Now, gentlemen of the committee, Tom, Dick, and Harry can not buy portions of companies. In the old days they used to buy so many feet of a mine. On the Comstock lode a man would buy 1 foot, or 2 feet, or 5 feet, along the lode in the mines. But when the stock of companies was possible of purchase, that is, when stock companies were formed, it became possible to distribute holdings of a mine in the form of stock.

Now, the peculiar end of it so far as I am concerned is, that I stepped into a company where the stock was all outstanding. I was not coming into the company for the purpose of selling its stock. I bought into a company where all of the stock was outstanding, and had been dealt in upon the stock exchange and the curb exchange for years. Therefore, if I can make it clear to you, I believe that every new company which is capitalized, of course if it is capitalized reasonably and is properly regulated, as is the case in California by the corporation commission of that State, and is not allowed to sell any stock unless the stock is deposited first in escrow, I mean the promotion stock is placed in escrow, why, then everybody is protected, and then trading can take place upon an exchange, men may buy and sell the stock, and there becomes considerable distribution, and it enables the promoters or holders of the ground which they want to develop, to obtain the necessary funds for putting on development.

May I illustrate that just once more in this way? There has been developed in the case of one of the properties which I purchased, as I stated before, an ore body in which the United States Bureau of Mines has just completed an investigation, and they have stated that we have in the matter of blocked-out ore ready for milling, \$1,294,000 worth in the case of that one property, which is one of the properties belonging to the company that I have mentioned.

Now, we haven't any funds with which to build a mill. We haven't any funds with which to move the railroad off the ore body.

And it so happens that Mr. Mills' railroad crosses our ore body and we cannot mine it because if we mined it the railroad might cave in on the mines, or we might throw the railroad off grade, and therefore we have not been able for a number of years to improve that ground. We tried to get Mr. Mills to cooperate with us, but the best we could do with him was to agree to move the railroad off, and we would have to run it around the ore body at a cost of \$55,000. Therefore it becomes a project of paying for the building of a mill, and paying for the moving of the railroad. Now, that is a project that, as shown by the United States Bureau of Mines, will pay 10 for 1, absolutely.

I am not here to talk about that project particularly, but if you gentlemen had tried for the last 3 years to raise any money for the building of a mill, or for any other purpose during that depression period, you would know what we have been up against. Why, you could not sell diamonds at half price. You could not sell anybody the idea of buying some stock in your company no matter how good it was.

But now, with the new development that has come about, with the change in the prices of gold and silver, a great number of projects which were not able to make any showing before now offer opportunities to sell some stock to get money for development operations.

And I want to say to you gentlemen that I think these development operations are just as legitimate—in fact, I believe more legitimate—than many others, and I could quote from a statement made by the public works commissioner of our State, the State of Nevada, that projects of that kind have the greatest economic value, and those are the projects which should receive consideration. And I expect that they will receive consideration after the examinations which are now being conducted by the United States Bureau of Mines. We are asking that the United States Bureau of Mines will come into that camp and make a complete report on all of the properties there.

The CHAIRMAN. Mr. Leonard, do you think you can now sell gold-mining stocks all right?

Mr. LEONARD. Well, Mr. Chairman, I will say to you that I have had an opportunity to sell gold-mining stocks, but I am a buyer and not a seller. As a matter of fact, a member of the New York Stock Exchange today, who has two sons who are both members of that stock exchange, will arrive on the Comstock lode next Monday. I am not going to talk about him particularly, but if you wish me to answer that question—and you asked me whether we could sell gold-mining stocks—he is going out there as a buyer and not as a seller.

Now, I can show you tickets on 10,000 shares of Tunnel stock which were bought by a stock-exchange member whose name is pretty well known from one end of the country to the other, and he sent it in for transfer with \$4 Federal taxes and \$300 State taxes on it, and I said to him: "Why do you pay this great State tax? Why don't you transfer it in Jersey City or San Francisco, where there is no State tax?" He said: "Well, I am making a sale of it because I am putting that stock in a trust as a hedge against declines in money." [Laughter.] This was last fall.

Now, I am telling you, if you want to hear about it, that you can sell gold stocks now if they are properly sponsored and if they will



show the absolute liquidation ability that other stocks can show, following, you understand, the most careful investigation by engineers.

But I also want to say to you gentlemen that there is a stock over here before the Federal Trade Commission right now in which they have five different prominent engineers in this country testifying, and they have not only a signed statement but have sworn to it in court, that there is \$11,000,000 of ore in sight in that property. Yet those people down there are very doubtful whether they ought to give their O.K. to sell any stock in that property right now; and it has taken them 7 weeks, or perhaps 9 weeks, and they are not by yet.

The CHAIRMAN. All right, Mr. Leonard, if you have finished your statement.

Senator KEAN. Mr. Leonard, you were talking about arbitrage. If this bill should be enacted into law, it would rather interfere than otherwise with the adjustment of prices as between the different exchanges, would it not? I mean, with all the restrictions that are contained in this bill, wouldn't it rather interfere with the leveling of markets?

Mr. LEONARD. Well, perhaps so, but I had not thought of that as at all detrimental or objectionable.

Senator KEAN. You were speaking of the San Francisco market having temporarily been higher than the curb in New York.

Mr. LEONARD. Yes.

Senator KEAN. Now, of course, there is no doubt about it that since that quotation is known to some broker he will offer to buy in New York or to sell in New York, or to buy or to sell in San Francisco, so as to level up that quotation.

Mr. LEONARD. During the Goldfield period there was a great deal of that. Many hundreds of thousands of shares were in and out of the markets. That was arbitrage.

Senator KEAN. Yes; I have seen a good deal of it. But what I am getting at is this: If this bill should be enacted into law as is, it would interfere very largely, don't you think, considering all the restrictions that are placed upon the broker, and all the restrictions that are placed upon trading, that this bill would largely prevent equalization of markets?

Mr. LEONARD. Well, I would not be worried about that. I do not think it would do any harm from that standpoint. I do not think the bill would mean the slightest damage. It might interfere with a few small traders, from their getting in between prices in two different markets.

Senator KEAN. Well, that would interfere with a leveling of markets, wouldn't it? For instance, if you are a broker in New York, or in San Francisco, and you see that the quotation in New York is 1 percent above the quotation in San Francisco, why, you would sell in New York and buy in San Francisco, wouldn't you?

Mr. LEONARD. Yes.

Senator KEAN. Now, any restrictions would interfere with that, wouldn't they?

Mr. LEONARD. Well, I do not understand that there are any restrictions in the bill on trading in New York or in San Francisco, are there?

Senator KEAN. Oh, yes; surely there are.

Mr. LEONARD. You mean that the stock could not be traded in except where it is listed?

Senator KEAN. No. I mean to say that with the restrictions which are placed upon a broker, that he must do this, or that, and the other; the quotations would be so wide apart owing to the resulting market, that in that way it would restrict a leveling of the markets as between two places.

Mr. LEONARD. I think it would.

Senator KEAN. That is all that I wished to ask.

The CHAIRMAN. We are very much obliged to you, Mr. Leonard.

Mr. PECORA. Mr. Leonard, are you familiar with the letter that was addressed to counsel for this committee by Mr. Hudson, president of the San Francisco Mining Exchange, under date of November 27, last, and which was placed in the record of this committee?

Mr. LEONARD. Yes. It was shown to me last night for the first time. I did not know that you had it, Mr. Pecora.

Mr. PECORA. It has just been produced for me here now.

Mr. LEONARD. I think it would be nice to read it again, if you will.

Mr. PECORA. I will be glad to do it. It is on the letterhead of the San Francisco Mining Exchange, and is dated November 27, 1933, addressed to me as counsel to the committee:

Complying with your request, we are enclosing herewith today's quotation sheet, which gives bids and offers and sales of stock listed in this exchange, together with the names and addresses of the members of the exchange

In this connection, I wish to remark that our exchange may be termed a "white chip trading rendezvous for stock" Mining and oil stocks are necessarily of a speculative character, and we do not attempt to make the public think they are anything else. A hole in the ground today may be a mine of value tomorrow, and the mine of immense development may run out of its ore and be a tremendous hole in the ground the next day. Our stocks, for that reason, as I said before, are speculative and do not have the immense quantity of water that many of the industrial stocks contain. The fact is we have to supply water from the desert area while the industrialists are usually organized by promoters and supplied with water with great hydraulic pumps from the Atlantic Ocean

If we can be of further service, we are at your command.

Yours very truly,

CHARLES E HUDSON, *President*.

P S—The bankers generally don't help us because our activities interfere with their game.

Mr. LEONARD. Well, Mr. Pecora, you can appreciate that that is a letter from a man some eighty-odd years of age, who has the reputation of being perfectly and squarely honest during his whole life. That gentleman invited me to make a few remarks before the exchange in San Francisco last summer when I was out there, and I began by saying: "I see a number of the brokers present who were here 25 years ago when I made my first visit to the exchange. I thought that they were old men. I looked upon them as elderly. But I see them here as young and as chipper as ever. Here is Charlie Hudson, 84. Here is Coffin, 94. Here is"—and I named about 8 or 10.

But I thought that the explanation would be, no doubt, the climate of California, and they all said "'Ray!"—a great yell for the New York speaker who would agree that the California climate was O.K.

But remember, Charlie Hudson is just as conservative, just as square, just as honest, and just as able in his field as any of us are

in our fields. He inspires confidence and is asked day by day by a large clientele to advise them with regard to investments in mining stocks. And I know that he always takes the same position that he has in the letter: If you are going to speculate, if you are going to gamble in mining stocks, it is your own guess.

The CHAIRMAN. Do you agree with that?

Mr. LEONARD. I agree that anybody that gambles in mining stocks without looking them up is not deserving of any particular protection from any committee anywhere. I do not think anyone who walks into a broker's office and is one of the chair warmers in one of these wonderful stock exchange houses that has a translux crossing, and sits there guessing on the red or the black, as to whether it is going up or down, and does not take the trouble to go over to the New York Stock Exchange and get the record and find out what he is buying and what he is selling, is not deserving of any particular protection.

I subscribe to everything our President has said from beginning to end, and from way back. But when he says, "Let the seller beware", and changes the situation which I have understood in legal procedure during my whole life, which was "Let the buyer beware", it seems to me that it is a pretty long step. And so far as I am concerned, when I speculate or gamble, or guess, or invest in stock, I have a pretty fair reason for it.

On the curb exchange during the period of my curb market experience, I thought everybody ought to know that stocks that were brought out on the curb were brought out there for distribution purposes, and therefore, if they were going to sell stock and get a distribution, there had to be an advance. Therefore, all I wished to know was that the stock was properly sponsored by a good market maker. Therefore, I proceeded to go in on all the underwritings. It did not make any difference what the company was, if the people were high class and had the underwritings right. Now, that is gambling. That is guessing. If I lost once out of 19 times or once out of 4 times, I was perfectly satisfied.

I want to tell you gentlemen that we put on a record in the curb exchange when I was there enough information on every company that was listed and every company that was not listed but only admitted to trading, so that any member of the public who wished to come there could go into the office and look at it and see exactly what he was buying.

But the average person that trades in stock—and you are talking about protecting the average person that trades in stock—does not care a continental what the company is. He wants some customer's man to tell him, or some other friend who lives next door to tell him, whether the stock is going up or not. Now, those people are of no value as stockholders in a company. They do not help any.

The CHAIRMAN. You mean to say the curb exchange has information as to the issue of stock, for instance, as to its assets and liabilities and its earnings? Is that all shown on your records there?

Mr. LEONARD. Yes; but, Senator, please make it clear, I am not connected with the curb exchange. I am not counsel for them now. I was counsel during all of the formative period and for 13 years. Any references I have made to the curb exchange are

unofficial, and I haven't any right to refer to them, but I am only speaking of them by way of illustration of points.

The CHAIRMAN. You said that anyone buying stock on the curb could go into their office and ascertain full information.

Mr. LEONARD. Yes; because they do keep a complete record of everything.

Mr. PECORA. Even of the securities that are only admitted to the floor for trading privileges?

Mr. LEONARD. Yes; but will you please get that from their representative?

Mr. PECORA. I mean you are not making that statement based upon any knowledge you have of conditions at the present time, are you?

Mr. LEONARD. No; I am not. I am making it upon the knowledge of conditions up to the time that I retired as counsel and the general information we had.

Mr. PECORA. How long ago was that, Mr. Leonard?

Mr. LEONARD. Six or seven years.

Senator ADAMS. Was that information available to the individual stock purchasers or just to the members of the exchange?

Mr. LEONARD. It was always and is now available to the public, any individual; he does not even have to be identified. He can come in there and see the whole record on any company. Didn't you know that? Yes; they do. They keep everything wide open. So do these mining exchanges and all these small exchanges. They keep the record for the benefit of the public. They can find out all that information.

The CHAIRMAN. Very well. Any other questions?

Mr. PECORA. In view of the last statement you made, I want to remind you, Mr. Leonard, of this statement that appeared on the document that accompanied the letter from Mr. Hudson, president of the San Francisco Mining Exchange, which I read a few minutes, and which was put into the record before this committee as exhibit no. 114 on February 26, 1934. Accompanying that letter was a printed sheet giving the names and addresses of members of the exchange and also the securities listed on the exchange, together with quotations. There also appears on that printed sheet this statement:

Facilities for investigating securities are available for everyone. Investigate before investing. Stocks listed on a recognized exchange are safer than unlisted issues. Trade only in listed stocks. The data on these sheets are collected with care, but neither the completeness nor the accuracy of the information is guaranteed. No responsibility is assumed for any of the statements herein contained nor for any omissions or inaccuracies therein.

Mr. LEONARD. But that is all available to the public.

Mr. PECORA. What percentage of the investing or trading public do you think takes advantage of that facility?

Mr. LEONARD. Very, very slight; not more than 2 or 3 percent.

Mr. PECORA. If that much?

Mr. LEONARD. Probably less. They do not inquire. They just buy and sell blindly. And they are to blame themselves, and the members of the exchange are not to blame. The members execute orders. Of course, when there is chicanery or when there is conniving or when there is manipulation of markets, that is another matter, but I am speaking of the fact that my son, my son-in-law, every man

that I have represented as an attorney for brokers for years—and many of them are now members of the New York Stock Exchange—every man absolutely executed his orders in the interest of his customer right through from the beginning. I have never caught one of them doing it otherwise.

Now, there is trading; there is manipulation. May I touch upon the most dangerous thing that brings about this situation? The exchanges are not to blame. They list a stock. A bunch of high-pressure salesmen proceed to buy a block of stock. Then they, through their connections in various offices, begin—

Mr. PECORA (interposing). What kind of offices?

Mr. LEONARD. Well, maybe the son of the corporation commissioner of Massachusetts might have an account with a brokerage house in New York—it actually did occur—and gave orders, and afterward, when it was found that that stock was thrown off the exchange for irregularities of the worst kind, it was found that the orders had all been sent in to perfectly good, legitimate stock exchange and curb houses through customers whom they thought they knew, and the manipulation took place by buying at the close every day enough to take all the stock that was offered and close it an eighth higher each day, and as they manipulated the stock up they had their employees and high-pressure men out through the country distributing stock on the strength of the quotations that were made on these legitimate exchanges. It took place many times on the stock exchange. It has taken place a number of times on the curb exchange, and we have to watch all the time or they will do it on the mining exchanges. Now, those are the men that are dangerous. Suppose they bought a block of stock—

Mr. PECORA (interposing). They cannot be reached, can they, by any regulations which the exchanges might adopt?

Mr. LEONARD. What?

Mr. PECORA. Those operators could not be reached by any rules or regulations adopted and enforced by the stock exchanges, could they?

Mr. LEONARD. They can only be reached by compelling the brokers to know their customers, and they do that now; the exchanges do that now.

Mr. PECORA. And despite the fact they do that now, you say those operations are possible?

Mr. LEONARD. Have been done, and have been possible, and I say that there are Government instrumentalities that can reach those men. There is not any reason why those men should buy a block of stock and then proceed outside the exchanges to make deals which bring discredit upon the company. Sometimes the company themselves have no connection with it at all.

Mr. PECORA. And sometimes officers of the company acting as individuals give options on stock which they themselves own?

Mr. LEONARD. Yes.

Mr. PECORA. To operators who operate in the way that you have indicated?

Mr. LEONARD. Yes; they have done that. And the exchanges are not to blame for that. They cannot help that.

Mr. PECORA. The point I am making, Mr. Leonard, is that the rules and regulations adopted by stock exchanges, well meaning though

they be, cannot reach persons who are not members of the exchanges. So there must be some other power set in motion to curb the activities of market operators who are not members of exchanges and whose operations tend to mulct the public. Isn't that so?

Mr. LEONARD. I think that would be a great thing to accomplish, and I am in favor of it, absolutely, and have been at all times. But when in doing so you regulate the exchanges out of business, perhaps, when you—

Mr. PECORA (interposing). I am glad you added that "perhaps."

Mr. LEONARD. Yes—see. [Laughter.] Well, so far as the little mining exchange in San Francisco is concerned, gentlemen, we have had plenty of regulation in the last 2 or 3 years, and still worked and are doing a perfectly good and legitimate business in cooperation with the commissioner of California's office, and no matter what may be the result of this legislation, we expect to be able to conform in all respects with whatever it may be.

The CHAIRMAN. That may be a rash statement.

Mr. LEONARD. That is our attitude, but we will be without a large portion of our business, I think. We will conform and go through with it, but every exchange and every brokerage house will find that there is a lesser market. Too many restrictions will reach out, not alone to the exchanges, but will reach all the development operations in this country. Mining, if you please, I am talking about, but industries and every other promotion. I would rather see the Securities Act amended, perhaps, in some important particulars a little later than to argue the matter here.

The CHAIRMAN. Very well; we are much obliged to you, Mr. Leonard.

Senator KEAN. Mr. Chairman, I have here a letter from the New York Airbrake Co., a corporation organized in the State of New Jersey, and written to me protesting against the bill. May I put it in the record?

The CHAIRMAN. It may go in the record. That is not "air mail" but "airbrakes"?

Senator KEAN. Yes; airbrakes. [Reading:]

NEW YORK AIRBRAKE CO.,  
February 27, 1934.

HON. HAMILTON F. KEAN,  
United States Senate, Washington, D. C.

DEAR SENATOR KEAN: The undersigned desires to file through you its vehement protest against the passage of the so-called "National Securities Exchange Act of 1934", being S. 2693, Seventy-third Congress, second session, introduced in the Senate on February 9, 1934.

We invite your attention to the fact that this act now only purports to regulate exchanges, but through various provisions directly affects the business and management of all corporations whose securities may be dealt in or listed on an exchange. It is to this phase of the proposed act that we direct our protest.

In the first place, the attempt to regulate the internal management of State corporations seems to be in derogation of the rights of the several States to deal with such matters, and with respect to the provisions referred to, the act appears to us to be of doubtful constitutionality.

Section 11 (a) prohibits any person from selling or buying any security on a national securities exchange unless a registration is effective as to such security.

Section 11 (b) provides for registration upon application by the corporation issuing the securities, and requires the filing with the exchange and the Federal Trade Commission of various undertakings, information, and documents. The Commission is to require an undertaking by the corporation to comply

with and, so far as it is within its power, enforce compliance by its officers, directors, and stockholders with the provisions of the act and the rules and regulations thereunder and, except in the case of Federal Reserve banks, not to lend any funds in the money market of any exchange or to any member thereof or to any person who transacts a business in securities through the medium of a member, except in accordance with rules and regulations to be prescribed by the Commission

The information which the issuer must file includes the organization, financial structure, nature of the business, particulars as to its different classes of securities and as to the terms on which they have been or are to be offered to the public, particulars regarding directors, officers, and principal security holders and underwriters, their remuneration and other interest in the securities, particulars as to the remuneration to others than directors and officers exceeding a stated amount and as to bonus and profit-sharing arrangements, and various other particulars, including material contracts and patents, balance sheets, profit-and-loss statements, and such other information as the Commission may require, also copies of articles of incorporation, bylaws, and similar documents, underwriting arrangements, and other documents which may be required by the Commission

By section 12 every corporation whose securities are listed, which means most of the larger industries of the country, would be required to file, in such form and detail as the Federal Trade Commission may require, annual quarterly and monthly reports (the latter including a statement of gross sales or gross income) with the Commission, and such other reports as the Commission may require

In view of the reports and returns now required by law and by the rules of the New York Stock Exchange, this requirement of new forms is simply adding a useless burden upon those who must compile them

By section 18 the Commission may prescribe the forms which are to be used, and may also require consolidated statements of accounts with any person directly or indirectly controlling or controlled by the listed corporation or with any person under direct or indirect common control

By section 13 the solicitation of proxies by the use of the mails, or an instrumentality of interstate commerce or any facility of an exchange or otherwise, is prohibited unless a statement shall have been filed with the Commission setting forth the purpose of the proxy, the persons to exercise it, their relations to and interest in the listed securities, and the names and addresses of the persons from whom similar proxies are being solicited. It must contain such further information as the Commission may require

This would necessitate in practice the filing of a complete list of stockholders, as it is common practice for the management to solicit proxies for stockholders' meetings

By section 15, every director, officer, or owner of more than 5 percent of any class of a listed security must file with the exchange and the Federal Trade Commission, at the time of registration of the security or when he becomes such director, officer, or owner, and also within 10 days after the close of each calendar month in which there has been any change in the amount of such securities owned by him, a statement showing the extent of his ownership and of all changes therein during the calendar month. There are also various prohibitions against and regulation of the purchase and sale of securities by the individual, including taking his profit on certain transactions and giving it to the corporation

Section 17 imposes a very wide liability, the extent of which it is impossible to define, upon any person who makes or is responsible for making a statement in any document filed with the Commission which is false or misleading in the light of the circumstances under which it was made in respect of a matter sufficiently important to influence the judgment of an average investor. Apparently he may be sued by anyone who has purchased or sold the security affected, whether or not he relied upon or even saw or heard of the alleged false statement. The burden of proof of good faith is placed upon the defendant

Section 18 confer very extensive powers on the Federal Trade Commission

In addition to the authority to make rules to carry out, administer, and enforce the provisions of the act, and to prescribe the form or forms in which information shall be set forth, the items or details to be shown in the balance sheet and earnings statement, methods to be followed in the preparation of accounts and in the appraisal or valuation of assets and liabilities, etc., and

in the preparation, where the commission deems it necessary or desirable, of consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the corporation, or any person under direct or indirect common control with the corporation, and in addition to the authority given to the commission to prescribe rules and regulations for the transaction of business upon an exchange, set forth in great detail in section 18 (c) of the act, the Commission is given very broad powers of investigation and inquiry by section 18 (e) which apparently would permit it to investigate the internal management of any corporation whose securities are listed

This section contains a provision that any officer participating in such inquiry and any person examined as a witness upon such inquiry who shall disclose to any person other than a member or officer of the Commission the name of any witness examined, or any other information obtained upon such inquiry, except as directed by the Commission or an officer thereof, shall be guilty of a misdemeanor

This interference with the responsibility of the management is particularly obnoxious and will simply serve to break down that sense of obligation and responsibility which has been abundantly shown by the vast majority of the business men in this country and without which no enterprise can succeed

Section 19 contains clauses imputing liability for the acts of so-called "controlled" persons, including not only those controlled by stock ownership or agency, but also a spouse, child, or parent residing with the person to whom liability is to be imputed in the absence of proof of nonapproval or that the transaction was not for the purpose of evading a provision of the act

It may be noted in passing that so far as wives are concerned, the provision is a departure from the principle of the married women's separate property acts and the whole course of legislation in favor of equal rights for women, which has been the distinguishing mark for the last quarter century

Sections 21 and 22, relating to publicity of all hearings, records, reports, and documents, will be welcomed by thousands of competitors of those whose success has depended upon legitimate business secrets, such as secret processes, ideas, etc This may well destroy the property right of every corporation in its good will, its method of doing business, the development of ideas for its benefit, and similar intangible property It will also be welcomed by all who engage in the bringing of strike suits against corporations

The criminal penalties provided by section 24, which may amount to a fine of \$25,000 or imprisonment of 10 years, or both, for a violation of any provision of the act or of any rule or regulation of the Federal Trade Commission, is so out of proportion to many of the possible violations that it is revolting to the sense of justice and fair play of all of us

By section 26 it is provided that the act shall supersede such laws of any State as are inconsistent with its provisions or purposes, and it is thus a direct interference with the rights of the State to legislate on questions of the management of State corporations

Section 28 makes it unlawful for a broker or dealer to use the mails or an instrumentality in interstate commerce to effect a transaction on a foreign exchange in a security of an American corporation, except in accordance with rules and regulations to be prescribed by the Commission

This is a direct interference with foreign business and with imports and exports

By section 30 the Federal Trade Commission is authorized to select and employ employees, attorneys, and agents and fix their compensation without regard to the provisions of other laws applicable to the employment and compensation of officers or employees of the United States.

This appears to be a violation of the principles of the civil-service laws

To sum up: The provisions relating to private corporations and individuals appear to place various features of the management of corporations chartered by the States in the hands of the Federal Trade Commission, which is neither equipped nor designed for the vast undertakings there suggested

They involve the breakdown of the authority of the several States over corporations chartered by them, the destruction of corporate responsibility and initiative, the substitution for private industry of the dictates of a bureaucracy, and the deprivation of private property without due process of law

The undersigned, whose stock is listed on the New York Stock Exchange, is a corporation organized and existing under the laws of the State of New Jersey,



by whose laws its franchises were granted and its management is governed. As such, it requests you to oppose the provisions referred to as being burdensome, unfair, and un-American.

Yours very sincerely,

LOWELL R. BURCH, *President.*

The CHAIRMAN. Mr. Reyburn.

**STATEMENT OF SAMUEL W. REYBURN, NEW YORK CITY,  
PRESIDENT ASSOCIATED DRY GOODS CORPORATION**

The CHAIRMAN. Mr. Reyburn, state your name, place of residence, and occupation, please.

Mr. REYBURN. Samuel W. Reyburn, New York City, president of the Associated Dry Goods Corporation, a holding company that operates 8 department stores located: In New York City 2 of the stores, in Baltimore 1, in Newark 1, in Buffalo 2, in Minneapolis 1 store, and in Louisville, Ky., 1 store.

The CHAIRMAN. You wrote, Mr. Reyburn, that you had some views you would like to express on this bill to the committee. You may proceed.

Mr. REYBURN. Mr. Chairman, the members of the Committee on Banking and Currency of the Senate, I want to thank you for this hearing. I regret that the pressure on this committee made it impossible for them to allow me more than 20 minutes. I would like to have this corrected copy of the request for appearance before your committee put in the record, as follows [reading]:

[Day letter]

NEW YORK, N Y., *February 28, 1934.*

Senator DUNCAN U. FLETCHER,  
*Senate Office Building, Washington, D.C.*

DEAR SENATOR: In Virginia, in Missouri, and in Arkansas, for generations, my forebears owned and operated farms and were prosperous. I was reared on a farm in Arkansas, but taught by my parents and others that, in view of the policy of the Federal Government to subsidize industry with privilege through the tariff adopted during the last years of the Civil War, and consistently followed, which worked against the farmer, though I would inherit a good farm, I could achieve greater success and a more useful life in some other vocation. I graduated at a little law school, practiced law for a while and then got into the real-estate and mortgage-loan business. While I had accumulated no money, I had acquired sufficient reputation to organize a trust company and get other people to put up the capital by buying stock. This was successful and gave me the time to hold several public elective offices as well as to become chairman of the Democratic county central committee in my county. Through the use of corporations I raised capital for several other enterprises. Twenty years ago, at the age of 42, I came to New York to act on a reorganization committee of an important business that was financially embarrassed. Subsequently I became chief executive and the leader in the management of this corporation with major activities in 6 States.

With the experience gained in these years of active work in the field of economic activities I would like to have you and your committee know that I believe the proposed legislation cited as the National Securities Exchange Act of 1934 will not be helpful to either the economic, social, or political orders of this country. I recognize that reasonable regulation and supervision is a proper function of Government activities of this kind but I do not think that any political body can assume authority or place restrictions that impose upon such body the management problems of business. From such information as I have gotten from the press and heard from other sources it would seem that so far the whole discussion has been about governmental and stock

exchange rights and duties. As far as I know little attention has been paid to the rights and duties of industry, including investors, management, worker, and final consumer. Naturally, not holding political office or being a member of an exchange or operating as a speculator, my approach is entirely from the point of view of industry, including investors, management, and workers, and of a citizen who is also a consumer. I have known Senator Robinson over 40 years. It is my expectation to leave here for Florida for a much-needed vacation next Saturday. If it is convenient, I would be glad to appear before your committee and give my views for whatever they are worth sometime on Friday. Wire answer my expense, 270 Madison Avenue.

SAMUEL W. REYBURN.

WASHINGTON, D. C., *February 28, 1934.*

SAMUEL W. REYBURN,  
*New York, N.Y.:*

Re telegram this date. We have every hour assigned for this week. If you will submit written statement I will put it in the record of the hearings.

DUNCAN U. FLETCHER

MARCH 1, 1934.

Senator DUNCAN U. FLETCHER,  
*United States Senate, Washington, D.C.:*

Appreciate your prompt reply. Believe personal appearance would be more helpful than brief. If you can give me place on calendar Tuesday or Wednesday will delay vacation.

SAMUEL W. REYBURN.

MARCH 2, 1934.

SAMUEL W. REYBURN:

Can give you 20 minutes Wednesday morning March 7.

R. H. SPARKMAN,  
*Acting Clerk Senate Committee on Banking and Currency.*

MARCH 2, 1934.

R. H. SPARKMAN,  
*Acting Clerk Senate Committee on Banking and Currency,  
Senate Office Building, Washington, D.C.:*

Thanks for the courtesy. Will be there Wednesday morning.

SAMUEL W. REYBURN.

My belief in governmental regulation and supervision of all dealers and business in credit is of long standing. I do not believe in a control on the part of Government that undertakes the responsibility of determining and discharging duties of management.

The bill in present form with its provisions and restricting and arbitrarily fixing amounts and terms of capital and capital security credit should not be enacted. I believe that the Securities Act of 1933, similar in many respects, does serious injury to industry, commerce, and trade, and if not amended will also cause great harm to both labor and the consumer.

Credit cannot be supplied to industrial and commercial trade and financial transactions for either capital or operating needs safely and economically under the *re idem* directions of a general law. In my opinion it cannot be economically provided or compelled by governmental bureaus.

With regulations and supervision to prevent the unfair use of credit and capital, freedom of judgment on the part of banks and bankers who take the risk would reduce costs, facilitate movement

of goods, and thereby render the greatest and most permanent benefit to both workers and consumers.

The spirit of the "new deal" is to get rid of new-fangled notions, known failures, and return to old-fashioned ideals of proven worth. Toleration and justice is what we are after. Pardon me for putting into this record some old truths with which you gentlemen are familiar but which you probably do not discuss in public often enough.

What is credit but the plans and promises that grow out of the exchange of goods and services? The tremendous expansion of trade in the past hundred years, which has made a great contribution to the lifting of men and women to higher levels of accomplishment and greater opportunities to enjoy life and liberty, would have been impossible without use of the three time- and effort-conserving factors in modern business: Transportation, communication, credit.

The growth of means for quick and cheap transportation which facilitate the movement of goods and passengers from one place to another.

The development of communication through which, at small cost, information and knowledge are so promptly conveyed and widely disseminated.

The physical agents of these two factors, so frequently seen—railroads, steamships, motor cars, telephone, telegraph, radio, newspapers—have made their use and value well known to most people.

The third factor—in many ways the most important—has been the increase in the use of credit in exchanging goods and services, in securing capital requirements and operation needs for business of all kinds, and in financing governmental enterprises in advance of collection of taxes. Its use has eliminated the need and risk of actual transfer of money to cover individual transactions, thus materially decreasing the time and expense of transferring title to property from one person to another. It has supplied capital that in no other way could be secured by able and courageous men in management to enable them to employ their talents in a large way for the benefit of the public and themselves. And its use has enabled nations to protect and maintain themselves.

Credit, however, has no very obvious physical agent. It is abstract, a concept born within the mind out of our knowledge of other things and our feelings and beliefs, plus our faith, confidence, courage, and judgment. Ignorance of its laws are general. It is fully comprehended only through reflection; demonstrated only through its effects. There are not many people who train their minds in the habit of research, analysis, and reflection to the point where they are quick in grasping effects or abstract ideas. Many people regard money and securities objectively as an end; they are only a means to an end. The principles of credit should be understood and used by every leader in business on statecraft who has financial responsibilities. While you and I are informed on the subject, we do not describe it to the public as often as we should. Hence, in times of widespread distress, be a mystery to so many it is unjustly blamed.

The "credit" of man, a corporation, or a nation is the faith and confidence inspired in others in the intention and ability of that man, corporation or nation to keep promises. Contracts, currency,

bills, notes, checks, bonds, stocks, and mortgages are only promises of one kind or another.

There is also another highly important basis in the free functioning of the credit factor. It is a prime influence also in the encouragement of industry, thrift, and self-denial on the part of individuals. It is the faith in the stability and efficiency of the Government, the belief that life, liberty, property will be protected, lawful contracts enforced, and justice administered.

The good business leader, the statesman, knows that a wise use of credit builds the character and enhances the reputation of an individual or a private or public corporation; but a foolish use of it undermines character and destroys good reputation. While there should be a constant endeavor to maintain a record which will quickly secure the loan of needed sums, such power should be used sparingly.

The banker, a dealer in credit, merely buys and sells "promises", which are undertakings of future performance in regard to exchange of goods and services. He does not deal in money but, like the merchant, keeps enough of it on hand to make change. The banker's task is to judge accurately the ability of those who borrow to meet their promises and to know markets of commodities and investment securities and probably future trends, so that he in turn may be in a position to meet his own "promises" at the proper time.

It is obvious that credit cannot be handled and controlled in the manner that it is possible to control physical property. Promises cannot be appraised by statute or even by the comprehensive regulations of a Government bureau. It requires experience, constant watchfulness, a keen and seasoned judgment, quick and accurate decisions. The ordinary practical judgments that successfully guide so many men in business will not do. Neither will the faithful following of statutory requirements by a loyal and diligent governmental employee. His administration naturally will consistently follow his changing moods, and actions may with the best intention vary from a liberal to a strict and possibly a severe interpretation of the act.

To meet the unusual vicissitudes encountered in supplying demands that grow out of the varying mass moods of consumers, with competition sharp, the business manager must have an open and inquiring mind. He cannot be content to see a thing happen without trying to learn why and how it happened. He must cling tenaciously to a problem until it is studied in every phase, yet decisions must be made in time and with a high degree of accuracy. It is this capacity for concentrated attention, classification, and analysis, with prompt and effective action which distinguishes the superior man from the mediocre and the good from the poor leader.

In times of optimism, when prosperity runs into expansion, and expansion into inflation, when practically everybody has ceased to use forethought and judgment and is dependent entirely on hopes for the future, and on hunches, all of us, even leaders, get the contagion and become demoralized. Some in any line of business may succeed on chance or by luck alone. But in difficult times when all are distressed by economic depression, when we have given up the

hope that "Prosperity is around the corner", or that some governmental agency will do the whole job of pulling us out, with our backs against the wall, the first law of nature, self-preservation, asserts itself and we begin to fight. Then industry, forethought, and judgment return.

Practical judgment is based on accurate observation and memory of facts. In a long steady trend of business affairs it is often sufficient to enable the leader to achieve a considerable success. Reflective judgment is based on both experience and orderly classification of facts. When confronted with an unusual situation a man with reflective judgment draws not only upon his memory of specific cases that are analogous, but upon all that precept, example, and experience have taught him, from which he has been able to establish certain basic principles.

There are many men who possess these rare qualities of reflective judgment heading our commercial and investment banking institutions. We need them. We should help them and make them help us. We should not let our anger and impatience with the foolish and crooked banker, the speculator, or the broker who may exaggerate and falsify, lead us to put obstacles in the way of good sound leadership in financial and credit affairs.

We are all familiar with the classification under the three heads of the basic elements which make up a normal man: His physical, mental, and moral qualities. In a well-balanced individual who gets the most out of life these three forces must be fairly well integrated and work together. With great competition in the laws of nature, the three seem never to be able long at a time to render balanced performance. Adjustments between these forces are constantly being made within all of us. The body is instinctively self-indulgent and hard to control, but all important. The physical is the soil in which the mental and moral qualities of man flower or fade.

Civilization, cooperative effort of mankind, motivated by mass thoughts, feelings, and beliefs of the individuals composing it, has aspects quite similar to those ascribed to men. It has political aspects, social aspects, and economical aspects, all of them important, all of them partners, which theoretically should be well integrated and cooperative, but which in fact are in constant conflict. It is only through an efficient economic order, the soil which sustains the other two, that a just and effective political order and a sound social order can be maintained.

To plan and carry on a progressive future civilization constantly consumes wealth. For continued progress this wealth must be replenished. While both the political order and the social order should help in the plans, the actual work of replenishing this wealth falls back on the economic order.

In our lifetime we can see the constant change and conflict of these forces. We can all remember when a part of the economic forces dominated both the political and social forces, not to their benefit and also to the great injury of a part of the other economic forces. Perhaps the only happy circumstance growing out of this great depression is that so many people now realize the truth and are bent on correcting it. Our great care now should be not to destroy or impair any of the economic forces. They have been the goose, but remember they laid the golden egg.

It seems to me that this proposed measure and the Securities Act of 1933, unless it is amended, are going too far. To carry out the far-reaching program of the administration the errors of the industrial economic life and the errors of the financial economic life must be corrected, but these great agencies so essential to a sound civilization should not be destroyed.

Government and its bureaus are just another lot of men, some able and some not, some with courage and some without. But in appointive places public servants are most conservative, with no incentive to stimulate imagination, vision, and the spirit of adventure that makes one unafraid of losing. Yet these are qualities that are needed in business to insure progress.

With that general statement, gentlemen, I want to add that I am here representing my business myself. I have been a leader in management, I have been an investor, I have been a worker, and I think I am a consumer and a common, ordinary citizen.

Now, I am not going to talk from the stock exchange viewpoint. I think there are objections from my viewpoint to sections 5, 6, 7, 11, 12, 14, 15, and 18.

My objections to 11, 12, and 18 are very well detailed by the opening statement I have made. I think there is too much interference. I feel quite sure if that law is put into effect men like myself will have great difficulty in getting the capital that they need to conduct their business. I am already having trouble. My corporation has four representatives from four of the leading investment banking houses of New York all either members of or they deal through the stock exchange, and I want to say for that class of the directors they are the best ones I have ever found. The other directors are men that are operating in business. Those houses are the Morgan & Co., Lazard Freres, Blake Brothers, and Lehman Brothers.

Those men have their statistical departments, their economists, and their analysts, and you cannot imagine how thorough they are in going into your statements and asking questions, and you cannot appreciate, unless you have lived it and experienced it, what a wonderful moral influence it is to have someone who knows how to answer intelligent questions, to go into your plans and your operations. That moral influence is of tremendous value.

I just want to say for respectable men in the investment banking houses I think every large corporation needs a considerable number of them on its board. One good thing in having a considerable number is they are hardly ever, on a very important thing, all agreed at first. Sometimes some of them never agree with the others, but it brings about discussion and investigation.

My objection to section 5 is that we cannot withdraw if we go in there without the permission of the Commission. I think that ought to be changed.

In 12, the margin requirements that you set up there in a statutory way are a great mistake from the point of view that I am representing here.

Then I do not think any man in any business ought to be limited in using his reputation for keeping his promises. He should be permitted to use that finest thing about him, as far as the rest of man-

kind is concerned, his character and his reputation, to borrow money.

As to the proxy requirements, they are very onerous, and I do not think will do us a bit of good. I think that ought to be changed.

I do not think the freedom of the over-counter trading ought to be interfered with too much, and I do not think good directors ought to be driven off of our boards.

Mr. PECORA. How would good directors be driven off the board of any corporation through this bill?

Mr. REYBURN. It limits their use of their discretion and judgment.

Mr. PECORA. With regard to their own tradings in the stock of their company?

Mr. REYBURN. In regard to the operations of that company.

Mr. PECORA. In what way, Mr. Reyburn?

Mr. REYBURN. Well, I think in the registration requirements you ought to put that right up to a small committee, not the directors.

Mr. PECORA. What committee—committee of directors?

Mr. REYBURN. Say the executive committee or the president or the treasurer.

Mr. PECORA. What is the difference between putting it up to a small group of the board of directors or the entire board? If they are all directors, they all should have equal knowledge of the affairs of the company.

Mr. REYBURN. No; you cannot expect that.

Mr. PECORA. Because that is the responsibility that goes with the duty of directorship.

Mr. REYBURN. No. That is a general impression, but it is not possible for all directors to have an intimate knowledge of the business or an absolutely personal, intimate knowledge of the value of the assets of the business. They cannot do it. They select the best agents they can to operate that business. Sometimes they are mistaken. Sometimes the morals of the agents change. And you will destroy, I think, good corporate management by requiring the executives to take these great responsibilities.

The CHAIRMAN. It is important to do away with window-dressing directors, scenic directors, and have real directors, isn't it?

Mr. REYBURN. Oh, you bet it is, but they are directors with their own business to look after and cannot devote the necessary time to it.

Mr. PECORA. Then what good are they as directors?

Mr. REYBURN. The law and the public impression as to what a director's duties are—that is, all the board of directors—is based on a misconception of the need of corporate activity.

Mr. PECORA. A corporation must have a board of directors?

Mr. REYBURN. A corporation must have a board of directors. Then the board of directors—

Mr. PECORA (interposing). Under the law and in theory the directors manage the corporation. They have the voice of authority with regard to corporation activities and are responsible to the public for the exercise of their duties as directors, are they not?

Mr. REYBURN. Directors should be elected by stockholders.

Mr. PECORA. Well, they are.

Mr. REYBURN. As their representatives to conduct that business in accordance with the law and ethics of the business. Those directors then exercise their authority. They first should select a group from

their number who have the time to give more attention to it than a director ordinarily can, as an executive committee. Then that executive committee, with the aid and approval of all the directors, should select the officers, the management. That is the way it actually runs, and that is the way the law ought to read. Now, of that group, the management—

Mr. PECORA (interposing). You mean to say that executive committees and boards of directors select the officers, or do you mean to say that the entire board of directors select the officers of the corporation?

Mr. REYBURN. It should be a good deal like the executive and the Senate here. The executive committee should investigate and recommend. The board then should elect the officers. Now, the officers ought to be held to the very highest degree of responsibility, and they ought to be, when they do wrong, prosecuted and sent to the penitentiary, and so ought some members of the executive committee. Now, this other board that knows and has time to investigate its executive committee and investigate its officers, stands for the stockholders. They must use judgment in doing that.

Mr. PECORA. You may say that many members of boards of directors have not the time to meet the responsibilities of their positions as directors. If that is the case, what use are they to a corporation's board of directors?

Mr. REYBURN. They would be and can be of tremendous value without being on the executive committee. They get your statements, they put you on the stand, they examine into your plans, they give you good advice, they help you in many ways.

Then the executive committee, men who have greater knowledge or more time, work very much closer to the management. They watch it from week to week. The board of directors may meet only once a month or once a quarter and yet may be a splendid board of directors.

The CHAIRMAN. Any further questions of Mr. Reyburn?

Senator KEAN. I would like to ask what representative—Mr. Lehman is on your board?

Mr. REYBURN. Yes; Robert.

Senator KEAN. That is a brother of the governor, is it not?

Mr. REYBURN. I think a nephew. I am not sure.

Mr. PECORA. Nephew.

Mr. REYBURN. Is he a nephew?

Mr. PECORA. Yes.

Senator KEAN. Lehman Brothers were two brothers that started the firm, and then they had children and they are all in the firm. So he was a partner of the governor's, wasn't he?

Mr. REYBURN. Oh, yes; I think he was a partner in the firm before the governor withdrew from it.

The CHAIRMAN. Is there anything more, Mr. Reyburn?

Mr. REYBURN. Yes; I have written a little closing here which I would like to submit.

The CHAIRMAN. Very well.

Mr. REYBURN. Before closing, in addition to the reasons heretofore given as to my objections to clothing a governmental bureau with so much power over credit markets, there is another very good



one. It is very doubtful to my mind as to whether it is a wise policy for the Government to assume such a responsibility to investors. This is particularly true in a matter that requires a well-developed judgment that only long and intimate experience could bring—which would be difficult indeed for the Government to secure—as well as wide sources of information and quick decisions.

The power to regulate, like the power to tax, gives the power to impair and to destroy. The right to regulate does not give the right to destroy, but imposes the duty to improve and to build stronger, sounder, and more useful policies and methods of administration. While, if this proposed bill is enacted into law it will not destroy the stock exchange, it will impair its usefulness, and will destroy much of the value of many, and perhaps all the value of some, of the investments that have already been made in good faith. It will destroy or seriously impair the credit of many industries in the country, cause a decrease of employment and wages and dividends, production, distribution, and consumption.

The reasoning processes of investors are fallible just as those of all the rest of us. Whether we like it or not, whether or not it is sound for them to hold such beliefs, a great many of them watch the sale prices of securities every day and are tremendously interested in having a broad market in what they call "liquid" securities, and they do not necessarily mean by that a "watered" stock.

With quick marketability removed from anything of value—be it a farm, factory, bond, or stock certificate—fewer people are interested and its price inevitably is seriously affected and decreased. Desires of customers are what makes this business. They come from all over the world. The exchange is only the place where their agents execute the orders.

For the past 20 years I have lived within a few miles of Wall Street, the greatest credit market in the world. On the scale we now live, with a vast volume of production and consumption and the efforts to take care of the future, such a credit market performs a great service. It should be regulated, of course, but at the same time, in holding it to a high degree of responsibility, it should have the freedom to make it most useful and constructive in local, national, and international credit transactions.

The stock exchange is here. It is the auction block where every day the promises of men, corporations, and nations are bought and sold. Like everything in nature, our credit system and this piece of market machinery are not perfect. Along with a vast amount of good work, so beneficial to society, conscientiously and courageously done, there are exploitations of questionable and even crooked jobs. Human hopes are easily overstimulated, and it is easy for those who want to exaggerate and misrepresent to induce many people to carelessly buy poor and often false promises.

Let a bill be drafted that eliminates the misuse of the exchanges and it will have the support of every honest-minded man in the country. The opposition to the present bill is wide-spread because the proposed legislation does not attack the problem from this simple and constructive point of view, and because it strikes a vital blow at those investors and those industries who are so necessary to the agriculture, commerce, industry, education, and charities of the country.

All of these things can be safeguarded by legislation which instead of destroying, in the guise of regulation, preserves industrial and investment values through the medium of regulation which prevents or severely punishes abuse.

Thank you, gentlemen, for your patience. If the law is redrafted and you think I could be of any help to you, I would be glad to have you call upon me.

The CHAIRMAN. We are very much obliged to you, Mr. Reyburn. I hope you have a pleasant vacation in Florida.

Mr. REYBURN. Thank you, sir.

The CHAIRMAN. Mr. George Rich, secretary of the Boston Stock Exchange. We will be glad to hear from you now, Mr. Rich.

#### STATEMENT OF GEORGE A. RICH, SECRETARY AND TREASURER OF THE BOSTON STOCK EXCHANGE, BOSTON, MASS.

The CHAIRMAN. State your name and place of residence and occupation, Mr. Rich.

Mr. RICH. Mr. Chairman and gentlemen of the committee, my name is George A. Rich. I am secretary and treasurer of the Boston Stock Exchange. I have been secretary since 1916, and have been connected with the exchange since 1898. I speak, however, in behalf of the Committee on New England, representing both brokers and dealers.

It is not my purpose to discuss the details of the proposed bill, as this has already been adequately covered by others. I should, however, like to address myself to some general aspects of the subject which seem to us important. They are in brief as follows: First, the control of credit from the standpoint of stock-market operations; second, the question of segregating broker and dealer activities, and, third, the regulation of exchanges and their practices.

Before discussing these details, may I say just a word regarding the Boston Stock Exchange and its position in New England? The Boston Stock Exchange was organized 100 years ago. It has been in continuous operation since that time, with the single exception of a closed period during the great war. At the present time the membership is limited to 139, of which approximately 100 are active. Forty of our registered firms are also registered firms on the New York Stock Exchange.

At the present time there are listed upon the exchange the bonds of over 260 different corporations, representing 300 separate issues, and common and preferred shares of over 300 corporations. All of these corporations represent either New England industries or industries in whose issues there is a present substantial local ownership.

Now, to proceed to the points suggested at the beginning. First, the control of credit from the standpoint of stock-market operations.

Fundamentally we all agree that extreme speculation, whether in securities, land, or commodities, is bad from an economic standpoint. On the other hand, from an economic standpoint it is of the utmost importance that securities should remain liquid and at all times readily marketable. We feel that any attempt to restrict credit by any inflexible rule made in the light of the present circumstances is

undesirable. In my opinion it would be most unfortunate to write in law specific rules as to credit, because conditions are fluid and laws are static. The sound way would appear to be to leave it in the hands of those who, by reason of their position and their connection with the financial and economic conditions of the country, from their experience in extending credit, can best judge as to the proper flow into securities in order to maintain their liquidity and marketability in the light of circumstances as they exist, not only throughout the whole country but in special local sections.

In the last analysis credit is dependent upon both the individual and upon the character of the securities upon which the loan is based. If this is a true statement, there then can be no uniformity applicable to the whole country or to all securities. For this reason my associates are convinced that any limitation, either on the amount the individual should borrow or that banks may loan, should be left to the control of the Federal Reserve Board.

Now, if it be said that the control of the Federal Reserve Board failed in 1929, it should be borne in mind that not only have banks and bankers learned by that experience, but by the passage of the Banking Act of 1933 the powers of the Federal Reserve Board have been greatly increased for the express purpose of preventing the undue diversion of funds into speculative operations. What I have in mind are these powers: The power to deny credit facilities of the Federal Reserve System to any bank making undue use of bank credit for speculative purposes; the power of the Federal Reserve Board to fix for each district the percentage of capital and surplus which may be represented by loans secured by stock or bond collateral; the power of the Federal Reserve Board to remove any director or officer of a member bank guilty of unsafe or unsound practices; the power to increase or decrease the reserve balances required to be maintained against either demand or time deposits; the elimination of all banking affiliates engaged in the securities business; the forbidding of any member bank to act as agent or medium for others making loans on securities. In my opinion and in that of my associates, if further protection or power is needed to control credit in market operations, it should be done through the amplification of that act.

Now, to the second point, the question of segregating broker and dealer activities.

With respect to section 10, which separates the activities of the broker and dealer, I would respectfully submit that such a separation would work a hardship on New England people as a whole, and on the security houses serving New England, particularly on the smaller holders of securities in comparatively small cities and communities. By forcing segregation we New England people believe that the act would force our local securities houses to withdraw from the small cities and communities, to withdraw both their services as brokers and their services as dealers. The effect on the listed holdings of such investors would be to make them less readily marketable. The small holder, if the securities houses in the small communities are forced to withdraw, would not be likely to have established connections with securities houses in the large cities. This being the fact, he would find it difficult, in case of necessity, to

dispose of his listed holdings promptly, or to make arrangements for quick execution of an order to sell. A similar difficulty would obtain in case he desired immediate execution of an order to purchase listed securities. The general effect, therefore, on the small holder in the smaller towns would be to his decided disadvantage. It would make his listed securities less readily marketable.

In addition to this, individuals in small places holding unlisted securities would be deprived entirely of services and financial advice from dealers if the segregation section forced, as we believe it would, the withdrawal of securities houses from the small cities and towns.

Moreover, this section would, I believe—and when I say I, I mean my associates too—would produce the following additional unfortunate results: First, a radical curtailment of our established organizations. Second, the discharge of members of the personnel of our organizations who have labored long and faithfully and have established recognized reputations for honesty and fair dealings with the customers. I may say that in the State of Massachusetts alone there are something more than 10,000 employed by our organizations. Third, the forced separation and perhaps the loss of a clientele built up over a period of many years. Fourth, an increased cost to industry for financing and consequently a decreased valuation of the securities sold to the investor. Fifth, the entire elimination from the dealer business of the most financially responsible firms and individuals in our district.

It is my personal belief, based on the local situation, that this will result in the driving of purely local financing to other fields, particularly to New York, where alone I believe could dealers be found of sufficient means to absorb and distribute the securities necessary for current financing. This is due to the fact that the majority of the houses of substantial financial resources in our district are members of the stock exchanges.

The criticism which has been directed at brokers occupying this dual position, it would seem, has been largely, if not entirely, overcome by the passage of the Federal Securities Act, which appears to have eliminated the opportunity for unfair advantage, not only under section 12, imposing civil liabilities upon the seller, but by section 11, imposing even greater responsibilities upon an underwriter. Furthermore, under our New England laws, both statutory and common law, full disclosure as to his relations to the transaction is required on the part of any broker who is selling as a principal. I am also advised that the Investment Bankers' Association Code of Fair Practices, about to be adopted, makes further requirements in this type of transaction.

Now, third, the regulation of exchanges and their practices.

As to the prohibition and regulation of practices of exchanges, it seems to me that there are two considerations. Certain practices are condemned by exchanges as well as public opinion. As to such practices, there can be no objection to the enactment of a law prohibiting them. There is a distinct difference, however, between such practices and many other matters covered by the proposed bill as to which there is a sincere and honest difference of opinion.

As to such things, if Congress feels that certain Federal regulations should be imposed upon the activities of the stock exchanges, we

should not oppose it, provided that the authority is placed in the hands of a capable independent group of men, not bound in advance by specific prohibitions and requirements, before whom we could appear and discuss our local conditions and our local practices. Before such a body we should feel that, if any of our practices were regarded as ill-advised or not in the interests of the public and we could not convince them otherwise, then there really was some question as to the soundness of our own position. In other words, a body with flexible authority, sitting in conference with the exchanges, studying their problems, and both interested in the same ends, the public good and the sound interest of the security holders, is without objection. We believe under those conditions a sounder practice and procedure can be worked out than is possible in any other manner.

The CHAIRMAN. Are there any questions of Mr. Rich?

Mr. PECORA. I would like to ask a few questions, Mr. Chairman.

Mr. Rich, you said that certain practices are condemned by exchanges as well as public opinion. As to such practices there can be no objection to the enactment of a law prohibiting them. Would you be good enough to enumerate the practices you have in mind?

Mr. RICH. What I had particularly in mind, Mr. Pecora, was the wash sales, and so forth, some extreme types of pool operations. Those were the particular things I had in mind.

Mr. PECORA. In the concluding part of your statement you said that "as to such things, if Congress feels that certain Federal regulations should be imposed upon the activities of the stock exchanges, we should not oppose it, provided that the authority is placed in the hands of a capable, independent group of men, not bound in advance by specific prohibitions and requirements, before whom we could appear and discuss our local conditions and our local practices."

As to that, Mr. Rich, do you have any notion that the Federal Trade Commission would shut its ears to any suggestions made by representatives or officers of stock exchanges when it devoted itself to the task of formulating rules and regulations?

Mr. RICH. I had no thought, and I have none, that the Federal Trade Commission, if it were given this authority, would not give every member of the present exchange, broker, or dealer, the opportunity to present their cases to the Commission and get their hearing. What I would suggest and what runs in my mind is that whether or no the organization, the form in which it could best handle this problem, should be more diversified and have more opportunity to attend to the particular problems than perhaps such a commission would have. In one of the reports—I think, the Dickinson report—they made two suggestions, did they not? One, that there could be a remaking of the Federal Trade Commission, setting up certain commissioners who would give all their time, or to an independent stock exchange authority. What we have in mind is a group of men of diversified contacts and of wide experience to whom we could present matters, because we feel very strongly that a uniform law imposed on every exchange would, in certain instances, work injustice to many of these purely local markets. We are trying to preserve our local market.

Mr. PECORA. The matter of preservation of local markets with regard to elements that apply only to localities could easily be taken

up with the Federal Trade Commission when that body formulates its rules and regulations, could it not?

Mr. RICH. I agree that it probably could. I just tried to express my thought and that of my associates as to the particular type of body that we felt properly could handle it better. It is not said in criticism.

Senator KEAN. I would like to ask you a few questions. If this law "as is" is enacted, the Federal Trade Commission would be bound, of course, by all the requirements of the law, would it not?

Mr. RICH. Yes.

Senator KEAN. And if they are bound by all the requirements of this law, that would so cripple your exchange that probably it could not do business?

Mr. RICH. This bill that is before us now; yes. Our suggestion is that there should be great flexibility in the law in order that that body might function better.

Senator KEAN. I understand; but we have had testimony here that it would perhaps close most of the exchanges.

Mr. RICH. Section 10 would hit our district terribly hard, because, as I have stated, a substantial part of our long-term local business is done with those who happen to be members of the stock exchange.

Senator KEAN. Do you have about the same rules as the stock exchange in New York has?

Mr. RICH. Pretty generally the same.

Senator KEAN. Do you have a right to question your members as to whom they bought for and whom they sold for?

Mr. RICH. Yes, sir; we do.

Senator KEAN. Have you questioned them on air stocks?

Mr. RICH. We have no air stocks listed.

Senator KEAN. None of them are listed?

Mr. RICH. No, sir.

Senator KEAN. If this bill is enacted into law it would interfere very much with the sale or financing of all municipal bonds, would it not?

Mr. RICH. It would, in our district. It would have to be done outside of our district.

Senator KEAN. In other words, it would drive municipals and other bonds off the market, and they are regarded as the highest type bonds in the market today. Bonds of the State of Massachusetts and towns in Massachusetts are selling on a better basis than those of other States and cities in the United States, are they not?

Mr. RICH. They are selling, yes; I would not like to go as far as that.

Senator KEAN. It would practically deprive those cities and towns of the ability of marketing their securities?

Mr. RICH. They would have to go outside of our district where they now operate.

Senator GOLDSBOROUGH. I understand, Mr. Rich, that it is your judgment that there should be set up an independent commission to carry out and effectuate the provisions of this bill?

Mr. RICH. My judgment, as I tried to express it, is that; yes, sir.

Senator GOLDSBOROUGH. Rather than the Federal Trade Commission?

Mr. RICH. Rather than the Federal Trade Commission.

Senator GOLDSBOROUGH. Is that based upon the fact that you think the Commission would be carrying burdens already placed upon it, plus those imposed by this act, which would be such a stupendous task that it would be difficult for them to carry out the provisions of this bill?

Mr. RICH. There are two answers to that, Senator. First, I think it would be a stupendous task for them; and personally I am not clear in my mind but that a different type of personnel, a more diversified personnel, with broader contacts with economic and business conditions, would not be more serviceable. I am not criticizing in that suggestion, but am simply giving my reaction as to the most competent way of handling it.

The CHAIRMAN. Would you recommend that municipals be exempted from this act?

Mr. RICH. Frankly, I do not see why they should not, Senator. It covers the country over. I am not very familiar with municipals outside of my own district, and just what might be involved by giving that general exemption I do not know.

The CHAIRMAN. Are there any further questions? If not, we are very much obliged to you.

Mr. RICH. I thank you very much, gentlemen.

The CHAIRMAN. We will now hear from Mr. Archibald Roosevelt, who is accompanied by Mr. George B. Gibbons.

**STATEMENTS OF ARCHIBALD B. ROOSEVELT, PRESIDENT OF ROOSEVELT & WEIGOLD, INC., DEALERS IN MUNICIPAL SECURITIES, NEW YORK, N.Y., AND GEORGE B. GIBBONS, PRESIDENT GEORGE B. GIBBONS & CO., INC., MUNICIPAL BOND DEALERS, NEW YORK, N.Y.**

The CHAIRMAN. State your name, place of residence, and occupation, Mr. Roosevelt.

Mr. ROOSEVELT. My name is Archibald B. Roosevelt. I am president of Roosevelt & Weigold, Inc., dealers in municipal securities. By municipals I mean those of States and subdivisions of States.

The CHAIRMAN. And your residence?

Mr. ROOSEVELT. New York City.

The CHAIRMAN. Mr. Gibbons, you may state your name.

Mr. GIBBONS. My name is George B. Gibbons. I am president of Geo. B. Gibbons & Co., Inc., municipal bond dealers, New York City.

The CHAIRMAN. Proceed, Mr. Roosevelt.

Mr. ROOSEVELT. Mr. Chairman and Senators of the committee, last week the Municipal Bond Club of New York had a meeting and appointed a committee to study the National Securities Exchange Act of 1934, of which committee Mr. George B. Gibbons is chairman. After some study of the bill we were asked to come down here and explain to the committee just how we thought that this bill would affect municipal bonds and municipal securities. Neither Mr. Gibbons nor myself are members of any exchange that deals in securities. We deal solely in municipal bonds.

We have made a study of this bill and have come to certain conclusions. We feel that it is pretty definite that if the bill goes through

"as is", we will be out of business. Of course, that is very painful for us. Perhaps some people do not care about it. But we do not believe that the Federal Government has any idea of putting a legitimate type of business out of the picture entirely.

Secondly, we believe we can show that municipalities and States will find it difficult and expensive, if not impossible, to finance through the issuance of bonds, on account of this bill.

Mr. Gibbons has prepared an analysis of the bill, paragraph by paragraph, such paragraphs as we believe affect municipal bonds. We have copies of his analysis here, and Mr. Gibbons would like to explain it and comment on the various paragraphs, and we would like to answer any questions and hear any suggestions that any of the committee or counsel for the committee may have.

The CHAIRMAN. You may proceed, Mr. Gibbons.

Mr. GIBBONS. In going over this bill we did so without the aid of counsel. A number of the bond dealers in New York City made a study of it and arrived at certain conclusions. These we would like to place before you.

It seemed to us that the bill, from its very wording, was not intended to cover State or municipal bonds, although it specifically exempted bonds of the Federal Government and therefore by implication included all municipal bonds, we assume. It seemed to be particularly injurious in some cases to States and municipalities.

To put it briefly, it makes many bonds unsalable, not only bonds already outstanding in the hands of their owners, but it eliminates competition in the purchase of new issues sold by municipalities or when sold out by their present owners, life-insurance companies, banks, or estates. It very largely destroys the desirability of municipal bonds as an investment. Of course there are hundreds of millions of them outstanding. It reduces their availability as collateral; in fact, it makes it almost nil, and it destroys their salability.

The CHAIRMAN. Will you explain those points of objection as you go along?

Mr. GIBBONS. I will gladly do that, Mr. Chairman.

As to section 3, we have not gone over all the paragraphs, because some of them apparently do not apply to the subject; but by section 3 municipal bonds are apparently included. Municipalities, States, districts, and political subdivisions are classed as issuers.

Section 6, paragraph (a). This paragraph prevents banks, if they buy or sell securities from or to a member of an exchange, as practically all banks do, from lending money on State or municipal bonds unless they are registered on some exchange. That means that an issue already outstanding cannot be taken to a bank and used as collateral. The reason they were purchased for, in many cases, was that they would be available as collateral when occasion arose.

Section 6, paragraph (b), makes it impossible to borrow more than 40 percent of the value of any State or municipal security, and only then if the security is listed on an exchange. This would seriously and adversely affect insurance companies, savings banks, postal-savings funds, pension funds, corporations, and individuals, as well as dealers in municipal securities, by making it impossible for them to borrow on State and municipal securities in times of stress, or, in the case of dealers, after they have purchased them and pending their



sale to their customers. It would practically make it impossible for a group of municipal dealers to join together to purchase and finance a large issue of municipal bonds. It would require too much cash. Recently Pennsylvania sold some 30 millions of bonds, and some 40 dealers joined hands to buy them; but if they could only borrow \$12,000,000 on the 30 millions of bonds and put up \$18,000,000 in cash it would have been an impossible thing for many of them to do.

Paragraph (c) of section 6 apparently is not intended to apply to a dealer in municipal bonds, but it nevertheless would hamper the sale of municipal securities. Many people buy a new issue and turn in as part payment other bonds, especially short maturities. This section prevents making a loan, so they would have to have all cash for the new bonds. Bonds which might be maturing within a month or two months would not be available to be taken as part payment or to make a loan on—

Mr. PECORA. Mr. Gibbons, pardon me for interrupting at this point, but have you overlooked the provisions of the bill which would enable holders of bonds of this character to borrow as much as a lender is willing to give, provided that the transaction whereby the bonds had been acquired by the borrower had not been effected within 30 days?

Mr. GIBBONS. I saw that. On new issues that 30 days' provision would not apply, because they might buy bonds today and sell them to you tomorrow, and you might want to borrow something on them right away and you could not use those bonds as collateral. You must pay for them in full.

Section 7, paragraph (a), provides that all borrowing should be from a member of the Federal Reserve System; so that if a bank refused to lend on municipal bonds, possibly because it did not like the bonds, or for any other reason within its own discretion, the owner of those bonds would have to go to another member of the Federal Reserve System to borrow the money. It might force him to sell the bonds. Today he can go to anybody with money, who is willing to lend it to him, and borrow it. A great deal of money is borrowed from people other than banks. A dealer buys many municipals and feels that they are perfectly good, but the bank may feel that they may be a slow thing to sell and may prefer not to loan on them. Other people who may have no immediate use for their money are perfectly willing to tie it up for a while and loan on those bonds. A dealer would be prevented from going to them to borrow the money. In fact, you could not even go to a member of your own family and get him temporarily to loan you some money. If the banks would not loan you the money, you would have to throw the bonds overboard.

Mr. PECORA. That also would not apply to a borrower who owned the securities for more than 30 days.

Mr. GIBBONS. You might buy some bonds at a public sale and be required to pay for them within 5 or 10 days. You might have made a mistake in buying them; you might have paid too much, but nevertheless you must borrow on them at once.

Mr. PECORA. But those provisions would not apply to a borrower who had owned the bonds for more than 30 days.

Mr. GIBBONS. But there is a period when you do not own them 30 days. When you are buying a new issue you only have them 1 day, and must borrow that day to pay for them.

Mr. PECORA. Your argument contains principles which would be applicable to new issues.

Mr. GIBBONS. Yes; and old outstanding issues, also; many a man buys an old issue and borrows on it immediately—an issue that has been outstanding. There is probably as much trading in old issues as there is in new issues. People seek to improve their holdings and sell one and buy another. So there is a continual turnover.

Paragraph (b) of section 7 limits a dealer very strictly in his commitments. It limits his obligations to not more than 10 times his capital. There are many municipal bonds sold at public sale, and in the average course of business no one dealer gets a very large percentage of the bonds he bids for. I have bid for as many as five or six millions of bonds in 1 day, and did not get any. At another time I bought five or six issues. I would not dare to run the risk of bidding for bonds if the aggregate amount of my bids totaled more than 10 times my capital, because if by a turn of fortune I should get all the bonds I bid for, my obligations would exceed the limits set by this bill. Even if I got them all and could turn them over very readily, I still could not assume the responsibility, even if it was temporary.

Paragraph (c) of section 7 presumes the segregation of business. That is not very practical in the municipal bond business, for the reason that most municipal bond dealers act in both the capacity of dealer and broker. I will explain to you how that is. If the city of Albany sells some bonds a syndicate may bid and secure the bonds. Other syndicates do not get them. The syndicate that does buy them is a dealer in those bonds. They have put their own money in it and are reselling them. The syndicate that bid for them and did not get them may have orders for those bonds. They talked to their customers about them to see if they would buy from them in case they secured the issue. They were unsuccessful, but nevertheless the customers want the bonds. Even though I individually did not secure them at the sale, they say, "We will take 25 thousand, anyway." I go to the syndicate that did get the bonds and buy them. In that case I am a broker. If I could only sell bonds where I acted as dealer I would have to be successful in every sale in order to make any money. I simply cannot afford to do business on that basis. Neither could I afford to act only as broker, because I could not then bid for them on my own account in cases where I had no immediate customer. That would apply to all dealers. That is true in New York City in the municipal bond business, and in smaller places it would not leave enough business for a municipal bond man to live on. Whether he be a dealer or broker, he would not get enough. They have very few bonds that they buy as a dealer, and a great deal they sell as a broker. Yet their dealer business is a very substantial part of their total business.

Mr. PECORA. Does your firm hold any stock exchange membership?

Mr. GIBBONS. Oh, no; we are incorporated. When we were a firm we were never members of any exchange at all. But we are members of the Investment Bankers Association, and they have a code, the

Investment Bankers Code; and that code requires that the dealer disclose to his customer the capacity in which he acts, whether as a broker or as a dealer. That would presumably safeguard the customer. As a matter of fact, my customers do not care whether I act as a broker or dealer. If they see bonds offered in the paper and my name is not among them, they give me an order for them. They know that I do not own the bonds, and they do not care. They get them at the same price.

In other words, whether I own city of Albany bonds or whether I deal in them as a broker makes absolutely no difference to my customers. I am not trying to hide the fact that I do not own the bonds, and the customer does not care whether I own them or not.

Mr. PECORA. It might make a difference if a customer came to you and sought your advice about a particular issue, and you at the time had some bonds and you recommended those in preference to others, which might appear to have a greater security and greater yield.

Mr. GIBBONS. But he would know whether I was an owner or dealer. Under the code I would have to tell him.

Senator KEAN. Is it not true, also, that you would submit a list of municipal bonds for him to pick from?

Mr. GIBBONS. That is correct. Some I would own and some I would not. He would not care one way or the other. But I would have to tell him, under the code, whether I was acting as broker or as dealer.

The CHAIRMAN. That code may be changed or abolished or modified at any time, may it not?

Mr. GIBBONS. Yes; so I understand.

Senator KEAN. But the practice is there, is it not, that that is the way the business is done?

Mr. GIBBONS. That is the way the business is done.

Senator KEAN. And you submit to your client a list, and he wants to invest \$100,000 in some bonds. You submit to him a list of municipal bonds?

Mr. GIBBONS. He usually wants a large list to choose from, and he chooses a bond from the point of view of the desirability of the bond to him, irrespective of whether you own it or not. For instance, if I own bonds it is particularly exasperating to have a man pass over every bond I would like to sell him to buy a bond that someone else owned and on which I make one fourth of one percent, but that of course is his privilege—he buys the bond he prefers.

Mr. PECORA. Evidence before this committee shows that one of the biggest bond houses of the country did not follow the practice you have alluded to. Rather they pushed on their customers their own securities, particularly at times when they knew those securities were souring.

Mr. GIBBONS. Municipals or corporation bonds?

Mr. PECORA. There were some foreign issues which are comparable to municipals. They were selling industrial corporation bonds. I refer to the National City Co.

Mr. GIBBONS. They are large bond dealers, but in my own business and that of Mr. Roosevelt, and a good many other businesses, it is 99.9 percent municipal bonds. We very seldom handle anything else.

Senator GOLDSBOROUGH. I gather that under section 10, especially in small centers, it would be pretty difficult to separate the dealer and broker business. In other words, you could not make a living?

Mr. GIBBONS. No; you would not, even in the large centers. In the recent past, as you know, the municipal bond market has been very much depressed. High grade 6-percent bonds in Westchester County have sold under par, and bonds of many cities were unsalable. Then they worked back until they were worth about par. But no dealer would be willing at that time to assume the liability of actually purchasing those bonds. The same held true in other States. But they were willing to handle those bonds as brokers for anybody who wished to buy them. A great many people thought they were a good purchase and did buy them. They were right, because now they are selling at the equivalent of 110. At the same time no dealer felt justified in buying a large block of those bonds. He had to do the business on a brokerage basis. He did not know whether they were going down to 80 or not. New York City bonds went to 65.

Mr. PECORA. You are familiar with the legislation that is proposed in Congress of extending to municipalities the principles of bankruptcy laws, are you not?

Mr. GIBBONS. I have head part of it.

Mr. PECORA. Have you taken any position with regard to that?

Mr. GIBBONS. I have not.

Mr. PECORA. Apparently, from the demand that has been presented to Congress for the enactment of that legislation, any municipality can issue bonds and sell them to the public, and some have issued those bonds on an unsound basis. So the mere fact that an issue is of municipal bonds does not carry with it any sanctity, so far as its soundness or secureness is concerned.

The CHAIRMAN. They have back of them the taxing power to make them good.

Mr. GIBBONS. That is just the remark I wanted to make, Senator.

Senator GOLDSBOROUGH. Then you regard as a great hindrance the limitations of section 10?

Mr. GIBBONS. It would very seriously tend to eliminate competition at sales. Competition at sales is tremendously desirable from the point of view of the municipality.

I have a point on that that I would like to bring out, but I will go over the other points, if I may, first.

In section 11 we simply suggest the impracticability of registering all municipal bonds. Many small places have sold their bonds and are no longer interested, or may not be; and if they do not register their bonds, the bonds already outstanding would not be available as collateral nor would they be salable. In New York State alone there are 57 counties, 60 cities, 543 villages, 932 towns, and some 8,550 school districts, each of which would require to be registered in order that their bonds may be available as collateral. They bear different rates of interest. It would be a colossal task to even get them to do it. Not being registered, these bonds would suffer a severe depreciation in price, and the use for which they were bought by many people, in order to have them available in times of stress, would be utterly destroyed.

Section 12 compels municipalities to have an outside audit in order to have their bonds listed.

The only comment I have on that is that it is pretty costly. Many States have systems of audit which they think are fairly satisfactory. Even an audit would not help particularly. It would not cure their credit. What they really need is a balanced budget and somebody to make a survey to be sure they are not spending more money than they are getting from taxes. That is what makes a municipal bond good, and not the accuracy of their accounts. As a matter of fact, the safety and the security of a municipal bond do not depend upon the integrity or the good business ability of the officials; that may be helpful, but they depend upon the taxpaying ability of the taxpayers in the town. If they depended upon the good business ability and the integrity of the officials, even though the latter were the best in the world when the bond was sold, the next administration might have less capable and honest officials; and if the value of the bond depended upon that it would be very unstable.

An audit of a municipality would simply certify as to the honesty of the officials and the correctness of their accounts. A municipality, for instance, might require a million dollars for its operating expenses and only levy half a million dollars to meet these expenditures, and thereby ruin their credit, but still be perfectly honest. Another municipality might levy a million dollars; some official might steal \$100,000, but, if they only needed the remaining \$900,000 to meet all their operating expenses, they would balance their budget in spite of the theft, and the bonds would be much more salable and at better prices than those of the municipality previously cited.

Section 14 seems to make it unlawful to sell, and practically prohibits the sale of, any State or municipal bonds which did not comply with the Commission's ruling, which probably includes a provision for registration with the Federal Trade Commission. In view of the vast number of political subdivisions in the country, this is hardly feasible. This paragraph would prevent the sale of new bonds and would seem to prevent the sale, or the use as collateral for loans in times of stress, of any bonds now outstanding which might be held by insurance companies, savings banks, Postal Savings funds, pension funds, individuals, and corporations. Many of the institutions just specified and many corporations own municipal bonds which they hold as a reserve against the time when they may need to sell them or borrow money on them. Unless the issuers of these bonds register them, the bonds would not be available for this purpose and would be nonsalable.

Section 17—

Senator GOLDSBOROUGH. What about section 16?

Mr. GIBBONS. I omitted that because that simply requires the bond dealer to keep certain books subject to examination by the Commission. We have all had income-tax people in from the State and from the Federal Government. The only objection I make to that is paying for it. I cannot pay my own employees sometimes. The representatives of the Government are welcome to anything they want to come down and see. Our books are perfectly open. My firm, and I guess many others, have kept their books in permanent form and not loose leaves. They run right back to the

time when we started in business. I know mine do, and I think most people's do. Any properly constituted officials are not only entitled to see them, but are perfectly welcome to see them at any time; and they have been seen several times. But it would be costly to place a charge of \$100 a day for a couple of auditors to go over the books and possibly spend a couple of weeks at it, when a man is having a hard time paying his own employees. Most of us have had a hard time in the last few years.

Section 17 (a). This paragraph and the subsequent paragraphs in this section would, apparently, render a municipality, which I believe is responsible for the acts of its officials, liable for any false statement. That sounds perfectly reasonable. I do not care whether they are liable or not, but it would be pretty tough on them, and I will tell you how it might happen.

A village in my State sold some bonds to me on an absolutely false statement made by the treasurer of the village. He absolutely lied and made false affidavits right through. He deceived the village officials; he deceived the attorneys for the village who were outside attorneys; he deceived the purchaser of the bonds. I sold those bonds under those false statements. I cannot guarantee the bonds I sell. All I can do is to be honest, myself, and make statements which I have investigated and believe to be true. If a municipal officer makes a false statement I cannot help it. That man did make such a false statement, and he was just released from jail the other day. By the way: Those bonds were sold in the fall of 1931 or the fall of 1932, I have forgotten which; but the market immediately after took a very severe drop until bonds of a similar character were selling at 90 cents on the dollar.

Under this bill, if I sold those bonds to you and they went down to 90 because of the general decline, you nevertheless having bought the bonds on a false statement can sue that municipality and make them pay you the difference. In this case it would cost them \$86,000, under this bill. The mere fact that the village treasurer lied and stole a few thousand dollars did not affect the legality or security of those bonds one atom.

The CHAIRMAN. Then there was no loss or no damage?

Mr. GIBBONS. Suppose a man had bought them at par and they had sold afterward at 90. He could claim that he paid par within 90 days for bonds that now sold at 90 and could show he bought them on a false statement and he could sue the village for damages. There are so many things in there that it seems to me that possibly this bill is not drawn particularly with regard to municipal bonds or State bonds—

Mr. PECORA. If the bill were to confer power on the Federal Trade Commission to exempt municipal bonds from the operations of its provisions, which you have criticized, such action would meet your criticisms, would it not?

Mr. GIBBONS. No; for instance, we would not be interested in whether they had exempted a certain bond of a certain village in Pennsylvania or Connecticut or New York, but before we could buy that bond we would have to be sure it was exempted. So long as it is required to exempt all municipal bonds there would be a delay. A man who needed money quickly could not use his bonds

before he found out they were exempt. People would wait until the emergency arose and then try to sell their bonds and could not.

Mr. PECORA. When you submit a bid for a new issue of municipal bonds do you make an independent investigation?

Mr. GIBBONS. To what extent do you mean—send an auditor up there?

Mr. PECORA. In order to form your judgment as to the soundness of the securities?

Mr. GIBBONS. Yes. We consider that we have investigated sufficiently to arrive at an opinion so that we are satisfied about the bonds. We take the sworn statements of the officials as to their financial status, their tax collections, their debt, their population, and we act on that.

Mr. PECORA. Then you do not make an independent investigation, if that is all you do.

Mr. GIBBONS. We do not send an auditor.

Mr. PECORA. Do you make any kind of an independent investigation?

Mr. GIBBONS. I have just explained what we do.

Mr. PECORA. You take the sworn statements of somebody else?

Mr. GIBBONS. Correct.

Mr. PECORA. Of the officers of the issuing municipality?

Mr. GIBBONS. Yes. That is precisely what we do. In the first place, it would be impossible for us to make an independent investigation of New York City, for instance. The task would be too great. Nobody would undertake it; or in Albany or Yonkers or any other place.

Mr. PECORA. I did not mean an independent investigation of that kind; but do you merely rely upon the data and information furnished by the officers of the issuing municipality?

Mr. GIBBONS. We rely on the officers of the municipality to furnish us an accurate statement of their financial status—their debt, their bonds, their tax collections. We rely on the attorneys, who are usually New York attorneys retained by different municipalities. There are several firms that specialize in that. We rely on their opinion as to the legality of the issuance of the bonds, that the proceedings authorizing them are legal and that the sale is legal.

Senator KEAN. But further than that, you require that the municipality shall furnish you with certain statements and affidavits?

Mr. GIBBONS. Correct.

The CHAIRMAN. You do not check up the assessment to see whether there is an overassessment or an underassessment on the property, and how it compares?

Mr. GIBBONS. We do, Senator, but not by going to the place. For instance, we take the tables of equalization in New York State and find out whether or not the State board of equalization assess property in a certain way. Albany, for instance, may assess its property on 80 percent or 70 percent. Some counties assess at 40 percent, so they would apparently have \$10,000 of market value of property for every \$4,000 assessed. In paying their taxes they pay on \$10,000 for State tax, and in their local taxes they pay on \$4,000. Some counties are assessed at a higher percentage than others. They also have county boards of equalization. We have all those tables and can check them all up.

The CHAIRMAN. You can tell whether property is coming down year after year or going up?

Mr. GIBBONS. You can do that by seeing whether there is a change in the assessed valuation and also the amount of new building which is added. The only change in any place would be the removal of old buildings and the addition of new buildings plus or minus the change in values. The real estate would be the same. A house and lot are usually assessed as one. We have all those records.

The CHAIRMAN. Are there any further questions of Mr. Gibbons or Mr. Roosevelt? If not, that is all. We are very much obliged to you gentlemen.

Mr. PECORA. Are municipal bonds speculated in?

Mr. GIBBONS. They do not speculate much in municipal bonds, because once they are sold they are gone. If you had them on an exchange you would be able to pick up some pretty cheap bonds.

The CHAIRMAN. The committee will take a recess at this time until 2:30 this afternoon.

(Whereupon, at 1:12 p.m., a recess was taken until 2:30 p.m. of the same day.)

#### AFTERNOON SESSION

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

The CHAIRMAN. The committee will come to order, please. Mr. Fletcher, we will now hear you.

#### STATEMENT OF R. V. FLETCHER, WASHINGTON, D.C., GENERAL COUNSEL FOR THE ASSOCIATION OF RAILWAY EXECUTIVES

Now, Mr. Fletcher, you have examined the bill we are now considering, S. 2693, have you?

Mr. FLETCHER. Yes, Mr. Chairman. And I want to submit just a few observations about two or three sections of the bill without discussing the general features of the proposed legislation at all.

The CHAIRMAN. You may proceed in your own way.

Mr. FLETCHER. I might say that I have no views to express at all with reference to the regulation of stock exchanges. I am concerned in behalf of the railroads, which I represent, with regard to a few features of the bill which seem to us to call for unnecessary expense, labor, and trouble. For instance, section 11, which is the registration clause of the bill; section 12, which deals with information that may be called for by the Federal Trade Commission; and one observation as to section 18 of the bill; as well as a very brief reference to section 13 in connection with proxies.

The CHAIRMAN. Very well. The committee will be glad to hear whatever you have to present in regard to this bill.

Mr. FLETCHER. So far as section 11 is concerned, that being the registration section, the point I wish to make is, that in that section, in connection with the obligation placed upon companies issuing securities dealt with on the exchanges, to have to register them, they are required particularly in the second portion of that section, which is (II) to furnish information to the Federal Trade Commission with respect to 11 different itemized matters.



As you no doubt know, in the railroad industry it is a highly regulated industry now. It is required to make reports to the Interstate Commerce Commission; to keep all records and accounts in conformity with the rules of the Interstate Commerce Commission; and, generally, to conform to the supervising authority of that body in great detail.

I have no purpose to delay the committee unduly, but would like to call attention to some items in section 11, more particularly paragraph (II) where it is provided that companies that issue securities listed on stock exchanges shall furnish the Federal Trade Commission, first, with information in regard to the organization, financial structure, and nature of the business. All that is reported regularly by the railroads in their annual reports to the Interstate Commerce Commission.

Second. They must furnish particulars regarding the terms, position, rights, and privileges of the different classes of securities outstanding. That information is not contained in the annual reports made by carriers to the Interstate Commerce Commission, but you will recall that before a railroad company can issue any security or reissue any of its securities, it must make application to the Interstate Commerce Commission under the provisions of section 20 (a) of the act, and secure the permission of the Interstate Commerce Commission to do anything about such securities; and the rules of the Interstate Commerce Commission which govern procedure in matters of that sort, require railroads to give all the particulars which are mentioned here in the second item of this subsection which I am now discussing.

It is true, of course, that there are securities listed on exchanges so old that they have not been issued under the authority of the Interstate Commerce Commission, since that portion of the Interstate Commerce Act requiring railroads to secure such authority from the Commission, was enacted in 1920. But I dare say there is scarcely a railroad of consequence in the United States that at some time or other since 1920 has not made application to the Interstate Commerce Commission for permission to issue or reissue a security of some kind. And the rules of the Commission require that there shall be reported to that body upon such application not only the particulars about the issue sought to be made then, but all particulars about all outstanding issues of stocks and bonds. So that without having checked the matter up carefully, I am quite convinced there is not a railroad in the country which has not filed with the Interstate Commerce Commission in connection with its application for authority to issue securities, all the material covered by the second section of that part I am now discussing.

The CHAIRMAN. This bill would not interfere with that in any way, would it?

Mr. FLETCHER. It would require railroads to give all this information again to the Federal Trade Commission, as I read the bill.

Mr. PECORA. Well, inasmuch as such information is given to the Interstate Commerce Commission, couldn't duplicate copies thereof be made and filed with the Federal Trade Commission?

Mr. FLETCHER. Do you mean from time to time as they are currently submitted to the Interstate Commerce Commission?

Mr. PECORA. Yes.

Mr. FLETCHER. That might be done, Mr. Pecora, but with all the labor involved in going back and reviewing the history for 20 years; no, not for 20 years but for 13 years, since section 20(a) was enacted, and filing such reports again with the Federal Trade Commission.

Now, Mr. Chairman, inasmuch as the Interstate Commerce Commission, which is a branch of the Government, has all that information, it could be readily obtained by the Federal Trade Commission upon application to the Interstate Commerce Commission, and therefore why should the railroads be required to go to the expense and the trouble of doing that again?

I will not take up your time to elaborate on that point, but will content myself by saying, Mr. Chairman, that as to every one of the items in section 11, and comprising 11 items, all except item (8) are exactly in that same category. The information here required is either on file with the Interstate Commerce Commission as a part of the annual reports of the carriers or else it has been filed with the Interstate Commerce Commission in connection with finance applications made to the Commission.

And that is true with reference to subsection (6), particulars regarding bonus and profit-sharing arrangements. It is also true in regard to subsection (7), particulars regarding management and service contracts; also as to subsection (8), particulars regarding material contracts not made in the ordinary course of business, and material patents; and also as to subsection (10), balance sheets; and also as to subsection (11), profit and loss statements for preceding years certified by independent public accountants. I could give you specific reference to the rules of the Interstate Commerce Commission along this line, but I do not want to burden the record unnecessarily. I am perfectly willing to have my statement checked on that, however.

Now, as to subsection (8), particulars of options in respect of securities existing or to be created, I do not think that information is with the Interstate Commerce Commission, but I doubt if it is very important in connection with the marketing of railroad securities, although you gentlemen are better judges of that than I am.

Mr. PECORA. Such information could be given in regard to options, I take it.

Mr. FLETCHER. I presume so, Mr. Pecora.

Mr. PECORA. That would not impose any particular burden or expense on the carriers, would it?

Mr. FLETCHER. I would not think so, as to that particular single item. Now, Mr. Chairman, in subsection (11) on page 24 of the bill, particularly along about lines 20 and 21, it is proposed to require that profit-and-loss statements for preceding years certified by independent public accountants, shall be furnished. I dare say that is a clause to which your attention has already been directed by other interests, and arguments made against it, but in the case of the railroads, some of which are nearly 100 years old, you can understand what an expense that would be, and what a burden it would be for such a railroad to have to go back to the beginning of its activities and furnish statements made by independent public accountants. And I think that is especially inapplicable to railroads, or rather it

is inapropos, if I may use a better word, so far as the railroads are concerned, because all accounts of railroads are kept in accordance with the regulations of the Interstate Commerce Commission, and they are fully regulated. I should like to respectfully suggest that that clause of the bill be made not applicable to railroads.

Mr. PECORA. You interpret paragraph (2) of section 12 (a) as requiring railroad corporations to furnish to the Federal Trade Commission annual and quarterly reports as of times prior to the effectiveness of this enactment, do you?

Mr. FLETCHER. Well, I had not really gotten to section 12 of the bill yet, but of course I am there since you ask me the question. I should say that that rather refers to the future, or at least it seems so to me, that particular section that you now call my attention to.

Mr. PECORA. Yes.

Mr. FLETCHER. I need not long detain you as to section 12 of the bill, because that is of the same general nature as section 11, and deals with information which shall be furnished to the Federal Trade Commission by the carriers, and among other things, annual and quarterly reports, including balance sheets and profit-and-loss statements certified by independent public accountants; and, Mr. Pecora, as counsel for the committee, I think you correctly suggested as I see it that that would probably apply to the future. There would not be any great amount of expense or labor involved in making duplicates of such reports as the Interstate Commerce Commission requires, and filing them with the Federal Trade Commission; except that I would want to make the same objection in that case as in the other as to the provision requiring certification by independent public accountants. The Interstate Commerce Commission very closely supervises all these accounts. Inspectors of the Interstate Commerce Commission visit the offices of the carriers insofar as their funds will permit them to do so, to see that those accounts are kept correctly. But, I doubt whether any great amount of good could be accomplished in the case of railroad accounts by making it necessary to file that sort of independent report.

Mr. PECORA. How frequently do railroad companies file audited reports with the Interstate Commerce Commission?

Mr. FLETCHER. They have to file various reports. Some have to be filed monthly, some have to be filed quarterly, and all have to be filed annually. The rules of the Interstate Commerce Commission make some distinction between what must be contained in the monthly report, and ordinarily that is a report of revenues and expenses.

Mr. PECORA. Somewhat like the provision of subsection (3) of section 12 (a).

Mr. FLETCHER. Somewhat like that; yes.

The CHAIRMAN. You may proceed.

Mr. FLETCHER. Just to give the committee an idea of the number of reports that have to be filed with the Interstate Commerce Commission and other branches of the Government by the railroads I will enumerate them:

They make 90 separate types of periodic reports to the Interstate Commerce Commission.

They make 13 reports to the Post Office Department.

They make 18 reports to the Treasury Department.

They make 4 reports to the Commerce Department.

They make 14 reports to the Geological Survey.

They make 28 reports to the United States Railroad Administration, what is left of it.

They make 8 reports to the United States Department of Agriculture.

They make 5 reports to the Board of Mediation and Conciliation, which administers the Railroad Labor Act.

They make 2 reports to the United States Bureau of Mines.

They make 4 reports to the War Department.

They make 1 report to the Alien Property Custodian.

Now, gentlemen of the committee, out of that mass of information thus contained it would seem to us the Federal Trade Commission could find out everything they might want to know about the railroads.

The CHAIRMAN. Railroad companies and their securities are exempt under the securities act.

Mr. FLETCHER. From the registration provision of that act. And in a general way that is what I seek here. But they are not exempt from the police part of the act if I may use such an inapt phrase. Those who are responsible for the issuance of securities, that is, to see that they are making correct statements, the railroads are not exempt from that. They are not exempt from liability for making full disclosure, but they are exempt from the registration provisions of the securities act.

Now may I mention in passing a provision of section 18 of the bill which to us seems unsatisfactory. That is the provision which gives to the Federal Trade Commission the right to direct the accounting methods and practices of carriers, with the proviso that rules or regulations so adopted by the Federal Trade Commission shall not be inconsistent with the requirements of the Interstate Commerce Commission.

I have had some little uneasiness about the term "inconsistent" because as I see it they could go beyond what the Interstate Commerce Commission has done. They cannot make a requirement which is contrary to what the Interstate Commerce Commission requires, but they could go far beyond that. And it seems to me that provision ought to be amended, if I may respectfully so suggest, to say that the power of the Federal Trade Commission shall not extend at all over accounts of carriers in view of the fact that they are now so fully regulated by the Interstate Commerce Commission.

May I say this about section 13 of the bill, and then I think that will be all I have to say. This is the provision about proxies. I dare say the committee has heard a good deal about that, and I do not want to repeat what some other and better-informed witness than myself may have submitted to the committee, but, without taking the time to read the section, you will note that when proxies are solicited for a meeting of stockholders it is necessary to give information as to the purposes of the meeting, and, more particularly—and this is the thing I want to lay stress on—they must send to each stockholder a list of all other stockholders from whom they are soliciting proxies.

In the case of the Pennsylvania Railroad—and I simply take that carrier as an illustration because it is the largest railroad—they have 250,000 stockholders. To assemble that number of stockholders together in an annual meeting, which may be only for the purpose of electing directors or of performing some other necessary but rather perfunctory task, is not possible. In other words, it would be impossible to get 250,000 people together, scattered as they are throughout the country and beyond, and therefore it is absolutely essential, if the law is to be applied, that stockholders may be asked to send their proxies in to a proxy committee. But, further, if the Pennsylvania Railroad has a print a book with the names and addresses of 250,000 stockholders, and print 250,000 copies of it, and send a copy of that book to each and every stockholder, why, gentlemen of the committee, it would be almost impossible to hold an ordinary meeting of stockholders of that great railroad.

Mr. PECORA. Objection has been made to that section, and the suggestion given that merely one copy of the list of stockholders and their addresses be filed with the Federal Trade Commission.

Mr. FLETCHER. Well, you see the point I am making about that.

Mr. PECORA. Yes.

Mr. FLETCHER. And this all leads me, Mr. Chairman, to make this suggestion. That the committee give consideration to adding to paragraph 10 of section 3 the following words:

Nor any security issued by a common carrier which is subject to the provisions of section 20 (a) of the Interstate Commerce Act as amended

That is the section which exempts Federal issues from the obligation here.

I thank you very much for permitting me to appear before you.

The CHAIRMAN. Do you want railroad issues put on the same basis as Federal issues?

Mr. FLETCHER. I think so far as registration, issuing, accounting, and reporting are concerned; yes. I am very much obliged to you gentlemen.

The CHAIRMAN. We are very glad to have heard you.  
(Thereupon Mr. Fletcher left the committee table.)

The CHAIRMAN. Is Mr. Comstock present?

Mr. COMSTOCK. Yes, sir.

The CHAIRMAN. Please come forward to the committee table.

#### STATEMENT OF LOUIS K. COMSTOCK, NEW YORK CITY, PRESIDENT OF THE MERCHANTS' ASSOCIATION OF NEW YORK

The CHAIRMAN. Please state your name, place of residence, and occupation.

Mr. COMSTOCK. My name is Louis K. Comstock, New York City. I appear here, Mr. Chairman, on behalf of the Merchants' Association of New York, of which I am president.

The CHAIRMAN. Well, do you wish to offer some views regarding the bill the committee has under consideration, S. 2693?

Mr. COMSTOCK. Yes, Mr. Chairman.

The CHAIRMAN. You may proceed in your own way.

Mr. COMSTOCK. The Merchants' Association of New York, representing some 4,500 business enterprises and touching almost every

branch of business and industry in the Nation, is profoundly disturbed by some of the provisions of the Fletcher-Rayburn bill to regulate security exchanges.

It is disturbed primarily by the extent to which the terms of these bills would subject all business and industry, both large and small, in this country to arbitrary bureaucratic control, and secondarily to the restrictions which would be placed upon the open market for corporate securities.

The association frankly recognizes that the period of economic depression, which we are now experiencing, has emphasized faults and abuses in the financial system under which we were operating in the preceding period of prosperity. It has no desire to condone the abuses nor to perpetuate the faults, but it does insist that in the effort to remedy these faults and abuses we should not cripple legitimate business, stifle initiative, destroy the liquidity of securities or place our private business at the mercy of bureaucratic inquisitors operating under blanket authority.

As business men, we believe that under any sound, advanced form of financial organization we are entitled to a market to supply our needs for long-period capital and to an organization capable of transferring ownership rights in already existing securities promptly and efficiently.

The Federal Securities Act, through its too drastic restrictions, liabilities, and penalties, has to a dangerous extent deprived us of the opportunity to obtain new long-period capital on reasonable terms. The Federal Banking Act of 1933, by requiring the divorce of banking affiliates from our large commercial banks, has greatly restricted the organizations engaged in or capable of carrying on investment banking. This association approves of the divorce of banking affiliates, but it desires to point out that this proper act, taken in connection with the restrictions of the Federal Securities Act and the provisions of the Fletcher-Rayburn bill prohibiting the exercise of the functions of broker and underwriter by the same persons or companies, will so greatly restrict the capacity to perform the functions of investment banking as to make unnecessarily difficult the supply of long-period capital which is absolutely essential for the return and maintenance of industrial and business prosperity.

We are also mindful of the fact that labor is indirectly concerned with this aspect of the matter because when there is insufficient capital available to a company it cannot employ as many workers as it otherwise would.

Lodging the control over the securities market in the hands of the Federal Trade Commission is open to very serious objections. Since its creation over 20 years ago the Federal Trade Commission has been given various duties from time to time. The most important of these duties were imposed by the Federal Securities Act of 1933. These duties are sufficiently important to require all the time and ability which the members of the Commission may possess without adding thereto the task of supervising and preparing regulations for the conduct of an extremely technical, delicately adjusted, business with manifold ramifications into every part of the world.

We respectfully submit that if a Federal regulatory body is to be set up at all it should be set up for the sole and specific purpose

of regulating security exchanges and that a large majority of its members be men thoroughly familiar with the problems of security markets.

We also urge, inasmuch as by far the greater part of the securities exchange business is concentrated in New York City, that the office of whatever regulatory body is set up should be located in New York City, the business capital of the country, in order to relieve business men from the expense and delay inseparable from transacting business with a regulatory body located in Washington.

It is common knowledge that the reports required by the Interstate Commerce Commission impose a tremendous cost upon the public utilities now under its regulation. It is also common knowledge that the Federal Trade Commission has from time to time required corporations to expend huge sums gathering information for that body from which little or no constructive results are discernible.

We are fearful that if the body charged with the regulation of security exchanges, and of securities listed thereon, is given the blanket authority proposed in the Fletcher-Rayburn bill to require information of the issuers of all securities listed on exchanges, it will result in great waste and extravagance for the compilation of information which will have little or no real value when submitted.

Our great railroad corporations find the expense of filing information for the Interstate Commerce Commission a serious item. Compilation of similar records for the Federal Trade Commission would be a very serious burden upon businesses of ordinary size and might be particularly burdensome if called for in periods of seasonal activity. The tendency to require too voluminous and repetitious information would be particularly strong if the regulatory body were made the Federal Trade Commission and the Commissioners themselves were so preoccupied with their many other duties that the actual work of investigating and analyzing reports on business organizations was left to subordinates.

We therefore strongly urge that the power of the regulatory body to demand information be sharply restricted.

The very broad definitions of "member", "broker", and "dealer" contained in section 3 make the requirements of section 6 unnecessarily restrictive of credit on the securities of companies not listed on an exchange.

While New York is, of course, the headquarters for very many large companies as the most important center of commercial business, and is the largest manufacturing center in the country, it is also the home of an even greater number of comparatively small and medium-sized companies whose securities are not listed on any exchange, but which are thoroughly sound and profitable. Their securities are certainly entitled to some credit facilities from persons who are acquainted with their worth. This criticism is even more pertinent if the definition of a "member" includes a bank buying or selling securities for its own account or as agent for its customers.

The weaknesses and limitations of the margin requirements proposed in subdivision (b) of section 6 have been thoroughly discussed by others, and the Merchants' Association, in this respect, will merely record its concurrence in the objections already raised, except that

it particularly objects to the adoption of any restriction which would lead to a wave of deflation through forced liquidation of loans.

We are strongly inclined to believe that the present margin restrictions of the New York Stock Exchange are sound and reasonable and that the control of margin requirements should be left in the hands of this body on the ground that it is thoroughly conversant with past experiences in this field and able to act quickly and effectively to remedy faults in the situation as they arise because of its intimate acquaintance with daily developments. Certainly, if any margin requirements are to be written into law, they should only be of the most flexible nature.

The provisions of sections 7 (c) and 10, which prohibit a broker from acting as a principal, apparently would so restrict his activities as to make impractical the odd-lot business which is the only means by which many thousands of legitimate investments can be made. We cannot see any legitimate objection to a man investing in less than 100 shares of high-grade stocks nor any reason for penalizing him, other than the small premium required by the rules of the New York Stock Exchange for purchasing less than a round lot. A purchase of 90 shares of American Telephone & Telegraph Co. stock, for example, involves over \$10,000, but if the odd-lot business is practically destroyed, as is reasonably argued it would be under the terms of this bill, a man would be practically prohibited from making use of such an investment to finance his business and he would be thereby encouraged to invest in lower-grade stock. We are firmly of the opinion that any advantage which may be gained by separating completely the operations of a broker and of a dealer would be more than offset by the penalty placed upon millions of legitimate investments, particularly those of men and women of small means or businesses of moderate size.

We believe that the provisions of section 13, which require any person soliciting a proxy to send to the person solicited, the names and addresses of persons from whom similar proxies are being solicited, is another instance in which the disadvantages outweigh the possible advantages. The necessity for printing a stockholders' list every time a stockholders' meeting was held would be a considerable item of expense without compensating advantage in a great majority of cases. We recommend that this provision be eliminated.

Mr. PECORA. Suppose that provision were modified so as to require the filing of a list of all stockholders of record and their addresses with the Federal Trade Commission, and would not require the sending of a copy of such list to every stockholder of the company when any proxies are sought?

Mr. COMSTOCK. That would decrease the objection considerably.

Mr. PECORA. It would practically cause the objection to disappear, would it not?

Mr. COMSTOCK. No; I do not think it would cause it to disappear, but it would decrease it.

Mr. PECORA. What would be the objection to filing a list of stockholders and their addresses with the Federal Trade Commission, if their proxies are sought?

Mr. COMSTOCK. Stockholders' lists are constantly changing.



Mr. PECORA. At the time that stockholders' lists are used for the obtaining of proxies, usually the stockholders of record as of a given date are those whose proxies are sought; isn't that so?

Mr. COMSTOCK. Yes; that is correct.

Mr. PECORA. Could not that date be the date fixed for making up the list?

Mr. COMSTOCK. I suppose that is so; yes.

Mr. PECORA. Would not that cause your objection, then, to disappear?

Mr. COMSTOCK. No; I do not think it would cause it to disappear. It would decrease it a good deal.

Mr. PECORA. What would be the objection?

Mr. COMSTOCK. I would like to put that the other way around. What could be the purpose of filing it with the Federal Trade Commission? I mean, what beneficial purpose would it serve?

Mr. PECORA. Conceivably the management of a corporation, through seeking proxies, which proxies they may readily seek because they have available to them at all times the list of the stockholders and their addresses, might, through that exclusive information which they have, be able to effectuate a purpose that might be selfish and might be inimical to the best interests of all the stockholders. If another stockholder or group of stockholders also wanted to seek proxies they would not have the list of stockholders available. The insiders in the corporation would have a decided advantage.

Senator KEAN. Would it not be much better to file it with the exchange where the stock is listed, and therefore where the stock is traded in, and therefore where the majority of stockholders would have ready access to it?

Mr. COMSTOCK. I should think so.

Mr. PECORA. Why not file it in an office of public record?

Senator KEAN. That would be an office of public record so far as the stockholders are concerned.

Mr. COMSTOCK. I think it is fair to say that if it would serve a beneficial purpose I do not think there would be any reasonable objection to it.

Senator KEAN. In the one case the stockholders, or body of the stockholders, would have to come down here to Washington and look it up, and in the other case they would go to the exchange where they bought the stock, and where the thing was readily available, and they could look at it there.

Mr. PECORA. File it in both places then.

Senator KEAN. It seems to me common sense would dictate—

Mr. PECORA. I should think the stock exchanges would prefer to have it filed with the Federal Trade Commission, rather than to have their own offices made the sole depositories for such lists, thereby subjecting themselves to whatever annoyance might ensue from having hordes of stockholders flock to their offices with a view of consulting the records.

Senator KEAN. Of course, under nearly every law I know anything about, any stockholder has a right to go and examine that list at the office of the company.

Mr. COMSTOCK. That is correct.

Senator KEAN. But, in addition, I think it would be a good thing to have that list on file where the stock is traded in, so that it would be available immediately to any stockholder.

Mr. PECORA. Don't you think, Senator, such a list should be in a public place?

Senator KEAN. Yes, Mr. Pecora; but I think that a public place would be a place where that was open to the public. If the stock exchange had that list, and everybody knew it was open to the public, it would be more convenient for the public to have it where the stock is dealt in, rather than with the public officials here. It is not as handy in the public offices here to get any information—at least I have not found it so—as it is in the stock exchange.

Mr. COMSTOCK. Suppose such a list were filed with the Federal Trade Commission or with the New York Stock Exchange, or some other stock exchange. Presumably the purpose of filing it is to confer some benefit on the other stockholders. Now, suppose you have a stockholder in London, or in Tokyo, or San Francisco, or Valparaiso. What good will it do them?

Mr. PECORA. I do not know, but it might do a lot of good to stockholders who were not in Tokyo or Valparaiso or anywhere else, and I imagine that that would include nearly all the stockholders.

Mr. COMSTOCK. That is true in a good many cases, but there are a good many cases where that is not true.

Mr. PECORA. The greatest good to the greatest number should be the fundamental principle of all legislation.

The CHAIRMAN. These foreign stockholders would probably have representatives or friends here to look after their interests.

Mr. COMSTOCK. They might have.

The CHAIRMAN. All right. Proceed with your statement.

Mr. COMSTOCK. The Merchants' Association objects, on behalf of the many small companies which are not listed on any exchange, but which within narrow circles are well known, to the provisions of section 14 insofar as they would prohibit dealing in unlisted securities without complying with all the rules and regulations which the Commission might see fit to prescribe.

Mr. PECORA. What is the reason for that objection? What is the argument in support of your objection there?

Mr. COMSTOCK. Well, it unnecessarily hampers the dealing in securities which are not listed anywhere, as between individuals.

Mr. PECORA. It would make available to all individuals an assurance that the trading, which is now more or less practically unregulated in the over-the-counter market, would be subject to some definite, uniform regulation. I should think that would be beneficial to all investors who deal in unlisted securities.

Mr. COMSTOCK. There are many securities that are not even traded in over the counter, which would be affected by this.

Mr. PECORA. The statement has been made here that there are thousands of such corporations whose securities are not listed, and are subject to trading in the over-the-counter market. The statement has been made that their number vastly exceeds the number of issues that are listed on stock exchanges.

Mr. COMSTOCK. That is very likely true.

Mr. PECORA. You say there are not very many. The opinion expressed here by persons, apparently, with competent knowledge on

the subject, is that the number of unlisted security issues vastly exceeds the listed issues.

Mr. COMSTOCK. I do not think we have any accurate information on that subject.

Mr. PECORA. I am merely giving you the opinion expressed to the committee by persons whose business and experience, apparently, endow them with some form of authentic knowledge on the subject.

Mr. COMSTOCK. The Merchant's Association questions the desirability of the provisions of section 16, which would permit the Federal Trade Commission to require the preparation of any accounts and records which it sees fit, and to assess the expense of any examinations made by its order against the company examined. This is very broad inquisitorial power bordering closely on deprivation of property without due process of law. It is obviously open to great abuse at the hands of subordinates and could be carried to an extent which would make a given business unprofitable through too great an increase in its overhead.

Mr. PECORA. Why would not that objection apply also to banks that are now subject to the inquisitorial powers of the Comptroller of the Currency, and, in the case of State banks, of State banking commissioners?

Mr. COMSTOCK. It might apply there. I am not thinking of that. I am not saying anything about that.

Mr. PECORA. Would you then advocate the repeal of the statutory provisions for such examinations of banks?

Mr. COMSTOCK. I do not think it is so much a question of the principle of the thing as it is in the abuse of the principle.

Mr. PECORA. That same abuse is possible in the case of bank examinations, is it not?

Mr. COMSTOCK. It probably is.

Mr. PECORA. The principle has not been abused there. What reason is there for believing that it would be abused by the Federal Trade Commission?

Mr. COMSTOCK. It may have been abused there.

Mr. PECORA. There has not been any great agitation about any such abuse that I have ever heard.

Mr. COMSTOCK. If these charges were reasonable, if the periodicity of the examinations were reasonable, it might be something that business could bear all right, but the point is, nobody knows how unreasonable they might become.

Mr. PECORA. What is the use of assuming that any legislation would be unwise merely because an abuse is possible under it? Measured by that standard or test, every piece of legislation, conceivably, could be branded as unwise, because it is possible to abuse any power, however wholesome the power might be.

Mr. COMSTOCK. Still, there is nothing here—

Mr. PECORA. The directors of a corporation conceivably could abuse the power they have in directing the affairs of the corporation, but merely because of that you would not deprive the directors of any power at all, would you?

Mr. COMSTOCK. Oh, no.

Senator KEAN. Is it not true that a bank is in quite a different situation, because a bank has to have, at the present time, at least,

\$100,000 capital, and it is supposed to have over \$1,000,000 in deposits if it has \$100,000 capital, and therefore it is a much larger concern, and therefore it is much easier to examine than an industrial company with, say, \$50,000 capital and inventories all over the place that have to be checked. It would be a much easier thing to check the bank than it would be to check an industrial company. The cost of checking an industrial company would be much greater than the cost of checking a bank.

Mr. COMSTOCK. Its percentage of the general overhead would be much greater, without doubt.

Mr. PECORA. Are we not assuming a lot?

Senator KEAN. No; I do not think we are assuming very much, Mr. Pecora.

Mr. PECORA. We are assuming that an abuse of power is possible, and hence the power itself should not be granted. As I said before, by that test you could condemn any piece of legislation which gave power to any public officer or board.

Senator KEAN. Yes; but by having too many requirements for examination you could kill any business.

Mr. PECORA. Any and all power, whether vested in a public officer or exercised by a private individual, is capable of abuse. You are going to destroy the entire fabric of civilization if, for that reason, you are going to deprive all persons of the exercise of all power. You have to lodge it somewhere. We must assume that the power will be exercised with sense and discretion, or, as the United States Supreme Court said in a famous case many years ago, the rule of reason would prevail. I think that is a fair assumption.

Mr. COMSTOCK. Of course, there is quite a decided difference between examinations by public authority of banks and examinations by public authority of a private business. Banks are fiduciary establishments. A private business is not.

Mr. PECORA. Where the business or the corporation, through offering its shares to the public, invites the public to become part owners of the business or partners in the business enterprise, do you not think the public is entitled to have some detailed and authentic knowledge concerning the business in which it is invited to participate as a partner? Would you, for instance, think of entertaining a proposition made to you in your individual capacity to become a part owner of a private business, unless you were given some information or permitted to have access to records which would enable you to reach a judgment as to whether or not you wanted to invest?

Mr. COMSTOCK. I could get that kind of information from which to make a judgment myself, probably better than the Government could.

Mr. PECORA. In the case of corporations which invite the public generally, through the offer of their securities to the public, do you not think the general public should have the information?

Senator KEAN. Mr. Comstock, are we not talking about—

Mr. PECORA. Do you think a corporation would prefer to have every investor flock to its offices and make a lot of inquiries concerning its business, rather than to file statements at regular intervals with a public body?

Mr. COMSTOCK. The objection to this provision applies more to the small corporations than it does to the big corporations.

Senator KEAN. We are talking about unlisted securities.

Mr. COMSTOCK. Absolutely.

Senator KEAN. We are talking about the little \$25,000 or \$50,000 corporations in the little towns.

Mr. PECORA. But, Senator, this provision here does not apply only to corporations whose securities are unlisted.

Senator KEAN. But the majority of corporations in the United States are little corporations which are locally owned, and they are not offering their securities to the public. They are owned by a few people that know each other, that have access to the books. They do not care to have outsiders buy them, as a rule.

Mr. COMSTOCK. And the expense of a governmental supervision—

Mr. PECORA. Conceivably, then, no situation would arise where the Federal Trade Commission would make unreasonable requests for examination of the records of such a corporation. The Federal Trade Commission, I imagine, would act only in cases where there was evidence of an active public interest.

Mr. COMSTOCK. Still, the way is open here in this bill for them to do it.

Mr. PECORA. As I said before, we ought to assume that powers vested in a public body are going to be exercised with sense and discretion.

We apply that rule in our business affairs. Even in an unincorporated business we put persons in charge of departments and leave it to the discretion and judgment of those subordinates with regard to the actual daily operation. That power can be abused, but you would not for one moment think that the ideal form of operating a business is for the owner to attend to every detail himself and make every decision in the routine operation. It is unreasonable. It is contrary to every-day experience.

Mr. COMSTOCK. The point we desire to make here is that there is provided in this bill an inquisitorial power over the small corporation that is not balanced by any good that could come from it.

Mr. PECORA. You are assuming that the inquisitorial power is going to be harshly and unreasonably exercised, and at an undue expense to the corporation.

Mr. COMSTOCK. May we not be justified in that assumption?

Mr. PECORA. I do not know why. What basis have you for the assumption? What greater basis have you for such an assumption than you have for the assumption that the power would be reasonably and wisely exercised?

Mr. COMSTOCK. That is a question of opinion, I think.

Mr. PECORA. I am asking you for experience that you might cite to support your view.

Mr. COMSTOCK. Of course, we have no experience as yet on the application of this law.

Mr. PECORA. But I mean in the past, with regard to the unreasonable exercise of corresponding powers.

Mr. COMSTOCK. I think I could cite some cases there—not at the moment, but I am perfectly certain that they are available.

Mr. PECORA. I think you would have to search your mind pretty carefully.

Mr. COMSTOCK. I do not know. I do not think so.

The CHAIRMAN. Proceed, Mr. Comstock.

Mr. COMSTOCK. This association further objects to the exemption of the employees of the Federal Trade Commission from the requirements of the Federal civil service law as provided in section 30. Past experience with newly created Federal agencies has proven that such an exemption provides a large amount of political patronage and that the efficiency of any agency staffed in this manner is greatly reduced. We respectfully submit that any regulatory body set up with broad powers over security exchanges and general business must be as free from political influence and the inevitable inefficiency which goes with political patronage as possible. We therefore strongly urge that this section be amended to require that all of the employees of the regulatory body, with the possible exception of a few technically qualified chief subordinates, be recruited under the restrictions of the Federal civil service law.

In conclusion the association believes that unless this bill is substantially modified in the directions outlined above, its enactment would do more harm than good both to the business community and the investing public by causing deflation of sound loans, by unduly restricting the investment market for long-term capital, by unwarranted restrictions upon credit facilities for the securities of small companies and small investments, and in the laudable endeavor to protect the investing public against fraud, will so cramp that same public with bureaucratic methods and control as to destroy or reduce the value of sound securities far more than the sum which may be saved by reducing fraud.

We most earnestly urge that the importance of the question involved is such as to warrant the most careful consideration for every proposed phase of this subject and the enactment of legislation after mature deliberation. Above all whatever statute is enacted should not be punitive in spirit nor intended to substitute Government supervision and control for the initiative and detailed knowledge which can only come from long and intimate acquaintance with the manifold forms of business organization and needs.

Mr. PECORA. Might I ask a question or two? In the second paragraph of your statement you say that your association is disturbed primarily by the extent to which the terms of this bill would subject all business and industry, both large and small, in this country to arbitrary, bureaucratic control. What is the arbitrary bureaucratic control that you refer to there?

Mr. COMSTOCK. I think it has been rather more or less explained all the way through the paper. It is that control which places under constant examination, at the will of the Federal Trade Commission, the accounting, and the ways of doing business of thousands of small corporations.

Mr. PECORA. What is there here which gives power to the Federal Trade Commission to determine the ways by which a corporation would have to do its business?

Mr. COMSTOCK. Well, the whole bill does that

Mr. PECORA. I think that is a very broad statement. Can you point to a single instance of any provision of this bill which would operate to give the Federal Trade Commission control and the

power to determine the way in which any corporation must do its business—conduct its actual, corporate business?

Mr. COMSTOCK. I do not think the use of the word "control" here is used in the sense you have just used it.

Mr. PECORA. You say that this bill would subject all business and industry, both large and small, in this country to arbitrary bureaucratic control. That is a very broad statement and I wondered if you really meant it to be as broad as its terms imply.

Mr. COMSTOCK. It may be broader than we meant to have it, but at that, the control there is pretty broad, even so.

Mr. PECORA. Does not the control, so-called, given by the bill to the Federal Trade Commission relate almost entirely, if not entirely, to the requiring of corporations to make reports?

Mr. COMSTOCK. Yes. That is what this word "control" means here.

Mr. PECORA. And also to prescribe the form and content of those reports.

Mr. COMSTOCK. Yes, sir. That is what we mean by control.

Mr. PECORA. That is not control of the business.

Mr. COMSTOCK. No. I do not think it is so intended here. That is not the meaning of that phrase.

Mr. PECORA. The language is capable of that interpretation.

Mr. COMSTOCK. That is possible; yes.

Mr. PECORA. Do you favor the adoption of a uniform system of accounting for corporations?

Mr. COMSTOCK. It depends on what you mean by a uniform system. If you mean the same system that the United States Steel Corporation employs and the A.B.C. Grocery Stores employ, then I am not in favor of uniform accounting, because you cannot make the systems apply.

Mr. PECORA. But there are certain uniform principles of accounting that might be made general to the accounting of all corporations. At the same time there are perhaps certain kinds of corporations with details or features that would not be common to all. But insofar as it would be possible to establish certain fundamental principles of uniformity, would you favor that?

Mr. COMSTOCK. Yes; I would. But I would make this qualification. I would favor it within competitive circles. Where businesses are competitive with each other, then I think the uniform accounting is a fine thing, a splendid thing.

Senator KEAN. I would like to ask you, after reading this bill and studying it, with regard to these smaller corporations, whether this, in your opinion, is not an attempt on the part of the Government of the United States to seize the rights of the States in the control of corporations which do not do an interstate business. The Constitution applies to corporations doing an interstate business; that is, the Constitution applies to companies engaged in interstate commerce. This is attempting to regulate corporations that do not do an interstate business, is it not?

Mr. COMSTOCK. Yes, sir.

Senator KEAN. That is one of your objections to it?

Mr. COMSTOCK. Yes.

Mr. PECORA. Have you made a study of the bill for the purpose of arriving at an opinion as to whether or not the bill is constitutional?

Mr. COMSTOCK. No, sir; I have not.

Mr. PECORA. Then, how can you answer Senator Kean's question in the absence of such a study?

Mr. COMSTOCK. I think it is perfectly easy to do that.

Mr. PECORA. You can do something more than most individuals.

Mr. COMSTOCK. I do not know of anybody who can pass upon the constitutionality of this bill, or any bill, except the United States Supreme Court.

Mr. PECORA. That has the power of making the final decision.

Mr. COMSTOCK. Yes.

Mr. PECORA. But it is open for anyone who is qualified by education, training, and experience, and who makes a study or research on the question of constitutionality, to reach an opinion.

Mr. COMSTOCK. That is an academic opinion, is it not?

Mr. PECORA. You say you have not made such a study of this bill.

Mr. COMSTOCK. That is an academic opinion.

Mr. PECORA. You have not made such a study of this bill?

Mr. COMSTOCK. Not from that point of view.

Mr. PECORA. Then how could you say whether or not the bill is constitutional?

Mr. COMSTOCK. I do not think I made that statement. I did not say the bill was unconstitutional.

Mr. PECORA. Your answer to Senator Kean's question was such that it could only, intelligently, be based upon an opinion as to its constitutionality.

Mr. COMSTOCK. He asked a certain question, which did not refer particularly to the Constitution, and I answered it in a perfectly proper way, from my point of view.

The CHAIRMAN. Have you anything further to say, Mr. Comstock?

Mr. COMSTOCK. No, sir. That is all. Thank you.

The CHAIRMAN. We are very much obliged to you.

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

#### **STATEMENT OF HERBERT FILER, NEW YORK CITY, DEALER IN PUTS AND CALLS, 39 BROADWAY, NEW YORK CITY**

Mr. FILER. Mr. Chairman and gentlemen of the committee, my name is Herbert Filer. I am a broker and dealer in puts and calls, and I represent the put-and-call brokers and dealers of New York City.

The CHAIRMAN. We will be glad to have your views about this bill.

Mr. FILER. I should like to present a statement in reference to section 8, subsection 9 of the proposed bill, which abolishes all puts and calls.

On behalf of the committee of put-and-call brokers and dealers, may I present to you this brief, the intention of which is to show that puts and calls, which are to be prohibited under the present proposed legislation, should be divided into two classes—those which are handled by the legitimate put-and-call brokers and dealers, whom we represent, and those which are granted by corporations or companies for manipulative purposes.

I wish to prove that the put-and-call contracts which we handle have great economic value and submit that in the proposed legisla-



tion a clear distinction should be made between the two kinds of options.

In setting forth the economic importance of the puts and calls which we deal in in the securities markets, we wish to emphasize three major elements: First, their value for insurance against loss; second, their stabilizing quality; third, the opportunity afforded the operator to protect a position in the market at minimum risk.

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

Mr. FILER. No, sir; a member of no exchange.

Mr. PECORA. You are in the put-and-call business?

Mr. FILER. Yes, sir.

A call is a negotiable contract giving the holder the right to purchase from the maker, for a specified length of time, a given number of shares of a certain stock, at a price fixed in the contract. The maker of the call agrees to deliver to the holder, at the holder's demand, a definite number of shares of a given stock at a stipulated price when the demand is made, before the expiration of the stipulated period of time.

A put is a negotiable contract giving the holder the privilege to deliver to the maker, for a specified length of time, a given number of shares of a particular stock, at a price stipulated in the contract. The maker of the put agrees to receive from the holder, at his demand, a fixed number of shares of a particular stock at a fixed price, if the demand is made before the expiration of the fixed period of time.

In appendix no. 1 will be found specimens of standard forms for put and call contracts employed by brokers and dealers in these contracts.

We wish to make it clear that this presentation refers entirely to privileges—puts and calls—sold on a competitive basis at a fixed premium and publicly offered, as distinguished from so-called corporation or company options frequently privately offered in large blocks for manipulative purposes.

Possibly it would be in the interest of clarity if a brief historical summary of puts and calls were presented to the committee. These contracts have been developed and sanctioned by business practice over a period of 2 to 3 centuries. Undoubtedly, they had their origin in transactions involving the merchandising of commodities, and in this respect are closely akin to the future contract system now in vogue and such an indispensable part of the marketing of all great staple commodities. As a matter of fact, the future contract system was devised entirely for the purpose of insurance against injurious price changes. The put and call system is in the same category, for it insures the investor in securities against violent fluctuations due to unexpected developments.

In the business world options are used every day in one form or other.

An instance of the use of the option contract in a business that probably is familiar to every member of your committee is its protective use in real estate transactions.

A manufacturer wishes to extend his factory space, provided business conditions in the near future make this advisable. To do so he has to acquire a large parcel of real estate.

In order to insure that he can buy the property when he needs it, without committing himself definitely to the payment of a large sum of money for the same, he is perfectly willing to pay a relatively small sum of money to the owner of the land for an option or call for a certain period of time.

It is true that if he should not go through with his plans he will lose the cost of the option, but it is equally true that the amount which he paid for the insurance was very well worth while.

In connection with put and call contracts it might be pointed out that John Houghton, in 1694, described how puts and calls were used in connection with dealings on the London Stock Exchange. In 1816 the transactions in puts and calls already had reached considerable volume on the Berlin Stock Exchange. Today there is no important financial center where puts and calls are not dealt in and where they are not known as an important adjunct to security dealings. At present, New York has developed into a large market for puts and calls, and financial interests all over the world are buyers of these contracts in New York.

Probably the most important function of puts and calls is the protection against unlimited loss they afford to the owner of stocks. The best method of illustrating the insurance feature of puts and calls would be to employ specific examples.

Let us take the case of United States Steel selling, say, at 55. An investor may have bought the stock at 53. He feels reasonably confident that his judgment has been sound, but he wishes to guard against any unforeseen contingencies. He consequently pays \$137.50 for a put, this charge being in the nature of an insurance premium. The put price is 51. If, during the 30-day period, the market should decline and Steel, let us say, sells at 45 at the end of the 30-day period, he will deliver 100 shares to the writer of the put at 51. In other words, while the best price he can obtain on the stock exchange is 45, he has been able to dispose of his stock at 51 through the medium of the protection of his put contract.

An investor holds 100 shares of Steel at 53. He buys a call at 57 good for 30 days feeling that if he should sell his long stock, he can by reason of his call contract, recapture the stock at 57, if it is to his advantage to do so.

Thus far this memorandum has referred entirely to the buyer of these contracts. It should be interesting to describe the position of the seller of these contracts.

The maker of the put in the case of Steel, selling at 55, is willing to accumulate the stock at 51, if it should decline. In the event that the stock is put to him by reason of the premium of \$137.50, less the commission charge, which he has received, the cost to him is reduced to that extent. In case the put is not exercised, the maker of the contract has received substantial compensation for the insurance contract.

As the seller of the call usually is the owner of stock, he is perfectly willing to sell the amount of shares represented by the call contract at the advance plus the premium he received.

It can be seen that in both the cases of the buyer of the put or call and the maker of these contracts that there may be in the majority of cases a mutual advantage.

In the opening paragraph reference is made to the stabilizing influence of the put-and-call contracts. The owner of a stock without put protection in a market that is unsettled and weak in many cases would be inclined to liquidate his holdings and add to the pressure on the market. With his courage fortified by the put he is completely immune from the panic psychology that besets other holders not similarly protected. The reverse would be the case in a boiling bull market when an investor who had previously disposed of his stock might be inclined to rebuy at an inflated price but is restrained from such impetuous action by owning a call which enables him to participate in the rise.

It is not the purpose of this memorandum to contend that puts and calls are free from speculative possibilities. The individual who buys the call pays a premium for the privilege of participating in the rise in the stock above the call limit, without actually owning stock. In the case of a strong, rising market, he may be able to reap a considerable profit before the expiration of the 30-day contract call period.

The buyer of a put may not be long of a stock and may wish to participate in any profits resulting from a sharp decline. Please bear in mind that this individual is not a short seller and that when he buys his stock against his put he is fully protected from loss and thus becomes a supporter of a falling market.

In the earlier part of this memorandum reference was made to the similarity between the put and call contracts in securities and the hedging operations in the case of commodities. Essentially they are the same. Numerous legislative decisions have sanctioned their validity, but it seems undesirable to take up the time of the committee by reciting these in detail. A typical instance should suffice, and the occasion is taken to cite the case of the *Board of Trade v. Christie Co.* (198 U.S. 236). In delivering his opinion Mr Justice Holmes, of the Supreme Court of the United States, said:

Purchases made with the understanding that the contract will be settled by paying the difference between the contract and the market price at a certain time stand on different ground from purchases made merely with the expectation that they will be satisfied by set-off \* \* \*. Hedging \* \* \* is a means by which collectors and exporters of grain or other products and manufacturers who make contracts for the sale of goods secure themselves against the fluctuations of the market by counter contracts for the purchase or sale, as the case may be, of an equal quantity of the product or of the material of manufacture. It is none the less a serious business contract for a legitimate and useful purpose that it may be offset before the time of delivery in case delivery should not be needed or desired.

The foregoing completes our presentation of the modus operandi and merits of the put-and-call operations on the various security exchanges, except to mention that the United States Government derives a substantial income from the tax on call contracts under the 1932 Revenue Act.

Before we conclude we wish to emphasize to the utmost the sharp distinction between the two kinds of put-and-call contracts. The class we sponsor is competitively sold, openly offered for a stipulated sum, guaranteed by stock-exchange firms, and protected by margins as in the case of purchase and sale of stocks. These contracts have no kinship with options privately or secretly issued by individuals, groups, corporations, or companies who, seeing speculative opportu-

nities in a particular security, offer these options for manipulative purposes, usually in conjunction with pool operations. It is our understanding that such operations recently have come under the ban of the New York Stock Exchange.

We trust your committee will recognize the economic relation of these put-and-call contracts to the security markets not only of the United States but the entire world. In fact, the London Stock Exchange, the oldest institution of this kind, places only one restriction upon these transactions, namely, that they are not permitted to run over a period exceeding approximately 105 days.

We are firmly convinced that these contracts serve the useful purposes of providing insurance, of stabilizing the market, and limiting losses to the public.

In conclusion, may we respectfully call the attention of the committee to the fact that every form of property can be insured against partial or total loss, whereas put and call contracts furnish the only known form of insurance against unlimited loss in securities.

The CHAIRMAN. What is your responsibility to the holder? Suppose for one reason or another you are unable to carry out the contract. Are you liable in any way?

Mr. FILER. No, sir; and it says so on the face of the contract.

The CHAIRMAN. You are simply agent?

Mr. FILER. Yes, sir; but if I buy a man a contract I will deliver it to him.

In the appendix, too, Mr. Chairman, are some various court decisions. If they will go in the record I would rather not bother to read them.

The CHAIRMAN. Yes; that is not necessary. They may be incorporated in the record.

(The matter submitted by Mr. Filer as an appendix to his statement will be found in the printed record at the end of today's proceedings.)

The CHAIRMAN. Are there any questions?

Senator KEAN. I would like to ask some questions. That is something I do not know much about, but I would like to ask you, is it not true that there is a tremendous business in puts and calls in London? That is true, isn't it?

Mr. FILER. Yes, sir.

Senator KEAN. And that a large part of the speculation in stocks in London is carried on by put and call?

Mr. FILER. So I have read.

The CHAIRMAN. In the case of puts and calls the parties do not own the stock at all; they just put up the difference, do they? There is no stock passed?

Mr. FILER. Oh, there is stock passed, absolutely.

Mr. PECORA. That is where the option is exercised?

Mr. FILER. That is where the option is exercised. It is my impression that in drawing up this bill these two classes of options were not recognized as being so totally different.

Mr. PECORA. Would you say, broadly speaking, a put or call is an option for a price and given at a price? That is, one pays for the option?

Mr. FILER. In buying or selling stock at a price.

Mr. PECORA. Yes.

Mr. FILER. Within a period of time.

Mr. PECORA. One pays for the option to buy and sell the stock at a price in the option?

Mr. FILER. That is right, within a period of time.

Mr. PECORA. Are there any statistics available to which you could refer us showing what proportion of cases puts and calls are exercised by the holders?

Mr. FILER. Well, of course, it is according to the activity of the market.

Mr. PECORA. Are there any figures or statistics available on that?

Mr. FILER. No. I could just say this, Mr. Pecora: I have been in the business about 15 years, and if you want to take my estimate I will be glad to give it.

Mr. PECORA. What would it be?

Mr. FILER. I would say that about 12½ percent of the options that are written are exercised. But because they are not exercised does not say they do not serve a valuable purpose in the meantime.

Mr. PECORA. I merely wanted to get whatever figures were available, and now you have given us some idea based upon your own personal business.

Mr. FILER. That is right.

Mr. PECORA. In dealing in puts and calls. You say that about one eighth of them are exercised?

Mr. FILER. About 12½ percent are actually exercised at expiration time. That is over a period of time in a normal market.

Mr. PECORA. Yes, sir; and the other seven eighths, the persons who buy these puts and calls, do not exercise them, and what they have paid for them is lost to them?

Mr. FILER. It is not lost. It is similar to an insurance premium that a man pays for—

Mr. PECORA. Yes. I mean they do not get it back; they pay that for an option to buy or to sell the stock at a fixed price?

Mr. FILER. It is not lost. It is not a case of not getting it back. They may have received that insurance. It may be that because a man holding a put through a falling market does not sell his stock out at a loss, and before the 30 days are over can sell that stock out at a profit. Now, he may not exercise the option, but the option has served a very valuable purpose.

Mr. PECORA. It has served a potential purpose.

Mr. FILER. Served a real purpose.

Mr. PECORA. In other words, it gave him a certain amount of what you call insurance.

Mr. FILER. Actual insurance.

Mr. PECORA. Actual insurance. But if he does not exercise his option under the put or call, why, what he has paid, let us say by premiums, by way of that insurance, he is out of pocket?

Mr. FILER. He is out of pocket. I would not call it a loss, any more than I would call a loss when I pay a premium on fire insurance and my house does not burn down.

Mr. PECORA. You say, based upon your experience in this business that about seven eighths of the options are not exercised?

Mr. FILER. That is right.

The CHAIRMAN. I understand these put-and-call contracts are very much alike in their nature to hedging contracts on commodities.

Mr. FILER. Yes, sir; so Justice Holmes ruled.

The CHAIRMAN. Any other questions?

Senator KEAN. The really big business in this thing is in London, isn't it?

Mr. FILER. London. Amsterdam has been very big in that market—Paris—in fact, there is quite a bit of business—

Senator KEAN (interposing). A large part of the speculation in London, as I understand it, is in puts and calls.

Mr. FILER. I understand that most of their transactions are done through puts and calls.

The CHAIRMAN. That is all, Mr. Filer. We are much obliged to you.

Mr. FILER. Thank you.

The CHAIRMAN. Mr. Oliver J. Troster.

**STATEMENT OF OLIVER J. TROSTER, NEW YORK CITY, A  
MEMBER OF THE FIRM OF HOIT, ROSE & TROSTER**

The CHAIRMAN. Mr. Troster, state your name, place of residence, and occupation.

Mr. TROSTER. My name is Oliver J. Troster, of the firm of Hoit, Rose & Troster, 74 Trinity Place, New York City.

The CHAIRMAN. You appear for whom, Mr. Troster?

Mr. TROSTER. I appear for the New York Security Dealers' Association.

The CHAIRMAN. How many members in that association?

Mr. TROSTER. Fifty-five.

The CHAIRMAN. Dealers in what?

Mr. TROSTER. Over-the-counter securities, sir.

The CHAIRMAN. All right; you may proceed, Mr. Troster.

Mr. TROSTER. I am also secretary of the New York Security Dealers' Association, which is, so far as I know, the only organized association of over-the-counter dealers in New York City. I am appearing at the invitation by your chairman to that association to send a representative to this hearing. I am submitting herewith a list of our members and a copy of our constitution; but I will not take the time of the committee to read either of these.

(The list of members of the New York Security Dealers' Association, submitted by Mr. Troster, will be found in the printed record at the close of today's proceedings.)

Most of the members of our association are not members of any stock exchange. The typical business of an over-the-counter securities dealer consists of buying and selling as a principal, and not as a broker or agent, securities which are not listed on any exchange. We deal in a very wide range of securities, including among others Liberty bonds, Federal farm loan bonds, home owners loan bonds, bank stocks, insurance stocks, municipal bonds, public-utility stocks and bonds, guaranteed railroad stocks, real estate, industrial and railroad bonds, baby bonds, and so forth.

In general, we serve two principal functions, the first being to provide a market for investors in securities in which there are not

enough buyers and sellers for investment for the stock exchanges to provide a really free market; and, second, a function of an entirely different character—to provide a market for dealings by insurance companies and other large institutions which deal in such large blocks that their purchases and sales would frequently swamp the market on an exchange.

This latter function is of particular importance in dealing with Liberty bonds, Federal farm loan bonds, and other Government and State and municipal bonds. Although some of these are listed on stock exchanges, the trading in them on stock exchanges is of very small volume and by far the greater volume of sales are made off the exchanges. This does not necessarily mean that the greater number of sales take place off the exchanges. In these issues the small investor may customarily use these exchanges.

The purposes of the bill appear to us to be met, therefore, by regulating the exchanges. It is there that the credit system of the country will be protected against undue price fluctuations. In this, our function is supplementary. By handling the sales in large blocks by large institutions and large investors, we prevent the devastating fluctuation in price which would really result if these securities were all thrown onto the exchange.

One of the Senators asked the other day if there were any reason why all this trading in bonds should not take place on the exchanges. The "social reason", as Mr. Corcoran expressed it, is the one that I have given.

I now come to the service which we render in providing a market for securities which otherwise would not have one. These are the securities which cannot wisely be listed or dealt in on a stock exchange, because they have one or more of the following characteristics: Lack of speculative interest; small capitalization, or limited number of shares or bonds; limited distribution, or small number of shareholders; or comparatively high price.

These are the types of security which, if they were listed on an exchange, would be subject to wide fluctuations in price due to the comparative scarcity of dealings.

Securities vary greatly in their availability for this purpose. At one extreme stand securities like the common stock of the American Telephone & Telegraph Co. or the General Electric Co., with millions of shares distributed among tens of thousands of different shareholders. Such a stock will generally find a ready and active market between active investors willing to buy or sell. The function of the exchange which makes a business of trading in securities is simple in such a case—being merely to provide a place where buying and selling orders can be matched at one price at a fixed rate of commission.

The normal over-the-counter security does not belong to this class. It is ordinarily of a type which could not be successfully listed or dealt in on an exchange. Recent attempts by the exchanges to deal in the slower-moving securities prove that they were not adaptable to this purpose. The attempt to deal on the New York Real Estate Exchange in bond issues of limited distribution affords an example. This exchange, created some 4 years back by well-intentioned people who apparently did not understand the economies of the situation, and

since which time there has been intense change in real-estate values, has been virtually nonfunctioning. Other unfortunate examples have been the attempt to deal in unlisted securities by the securities division of the New York Produce Exchange and the so-called "unlisted" section of the New York Curb Exchange.

In the progress of marketability from the slowest to the most active type of security, it is the function of the over-the-counter dealer to provide a market for as many securities as he may, excluding those which enjoy a wide enough distribution to be properly listed on an exchange. Natural desire for profit will make him extend the range of his activities as widely as possible, and this urge on his part makes a very real contribution to the public welfare in extending as widely as possible the list of securities in which the public can find a market. At the same time it promotes business development and employment by extending the number of corporations in which the public will be willing to invest.

Now let us see this picture in its full perspective. It is estimated that there are 180,000 industrial corporations in the United States alone. The number of corporations of all types—industrial, rails, public utilities, and so forth, whose stocks are listed on the New York Stock Exchange has been stated to be 788.

MR. PECORA. Mr. Troster, I wonder if Mr. Comstock is in the room, because those figures would be interesting to him.

MR. TROSTER. I noticed that, and this is quoted, I believe, from Mr. Whitney's report; at least, a part of it is

Here we have the fundamental and vital difficulty with this bill from our point of view.

Based, as the bill appears to be, on a desire to regulate the large exchanges of the country, and drafted with an eye to their peculiar problems, it has wholly overlooked the infinite diversity of the over-the-counter business and of the problems of that business. After devoting section after section to regulation of the stock exchanges and of the corporations whose securities are listed on the stock exchanges, it finally lumps the over-the-counter business in one comprehensive catch-all section, section 14, and leaves its entire regulation to the unfettered discretion of the same Commission which is to regulate the stock exchanges and which will necessarily be principally occupied with their problems.

As the very name of this act implies, it is designed primarily for the regulation of national securities exchanges. Whether or not its provisions are well or ill adapted to meet these purposes, and whether or not the Federal Trade Commission is well adapted or ill adapted for this function, has been and is likely to be the subject of much testimony and thoughtful consideration here. We do not come to speak on that subject, except insofar as the over-the-counter business is affected thereby.

We come for what may be termed the "forgotten man" of the securities business—not the man whose large-scale dealings in the securities of a few great corporations fill the popular imagination, but the man who day in and day out provides a market for the infinitely larger number of smaller corporations which make up the backbone of the business of this country.

It is true that our New York Security Dealers Association represents only a small fraction of the business of this character in the



United States. We do not presume to speak for all the dealers in that business. They are scattered through all the smaller cities of the land. Wherever there is a group of small companies in a community whose securities are dealt in locally, there will be a local dealer or dealers who will strive to supply a market for that purpose.

We speak only because we have been invited to do so, and in confidence that our business is typical and representative of that of the many other cities of the United States. Nor does our association, of course, represent all or nearly all of the dealers in New York.

There are necessarily some people engaged in the business who are unfitted by character and experience to assume the very real responsibilities of this business. This group will attempt to avoid regulatory supervision, just as the bootlegger did under prohibition, and particularly where the supervision comes from so remote a source as Washington. There may well be prosecutions of a few offenders, but a few prosecutions and convictions will not stamp out the evil, particularly where the prosecution will be as slow and cumbersome as must inevitably be the case where it emanates from a single huge Government bureau in a distant central point. The real hope lies in constant vigilance and self-regulation in the locality.

I rather expect that the stringent regulations proposed in this bill in regard to lending on securities will result in the creation of a great bootleg lending market. If a man can no longer borrow from a respectable dealer or broker more than \$400 on a \$1,000 bond, the pawnshops will soon provide him with an opportunity to pledge the same bond together with one stickpin, and to borrow \$800 on the two of them, marking \$400 against the bond and \$400 against the stickpin. If the prohibition law has any lesson for us, I venture the suggestion that that lesson is that the Federal Government will not, as a practical matter, be able to reach this kind of business.

Mr. PECORA. Do you think that that kind of an evasion that you refer to there, the stickpin which is of only nominal value, would enable a person attempting it to escape from the penal provisions of the bill?

Mr. TROSTER. From the real provision?

Mr. PECORA. From the penal provisions of the bill. In other words, that such a subterfuge as you suggest here, if adopted by a so-called "bootlegger" in the securities market, will enable him to escape the consequences of the law?

Mr. TROSTER. I do not see how you could very easily find those cases. I do not know how you could find them.

Mr. PECORA. Where they exist they can be found.

Mr. TROSTER. Would there be anything to prove, any way to prove, that the diamond stickpin and so forth was not worth \$400, or that he did not think it was worth it? My point is that it will be a bootleg market.

Mr. PECORA. My point is that the sort of evasion or circumvention that you refer to here, assuming that the stickpin in this supposititious transaction is a stickpin of nominal value, would not operate to enable the person adopting this subterfuge to escape the penal provisions of this act.

Mr. TROSTER. You mean the lender?

Mr. PECORA. Yes.

Mr. TROSTER. Well, undoubtedly, if there would be just as many of those shops as there were bootleg establishments in New York during prohibition, it would be rather difficult, I imagine, to find all of them.

Mr. PECORA. Oh, I think they could be found. The trouble with bootlegging in liquor was there was not much of a disposition, apparently to really enforce the law.

Mr. TROSTER. I will not argue with you on that point.

The respectable and honest dealers—and I confidently state that they are in the great majority—are as much opposed to the dishonest dealer as are the members of this committee. We suffer daily from his competition. What we really fear is that this bill will encourage and promote his business and not discourage him. By constant vigilance we have in the last decade gone far in the elimination of what might be called the “underworld” of traders in securities. That has been the prime cause for the creation of our association. At this moment our members have been advised to subscribe to the proposed draft of Code of Fair Competition for Investment Bankers, which upon its adoption will provide stringent regulations on the same subject matter. These regulations will, of course, like those under all codes, be enforced in the first instance by others engaged in the same business in the respective localities, and only the appropriate power of supervision and review will be required from the Federal Government itself. This seems to us to be a constructive step forward. But a proposed statute simply throwing this whole great subject under the general jurisdiction of the Federal Trade Commission seems to us a step backward which can only lead to the encouragement, and not the discouragement, of dishonest and bootleg practices throughout the country.

I come now to particular provisions of the act.

Under section 3 exchanges are defined to include :

Any board or market place, whether organized or unorganized, however managed or conducted, and whether incorporated or unincorporated, where or by means of any facility of which, contracts or offers for the purchase or sale of securities or other transactions in such securities are made

It appears to me as a layman that these words may be broad enough to cover every place of business of an over-the-counter dealer. Purchases and sales are certainly made there and by the use of its facilities. In a broad sense it is itself a board or market place. Yet we feel certain that the Congress cannot intend the absurd result that every little over-the-counter dealer's place of business is itself to be an “exchange” for all purposes of the act.

To insure that the intent will be clear, we suggest that the definition of exchanges be confined to regularly organized exchanges as is done in the draft of Investment Bankers' Code.

We now come to section 6. The problem here is whether the average over-the-counter dealer is “a person who transacts a business in securities through the medium of a member” of an exchange.

Here dealers divide into many classes. Most of them also act as brokers in varying degrees. Why is this? The reason is simple—that the customers demand it. The average investor regards brokers and dealers as really the same. He uses the broad term “broker” to apply to both classes, and to him his broker is the man through

whom he can sell the security he doesn't want to hold any longer and can buy the one he wants.

The average investor has no necessity to catalog in his own mind the house with which he does business definitely as broker or dealer, because of the general nature of the activities of the house. His requirements are that he know on every particular transaction what the relationship of the house is to him—whether it is as broker or agent on a commission basis or whether the house is a dealer acting on a net basis.

Now, in my firm, for example, if a man wants us to sell for him 100 shares of a listed stock we pass the business on to a stock-exchange firm and take no additional commission above that charged us by the stock-exchange firm. This is the customary practice among over-the-counter dealers in New York. We cannot understand the economic benefit in upsetting the habit of our customer which may be of years standing and based on mutual trust of going to a single broker or dealer for his financial advice and his financial transactions. In effect, you would be requiring us to tell him: "No; we will handle your Home Owners' Loan Corporation and your municipal bonds or your public-utility preferred and insurance stocks for you, but we won't handle your A. T. & T. or your General Electric or your General Motors."

The customer is baffled. To him they are securities—they are all one, and he wants us to handle them for him.

In my judgment, the principal effect of this will be to deprive the customer of the benefit of the knowledge of the dealer, which is the result of years of experience and accumulation of records. The knowledge acquired by the sum total of the dealers throughout the country of all classes of securities, including those in which they do not themselves personally deal, is a real asset to the investors of the country.

This bill proposes to kill that asset at one blow.

Many members of the Congress are lawyers. They understand well the difference between office lawyers and court lawyers, for example. Yet the layman speaks only of "his lawyer." Most likely, his lawyer does not go into court; yet the layman goes to him with his court case, if he has one, and trusts to his lawyer to pass it on to the proper specialist if he need one, whether it be a divorce lawyer, a patent lawyer, a corporation lawyer, or one specially qualified in bankruptcy law, railroad law, radio law, criminal law, or any other of the innumerable classes in which lawyers are specializing today.

So in the securities business there is an infinite variety of specialists. The lay investor cannot know them all. He comes to me and I take care of him, calling in the proper specialist where he has a security of the type I do not personally handle. But under the proposed bill I must turn him away whenever he comes with a type of security which is not what I myself directly handle; and I must do this under penalty of never being able to make a loan to him or arrange a loan for him on the very type of security which I do handle—the over-the-counter security not listed on any stock or securities exchange.

We submit that this sort of division into rigid classes or castes of the different types of dealers or brokers is arbitrary, unnecessary, and fundamentally un-American.

I should suppose that these considerations are even more important to investors outside of New York than to investors in New York. The New York investor can perhaps educate himself as to the different types of available brokers and dealers. But the man in the smaller city or town will only have a few brokers or dealers available. Far more than the New Yorker even, he wants to deal with the broker whom he has confidence in, whom he knows. Indeed, in many places he has hardly any choice. Yet if that broker does any business through the medium of any member of any exchange he will be debarred from taking any orders for his customer in baby bonds, guaranteed railroad stock, real-estate bonds, municipal bonds, and all the other types of securities not dealt in on an exchange. He will be debarred even from loaning or arranging for a loan on any of the stocks or bonds in local companies owned by his customer.

We therefore believe it to be extremely important that the same loan privileges be granted to unlisted securities as are finally granted to listed securities.

Indeed, the effect of requiring brokers and those dealing with brokers to get rid of the unlisted collateral in their accounts will, in my opinion, result in a great amount of dumping, the effect of which will be definitely deflationary.

This is more important outside of New York, as we in New York do our over-the-counter business almost entirely on a cash basis, whereas in other cities customers' securities are very frequently carried by the dealers, who are in many cases members of at least one exchange.

We further believe that the phrase "any person who transacts a business in securities through the medium of any such member" should be replaced by a phrase which would be limited to persons habitually and primarily engaged in a brokerage business on an exchange.

The same considerations apply to the term in section 10: "any person who as a broker transacts a business in securities through the medium of any such member."

We come finally to section 14. Placing all over-the-counter trading and dealing under the jurisdiction of a commission is not objectionable per se. No honest security dealer is afraid to be under supervision, any more than anyone else conducting an honest business. There is a belief among us, however, that a national commission, if not fully acquainted with the nature of the over-the-counter business, might attempt to regulate it along lines which follow strictly the regulation of exchanges. The over-the-counter business differs in so many ways from exchange business that it plainly needs rules of its own, which, though similar in general scope and purpose to those applying to the listed business, must of necessity differ from them in details, many of which are essential to the survival of the business.

Trading in securities over the counter is the oldest form of dealing in securities. It antedates all exchanges and is essentially one of barter or negotiation.

There can be no argument against the pure theory of an exchange, a central meeting place where the orders of buyers and sellers of active securities meet at a central place and are executed at one price at a fixed rate of commission. The trouble comes when it is attempted to stretch this theory to cover securities and situations to which it cannot apply.

Our recommendation is that, inasmuch as the Investment Bankers' Code when approved by the President will itself become a law regulating the activities of dealers in securities, and inasmuch as that code contains stringent and enforceable regulations, there is no necessity, at least at this time, for the enactment of section 14 of the proposed national exchange act.

Before closing, may I express my thanks to the chairman and members of this committee for giving me this patient hearing. This concludes my formal statement. I would like to submit for the record a brief statement with regard to the practice of dealing in unlisted securities on exchanges, with particular reference to the document submitted by the New York Curb Exchange on this same matter, and I would be happy to answer any questions which any member of the committee may wish to ask.

Mr. Chairman, I have this document that I would like to read, if you have the time; or I will summarize it if you have not the time.

The CHAIRMAN. I think you might summarize it. Could you not put it into the record?

Mr. TROSTER. I would like to summarize it or read one or two paragraphs from it, inasmuch as it has to do with dealing in unlisted securities on exchanges. This statement sets forth the fact that merely listing a security on an exchange does not in itself guarantee a good and active market in that stock. Also that the matter of investigation by Government authorities of trading in unlisted securities on an exchange is not a new one. This was done a quarter of a century ago by the present Chief Justice of the Supreme Court, Charles Evans Hughes, in connection with the investigation of the insurance scandals in New York City, with the result that the previously existing unlisted department of the New York Stock Exchange was voluntarily abolished in 1909.

It also develops our understanding of the simon-pure theory of a stock exchange. If I can read just the three paragraphs which I have mentioned, I will be through. [Reading:]

The matter of investigation by Government authorities of trading in unlisted securities on an exchange is not a new one. This was done a quarter of a century ago by the present Chief Justice of the Supreme Court, Charles Evans Hughes, in connection with the investigation of the insurance scandals in New York City. As a result of this, there came out the so-called "Hughes' report", which, in speaking of dealing in unlisted securities on the New York Stock Exchange, among other things recommended that "the unlisted department except for temporary issues, should be abolished." As a result of this, the previously existing unlisted department of the New York Stock Exchange was voluntarily abolished in 1909.

"The theory of the exchange in the maintenance of its unlisted department may be stated as follows. When an active market in a security which meets the qualifications exists in New York, the public is better served by having that security dealt in on an exchange. The purchaser or seller on an exchange deals through a broker member acting as agent, who makes contracts for his customer with other members likewise acting as agents. A specified commission only is charged, the transaction is immediately made public by means of

the ticker; purchases and sales appear throughout the country in the daily papers; each transaction is open to investigation and verification; each member is subject to the rules and discipline embodied in the constitution and rules of the exchange"

This is what we would term the "simon-pure theory" of an exchange with which we would be the last ones to quarrel. This picture does not take into consideration the activities of the specialist who buys and sells for his own account and whose activities notoriously can become pernicious and contrary to public policy when applied to inactive securities.

When an order is put on the telephone through the machinery of an exchange, the buyer or the seller loses all power of direct negotiation. If he gets back more than he gives up in terms of an equitable execution at a fixed commission rate, the public good is served. But if he gives up his power of negotiation and does not get back the benefits of an execution by the matching up of buying and selling orders that are extant, but is subject only to the good nature of the specialist, it would seem that he is worse off.

As to the spread being notoriously wide over the counter, we submit that the spread between the bid and asked prices of any security is based on the nature of the particular security rather than upon the market in which it is traded. In general, securities fully listed on, say, the New York Stock Exchange, have a better market than unlisted securities. On the other side of the picture there are securities in the over-the-counter market that day in and day out have a ready market. Putting it a different way, the listing of a security does not necessarily make a better market. The market is determined by characteristics of the particular security listed; that is, distribution, speculative interest, etc. The inference that listed securities uniformly have good markets and those dealt in over the counter have poor markets, is not in accord with the facts.

Looking at this morning's New York Times in the column recording bid and asked prices of stocks not traded in the day before on the New York Stock Exchange, we find 39 which have either no bid or no offering, and 211 which have a spread between bid and asked prices of 2 points or more and run as high as 262 points.

For example, the American Express Co. was quoted at 88 bid, 350 asked; American Agricultural Chemical Co. preferred, 27 bid, 44 asked; Chicago, Indianapolis & Louisville Railway, preferred, 2 $\frac{5}{8}$  bid, 7 asked; Mackay Cos. preferred, 25 bid, 79 asked; Federal Mining & Smelting Co., 90 bid, 105 asked; Texas & Pacific Land Trust (old), 750 bid, 950 asked. Many more examples could be given, but that is all that I will take the time to read.

Mr. PECORA. In your statement, on the first page thereof, you say that the typical business of an over-the-counter securities dealer consists of buying and selling as principal, but not as broker or agent, securities which are not listed on any exchange. Does that mean that if the customer comes to you and asks you to sell for him, say, 100 shares of securities not listed, your firm would buy them from him with a view of selling them to some other customer who might want to buy them.

Mr. TROSTER. You mean one of our regular customers would walk into the office with a hundred shares of stock?

Mr. PECORA. Is that a typical example of a transaction over the counter that securities dealers engage in?

Mr. TROSTER. No; our business is mainly in dealing with other brokers, members of the stock exchange, members of the curb, and other houses.

Mr. PECORA. Suppose someone came in and asked you to sell for him a hundred shares of a security that is usually traded in in the over-the-counter market and which is not listed on any exchange, would you buy them with a view of selling to someone else who might want to buy that particular security?

Mr. TROSTER. Yes.

Mr. PECORA. Would you sell it both as a broker and as an agent?

Mr. TROSTER. We could do either, if he desired. We always ask him which he would rather have us do.

Mr. PECORA. Where you buy for your own account from him, you are acting as principal?

Mr. TROSTER. Yes.

Mr. PECORA. Do you charge him a commission?

Mr. TROSTER. No, sir. We buy it directly from him and sell it at a net price. We cannot charge him a commission.

Mr. PECORA. How is the customer to know whether the purchase is being made by your firm for its own account?

Mr. TROSTER. From the confirmation which he receives. He receives a confirmation from us the following day, saying, "We have this day sold for your account and risk"—if we have sold it for his account and charged him a commission for it, or it will say, "We have this day bought from you." He will receive one or the other, depending on whether we have acted as broker in the first case and as principal in the second.

Mr. PECORA. Suppose you had an order from a customer to buy a hundred shares of X stock, an unlisted security, at, we will say, 95, and you have another customer come in who asks you to sell for him 100 shares of X stock at 90—what do you do?

Mr. TROSTER. We make a profit.

Mr. PECORA. You mean, you—

Mr. TROSTER. Would buy from one and sell to the other.

Mr. PECORA. You make a spread?

Mr. TROSTER. Yes.

Mr. PECORA. Would you also charge a commission to either the purchaser or the seller?

Mr. TROSTER. I am a layman, but I have always understood, in my dealings, that I could not be a principal and a broker at the same time. I think that is the law.

Mr. PECORA. When the customer that wants you to sell for him 100 shares of that stock at 90 comes to you with his order, and you have an order in your office from another customer to buy a hundred shares of the same stock at 95, would you tell the customer who wants you to sell that you have an order at 95?

Mr. TROSTER. If I could survive the shock of such a thing as that happening, I would undoubtedly do this. We are in the business of dealing in securities. We hope to be in that business for years to come. We jealously guard our reputation, and we would take only such an amount of spread between those two as we thought was absolutely fair and honest, depending on the nature of the stock, upon the amount of effort that we had to put in on one or the other order, and upon the fact that we are regulated by competition from other dealers; that one of these customers may be a customer of another house, and if we took too much of a profit from him, if it was discovered, the matter would be reported to the district attorney in the State of New York or to the stock exchange or to the Better Business Bureau, and our reputation would be gone. In other words, it would depend entirely upon those factors which I mentioned. We would undoubtedly make a spread on a stock of that much—I could not answer offhand as to how much there would

be, but it certainly would not be five points if they just happened to walk into the office.

Mr. PECORA. Suppose such a situation to arise where you had an order from a customer to buy 100 shares of X stock, and another customer came in and gave you a certificate for 100 shares of X stock to sell, and he told you he was willing to take 90. Would you tell the customer that wanted you to sell at 90 that you had another customer who would buy it at 95, or would you deal as principal with both?

Mr. TROSTER. That is not done among reputable dealers. Before giving you an order to buy or sell something a customer asks, "What is the market?"

Mr. PECORA. Is there any way by which the customer could check up on your statements as to what the market might be?

Mr. TROSTER. There are 1,600 dealers in New York City in unlisted securities.

Mr. PECORA. And your association is composed of how many?

Mr. TROSTER. Of 55 to 60 of the best-known names.

Mr. PECORA. Do you know what the other 1,550 do, who are not members of your association?

Mr. TROSTER. There are a good many good names outside of our association, and I have no doubt they would live strictly up to any principles that we might live up to. On the other hand, as I mentioned in my brief, there are those who do not qualify in undertaking to deal in unlisted securities, and they should be regulated in some way, and we are the ones that will certainly root for that harder than anybody else.

Mr. PECORA. If the provisions of section 14 are carried into effect by the adoption of suitable rules and regulations by the Federal Trade Commission, might they not take care of that situation?

Mr. TROSTER. They might; but on March 15 there is a hearing on the American Institute of Banking code of fair practices, I understand, and that is a law which is going to be administered by people who are now engaged in that business, and we think the business should be run or managed and supervised by that group, and can be, better than it could at least in the initial stages by the Federal Trade Commission.

Mr. PECORA. Is there not a much greater opportunity for unfair and unscrupulous dealings by unscrupulous over-the-counter securities dealers with the public than there is in the case of transactions in securities that are listed on the exchange?

Mr. TROSTER. Yes; there are. It comes in in the inactive securities. That is where the chances come in, I assume, for any irregularities on an exchange.

Mr. PECORA. For instance, in the over-the-counter market the public has not the advantage of ticker quotations to get the current prices and quotations?

Mr. TROSTER. No, sir.

Mr. PECORA. That are being effected in transactions on the exchange?

Mr. TROSTER. Mainly because the transactions are so few and far between. These unlisted securities are not dealt in, as you undoubtedly know, every day. Some are dealt in once in a year.



Mr. PECORA. There are various opinions that have been expressed here in regard to the relative importance of the over-the-counter market and the securities market as represented by exchange transactions.

Mr. TROSTER. We have no quarrel whatsoever with the trading on an exchange on active securities. Where a security is active we have no desire whatsoever to have any quarrel with an exchange. Inactive securities of the kind typified by one of these four things that I have mentioned in my brief, where there are high prices, where they are closely held, where there is lack of distribution—any of the characteristics that we have mentioned—they are not susceptible to being traded in. Otherwise you would have them selling at 22 one day and 35 the next, and up and down the scale.

Mr. PECORA. In the over-the-counter market where the security dealt in is an unlisted security, is not the public at a disadvantage in trading in that market because of the absence of current quotations on the buying and selling side?

Mr. TROSTER. There are quotations in the newspapers.

Mr. PECORA. But they are published at the end of the day.

Mr. TROSTER. Yes.

Mr. PECORA. I mean current quotations in the course of the day's trading.

Mr. TROSTER. They might never change in the course of a day. There might not be any transactions.

Mr. PECORA. But where there are such transactions, what would be the public's source of knowledge of them?

Mr. TROSTER. They can get it from any of the dealers at any time. Most all of the stock exchange houses have departments that deal in unlisted securities.

Mr. PECORA. How could the customer desiring to trade in such securities through an over-the-counter security dealer check up on the information that the dealer gives him? He would have to go shopping around to the offices of different dealers to find out, would he not?

Mr. TROSTER. He does; but the number of people who would actively want to trade in any inactive security that is dealt in over the counter are few and far between.

Mr. PECORA. You frequently get orders from customers to purchase securities for them. You also receive orders to sell from other persons, do you not?

Mr. TROSTER. Yes.

Mr. PECORA. And there is usually a spread between the two prices?

Mr. TROSTER. Yes.

Mr. PECORA. The customer who wants to buy has no knowledge, except that which is vouchsafed to him by the dealer, of the price at which a customer wants to sell?

Mr. TROSTER. My associate just remarked that orders of that kind that we get are very few and far between. It is rarely that these two orders come in simultaneously.

Mr. PECORA. I do not mean simultaneously.

Mr. TROSTER. Or in the course of the day.

Mr. PECORA. You get orders both to buy and sell from different customers in the same security, do you not?

Mr. TROSTER. But at a price enabling you to make a profit.

Mr. PECORA. Enabling who to make a profit?

Mr. TROSTER. The dealer.

Mr. PECORA. That is what I wanted to find out. If a customer who wants to sell a security which is unlisted and which is traded in in the over-the-counter market goes to a dealer who specializes in that market and tells the dealer he wants to sell a hundred shares of that stock at a certain price, is the customer told whether or not the dealer has at that time an order to buy the same kind of security at a higher price?

Mr. TROSTER. No.

Mr. PECORA. The dealer then is in position to take advantage of the spread, and usually does it for his own benefit and profit, does he not?

Mr. TROSTER. The first man that—

Mr. PECORA. Can you not answer that?

Mr. TROSTER. In a case of that kind, the first man coming in wanting to buy a hundred shares of stock—to give an example, it might be, say, Remington Arms stock which is quoted at 6 bid, offered at  $6\frac{3}{8}$ . He will ask what the market is before he will give you an order. If he gives you an order it will be some place, say, about  $6\frac{1}{8}$  or  $6\frac{1}{4}$ . It will not be  $6\frac{3}{8}$ . If I quote him the market he will say, "I will take 100 shares"; and I have traded with him on a net basis I have sold him 100 shares. No commission is mentioned by me. I have sold him 100 shares of Remington Arms stock. If he bids  $6\frac{1}{4}$  and I am long on stock that cost me  $6\frac{1}{8}$ , I will undoubtedly sell him 100 shares at  $6\frac{1}{4}$ , in which case I have not yet had any order from him. He has made me a bid and I have executed the order and it is through with. I have no order unless he would get it at  $6\frac{1}{8}$ . If a man should come in and offer to buy G.T.C. (good till countermanded) 100 shares at  $6\frac{1}{8}$ , if I am willing to sell it at  $6\frac{1}{4}$ , I quote the next man 6 bid, offered at  $6\frac{1}{4}$ . If he says, "I want to sell 100 shares", I quote him the market and I can buy his hundred shares and make  $\frac{1}{8}$  of a point in between the bid and the offered price. But I have not had an order from the customer at any time.

Mr. PECORA. Suppose a customer comes to you and says—and let us assume that this is an unlisted security—"I want you to sell this stock for me at 90, or the nearest price thereto that is obtainable", and at that time you have an order from another customer to buy for him, say, 100 shares of the same stock, and he says he would be willing to pay as high as 92. What would you do in such a situation?

(The witness consulted his associate.)

Mr. PECORA. Can you not tell us without consulting?

Mr. TROSTER. It was on something else. The amount of profit I would take on a transaction of that kind would undoubtedly be half a point.

Mr. PECORA. What do you mean? Do you mean that you would tell the customer who asked you to sell for 90 or as close to that as possible that you would sell that stock to the customer who has indicated that he is willing to buy at 92, and give the seller the benefit of the difference?

Mr. TROSTER. You could deal on one point, giving the benefit of a better execution to both people, making two perfectly good cus-

tomers for years to come, improve your reputation and make, as I say, good customers for the future.

Mr. PECORA. Is it not a fact that firms or dealers in the over-the-counter market who specialize in bank stock will send out to persons who they regard as potential customers an announcement to the effect that they will buy so many shares of X bank stock at 20 or sell so many shares of X bank stock at 21? That is a frequent practice, is it not, among dealers like your house?

Mr. TROSTER. Yes.

Mr. PECORA. And members of your association?

Mr. TROSTER. Yes, sir.

Mr. PECORA. If a house gets orders from customers to both buy and sell at prices which show a spread, would the dealer take advantage of that situation and make that spread for himself by acting as principal in transactions both with the buyer and with the seller?

Mr. TROSTER. He would make a profit. We act as dealers on all occasions. We are dealers in unlisted securities. We would therefore make a profit. We feel we are entitled to a profit. The number of orders of that kind are very limited. We spend much money in circularizing, on postage, on telegrams, on advertising, and so forth. We figure that we are entitled to a profit on a trade that was put through our organization. We have to match up isolated cases of this kind against the times when we sell out of inventory that we may have on hand with the possibility of buying it back, or times when we buy stock against the possibility of reselling it later. In the average of those cases you will find that the margin of profit or loss is extremely small.

Mr. PECORA. Can you tell the committee in what proportion of the transactions that you effect you charge commission?

Mr. TROSTER. Speaking for my own firm, I imagine it is half of 1 percent.

Mr. PECORA. Only half of 1 percent?

Mr. TROSTER. On listed business we take no commission.

Mr. PECORA. I am referring, of course, to transactions in unlisted securities.

The CHAIRMAN. Do you do business with parties outside of New York?

Mr. TROSTER. Yes, sir.

Senator KEAN. You have read this bill, have you not?

Mr. TROSTER. Yes, sir.

Senator KEAN. It is claimed by some people that if this bill were enacted into law it would shut up the stock exchanges. Other people, even its proponents, claim that it would reduce the volume very much. If it reduced the volume of trading very much, then you are going to have the same kind of spread that you illustrated?

Mr. TROSTER. The number of securities would certainly increase—

Senator KEAN. And you would have such a wide spread between the prices of securities that a person who wanted to buy or wanted to sell would be subject to buying at very large differences and selling at very large differences?

Mr. TROSTER. Yes, sir.

Senator KEAN. If you get 100 shares of an unlisted security to sell, the first thing you do is to call up traders and ask them for a bid; is that right?

Mr. TROSTER. Not necessarily if it is a semi-active stock.

Senator KEAN. I am talking about an unlisted stock that is very dull. The first thing you do is to call up the traders, is it not?

Mr. TROSTER. Yes.

Senator KEAN. Then you try to get a bid from the traders; and, under this bill, if the traders did not give you all the information, you would have a suit against you, would you not?

Mr. TROSTER. So I am informed.

Senator KEAN. So that the traders undoubtedly are practically the only market for a lot of these unlisted securities, and therefore they would have to refuse to make a bid?

Mr. TROSTER. Yes.

Senator KEAN. Because they would be subject to this law, and therefore you would lose that market entirely.

Mr. TROSTER. That very slow moving type of security would have a very poor market; yes, sir.

Senator KEAN. That is all.

The CHAIRMAN. That is all, Mr. Troster.

We will now hear from Mr. Chinlund.

#### STATEMENT OF EDWIN F. CHINLUND, NEW YORK CITY, REPRESENTING THE CONTROLLERS INSTITUTE OF AMERICA

The CHAIRMAN. State your name, residence, and occupation.

Mr. CHINLUND. My name is Edwin F. Chinlund; residence, New York City; I am representing the Controllers Institute of America.

The CHAIRMAN. Do you want to be heard on the bill?

Mr. CHINLUND. Yes, sir; I have a statement, Mr. Chairman.

The CHAIRMAN. Proceed.

Mr. CHINLUND. The Controllers Institute of America has considered the provisions of S. 2693 and H.R. 7852, to be known as the "National Securities Exchange Act of 1934", and has requested me to submit this statement and to appear before you to present the views of the Controllers Institute on the bill.

The Controllers Institute is in sympathy with necessary actions taken to protect the investing public by the elimination of abuses in the security business, and to prevent abuses of credit caused by the diversion of credit into speculative channels to the injury of general business. This statement is principally confined to the accounting and financial aspects of the bill since those aspects are the ones in which our membership is primarily interested.

The membership of the Controllers Institute of America consists of over 300 controllers and other executives who are responsible for the accounting and financial policies of many of the corporations whose securities are listed on exchanges. This statement has the approval of our board of directors and based upon that approval and the many communications received from members, we feel safe in stating that it represents the opinion of the majority of our members even though we have not had time to obtain their vote.

In this connection it is appropriate to refer to the Declaration of Principles of the Controllers Institute of America, adopted shortly after foundation of the institute, which expresses our point of view on this subject and which, as will be seen, harmonizes with the avowed purposes of the bill (reading):

The Controllers Institute of America stands for the observance of the highest ethical standards in corporate accounting practice and in the preparation of reports of financial and operating conditions of corporations to their directors, stockholders, and other parties at interest, in such manner that all concerned may know the actual conditions insofar as such reports may assist in the determination thereof. To that end, the Controllers Institute of America offers its advice and assistance in connection with any movement which has for its purpose the establishment of better safeguards for the protection of the investor.

We submit the following as to the accounting and financial features of the bill.

The provision of section 12, which provides for the filing of quarterly balance sheets and income accounts, and further provides that such balance sheets and income accounts shall be certified by independent auditors, is, in our opinion, too burdensome to business and is unnecessary to secure the protection to investors for which the law is intended.

The present listing requirements of the New York Stock Exchange provide that corporations shall publish an annual balance sheet and income account, and quarterly income accounts. The variation of balance sheet items during a quarter is usually not great enough to justify spending the investors' money to set up the elaborate accounting machinery necessary to prepare a balance sheet sufficiently accurate to permit the officers of the corporation to assume responsibility for its correctness. Furthermore, quarterly audits would multiply the cost of the present annual audits and would be too heavy a burden for the corporation to bear. It is well recognized in accounting and business circles that quarterly statements of many corporations, although reasonably correct, are based upon estimates to a larger degree than annual statements, and therefore without greatly elaborating the present accounting methods they cannot be as accurate as the annual statements. Furthermore, if a corporation were to publish a certified quarterly balance sheet, it would be necessary in many cases to take physical inventories quarterly whereas now physical inventories are, in most cases, only taken once a year.

What the investor requires mainly to pass judgment on his investment is the trend of earnings, and most corporations whose securities are listed on the New York Stock Exchange are meeting this requirement by issuing quarterly income accounts. It is true that some corporations are not submitting quarterly reports because their agreements with the exchange were made before the exchange instituted the provision making this a requirement for new listings. However, the efforts of the exchange through its committee on stock list have been devoted for a long time to having corporations agree voluntarily to modifications of their listing agreements, so as to provide for quarterly earnings reports.

In this connection it should be pointed out that when the New York Stock Exchange made the publication of quarterly earnings statements a listing requirement, it was found that in certain industries quarterly statements were wholly misleading by reason of wide seasonal variations. Furthermore, in some cases it was found to be impossible to ascertain with any reasonable degree of accuracy certain basic data necessary for the preparation of such statements. In such cases, the stock exchange decided to permit the publication

quarterly of earnings statements covering the 12 months' period immediately preceding such publication, instead of 3 months figures, thus eliminating the seasonal factor.

We suggest, therefore, that 12 months earnings statements, published 4 times yearly, be permitted in place of quarterly statements where the latter would be misleading to the investing public. We suggest also, that permission be granted to publish semiannual earnings statements in cases where it appears that such statements present the picture more fairly than quarterly statements. Furthermore, in cases where it is obvious that an investment policy can be determined most satisfactorily from annual statements, such annual statements should be permitted.

The point we wish to make is that greater flexibility should be permitted, to conform to the diversity of conditions found in the various industries. It is our considered opinion that the appropriate earnings statements, as prescribed above, issued with the necessary qualifications as to approximation, should become a requirement, that the publication of certified balance sheets quarterly is unnecessary and much too costly, and that the present practice of annual balance sheets is preferable.

The provision as to monthly reports of sales or gross earnings is probably not too onerous for some corporations, although for others it would be very impractical. If a regulatory bill should be passed by Congress the provision for monthly reports should be flexible enough to authorize the Federal Trade Commission to waive this requirement in justifiable cases.

The provision of section 11 covering registration requirements, which provides that the Federal Trade Commission may modify the rules and regulations for the information to be filed with it before or at registration, together with the penalty provisions of section 17 (a), which apply if the information is "false or misleading in respect of any matter sufficiently important to influence the judgment of an average investor", may easily work out to be an invitation to unscrupulous traders to attempt to profit unjustly. Such traders might trade recklessly in any security in whose registration statement the slightest flaw may be detected, on the assumption that if a profit is made, well and good, while if the speculative transaction results in a loss, such loss may be recovered from the officers, directors, or accountants of the issuing corporation. It is even possible, as the bill is written, for damages to be assessed much in excess of the loss actually sustained.

The possibility of slight clerical errors among the thousands of figures and statements which must be contained in the voluminous reports required under this bill is so great as to raise serious question as to whether or not any corporation official or public accountant of responsibility could run the risk of possible penalties.

The provision of section 11 as to audit of balance sheets and profit and loss statements for preceding years does not specify the number of preceding years. It would seem to the Controllers Institute that if specific control of registration of securities is to be undertaken by the Government, it should be done either under much more clearly defined rules and regulations, incorporated into the law, which can

only be done after adequate time to study the question or left to the discretion of the regulating commission.

Under section 11, for all securities now listed on exchanges, a registration statement as defined by that section, and as further amplified by rules and regulations of the Commission, must be filed prior to October 1, 1934. Such registration statements include certificates of audit by independent public accountants. Therefore not only would it be necessary for audits to be made of previously unaudited companies but also new audit certificates would be required of companies at present audited, all to be filed prior to October 1, 1934. This large number of audits could not possibly be completed prior to that date by the public-accounting profession of this country.

As now written, the bill would include all railroads which desire listing on an exchange for one or more of their securities. This includes most of the class I railroads, which number about 180. To complete audits of all of these extensive properties by October 1, even if the work were commenced today, would be a physical impossibility.

An alternative method of accomplishing the purposes of the law would be to have the regulatory body supervise the actions and policies of the listing committees of the exchanges and the general requirements for listing within maximum limits to be stated in the law. Thus the Commission would not be given the burden of detailed approval of each individual listing. This procedure would also remove the possibility of investors assuming endorsement of soundness of issues by the Federal Trade Commission, if the Commission does not disapprove the listing within the 30 days specified in the bill.

The Controllers Institute wishes to express its concern over the serious situation in which each corporation's directors and executive officers will be placed if this bill becomes law. They will have to decide whether to comply with the law in order to secure listing and have marketability for their corporation's securities or to suffer loss of listing to avoid incurring the excessive expense and terrific liabilities imposed by the law. Officials have already been placed in the position of having to decide whether to incur the serious obligations required by the Securities Act of 1933 in order to secure new financing or even refunding. In most cases, however, it has been possible to postpone decision on this question by delaying new expenditures, with the resulting harmful effect on business recovery and unemployment, in the hope and expectation that the Securities Act would be modified in the near future.

In the legislation now proposed the situation is much more serious since a decision will have to be made immediately on passage of the bill in order to complete the tremendous amount of work required for securities to remain listed on October 1, 1934. Should it be decided that either the cost, the liability involved in complying with the listing requirements, or the difficulties arising from the undefined future regulation is too great, the only recourse would be to permit the corporation's securities to become unlisted, thus driving trading in the securities into a bootleg market, which this law would probably create. The results thereof would be:

(a) The investor would be unable to borrow on his security.

(b) If obliged to sell, the investor could do so only on a market in which a wide spread would very likely exist between the bid and asked prices.

(c) The corporation would find it extremely difficult to finance, even if the obstacles raised by the Securities Act of 1933 could be overcome.

(d) The National Government and the States in which exchanges are located would lose large tax receipts.

(e) Business recovery would be retarded.

Section 18, subsections (a), (b), and (c) in particular, granting special powers to the Federal Trade Commission, also directly affect corporations. These powers are expressed in such a broad way that the cost and volume of the information might be excessive. The broad powers granted would compel corporations to use such accounting methods and prepare such reports as may be demanded, although they might not meet the needs of the directors and officers of corporations in the regular management of the business. Duplicate records and reports would, therefore, be necessary. The methods to be prescribed for the valuation of assets, determination of recurring and nonrecurring income, and so forth, also are placed under the jurisdiction of the Federal Trade Commission, and would take the operation of business matters out of the hands of those professionally expert who have responsibility of performance. Subsection (c) also gives the Federal Trade Commission power to require corporations to bring their corporate records for secret investigation "from any place in the United States or any State at any designated place of hearing." On account of the great volume of records which might be involved, this hardly seems practical.

The Controllers Institute believes that the methods of accounting are internal matters for the controllers of each corporation to prescribe based upon recognized accounting principles and practices designed to meet the particular requirements of the business, and that the accounting methods and the accounts resulting from them should be approved by independent public accountants auditing the corporation's accounts. We believe that if it is to be the policy of the Federal Government to regulate all corporations, such regulations should be confined to major principles and not details.

The two countries of the world in which it is generally recognized that accounting has had the greatest development are England and the United States. The procedure under which this improvement in correct presentation of balance sheets and income accounts has been developed has been by selection of trained expert accountants as financial officers of companies, supplemented by an annual audit of the methods and accounting principles put into effect through such officers by independent public accountants. The intimate knowledge of the particular type of business and the kind of transactions it carries on, necessary to determine proper accounting policies for such business, requires detailed and recurring investigation which, in our opinion, no regulatory body could undertake and carry out as a substitute for the well-developed procedure now in existence. Anyone who has made a study of the development of the presentation of corporate financial statements is convinced that its entire history



shows an improvement in the direction of conservative and accurate statements of financial position and earnings.

The foregoing covers the principal difficulties which would arise from the accounting features of the proposed bill. There are other objections to the bill which have been covered by previous witnesses, such as—

(1) The deflationary effect of the ineligibility of unlisted securities and the margin requirements.

(2) The indefinite and almost unlimited control of corporate activities placed in the Federal Trade Commission.

(3) The possibilities of driving the security business into the hands of security bootleggers by the heavy restrictions placed on exchange members; and

(4) The difficulties arising from liability of directors, officers, accountants, and others under the provisions of section 17.

Section 13 of the bill relating to proxies imposes an undue burden and an excessive cost which must be borne in the last analysis by the stockholders. It should be pointed out that in the vast majority of cases proxies are solicited only to insure a quorum so that necessary corporate business may be transacted at annual meetings, thereby saving stockholders expense and time of attending meetings.

Reform of certain phases of the security business is necessary. Reform is always necessary in a dynamic nation like ours. The only question is how to reform without creating more evils than are remedied.

We feel that the greater benefits to the American people can be secured through a continuation of the evolutionary process of reform through education—education of the public, of security dealers and brokers and issuing corporations—rather than by such a process as is represented by this bill as written. Distinct progress along constructive lines has been made by the development of local blue sky regulation, by the activities of better business bureaus and similar organizations, through the initiative of the leading organized security exchanges, and through the growth of a more public-spirited point of view on the part of the leading corporations, especially since their securities have become distributed so widely among the general public.

To interrupt the evolution of reform through education and public opinion, by suddenly setting up stringent regulations impossible of enforcement, without driving the security business underground, would result in a set-back to the real progress which has been made so far. The Controllers Institute therefore respectfully recommends deferment of regulation of the securities business until a more thorough study of the subject has been made. The Securities Act of 1933 insofar as it covers issues which would be listed, duplicates to a large extent the listing requirements of the national securities exchange act.

We believe that many of the provisions in the proposed bill, if enacted into law at the present time, would counteract to a large extent much of the moral and economic benefit that has resulted from the aggressive leadership provided by the present administration and much of the legislation passed since March 4, 1933.

It is also our opinion that the Securities Act of 1933 in its present form is a definite deterrent to economic recovery and to the flow of private capital into industry, and unless substantially modified is bound to bring many serious evils in its wake. This in our opinion is equally true of the proposed national securities exchange act reviewed by this statement, and we believe therefore that not only should the proposed law not be passed but that it would be wise legislation to make drastic revisions of the Securities Act of 1933.

Since such revisions can probably not be worked out quickly, it would, in our opinion, be desirable to repeal that law now and, in lieu of both of those acts, appoint a commission for the purpose of studying the question thoroughly and reporting to the next session of Congress with proposed legislation to accomplish such reforms as might appear advisable after such study. As a suggestion, the make-up of such a commission of study, in addition to representatives of the legislative authority and appropriate Government departments, might well include men selected from the stock exchanges, investment banking business, banks, insurance companies, legal profession, public-accounting profession, and corporate executive and accounting officers.

It is worth noting that the Federal Reserve Act, our most important piece of financial legislation, as finally enacted in December 1913, effecting a vast improvement in our whole banking and currency system, was incubated and perfected only over a period of several years.

We are very appreciative of the courtesy extended to us in permitting us to be heard on our reactions to the bill as presented. We offer to place our services at the disposal of the committee for any elaboration of the above or any study which it desires to obtain.

The CHAIRMAN. All right, Mr. Chinlund. Are there any questions by members of the committee?

Senator KEAN. I think you have outlined it would be almost impossible in the accounting business to require accounts, for instance, if you take a great international company today, and they ship their goods all over the world, and, say, they get paid in the currencies of other countries, when they get paid in the moneys of other countries, some countries prevent that money from being remitted out of the country, don't they?

Mr. CHINLUND. That is right.

Senator KEAN. And therefore such a company would have to maintain a deposit in that country, and they might report that as earnings whereas the exchange might vary very much, and they might suffer a big loss on it, is that right?

Mr. CHINLUND. That is right.

Senator KEAN. So that the earnings would not really be reflected in what they were doing.

Mr. CHINLUND. The proper procedure in that case, in event they had funds in another country, would be to value their receivables at the amount the balance sheet would take, whatever it happened to be.

Senator KEAN. Yes; and that would be very doubtful, because they could not get their funds out of the country, isn't that so?

Mr. CHINLUND. Yes, sir. And they certainly ought to state that fact.

The CHAIRMAN. Very well, Mr. Chinlund, we are very much obliged to you.

(Thereupon Mr. Chinlund left the committee table.)

The CHAIRMAN. I now want to make a part of the record a communication received from the Federal Trade Commission today, being dated March 6, 1934, which bears on matters that I have referred to and that I think are important. I now ask the committee reporter to enter these on the record and I want them returned to me.

FEDERAL TRADE COMMISSION,  
Washington, March 6, 1934

HON DUNCAN U FLETCHER,

*Chairman Senate Committee on Banking and Currency.*

MY DEAR SENATOR FLETCHER. There is enclosed a copy of Commission's exhibit 5666, consisting of copies of correspondence between officials of the Chicago Stock Exchange and officials of Tri-Utilities Corporation. These letters were written during 1930 and 1931.

Tri-Utilities Corporation went into receivership August 31, 1931. The assets of Tri-Utilities were sold and the receiver was discharged the latter part of January 1933

As you will note, the subject of the correspondence related to support of the market for the common stock of Tri-Utilities Corporation. The final liquidation dividend of the receivership estate in January 1933 was less than \$9,000, which was paid to creditors, with aggregate claims of about \$20,000,000, exclusive of common and preferred stockholders. The amount of common and preferred stock outstanding was in excess of \$15,000,000 which amount was a total loss.

Very truly yours,

GARLAND S FERGUSON, *Chairman*

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FEDERAL TRADE COMMISSION EXHIBIT No. 5666

THE CHICAGO STOCK EXCHANGE,  
November 3, 1930.

Mr G. L. OHRSTROM,

*President Tri-Utilities Corporation,  
Jersey City, N. J.*

MY DEAR MR OHRSTROM:

One of the understandings the Chicago Stock Exchange asks, when securities are listed here, is that those applying for the listing will keep up a market. By keeping a market we mean keeping a bid in these securities at all times on the exchange.

The public, which has purchased the securities listed on any stock exchange, is under the impression that they will always be able to sell such securities in the future at the exchange where they are listed.

When a security listed here has no market—in other words, when a listed security cannot be sold at any price—the situation brings criticism from the owners of such stocks and bonds, as well as from the commercial banks that are asked to place loan values on these securities. In fact, our banks take the attitude that any listed security with no bid is worthless as collateral.

I mention these facts because I believe they are of enough importance for you to make every effort to keep a market for your securities listed here. Our records show there has been no bid in your common stock for several months and the last sale was on March 23, 1930.

I am sure you will see the importance, not only to the Stock Exchange but to your own company as well, in cooperating with us along the lines suggested. I will appreciate it if you will let me know what your plans will be in this connection.

Very sincerely yours,

HARVEY T. HILL,  
*Executive vice president*

NOVEMBER 21, 1930.

Mr HARVEY T HILL,  
*Executive vice president Chicago Stock Exchange,  
 120 South La Salle Street, Chicago, Illinois*

DEAR SIR We have your recent letter addressed to Mr Ohrstrom on the subject of market transactions in Tri-Utilities Corporation common stock on the Chicago Stock Exchange

We need your statement that there have been no sales of this stock for several months We call your attention to the fact that transactions in this stock occur frequently on the New York Curb Exchange, and that anyone wishing to dispose of this stock can do so in New York The fact that sales occur in the New York market also makes the stock available for use for collateral

. It is a fact over which the corporation has no control that the market for its stock has developed in New York rather than in Chicago

We need not tell you that over the past year diminished public interest in common stocks has resulted in rather thin and inactive markets in many stocks in which there would otherwise be considerable trading We believe that when a different condition exists in security markets generally a more active market will develop in Chicago as well as in New York

We wish to cooperate with the Chicago Stock Exchange and will do everything which we reasonably and properly can to facilitate transactions on the Chicago exchange

Yours very truly,

TRI-UTILITIES CORPORATION,  
 By F S SPRING, *Treasurer.*

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THE CHICAGO STOCK EXCHANGE,  
 120 South La Salle Street, December 20, 1930.

Mr F S SPRING,  
*Treasurer, Corporation, One Exchange Place, Jersey City, N J*

DEAR SIR: Referring to your letter of November 21st, will state that it is the obligation of every company whose securities are listed on our Exchange to maintain a bid for said securities or to see that a bid is maintained by its bankers Failure of any company to carry out its obligations in this respect will, at the very least, have a bearing upon the consideration of other issues of the corporation which may be submitted for listing or sponsored by the same bankers.

By reason of the listing of our stock on this exchange, your company has the benefit of exemptions under the securities laws of a considerable number of States which do not exempt curb securities Most of these exemptions require that the securities be not only listed but dealt in The purpose of such provision is undoubtedly that the investor may be guided by the record of actual sales on the recognized exchange, and it might be possible for a litigant to allege that the exemption did not apply where transactions did not take place at reasonably frequent intervals

I discussed this situation with Mr Massey before his recent illness, and if he is now back at his desk I would suggest that you take the matter over with him There is a great deal of interest in this section in your company and affiliates, and with a reasonable amount of cooperation from the company and the bankers an active market can be developed.

Very truly yours,

E. W. FEDDERSON, *Chief Examiner*

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DECEMBER 23, 1930

Mr R R MASSEY,  
*Care of G L Ohrstrom & Co, Inc, 231 South La Salle Street,  
 Chicago, Ill*

DEAR MR MASSEY We received a letter from E W Fedderson, copy of which is attached in answer to our letter to the Chicago Stock Exchange dated November 21, copy of which is also attached

We should be glad if you will give us your comment on this situation in the light of your conversation with Mr Fedderson

Yours very truly,

F. S SPRING, *Treasurer.*

JANUARY 13, 1931.

Mr M. E. SIMOND,  
New York Office

DEAR MAYNARD A few days ago I had a long talk with Mr E. W. Fedderson, statistician of the listing committee of the Chicago Stock Exchange, with reference to the markets on our securities listed on that exchange.

Mr Fedderson stated that the feeling of the exchange that we were not properly supporting our markets had become very definite. They have always considered our situations as among the more sound and stable issues listed, and have been particularly disappointed with the market on Tri-Utilities common, which they feel should be in much better condition since it is our top holding corporation. They do not seem to be so seriously concerned over the lack of activity as they are over the fact that for some period of time there has not even been a bid of any sort for the stock. They are aware of the general problems which arise in running a market but feel that there should be some point at which we could bid for the stock which would not involve taking back very much of it.

Mr Fedderson's attitude towards us has been and still is very friendly. His attitude is that while serious consideration has been given by the exchange to taking some of our securities off the list, at the present time there is no action of that sort contemplated. He feels that the exchange would certainly give us a chance to work on the situation before doing anything further, but that they would be looking for some improvement in the situation—particularly with respect to Tri-Utilities—sometime within the near future.

As I suspected before talking to Mr Fedderson, one of the factors which has caused a definite drive on the part of the exchange for increased activity in listed stocks has been severe criticism on the part of middle western securities commissions of the markets maintained. Action has now been taken in Wisconsin to remove the Chicago Stock Exchange from the list of exchanges whose listed securities are exempt under the Wisconsin securities act. It seems fairly definite that this action will be successful and the Chicago exchange expects to be stricken from that list. Apparently similar action is contemplated in other Middle Western States.

In view of the fact that business seems to be a little bit better than it has been recently, and that plans are being made to better the condition of the Tricommon market, is there not some way that we can within the near future at least place some sort of a bid with the Chicago Stock Exchange? They are naturally quite interested in seeing some activity in the stock, but I feel that a bid of any sort would go a long way toward curing what has become a very sore situation.

Very truly yours,

R. R. MASSEY

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G. L. OHRSTROM & Co, INC, NEW YORK,  
BOARD OF TRADE BUILDING,  
Chicago, Ill., January 14, 1931

Mr F. S. SPRING,  
Tri-Utilities Corporation,  
1 Exchange Place, Jersey City, N. J.

DEAR FRANK In accordance with our conversation while I was in New York, I have discussed with Mr Fedderson of the Chicago Stock Exchange the complaints which he made to you concerning the market on Tri-Utilities common.

Attached you will find a copy of a memorandum written to Mr Simond concerning my visit with Mr Fedderson.

While we are apparently to be given further leeway in the matter, I feel that in order to avoid trouble with the exchange, we are soon going to be forced to put some sort of a bid on the Chicago Exchange.

Yours very truly,

R. R. MASSEY

JANUARY 13, 1931

Mr R R MASSEY,  
*Care of G. L. Ohrstrom & Co, Inc,*  
*231 South La Salle Street, Chicago, Ill.*

DEAR MR MASSEY: You will recall our conversation with you on the subject of maintaining a market in Tri-Utilities Corporation common on the Chicago Stock Exchange

I am wondering if you have discussed this matter any further with anyone connected with the Chicago Stock Exchange.

You will recall that we suggested that the letter from Mr. Fedderson might be answered by saying that you or Mr. Pitner would call on him and discuss this general subject, and explain the present situation with respect to the market.

Yours very truly,

H D McHENRY

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G. L. OHRSTROM & CO, INCORPORATED

NEW YORK

BOARD OF TRADE BUILDING,  
 CHICAGO, ILLINOIS,  
*January 16, 1931*

Mr. H. D. McHENRY,  
*Tri-Utilities Corporation,*  
*1 Exchange Place,*  
*Jersey City, New Jersey.*

DEAR MR McHENRY: I have your letter of January 13th with reference to our conversation on the subject of maintaining a market in Tri-Utilities Corporation Common Stock on the Chicago Stock Exchange

I discussed this matter with Mr. Fedderson of the Stock Exchange upon my return to Chicago the first of the year. I wrote Mr. Simond of our New York office a memorandum concerning this and forwarded a copy of this memorandum to Mr. Frank Spring, which you can undoubtedly obtain in your office.

Through the cooperation of our New York office a bid has now been entered and we feel that matters can be satisfactorily adjusted with the Exchange.

Yours very truly,

RRM:R

R. R. MASSEY,

The CHAIRMAN. The committee will now stand in recess until 10:30 o'clock tomorrow morning.

(Thereupon, at 5:10 p.m., Wednesday, Mar. 7, 1934, the committee adjourned until 10:30 o'clock the following morning.)

APPENDIX No. 1

(a) A call, which gives the right in consideration of a premium paid, to buy and receive delivery of a specified quantity of a named security at a fixed price, on or before a stated date, reads as follows:

CALL

This contract must be presented to the cashier of the firm it is endorsed by, before the expiration of the exact time limit. It will not be accepted after it has expired and cannot be exercised by telephone

NEW YORK, *March 7th, 1934.*

For value received, the Bearer may call on endorser on one day's notice except last day when notice is not required for one hundred----- (100) shares of the common stock of the U S Steel Corp.-----at fifty-seven-----dollars per share (\$57 00), any time in thirty----- days from date.

All dividends for which transfer books close during said time, go with the stock

Expires April 6th, 1934  
2:45 p.m.

A. BLANK, *Broker.*

Delivery on C. H. Sheet of N. Y. S. E. or next day according to S. E. usage.

Endorsed by a New York Stock Exchange firm

PUT

(b) A put entitles the purchaser to deliver a specified amount of stock at a stipulated price on or before a specified date

This contract must be presented to the cashier of the firm it is endorsed by, before the expiration of the exact time limit. It will not be accepted after it has expired and cannot be exercised by telephone.

NEW YORK, *March 7, 1934.*

For value received, the bearer may deliver me on one day's notice except last day when notice is not required one hundred----- (100) shares of the common stock of the U.S. Steel Corp----- at fifty-one----- dollars per share (\$51 00), any time in thirty----- days from date.

All dividends for which transfer books close during said time, go with the stock.

Expires April 6th, 1934  
2:45 p.m.

A. BLANK, *Broker.*

Delivery on C. H. Sheet of N. Y. S. E. or next day according to S. E. usage.

Guaranteed by a New York Stock Exchange firm

APPENDIX No. 2

COURT DECISIONS

The attitude of the courts towards put and call transactions is shown in the following court decisions:

In *Biglow v. Benedict*, 70 N.Y. 202, the defendant, in consideration of a payment of \$250, agreed to receive from the plaintiff at any time within six months a certain quantity of gold coin at a specified price. The defendant refused to carry out the contract and set up the claim that the transaction was a gamble. The court held that the contract was legal in spite of the element of hazard involved. It was pointed out that the same element of chance occurred in every optional contract when one of the parties binds himself to sell or receive property at a future time at the election of the other. The court said:

\* \* \* \* \*

"Mercantile contracts of this character are not infrequent and they are consistent with the *bona fide* intention on the part of both parties to perform them. The vendor of goods may expect to purchase or acquire them in time for a future delivery, and while wishing to make a market for them is unwilling to enter into an absolute obligation to deliver, and therefore bargains for an option, which, while it relieves him from liability and assured him of a sale in case he is able to deliver, and the purchaser may in the same way guard himself against loss beyond the consideration paid for the option in case of his inability to take the goods. There is no inherent vice in such a contract."

*Story v. Solomon*, 71 N.Y. 420, involved the question of a double option where the seller agreed either to receive or deliver 100 shares of Western Union stock within a certain time at a certain price. The court said:

"There is always an element of speculation and uncertainty as to that, and yet it had never been supposed that there is any betting by such contracts. Here the option to buy or sell was put in the same contract. On the face of the contract the plaintiff provided for the contingency that on that day he might desire to purchase the stock, or he might desire to sell it, and in either case there would have to be a delivery of the stock or payment of damages in lieu thereof. We should not infer an illegal intent unless obliged to. Such a

transaction, unless intended as a mere cover for a bet or wager on the future price of the stock, is legitimate and condemned by no statute, and that it was so intended was not proved. If it had been shown that neither party intended to deliver or accept the shares, but merely to pay differences according to the rise or fall of the market, the contract would have been illegal."

In *Irum v. Willeur*, 110 US 490, the question arose as to whether a contract covering grain futures was a gambling contract. The defendant contended that he never intended to take delivery. The court said:

"It makes no difference that a bet or wager is made to assume the form of a contract. Gambling is none the less such because it is carried on in the form or guise of legitimate trade. It might therefore be the case that a series of transactions such as that described in the present record might present a succession of contracts perfectly valid in form, but which on the face of the whole taken together and in connection with all the attending circumstances, might disclose indubitable evidence that they were mere wagers."

It was held, however, that it was not sufficient to show that one party intended that delivery should not be made. "The proof must go further and show that this understanding was mutual—that both parties so understood the transaction."

To the same effect:

*Hentz v Mmer*, 58 Hun 428,

*Zeller v Leiter*, 189 NY 361,

*Springs v James*, 137 App Div 110, affd 202 NY 603;

*Cohen v Rothschild*, 182 App Div 408

In *Lewis v Wilson*, 50 Hun 166, the plaintiff sought to enjoin his suspension by the Consolidated Exchange where a claim was made that he failed to perform an agreement to accept stock under a put contract. The defendant claimed the contract was illegal. The court said:

"\* \* \* to render agreements of this description illegal and void, it must appear affirmatively that they were entered into as gaming contracts and not as real transactions for the purchase and sale of property \* \* \*"

*Embrey v Jemason*, 131 US 236,

*Watson v Blossom*, 2 NY S 551,

*West v Wright*, 86 Hun 436

#### ACTIVE MEMBERS OF THE NEW YORK SECURITY DEALERS ASSOCIATION

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Bristol & Willett Meyer Willett, 115 Broadway, New York NY

Frank Charcot, Jr, 25 Broad Street, New York, NY

Clokey & Miller, Gerald Clokey, 50 Broadway, New York, NY

T. C Corwin & Co, T C Corwin, 25 Broad Street, New York, NY

Doty, Fay & Co, A C Doty 15 William Street, New York, NY

Dillon, Throckmorton & Shantz, Howard D Shantz, 115 Broadway, New York, NY

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Dunne & Co, Frank Dunne, 40 Wall Street, New York, NY

Joseph Egbert, 2 Rector Street New York, NY

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Munds, Winslow & Potter, Frank S Thomas, 40 Wall Street, New York, N Y.  
William Morris & Co, Wilham Morris, 44 Pine Street, New York, N Y  
G M. P Murphy & Co, Prescott Eiskine Wood, 52 Broadway, New York, N Y  
National Quotation Bureau, L E Walker, 48 Front Street, New York, N Y  
George Nelson & Co, George Nelson, 74 Trinity Place, New York, N Y  
Mark Noble & Co, Mark A Noble, 30 Broad Street, New York, N Y  
L A Norton & Co, Harry D McMillan, 35 Nassau Street, New York, N Y  
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John J O'Kane, Jr., & Co, John J O'Kane, Jr, 42 Broadway, New York,  
N Y.  
Outwater & Wells, H Prescott Wells, 15 Exchange Place, Jersey City, N J.  
J Roy Prosser & Co, J Roy Prosser, 52 William Street, New York, N Y  
F. J Rabe & Co, F J Rabe, 120 Broadway, New York, N Y  
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B H Roth & Co, B H Roth, 25 Broad Street, New York, N Y  
Wm J Ryan & Co, William J Ryan, 44 Wall Street, New York, N Y  
Leo G Siesfeld & Co, Leo G Siesfeld, 25 Beaver Street, New York, N Y  
W C Simmons & Co, W C Simmons, Room 1810, 40 Exchange Place, New  
York, N Y  
Simons, Blauner & Co, Isidore B Kraut, 25 Broadway, New York, N Y  
Sirota, Rosen & Co, Nathan Rosen, 42 Broadway, New York, N Y  
Carroll M Swezey, 42 Broadway, New York, N Y  
Hart Smith & Co, H Hart Smith, 52 Wilham Street, New York, N Y  
Spielmann, Shea & Co, Henry Spielmann, 111 Broadway, New York, N Y  
P J Steindler & Co, Percival J. Steindler, 11 Broadway, New York, N Y.  
Tweedy & Co, F B Tweedy, 15 Wilham Street, New York, N Y  
C E Unterberg & Co, Chas E Unterberg, 48 Wall Street, New York, N Y  
Ward & Co, Bertram A Selgman, 120 Broadway, New York, N Y



# STOCK EXCHANGE PRACTICES

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THURSDAY, MARCH 8, 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), Adams, Bulkley, Goldsborough, Carey, Townsend, and Kean.

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; Roland L. Redmond, counsel to the New York Stock Exchange; R. E. Desvernine, counsel to Association of Stock Exchange Firms; William A. Lockwood, counsel to the New York Curb Exchange.

The CHAIRMAN. The committee will come to order, please. Mr. Grubb, I believe you are already at the committee table.

Mr. GRUBB. Yes, Mr. Chairman.

## STATEMENT OF E. BURD GRUBB, SUMMIT, N.J., PRESIDENT OF THE NEW YORK CURB EXCHANGE

The CHAIRMAN. Mr. Grubb, will you please state your name, residence, and occupation?

Mr. GRUBB. My name is E. Burd Grubb. I reside at Summit, N.J., and I am president of the New York Curb Exchange, a securities exchange located in New York City.

The views of my exchange in respect of the bill will be presented by Mr. William A. Lockwood, of New York City, who for the last 14 years has been counsel to the exchange.

However, before introducing Mr. Lockwood, who will make a rather extended statement in regard to the bill, I desire to offer for the record a formal statement which I have prepared; also a further statement in respect of trading in unlisted securities, and giving the unlisted requirements of the Curb Exchange.

I will not take up your time attempting to read these somewhat lengthy statements, as they will be explained orally by Mr. Lockwood, but I should like to give you a résumé:

The New York Curb Exchange is the second largest security exchange in the United States. It occupies exclusively for its own uses a 14-story building running from Trinity place to Greenwich Street in New York City. It has two classes of membership, regular and associate. The regular members number 550, the associate members 420. In the year 1927 the total number of transactions in stocks on

its floor was 93,437,156 shares and in bonds \$831,783,000; in 1933, 100,916,602 shares and \$944,364,000 bonds. The average transactions for the 7 years in stocks were 183,900,655 shares and in bonds \$843,-117,285. Its transactions approximate or exceed the combined transactions taking place annually on all other exchanges in the country excepting only those on the New York Stock Exchange. Its ticker service extends throughout the country and its quotations are generally published in all newspapers having other than a small local circulation.

The exchange maintains a listing department under the supervision of the secretary of the exchange and two assistant secretaries. This department has a staff of employees whose duty it is, among other things, to assist the committee on listing and the subcommittees thereof in the examination of applications for admission of securities to full listing and to unlisting trading. This department has also the assistance of an independent certified public accountant.

All securities dealt in upon the exchange are officially listed by action of the board of governors, one class, designated as "fully listed", upon the application of the issuing company itself, and the other, designated as "admitted to unlisted trading", upon the application of a regular member of the exchange. The term "unlisted securities" was adopted years ago, and has continued to be used in order that there might be no mistake in the minds of investors who understood "listed" to mean on the application of the issuing company. The differences between the methods of listing the two classes will be explained later. Many newspapers differentiate by means of an asterisk between these quotations. The exchange itself makes the differentiation clear on its ticker and in its official bulletins.

The curb exchange is, generally speaking, a primary market in respect to its fully listed securities. The listing requirements in respect to these are modelled upon those of the New York Stock Exchange.

The so-called "unlisted securities" must have been in existence for a minimum of 2 years before an application for admission may be made. A random check of 231 companies shows that at the time of application for admission the average period of existence was 25.7 years. Companies which have weathered economic business stress and strain for so long a period not only invite confidence by reason of this factor, but also furnish records of extended experience which may be studied by an investor before making his purchase.

The requirements for admission to unlisted trading, supplemented by resolutions of the board of governors, contain among others the following provisions:

No stock will be admitted, the authorized issue of which is less than 100,000 shares. No bonds will be admitted of an issue of less than \$5,000,000.

There must be a sufficient distribution in and around New York and an active market must prevail in the vicinity.

The company must have been in actual operation for not less than 2 years and show a record of actual and satisfactory earnings for such period.

The company must have established and continue the principle of furnishing to stockholders periodical reports containing balance

sheets and profit-and-loss statements, certified to by independent accountants.

Balance sheets and profit-and-loss statements covering a period of not less than 2 years immediately preceding the date of application must be filed. The statements must be reported in Poor's, Moody's, or Fitch's Manual or Standard Statistics' Service, or be obtained from an authoritative source.

There must be furnished a history and description of the business, a tabulated report on dividends, a full description of funded indebtedness, an official copy of the latest annual report, a statement from an officer of the company or from the transfer agent or registrar of the stock of the number of stockholders among whom the shares of each class of stock applied for are distributed, and a statement from a responsible officer of the company as to any outstanding company options, if any, or of any options or calls on the stock known to such officer.

Notice is given to the company in advance of admission to unlisted trading and opportunity given to appear. A security will not be admitted over the duly authorized objection of the company when evidence is furnished of pending financing or of reorganization or of purchase of properties or of exchange of securities. An independent certified public accountant employed by the exchange analyzes and reports to the committee on financial statements submitted.

In a company listing, the company must agree with the exchange to maintain certain standards of accounting and to furnish the exchange with information in respect to options and other material corporate purposes. Thus the exchange exercises control over certain corporate activities. At the same time, the seeming defect in the case of securities admitted without company agreement is more technical than real.

Insofar as present applications for unlisted trading are concerned, the companies must have established and continue the practice of periodic audits by an independent public accountant. It is true that in regard to securities admitted prior to July 1933, such procedure may not be demanded. At the same time it is interesting to note that of the 819 companies, the securities of which were admitted to unlisted trading as of March 1, 1934, 616, or 75.2 percent, have established this practice.

The theory of the exchange in the maintenance of its unlisted department may be stated as follows: When an active market in a security, which meets the qualifications, exists in New York, the public is better served by having that security dealt in on an exchange. The purchaser or seller on an exchange deals through a broker member acting as agent who makes contracts for his customer with other members, likewise acting as agents. A specified commission only is charged; the transaction is immediately made public by means of the ticker; purchases and sales appear throughout the country in the daily papers; each transaction is open to investigation and verification; each member is subject to the rules and discipline embodied in the constitution and rules of the exchange.

Eighty-two percent of the securities dealt in upon the New York Curb Exchange come under the "unlisted" classification. Sections 11 and 12 of the present bill will, if enacted, throw the great

majority of the trading in these securities off the exchange into the over-the-counter market. The reason for this is that under section 10 a security may not be dealt in on a national exchange unless, in addition to registering the security with the Federal Trade Commission, the issuing company makes application to the exchange for listing and enters into certain undertakings with the exchange. It may be definitely stated that the great majority of the corporations, the securities of which are dealt in unlisted on our exchange, will not apply for registration on our exchange under the proposed act for reasons of indifference, trouble involved, expense, or otherwise. These securities will, accordingly, have to be dropped from the exchange. The owners and purchasers thereof will then be deprived of the benefit of an organized, regulated market, and of the information respecting the securities which is on file with the exchange.

By way of contrast to transactions taking place on an organized exchange, a transaction outside of the exchange is generally conducted between the customer and one acting as a dealer or principal; i.e., for himself. There is no specified rate of commission. Indeed, the dealer pays what he feels inclined to pay and sells for what he can get. The spread is often notoriously wide. The opportunity of verifying the transaction is not comparable with that on an exchange where the officers or a committee may call upon members to produce all records and to explain any transaction.

Moreover, quotations of the outside market are not so accurate and complete as those on an exchange and are given very little publicity. Indeed, outside of the great cities, it is doubted if the price range in securities other than those dealt in on the New York Stock Exchange or the New York Curb Exchange is given any notice whatsoever. Most newspapers carry transactions on these two exchanges but no reports of outside markets. Where a security is not dealt in on an exchange, one who wishes to buy or sell the security may not turn to the morning paper and see the record of the actual transactions of the day before and the closing "bid and asked"; he must apply to an outside dealer to inquire what he will give or what the customer must pay for the security in question. This situation must necessarily leave the customer more or less at the mercy of the dealer; it leaves him largely out of touch with realities.

Another important factor to be considered in relation to the outside market as contrasted with the recognized exchanges is the lack of control over the individual as against the control through an organized body. The outside dealer answers to no one other than his customer; the exchange member is, to the contrary, accountable for his conduct not only to his customer, but to the exchange as well. Moreover, as frequently happens, the customer has little or no means of ascertaining the standing of the outside dealer and takes a very wide chance when he forwards his securities for sale or his money for purchase to one whom he may know only through advertisement. On the exchange, to the contrary, it is the duty of the committee on business conduct, assisted by its accountants, to keep in touch with, and supervise the financial standing and business methods of its members and member firms.

Occasional objections have been voiced that the New York Curb Exchange admits securities to unlisted trading without the express approval of the company issuing the securities and at times retains a security on its list against the express opposition of such company. The overwhelming majority of companies the securities of which are admitted to unlisted trading on the New York Curb Exchange are either satisfied with the market which exists on the exchange, or have no interest therein.

The exchange always considers such complaints and invites the officials of the company to confer with the exchange or to state their views in writing. If substantial and adequate reasons are given, the security will be removed. The exchange believes, however, that if the security have an active market in New York and if the security qualify under the exchange requirements, it is in the interest of the public and of the stockholders to have it traded in on the exchange and that this interest should govern the decision of the committee.

The exchange believes that complete information should be available to the public as to every security bought or sold in the United States. This would be ideal. The pending bill applies only to securities registered with the Commission and on an exchange. If passed in its present form, it is believed that practically all of the securities dealt in unlisted for so many years on the New York Curb Exchange will have to be stricken from the list for the reason that the companies themselves will not apply for registration on the exchange. Purchasers and sellers will therefore no longer have the advantage of this great national market in which members and their transactions are subject to regulation and supervision. The exchange respectfully urges that a bill which destroys this market is not in the public interest.

As to the question of providing an exchange market in American depositary receipts for foreign stocks and for foreign bonds already issued and widely held in this country, I contend that these foreign companies could not be expected to file any information with the Federal Trade Commission if the act comes into effect. The foreign companies would probably, as their securities were already distributed and held in the United States, not feel obligated to go to the trouble and expense of complying with the act. What is considered information adequate for an intelligent understanding of the business of the companies concerned is always on file, open to the public, with the depositary as well as with the exchange.

The exchange believes that these securities should not be thrown to the over-the-counter market but should be retained on an organized exchange and that the bill should be revised in this particular.

Now, if it is agreeable to you, Mr. Lockwood will continue from this point.

The CHAIRMAN. Very well, Mr. Grubb.

MR. GRUBB. But, of course, I should like for these statements which I am submitting to be made a part of the record.

The CHAIRMAN. That will be done.

(The two statements submitted in printed form by Mr. Grubb will here be made a part of the record, as follows:)

STATEMENT OF E BURE GRUBB, PRESIDENT OF THE NEW YORK CURB EXCHANGE, IN RESPECT TO S 2693, ENTITLED "NATIONAL SECURITIES EXCHANGE ACT OF 1934"

Mr Chairman and members of the committee, a few words as to the size, operation, and importance of the New York Curb Exchange. It is the second largest security exchange in the United States. It occupies solely for its purposes a 14-story building running from Trinity Place to Greenwich Street, New York City. It has its own Securities Clearing Corporation. The exchange has 550 regular members and 420 associate members. All members are subject to the regulation of and discipline by the exchange under its constitution and rules, which are modeled on those of the New York Stock Exchange. According to the New York Times Annalist the total number of sales of stock on the New York Curb Exchange in the year 1927 was 93,437,156, and of bonds, \$831,783,000. In 1933 the transactions were 100,916,602 shares of stock and \$944,374,000 of bonds. During the period named the ticker service of the exchange extended over the country. Its quotations were and are published generally in newspapers throughout the Nation.

The transactions in stocks alone on the New York Curb Exchange approximate or exceed the combined transactions taking place on all other exchanges in the country, excepting only those on the New York Stock Exchange. Further details of its history and operations are contained in my memorandum which is filed herewith.

The securities traded in upon the New York Curb Exchange are classified under two headings—"fully listed" securities, which are admitted upon the application of the companies issuing the same, and "unlisted" securities, which are admitted upon the application of a regular member of the exchange, himself a stockholder of the company in question. All securities traded in upon the New York Curb Exchange are officially listed by sanction of the board of 36 governors of the exchange.

The New York Curb Exchange is, generally speaking, a primary market in respect to its "fully listed" securities. These securities are largely those of new companies.

The so-called "unlisted securities" are never those of new or newly formed companies, but are of companies which have been in existence for a substantial number of years and in respect to which there exists a public record of their history and financial condition and a public market. A random check recently made of 231 companies shows that at the time of application the average period of corporate existence was 25.7 years. Companies which have weathered economic business stress and strain for such a period not only invite confidence by reason of this factor but also furnish records of extended experience which may be studied by an investor before making his purchase.

The requirements for admission to unlisted trading, supplemented by resolutions of the board of governors, contain among others the following provisions:

No stock will be admitted, the authorized issue of which is less than 100,000 shares. No bonds will be admitted of an issue of less than \$5,000,000.

There must be a sufficient distribution in and around New York and an active market must prevail in the vicinity.

The company must have been in actual operation for not less than 2 years and show a record of actual and satisfactory earnings for such period.

The company must have established and continue the principle of furnishing to stockholders periodical reports containing balance sheets and profit and loss statements, certified to by independent accountants.

Balance sheets and profit and loss statements covering a period of not less than 2 years immediately preceding the date of application must be filed. The statements must be reported in Poor's, Moody's, or Fitch's Manual, or Standard Statistics' Service, or be obtained from an authoritative source.

There must be furnished a history and description of the business, a tabulated report on dividends, a full description of funded indebtedness, an official copy of the latest annual report, a statement from an officer of the company or from the transfer agent or registrar of the stock, of the number of stockholders among whom the shares of each class of stock applied for are distributed, and a statement from a responsible officer of the company as to any outstanding company options, if any, or of any options or calls on the stock known to such officer.

Notice is given to the company in advance of admission to unlisted trading and opportunity given to appear. A security will not be admitted over the



duly authorized objection of the company when evidence is furnished of pending financing or of reorganization or of purchase of properties or of exchange of securities. An independent certified public accountant employed by the exchange analyzes and reports to the committee on financial statements submitted.

In a company listing, the company must agree with the exchange to maintain certain standards of accounting and to furnish the exchange with information in respect to options and other material corporate purposes. Thus the exchange exercises control over certain corporate activities. At the same time, the seeming defect in the case of securities admitted without company agreement is more technical than real.

Insofar as present applications for unlisted trading are concerned, the companies must have established and continue the practice of periodic audits by an independent public accountant. It is true that in regard to securities admitted prior to July 1933 such procedure may not be demanded. At the same time it is interesting to note that of the 819 companies, the securities of which were admitted to unlisted trading as of March 1, 1934, 616, or 75.2 percent, have established this practice.

The theory of the exchange in the maintenance of its unlisted department may be stated as follows: When an active market in a security, which meets the qualifications, exists in New York, the public is better served by having that security dealt in on an exchange. The purchaser or seller on an exchange deals through a broker member acting as agent who makes contracts for his customer with other members, likewise acting as agents. A specified commission only is charged, the transaction is immediately made public by means of the ticker, purchases and sales appear throughout the country in the daily papers, each transaction is open to investigation and verification, each member is subject to the rules and discipline embodied in the constitution and rules of the exchange.

Sections 11 and 12 of the present bill will, in my opinion, in practical effect end this valuable service. This is due to the fact that 82 percent of the securities dealt in on the exchange come under the so-called "unlisted classification." Under section 11 a security may not be dealt in on a national exchange unless in addition to registering the security with the Federal Trade Commission, the issuing company makes application to the exchange for listing and enters into certain undertakings with the exchange. It may be definitely stated that the great majority of corporations, the securities of which are dealt in unlisted on our exchange, will not, for reasons of indifference, trouble involved, expense, or otherwise, apply for registration on our exchange under the proposed act. These securities will, accordingly, have to be dropped from the exchange.

The problem of trading in unlisted securities upon an organized exchange cannot be considered apart from the provisions of section 14 relating to "over-the-counter" markets. The effect of sections 11 and 12 would be, as I have said, to throw the majority, if not all, of the so-called "unlisted securities" now traded in upon the New York Curb Exchange into the over-the-counter market. The authors of the bill recognize that they cannot accomplish the result contemplated by this legislation unless at the same time they provide some effective means of regulating the over-the-counter market. This they have attempted to do in section 14 which, apart from any constitutional questions, is obviously the weakest section of the entire bill. Mr. Corcoran, in his recent appearance before the House Committee, frankly conceded that how the over-the-counter market is to be regulated has not as yet been worked out. Indeed, he went further before this committee and admitted that none of the three groups which has studied the problem has been able to suggest a plan for the control of unorganized markets.

The unlisted department which exists on some exchanges and particularly on the New York Curb Exchange offers, it is submitted, the only effective machinery so far suggested for the effective control of unlisted securities, that is to say, of securities where the companies issuing them do not take the initiative to have them registered upon an exchange. The authors of the bill frankly propose to try to force all securities to be registered upon an exchange by the untested method of differentiating in the credit which may be advanced on the faith of the two classes of securities. On the other hand, the unlisted department of the New York Curb Exchange offers a method of

regulating the purchase and sale of such securities, a method which has been proved by experience and found to be adequate to a very high degree. It is submitted that clearly it would not be in the public interest to legislate such an organized market out of existence unless there exist clear and well-defined plans for the substitution of something better. So far nothing better has been proposed.

Apart from the questions generally presented by section 10 of the bill, the portion thereof dealing with specialists has a different application on the curb exchange from that on the New York Stock Exchange. It arises by reason of the fact that on our exchange, as well as on other exchanges, a specialist in full lots is a specialist in odd lots. It is, accordingly, essential if owners and purchasers of odd lots of our securities are to receive or pay a price fairly reflective of full lot values, that the specialist should not be prohibited in fulfilling his odd lot obligations from purchasing and selling other than on fixed orders, full lots of securities. On our exchange when a specialist executes an order in a full lot he becomes automatically bound to take all market orders on his books in odd lots and all other orders in odd lots, which are with a differential charged for odd lot trading, below the price of the full lot. A specialist must necessarily, accordingly, be so placed that he may immediately upon executing a full lot take or furnish all odd lots which the full lot elects. To that end he must necessarily be long or short of a sufficient number of stocks to meet the exigencies of the situation. It may be that the sale of a full lot will require him to take hundreds or thousands of shares in odd lots. To be prepared to do this and to make delivery promptly, he must make the necessary commitments.

Congress seeks through Federal legislation to protect the interests of the investing public of the United States. This protection should not be calculated to impair the right of an investor to purchase or to sell or to borrow, to control business generally, or to restrict the exchanges and their members in the performance of useful and necessary functions. The essentials of the protection desired lie in fair practices on an exchange, and information available to the public in respect to corporations whose securities are dealt in, sufficient in scope and in accuracy to give the investor adequate knowledge of the nature of the enterprise in which he is about to put his money.

Testimony on the bill taken before your committee reveals strong opposition from many sources. The bill in fact admittedly covers not only the operation and administration of stock exchanges and of their members, but proceeds to extend the authority of the Commission over the use of listed and unlisted securities for credit purposes, and over the rules registered corporations must follow to remain registered. In other words, the bill goes beyond the exchanges and their members in an effort to extend a powerful Federal influence over the capital structure of the country. In addition, much of the argument of Mr. Corcoran before this committee and before the House committee was based on social theories which underlie the bill.

The curb exchange believes that its rules and regulations at the present time effectually restrain manipulative practices and unwarranted activity, which, when all is said and done, stimulate movements in securities. The questions of margin, loaning on securities, options, listing requirements, and other controversial problems sought to be covered by the present bill, are made less urgent by reason of these rules. While we believe that from self-interest alone it is inconceivable that the curb exchange itself would lighten, ignore, or remove these restrictions, yet we recognize that Congress and the public will not be satisfied without assurance in the form of Federal law that at least the provisions now in force remain effective and universal.

With this point in view, the exchange has examined the pending bill to determine which of its provisions it is satisfied would be in the public good. It is prepared to recommend the licensing of exchanges by Federal authority, and the enactment, with certain modifications looking primarily to clarity, of the provisions of section 8 of the pending bill which deal with manipulative practices. The adoption of these prohibitions, as I have said above, hits at the practices which are the starting points of manipulation and market activity. They are the practices which fan the flames of public buying.

These would leave for the present unsettled, the controversial questions respecting margin requirements, segregation of capital, the functions of a specialist, options, corporate information, and other matters which have been discussed before this committee. The Curb Exchange respectfully suggests that insofar as there has been no consensus of opinion in respect to the

necessity for, or manner of, the regulation of these matters, that a commission be appointed by Congress to which these subjects should be referred for consideration and recommendation. This commission would give an opportunity to be heard to all those who might be directly or indirectly affected by the laws or rules to be adopted and would have before it the various formal reports which have been issued. This commission would report to Congress, which would then decide whether or not certain activities and functions should be directly covered by statute, and if so in what manner and to what degree, or should be left to the general discretion of a regulatory body.

This Congressional commission might wisely consider when and under what conditions a security should be dealt in on a national exchange. If its recommendations might be awaited, sections 11 and 12 with their devastating result in respect to so many securities now dealt in unlisted on exchanges throughout the United States, would not be suffered.

If, however, it be deemed by Congress essential to the protection of the public to provide for registration, it is respectfully submitted that the advantages to the public of an exchange market for securities might be preserved if section 11 were amended to provide for the registration of securities by corporations with the Federal Trade Commission only, but that no security might be registered for dealing on a national exchange unless the company had completed registration with the Federal Trade Commission. The Commission would be required to furnish to an applying exchange copies of the information on file, upon receipt of a reasonable charge therefor.

There would also be introduced an additional section authorizing dealings on exchanges in securities other than securities registered for dealing, under such rules and regulations as the Federal Trade Commission might adopt. The bill might further provide that quotations of securities should clearly indicate such as were registered for dealing and such as were admitted to dealing. Such a modification would preserve under proper rules the markets in securities such as are now traded in unlisted on the New York Curb Exchange.

I cannot believe that the members of your committee desire legislation which will deprive the investing public of the United States of the advantage of continuing to buy or sell unlisted securities on the New York Curb Exchange, which has for so many years furnished the national market therein. It is, accordingly, urged that the matter of the requirements for admission to, and continuance of, dealing generally in securities on an exchange be submitted to a commission for study and recommendation. But if that be deemed inexpedient, that sections 11 and 12 be amended in the public interest to allow the continuance of trading on an exchange under proper requirements of securities, the issuing companies of which do not see fit to apply for listing.

Before elaborating further on our unlisted securities, I desire to call the attention of the committee to the fact that there are dealt in on the New York Curb Exchange a great number of so-called "American depositary receipts" for shares of stock in foreign companies. There are outstanding upwards of 7,022,785 of such receipts. In the year 1933 nearly 4,414,953 shares represented by such receipts were dealt in on our exchange. Each of these stocks is listed on the London, Amsterdam, Paris, Berlin, or Milan stock exchange. It is inconceivable that the companies whose stocks are thus held in the form of receipts in this country would file the information required by the bill. Corporate reports and information are on file with the exchange as well as with the American depositary.

In foreign bonds in 1933 upwards of 74 million dollars worth were dealt in on our exchange. It would hardly be the purpose of Congress to force such securities from dealings on an exchange which represents the market therefor and to throw the holders of the American receipts and bonds into such outside market as might develop. It is respectfully submitted, accordingly, that in any event an exception should be made for such receipts for foreign stocks and for such foreign bonds as may be already outstanding.

The exchange desires to express its appreciation of the opportunity afforded it by the committee to present these views and the views expressed in the accompanying statement in respect to exchange trading in unlisted securities which it files herewith and requests that it be made a part of the record.

Respectfully submitted.

NEW YORK CURB EXCHANGE,  
E. BURD GRUBB, *President*

MARCH 5, 1934.

APPLICATION BLANK

FOR ADMISSION TO UNLISTED TRADING

Application is hereby made by \_\_\_\_\_  
 (Name of Regular Member)  
 for the admission to Unlisted Trading of the \_\_\_\_\_  
 (Class of Stock)  
 of \_\_\_\_\_  
 (Name of Company)

- 1 Are you a registered holder of the stock herein applied for? \_\_\_\_\_  
 (See Requirement 10)
- 2 Do you agree to continue as a registered stockholder and to furnish promptly to the Secretary's Office copies of all reports and notices which the company may distribute to its stockholders? \_\_\_\_\_  
 (See Requirement 17)
- 3 The following information should be inserted  
 Location of executive office \_\_\_\_\_  
 Location of property \_\_\_\_\_  
 Nature of business \_\_\_\_\_  
 When and where incorporated \_\_\_\_\_  
 (See Requirement 1)  
 Transfer agent \_\_\_\_\_  
 Registrar (must be a corporation) \_\_\_\_\_  
 Annual meeting \_\_\_\_\_  
 Fiscal year ends \_\_\_\_\_

CAPITAL STOCK

Class	Shares Authorized	Shares Outstanding	Shares Unissued	Par Value
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____

If the total outstanding shares and unissued shares of any class of stock does not equal the amount of authorized shares, kindly attach a separate rider explaining in detail the status of the shares not accounted for above

- 4 Are the shares fully paid? \_\_\_\_\_ Non-assessable? \_\_\_\_\_ Does personal liability attach to ownership? \_\_\_\_\_
  - 5 In what class (or classes) of stock is voting power vested? \_\_\_\_\_
  - 6 Has the company any bonds or notes authorized? \_\_\_\_\_ If so, specify \_\_\_\_\_
  - 7 Give the numbers and denominations of the above stocks or bonds on which transfer has been stopped \_\_\_\_\_
  - 8 Do the by-laws of the corporation provide that at least ten days' written notice be given stockholders in advance of both annual and special meetings of stockholders? \_\_\_\_\_
  - 9 Do the by-laws of the corporation provide that the stock transfer books be closed in the event of the declaration of a dividend? \_\_\_\_\_ If so for how long? \_\_\_\_\_
  - 10 Has the above named company officially established the principle of furnishing to stockholders annual reports certified to by independent accountants? \_\_\_\_\_  
 (See Requirements 2 and 9)
  - 11 Has there ever been a public offering of the issue herein applied for? \_\_\_\_\_  
 (See Requirement 3)  
 If so, by whom? \_\_\_\_\_  
 At what price? \_\_\_\_\_  
 Give date of offering \_\_\_\_\_
- Attach to this application copies of prospectuses, advertisements and offering circulars distributed at the time of public offering
- 12 Who are the present bankers of the corporation? \_\_\_\_\_
  - 13 What is the distribution of the stock generally and what is the distribution in the vicinity of New York? \_\_\_\_\_

- 14 Is the issue listed or dealt in upon another exchange?-----If so, where?-----
- 15 Is there a present active market for the stock in New York City?-----
- 16 What is the present market quotation for the issue?  
 (a) On said Exchange?-----  
 (b) Over the counter in New York?-----
- 17 State the approximate present daily volume of dealings in the issue  
 (a) On said Exchange?-----  
 (b) Over the counter in New York?-----
- NOTE In connection with Questions 12 to 17 above, see Requirements 11, 12 and 16
- 18 Give the names of houses in New York City dealing in said issue?-----
- 19 Has the company any options or agreements of similar nature in force?-----  
 If so, furnish copies thereof (See Requirement 19 )
- 20 Give the names and addresses of the officers.  
 -----  
 -----  
 -----
- 21 Give the names and addresses of the directors  
 -----  
 -----  
 -----
- 22 Has the company ever applied for the qualification of its shares in any state and been rejected?-----
- 23 From what source did you obtain the financial statements which you have submitted in conformity with Requirement No 5?-----
- 24 From what source did you obtain the history and business which you have submitted in conformity with Requirement No 6?-----
- 25 From what source did you obtain the record of dividends which you have submitted in conformity with Requirement No 7?-----
- 26 From what source did you obtain the tabulation *re* funded indebtedness which you have submitted in conformity with Requirement No 8?-----
- 27. Do you agree to furnish such further information in respect to the above named securities as may be requested by the Secretary?-----
- 28 Do you agree to us your best efforts to maintain an orderly market in this issue if admitted to dealing?

Signed-----  
 (Name of Regular Member)

Date-----

NOTE—In addition to answering all questions given above, applicant member must also submit all further data specified in the requirements

The Committee on Listing recommends to the Board of Governors that the above described----- be admitted to unlisted trading

-----  
*Chairman*

NEW YORK CURB EXCHANGE

REQUIREMENTS FOR REGULAR MEMBERS RE ADMISSION OF STOCKS TO UNLISTED TRADING

The following is a list of data to be furnished, and of requirements to be conformed to, by regular members in applying for the admission of stocks to unlisted trading. No requirement may be modified unless impossible of strict compliance due to conditions beyond control of the applying member, should such condition or conditions exist a detailed explanation of the same must be furnished. The following requirements do not apply to "Rights", "Warrants" or to "Split ups" or to substitutions, or to readjustments of capital structure, et cetera, including reorganizations in respect to securities listed upon the New York Stock Exchange or listed or admitted to trading on the New York Curb Exchange.

The Committee expects that members will not file applications for the admission to unlisted trading of stocks of corporations which are not nationally or internationally known, unless there is sufficient distribution in the Eastern States, particularly in and around New York, to warrant the belief that an active market exists in New York City

No stock will be admitted to unlisted trading the authorized issue of which is less than 100,000 shares, of which at least 25,00 shares of free stock must be in the hands of the public.

1 The Company must have been in actual operation for not less than two (2) years and show a record of actual and satisfactory earnings for such period. If, however, a new Company has taken over the assets of an old Company, itself incorporated and showing a record of actual and satisfactory earnings for two (2) years, the prior period may be considered. This period need not, however, be essential in the case of Investment Trusts whose portfolios consist of, or of Holding Companies whose capital is invested in securities of, Companies which themselves have been in operation for the period

2 The Company must have established and continue the principle of furnishing to stockholders periodical reports containing balance sheets and profit and loss statements, certified to by independent accountants (in any event, not less than once a year).

3 No stocks will be admitted to unlisted trading for at least six months subsequent to the date of public offering unless previous to the expiration of said period the Company and/or its bankers approve or the issue has been listed upon another exchange

4 The applying member must fill in the answers to all questions appearing in the application blank and sign such application blank

5 Financial Statements Balance Sheets and Profit and Loss Statements covering a period of not less than two (2) years immediately preceding the date of application. This data must be transcribed from Poor's Manual, Moody's Manual, Fitch's Manual, or Standard Statistics' Service, or be obtained from an authoritative source. The applying member shall attach a certificate stating the source from which such data has been obtained

6. History and description of business from inception to date, with certificate of applicant member specifying the source from which the information has been obtained

7. Tabulated record of dividends on all classes of stock from initial payment to date, showing payment date, rate and amount of each dividend, with a certificate signed by the applicant member showing the source from which the information has been obtained

8 Funded Indebtedness A tabulation showing (a) full title and date of issue of each kind or series, (b) date of maturity, (c) interest date and interest payment dates, (d) amount authorized of each issue, (e) amount outstanding of each issue, (f) security, and nature and priority of lien, (g) provisions for redemption, (h) if convertible, under what terms, etc

9. An official copy of the latest annual report of the corporation in the form as issued to its stockholders. The financial statements included in said report must have been prepared by a properly qualified practicing public accountant in good standing, and not by an officer, director or employee of the corporation

10 A photostatic copy of stock certificate (both sides) representing the class of stock applied for

11. A present active market must prevail for the stock in New York City, and satisfactory evidence to this effect must be submitted by the applicant member.

12. A statement of the approximate present daily volume of dealings in New York

13 A statement from an officer of the company, or from the transfer agent or registrar of such stock of the number of stockholders among whom the shares of each class of stock applied for are distributed

14 Name of Transfer Agent

15 Name of Registrar (must be a corporation)

16 If this issue is traded in on other Exchanges, furnish

(a) Names of Exchanges.

(b) Approximate daily volume of dealings.

17. Furnish an agreement to submit promptly to the Secretary's Office copies of all reports and notices distributed by the company to its stockholders

18 A signed typewritten transcript of all information relative to the company applied for (other than that furnished in answer to requirements enu-

merated above), as it appears in Poor's Manual, Moody's Manual, Fitch's Manual, or Standard Statistics' Service

19 A statement from a responsible officer of the company as to any outstanding company options, if any, or of any options or calls on the stock known to said officer.

20 All information must be delivered to the Secretary's Office at least one week prior to a meeting of the Committee.

In addition to the above requirements, the following special requirements shall apply to requests for the admission to member listing of stocks of foreign corporations.

#### FOREIGN CORPORATIONS

(a) Relative to Requirement #5 above, in filing an application for the admission to unlisted trading of securities dealt in on foreign Exchanges, if no information regarding the company is contained in any of the Manuals mentioned in Requirement #5 above, the Committee will consider data as taken from the following publications:

"Stock Exchange Year Book" (London Stock Exchange)

"Gids bij de Prijscourant van de Vereeniging Voor Den Effectenhandel" (Amsterdam).

"Saling Boersen Jahrbuch" (Berlin).

"Annuaire Desfosses" (Paris)

If any of the data furnished is in a foreign language, an English translation, authenticated to the satisfaction of the Committee, must be furnished of all necessary data

(b) The Committee will only admit to trading a foreign security, the nominal value of which is expressed in terms of, or the income from which is payable to security holders in, a currency which is on a gold basis.

(c) Upon approval of any foreign shares, request for the admission of which to unlisted trading has been made by a regular member, such shares will be admitted to such trading only in the form of certificates issued by an approved American institution or by the American branch of an approved foreign institution, based upon the deposit with a foreign correspondent of the original foreign shares

(d) In case of foreign shares, the Committee will give consideration to all matters affecting the marketability of the shares and the facility with which domestic and international transactions may be effected therein.

As amended to July 5th, 1933.

B-45

NEW YORK CURB EXCHANGE,  
OFFICE OF THE SECRETARY,

July 5, 1933

*To the Members:*

At a Special Meeting of the Board of Governors held today the following resolutions were adopted:

*Resolved*, that in advance of admitting to unlisted trading notice shall be given to the Company whose securities it is proposed to admit to unlisted trading, and opportunity given to appear before the Committee and present objections, if any

*Resolved further*, that no security will be admitted to unlisted trading over the duly authorized objection of the Company whose securities it is proposed to admit to unlisted trading when evidence is furnished of pending financing or of reorganization or of purchase of properties or of exchange of securities.

*Resolved further*, that if the authorized issue of a stock, except preferred stocks entitled in liquidation to not less than one hundred dollars (\$100.00) per share, be reduced below 100,000 shares, the stock will be removed from unlisted trading

*Resolved further*, that the Board of Governors shall pass on all applications for admission to unlisted trading.

*Resolved further*, that an independent certified public accountant shall analyze financial statements supplied in the case of the application to admit a security to unlisted trading

*Resolved further*, that if, as a result of such analysis, or otherwise, it shall appear to the Board of Governors that such statements are incomplete or

inaccurate in any material aspect, and such omissions and/or inaccuracies are not corrected, the security in question shall not be admitted to unlisted trading.

*Resolved further*, that a security will not be admitted to unlisted trading where the issue authorized is greatly in excess of that outstanding at the time of application, unless the Company will agree to notify the Exchange of the issuance of such additional security, and that if the Board of Governors is not satisfied with the circumstances surrounding such additional issue and the additional security is actually issued, the security already admitted to unlisted trading will be removed.

*Resolved further*, that all removal or suspension notices of securities shall be printed on the ticker immediately they are removed or suspended.

*Resolved finally*, that fully listed securities removed from listing will not be readmitted to unlisted trading unless such securities are qualified for such unlisted trading.

EUGENE R TAPPEN, *Secretary*

Do not destroy File for future reference

BONDS

NEW YORK CUREB EXCHANGE

APPLICATION BLANK FOR ADMISSION TO UNLISTED TRADING

Application is hereby made by \_\_\_\_\_ for the admission to  
(Name of Regular Member)  
Unlisted Trading \_\_\_\_\_  
(Name of Company) (Amount outstanding)

(Title of issue) (Interest Rate) (Maturity Date)  
1 Do you agree to furnish promptly to the Secretary's Office copies of all reports which the company may distribute to its stockholders? (See Requirement 17) \_\_\_\_\_

2 The following information should be inserted:

Location of executive office \_\_\_\_\_ Location of property \_\_\_\_\_  
Nature of business \_\_\_\_\_  
When and where incorporated (See Requirement 1) \_\_\_\_\_  
Names and Addresses of Trustee (s) \_\_\_\_\_ Annual meeting \_\_\_\_\_  
Fiscal year ends \_\_\_\_\_

CAPITALIZATION

Class	Authorized	Outstanding	Unissued	Par value (of stocks)
-----	-----	-----	-----	-----
-----	-----	-----	-----	-----
-----	-----	-----	-----	-----

Are the shares fully paid? \_\_\_\_\_ Non-assessable?  
Does personal liability attach to ownership?  
In what class (or classes) of stock is voting power vested? \_\_\_\_\_

3 Give the numbers and denominations of the above bonds on which transfer has been stopped: \_\_\_\_\_

4 Has the above named company officially established the principle of furnishing to stockholders annual reports certified to by independent accountants? (See Requirements 2 and 11) \_\_\_\_\_

5. Has there ever been a public offering of the issue herein applied for? (See Requirement 3) \_\_\_\_\_

If so, by whom? \_\_\_\_\_

At what price? \_\_\_\_\_

Attach to this application copies of prospectuses, advertisements and offering circulars distributed at the time of public offering

6 Who are the present bankers of the corporation? \_\_\_\_\_

7 What is the distribution of the Bonds generally and what is the distribution in the vicinity of New York? \_\_\_\_\_



- 8 Is the issue listed or dealt in upon another exchange?-----If so, where?-----
- 9 Is there a present active market for the Bonds in New York City?  
-----
- 10 What is the present market quotation for the issue?  
 (a) On said Exchange?-----  
 (b) Over the counter in New York?-----
- 11 State the approximate present daily volume of dealings in the issue  
 (a) On said Exchange?-----  
 (b) Over the counter in New York?-----

NOTE—In connection with Questions 6 to 11 above, see Requirements 12, 13 and 16

- 12 Give the names of houses in New York City dealing in said issue?  
-----
- 14 Give the names and addresses of the officers -----  
-----
- 15 Give the names and addresses of the directors -----  
-----

- 16 Has the company ever applied for the qualification of its securities in any state and been rejected?-----
- 17 From what source did you obtain the financial statements which you have submitted in conformity with Requirement No 5?-----
- 18 From what source did you obtain the history and business which you have submitted in conformity with Requirement No 6?-----
- 19 From what source did you obtain the record of dividends which you have submitted in conformity with Requirement No 9?-----
- 20 From what source did you obtain the tabulations *re* funded indebtedness which you have submitted in conformity with Requirements 8 and 10?-----
- 21 Do you agree to furnish such further information in respect to the above named securities as may be requested by the Secretary?-----
- 22 Do you agree to use your best efforts to maintain an orderly market in this issue if admitted to dealing?-----

Signed-----  
 (Name of Regular Member)

Date-----

NOTE—In addition to answering all questions given above, applicant member must also submit all further data specified in the requirements

The Committee on Listing recommends to the board of Governors that the above described-----be admitted to unlisted trading

-----  
*Chairman*

NEW YORK CURB EXCHANGE

BONDS

REQUIREMENTS FOR REGULAR MEMBERS RE ADMISSION OF BONDS TO UNLISTED TRADING

The following is a list of data to be furnished, and of requirements to be conformed to, by regular members in applying for the admission of bonds to unlisted trading. No requirement may be modified unless impossible of strict compliance due to conditions beyond control of the applying member, should such condition or conditions exist a detailed explanation of the same must be furnished. The following requirements do not apply to "Rights", "Warrants" or to "Split-ups" or to substitutions, or to readjustments of capital structure, et cetera, including reorganizations in respect to securities listed upon the New York Stock Exchange or listed or admitted to trading on the New York Curb Exchange

The Committee expects that members will not file applications for the admission to unlisted trading of bonds of corporations which are not nationally or internationally known, unless there is sufficient distribution in the Eastern States, particularly in and around New York, to warrant the belief that an active market exists in New York City

No bond will be admitted to unlisted trading of an issue of less than \$5,000,000 00

1. The Company must have been in actual operation for not less than two (2) years, and show a record of earnings, satisfactory to the Committee, for such period. If, however, a new company has taken over the assets of an old company, itself incorporated and showing a satisfactory record of earnings for two (2) years, the prior period may be considered.

2. The Company must have established and continue the principle of furnishing to stockholders periodical reports containing balance sheets and profit and loss statements, certified to by independent accountants (in any event, not less than once a year).

3. No bonds will be admitted to unlisted trading for at least six months subsequent to the date of public offering unless previous to the expiration of said period the Company and/or its bankers approve or the issue has been listed upon another exchange.

4. The applying member must fill in the answers to all questions appearing in the application blank and sign such application blank

5. Financial Statements. Balance Sheets and Profit and Loss Statements covering a period of not less than two (2) years immediately preceding the date of application. This data must be transcribed from Poor's Manual, Moody's Manual, Fitch's Manual, or Standard Statistics' Service, or be obtained from an authoritative source. The applying member shall attach a certificate stating the source from which such data has been obtained

6. History and description of business from inception to date, with certificate of applicant member specifying the source from which the information has been obtained.

7. Copy of the Mortgage or Indenture certified to by the Trustee.

8. A complete description of the issue applied for, including the following:

A (1) Full title, (2) amount applied for (whether temporary or permanent), denominations and numbers, (3) amount authorized and outstanding; (4) whether bonds are coupon (registered as to principal) or registered, interchangeable or exchangeable; (5) exchangeability or convertibility into other securities, and terms.

B (1) Date of issue and maturity, (2) interest rate; (3) places at, and dates for payment of interest and principal, (4) where registerable or transferable; (5) kind and standard of money, and options, (6) tax exemptions; (7) whether redeemable or purchasable in whole or part by sinking fund or otherwise, showing (a) dates, (b) price, (c) duration and place of published notice, (8) specified reservation of stock for conversion

C Provisions for declaration of principal due and payable in event of default in payment of interest, or other defaults, and waiver, percentage of outstanding bonds controlling trustee.

D A statement as to the purpose of issue and the application of the proceeds.

E A complete description of the security or underlying collateral.

9. Tabulated record of dividends on all classes of stock from initial payment to date, showing payment date, rate and amount of each dividend, with a certificate signed by the applicant member showing the source from which the information has been obtained

10. Funded indebtedness. A tabulation showing (a) full title and date of issue of each kind or series, (b) date of maturity, (c) interest date and interest payment dates, (d) amount authorized of each issue, (e) amount outstanding of each issue, (f) security, and nature and priority of lien, (g) provisions for redemption, (h) if convertible, under what terms, etc.

11. An official copy of the latest annual report of the corporation in the form as issued to its stockholders. The financial statements included in said report must have been prepared by a properly qualified practicing public accountant in good standing, and not by an officer, director or employee of the corporation

12. A present active market must prevail for the bonds in New York City, and satisfactory evidence to this effect must be submitted by the applicant member

13. A statement of the approximate present daily volume of dealings in New York.

14. The regular member shall furnish the Committee with satisfactory evidence of adequate distribution.

15. Name(s) of Trustee(s).

16. If this issue is traded in on other Exchanges, furnish:

(a) Names of Exchanges.

(b) Approximate daily volume of dealings.

17 Furnish an agreement to submit promptly to the Secretary's Office copies of all reports distributed by the company to its stockholders.

18. A signed typewritten transcript of all information relative to the company applied for (other than that furnished in answer to requirements enumerated above) as it appears in Poor's Manual, Moody's Manual, Fitch's Manual, or Standard Statistics' Service.

19 All information must be delivered to the Secretary's Office at least one week prior to a meeting of the Committee.

As amended to July 5th, 1933.

STATEMENT OF E BURD GRUBB, PRESIDENT OF THE NEW YORK CURB EXCHANGE,  
IN RESPECT TO EXCHANGE TRADING IN UNLISTED SECURITIES AS AFFECTED BY  
S 2693 AND H R. 7352

NEW YORK CURB EXCHANGE—THE UNLISTED SECURITIES

*Preface*—The question is often asked, "What are 'Unlisted Securities'; what does it mean when a security is 'admitted to unlisted trading'?" The purpose of this review is to attempt to answer these questions in an endeavor to bring about a more accurate understanding of certain of the functions of the New York Curb Exchange and particularly of its so-called Unlisted Department.

The Officers and Governors of the Exchange are frequently surprised at the amount of misinformation or the entire lack of any information which exists with respect to this important Department. This is not the result of anything inherently difficult about the Unlisted Department or of any concealment of the facts by the Exchange; but is due, so it is believed, in part to a general impression on the part of the public that there is something mysterious in the technical machinery and operation of security markets, and, in part, to lack of interest, particularly in good times.

Of late, much criticism has been leveled at security markets, including markets on the recognized Exchanges. No doubt some of this has been justified, although, so far as affects the Exchanges, it may be noted that most of the charges, in connection with recent disclosures have been against outsiders who have attempted to misuse Exchange or other markets, rather than against the Exchanges or their members as such. The Exchanges have made mistakes, but it is a matter of comment that with all the evidence of dishonesty or of overreaching disclosed, no proof has been brought forth of misconduct by the Exchanges themselves.

This Exchange, in common with others, has been criticized for certain practices, but, for the most part, these criticisms apply to alleged manipulation, pools, and trading practices generally and are not affected by any differences between "fully" listed and "unlisted" securities. So far as the Unlisted Department or securities therein is concerned, practically no criticism has come from the investing public. The objections received respecting this Department, very generally, have been from competitor markets, or, in some instances, from officials of certain companies whose securities have been admitted to unlisted trading.

These objections are considered in this review, the primary purpose of which, however, is to state the origin, purpose and activities of the Unlisted Department and to show the need which it fulfills.

HISTORICAL INTRODUCTION

Before taking up the Unlisted Department, it may be worth while to say a word about the Exchange itself.

In common with many Exchanges, both in this country and abroad, the New York Curb Exchange had its beginnings out-of-doors. From the time of the Civil War and even before, trading was carried on in various streets in the financial district in Lower New York. During the 90's, this market functioned in Broad Street near Wall, where it remained until the Exchange moved indoors in 1921. It was always a picturesque institution and in the years immediately preceding its transfer to present quarters, it grew tremendously in importance.

In the meantime, in 1908 to be exact, a number of progressive Curb brokers founded the New York Curb Agency. This was one of the first constructive

steps taken to organize this group formally. The present Exchange, under the name of the New York Curb Market, or Market Association, was organized as a voluntary association in 1911. A Listing Department was established and offices were maintained at 25 Broad Street where data pertaining to the companies listed was available for public examination. By reason of the rapid growth of the Exchange and realizing thereby the necessity for greater control and discipline over its members and keener scrutiny of the securities admitted to dealing, the members of the Exchange determined to move all of its activities indoors. This change was seriously considered as early as 1915 but, owing to the World War, it was not possible to accomplish this purpose until 1921 when the Exchange entered its new building at Trinity Place, New York, which, with the extensive fourteen story addition, it still exclusively occupies.

The Exchange had two classes of membership. Regular and Associate. Regular members are owners of memberships and are entitled to full privileges, while associate members or their firms are accorded the privilege only of having their business done at the special commission rates. Both classes are subject to the regulation and discipline of the Exchange which is governed by its constitution and rules, modeled on those of the New York Stock Exchange. The regular members number 550, the associate members, 420. Of the regular members, 163, and of the associate members, 364, are members of the New York Stock Exchange or members of the New York Stock Exchange firms. The high price of \$254,000 was paid for a regular membership on October 9, 1929, the latest price was \$40,000.

If not before, certainly soon after it moved indoors, the New York Curb Exchange became the second largest security Exchange in the United States. Since 1921, its growth has been extraordinary as is evidenced by the fact that in the year 1927, the New York Times Annalist shows that the total number of sales of stocks on the New York Curb Exchange was 93,437,156 shares and of bonds \$331,783,000, in 1933, 100,916,602 shares and \$944,374,000 bonds. The average transactions for the seven years in stocks were 183,900,655 shares and in bonds \$843,117,285. Also during the period, the ticker service of the Exchange extended over the country, its quotations were published in papers generally throughout the nation and its position and importance as a public market place grew apace. Today it is still by far the second largest Exchange in the country, approximating or exceeding in stocks alone, the combined transactions taking place on all other Exchanges of the country, excepting only those on the New York Stock Exchange. (Figures of stock transactions from January 1, 1929 to October 1, 1933, compiled by DeCoppet and Doremus)

The government of the Exchange is vested in a Board of Governors composed of 36 members elected by the regular membership. The officers of the Exchange consist of a President, a Vice-President and a Treasurer, each of whom must be a member of the Board of Governors, and a Secretary, a First Assistant Secretary and such other Assistant Secretaries as the Board of Governors may see fit to appoint.

The work of the Exchange is carried on under the supervision of 14 Standing Committees of the Board of Governors and by two subsidiaries, the New York Curb Exchange Realty Associates, Inc., and New York Curb Exchange Securities Clearing Corporation. Among the Standing Committees is the Committee on Listing, consisting of twenty members. The work of this important Committee in turn is divided among five Sub-Committees consisting of five members each, as follows: Special Sub-Committee on Foreign Securities, Special Sub-Committee on Formal Listing, special Sub-Committee on Investment Trusts, Special Sub-Committee on Unlisted Securities and Special Sub-Committee on Bonds.

The Exchange maintains a Listing Department under the supervision of the Secretary of the Exchange and two Assistant Secretaries. This Department has a staff of employees whose duty it is, among other things, to assist the Committee on Listing and the Sub-Committees in the examination of applications for admission of securities to "full" or formal listing and to "unlisted" trading. The Department also has the assistance of a firm of certified public accountants.

As heretofore indicated, two major classes of securities are traded in upon the Exchange—"fully listed" securities, which are admitted upon the application of the companies issuing the same, and "unlisted" securities, which are admitted upon the application of a regular member of the Exchange, himself a stockholder of the company in question. It is not the intention here to consider at any length the securities falling in the first category. An application of a company for formal listing is accompanied by a full disclosure, over the

official signature of the company, of facts deemed pertinent for a study of the securities sought to be fully listed. The requirements for full listing call for substantially all the information specified in the requirements of the New York Stock Exchange.

The New York Curb Exchange is, generally speaking, a primary market in respect to its "fully" listed securities. These securities largely represent *new* companies in which there is the hope, based upon the nature of the enterprise, the personnel of its officers and its capital structure, of successful development.

The so-called "unlisted securities" with which this review deals primarily are admitted upon an entirely different theory and fulfill a somewhat different economic need. Such securities are *never* those of new or newly formed companies, but are of companies which have been in existence for a substantial number of years and with respect to which there exists a public record of their history and financial condition and a public market.

#### THE UNLISTED SECURITIES

Technically speaking, "unlisted securities" are those which are not listed upon any Exchange. As pointed out by Mr J. Edward Meeker in his instructive book, "The Work of the New York Stock Exchange," many brokerage and investment firms operate extensive "unlisted departments," dealing in securities whose only market is "over-the-counter" in New York or by arbitrage in outlying cities. The number of securities traded in in this way, or in less organized markets, is difficult to estimate, but it is safe to say that the volume of trading in securities off or outside any Exchange has been and still is very considerable.

All securities traded in upon the New York Curb Exchange are *officially* listed by sanction of the governing authorities whether traded in "fully listed" or so-called "unlisted." In the case of "fully listed" securities, the admission to the list is upon the application of the company issuing the same, while in the case of "unlisted" securities, the listing is upon the application of a regular member of the Exchange.

Even in the years when the members of the New York Curb Exchange were still functioning on Broad Street, or on "the curb," the practice prevailed of admitting to dealing; *i. e.*, to unlisted trading, securities for which a market existed in New York other than on the New York Stock Exchange. There were then and always have been sound securities in which an active market existed in New York which were not, for one reason or another, listed upon the New York Stock Exchange. These were, generally speaking, issues which were all distributed. Market quotations accordingly were, as a rule, immaterial to issuing companies and there existed no reason for the company itself to incur the trouble and expense of obtaining formal listing. There were, however, a public ownership and interest and the need to owners of a market. Such securities, therefore, came to be traded in upon the Curb Exchange which became even then the recognized market for the securities dealt in there.

At the present time 355 stocks and 19 bonds are fully listed and 1,069 stocks and 620 bonds are traded in "unlisted" upon the New York Curb Exchange. The trading in these later securities constitutes the most important business of the Exchange. The name "unlisted securities" is somewhat misleading as, from it, many persons imply that the securities referred to are selected without any care or investigation whatsoever. The requirements for admission to unlisted trading will be referred to hereafter but at this point it is desired to call attention to the fact that, as a whole, this group of securities compares favorably with those listed upon any other Exchange. The bond list particularly, which is almost entirely made up of unlisted bonds, is deserving of critical comparison.

On July 1, 1929, out of a total number of 476 bond issues admitted to unlisted trading, three issues were in default on interest payments. On November 1, 1933, out of a total of 643 bond issues admitted to unlisted trading, only 83 issues (including 18 certificates of deposit representing underlying bond issues in default) were in default. A study has been made of the stocks which were admitted to unlisted trading on July 1, 1929. At that time there were 1,509 issues, excluding bonds, admitted to unlisted trading. Of these, 981 or 65% were dividend-paying. On December 31, 1933, there were 1,144 stocks admitted to unlisted trading of which 477 were dividend-paying or 42%.

The major market in so-called "unlisted securities" which exists today upon the New York Curb Exchange, came into being for the most part, not because of any artificial stimulation, but because a real need existed for such a market. Indeed, the tremendous development of the New York Curb Exchange would have been impossible had the need not existed and if the need had not adequately been fulfilled by the service rendered by this market. No doubt this growth was aided by the fortunate location of the Exchange in the largest financial center of the country and by the extraordinary growth and expansion of business activity which took place in the years following the World War. But more important than all else was the fact that there was a need for such a market which was met by the facilities afforded by this Exchange.

The facilities of the New York Curb Exchange are exceeded only by those of the New York Stock Exchange itself. The quarters occupied by the Exchange are modern in every particular. Its trading room, which extends five stories in height and which has an area of 20,023 square feet without a supporting column to break up the space, is one of the largest in the world. The ticker service, equipped with modern high speed tickers, is nationwide and its Clearing Corporation, modeled on that of the New York Stock Exchange provides the latest and most efficient facilities for the clearing and settlement of security transactions. Moreover, the Exchange has had the cooperation of the New York Clearing House banks, many of which make their funds available at the money post on the floor of the Exchange and of the financial community in general which has come to recognize the substantial position it occupies in our national economy.

As stated earlier, the securities admitted to "unlisted trading," are seasoned securities, that is to say, they are securities of companies which, for the most part, have been in existence for a substantial number of years and whose financial career is a matter of public record. It is not pretended that the information available to the Exchange is as detailed or complete as the information obtained in the case of fully listed securities. On the other hand, the information actually available is deemed by the Exchange adequate to protect an investor.

The New York Curb Exchange early recognized the importance of this market not only to its members but to the public at large. Shortly after the reorganization attendant upon its going indoors in 1921, a Special Committee was appointed whose function and duties were to admit to unlisted trading, upon the application of a regular member of the Exchange, securities which passed the examination of the Committee.

The requirements for admission to unlisted trading have naturally developed and become more stringent as experience showed the need. The rule was early made that no security would be admitted when the company issuing it had less than two years' experience. Financial statements had to be published in Poor's, Moody's or other reliable standard publications of a statistical nature, or an authoritative statement, *i e*, from official sources, had to be furnished to the Committee. The application for admission of a stock had to be presented by a regular member of the Exchange, himself a stockholder of the company whose securities it was sought to list. The Committee examined the company's statements, considered the character of the security and its earning record, the distribution of the issue and the market therein, and the security was admitted to unlisted trading only upon its approval.

Quite naturally, the Exchange made mistakes both of commission and of omission. In the speculative period immediately approaching 1929, many securities were admitted to trading where an actual market in New York did not exist but where it was hoped that a market would develop. The Exchange now appreciates that the existence of an active market here is fundamental and should in all cases be a prerequisite for admission of a security to unlisted trading. This requirement is now among those firmly insisted upon.

We have already called attention to the requirement that a company must have been in existence for a substantial number of years which is a prerequisite to the admission of a security to unlisted trading. While the requirement today, as earlier, is that a company, whose securities are so admitted, shall have a minimum corporate existence of two years, in actual practice the great majority of such companies have, prior to the admission of their securities, been in existence much longer. Recently a statistical test was made which very clearly illustrates this point. Taking at random the files of the companies lettered F to K, numbering 231 stocks, an examination showed that at the time of application, the average period of corporate existence of

these companies had been 257 years. Companies which have weathered economic business stress and strain for so long a period not only invite confidence by reason of this factor but also furnish records of extended experience which may be studied by an investor before making his purchase. The unlisted securities are never new and untried, but must always have a record of actual performance behind them.

As we have already seen, all securities traded in on the Exchange are officially listed, one on application of the company, the other on the application of a member. The factor not generally understood is the information required and the care exercised in the admission to dealing of any security. The belief prevails in some quarters due, undoubtedly, to the misleading phrase "unlisted", that any type of security will at any time, without examination and without information on file, be admitted under the caption "unlisted". That the contrary is the case will be made clear by a study of the application blanks, requirements and resolutions relating to the admission of securities to unlisted trading and by the record of treatment of listing applications.

During the spring of 1933, the Attorney General of the State of New York conducted a public examination of the Unlisted Department of the New York Curb Exchange. This examination satisfied the Exchange that the rules and regulations governing the admission of securities to so-called unlisted trading needed additional strengthening and enlarging and, at the conclusion of the examination, requirements were adopted which it is believed assure the public of a maximum of care in the admission of securities to unlisted trading.

The present requirements for admission to unlisted trading, supplemented by the resolutions which were adopted at the close of the investigation above referred to, are available and will be furnished to any who are interested, as will the requirements for admission to "full" for formal listing.

A comparison of the respective requirements for "full" or formal listing and for "unlisted" trading, it is believed, will satisfy any reasonable person that adequate investigation is made of the unlisted securities before they are admitted to trading. While less data and information are obtained in support of an application for admission to unlisted trading than in support of an application for formal listing, any objection on this ground is more than offset by the fact that the unlisted security usually has a long record of actual performance. While performance is by no means the sole test in admitting a security, a bad record is always sufficient reason for rejecting it. That the standards applied by the New York Curb Exchange in the admission of unlisted securities have been sufficient, except in a relatively very few cases, is adequately established by its actual experience with these securities.

It is true that a requirement for company listing is that the company must agree with the Exchange to maintain certain standards of accounting and to furnish the Exchange with information in respect to options and other material corporate purposes. Thus the Exchange exercises control, important to stockholders and to the investing public, over certain company activities. At the same time, the seeming defect in the case of securities admitted without company agreement is more technical than real. In so far as new applications for unlisted trading are concerned, the companies must have established and continue the practice of periodic audits by an independent public accountant. An official statement must be furnished as to options outstanding. With the securities already admitted, these factors are not enforceable. But public opinion and conceivably statutory provisions may well compel corporate compliance with these requirements.

Moreover, many of the companies whose securities are admitted to unlisted trading cooperate with the Exchange to an high degree both in the furnishing of information and in the acceptance of suggestions from the Exchange. Those which are listed upon other recognized Exchanges will be held by such Exchanges to a strict observance of Exchange rules. Those which are unlisted anywhere, so long as they may be traded in over-the-counter or unlisted on an Exchange present rather a legislative than an Exchange problem. If corporations generally were compelled to follow certain specified rules of accounting and to publish or to file with public authorities full information of corporate activities, the public would be in a position to judge much more intelligently corporate structures, earnings and acts. That is what the present bill undertakes, except that it confines the filing of information to fully listed securities only. So long as companies may be organized with unlimited charter privileges and so long as these securities may be bought and sold, it is a protection to the public to have them dealt in upon an Exchange. Markets existed therein before

such securities were admitted to trading and such markets would necessarily spring up again if such privileges were denied. When dealt in upon an Exchange, the security enjoys a publicity which tends to lead the issuing company to follow the trend of public opinion. Moreover, the market action in any stock from day to day is under the supervision of the Committee of Arrangements and in the event of any movement injurious to the public, prompt action in calling for transcripts of members' accounts or in the proper case of suspending trading in the security is an effective control and remedy.

The theory of the Exchange in the maintenance of its Unlisted Department may be stated as follows. When an active market in a security, which meets the qualifications, exists in New York, the public is better served by having that security dealt in on an Exchange. The purchaser or seller on an Exchange deals through a broker member acting as agent who makes contracts for his customer with other members, likewise acting as agents. A specified commission only is charged; the transaction is immediately made public by means of the ticker; purchases and sales appear throughout the country in the daily papers; each transaction is open to investigation and verification, each member is subject to the rules and discipline embodied in the constitution and rules of the Exchange.

By way of contrast to transactions taking place on an organized Exchange, a transaction outside of the Exchange is generally conducted between the customer and one acting as a dealer or principal, *i e*, for himself. There is no specified rate of commission. Indeed, the dealer pays what he feels inclined to pay and sells for what he can get. The spread is often notoriously wide. The opportunity of verifying the transaction is not comparable to that on an Exchange where the officers or a Committee may call upon members to produce all records and to explain any transaction.

Moreover, quotations of the outside market are not as accurate and complete as those on an Exchange and are given very little publicity. Indeed, outside of the great cities, it is doubted if the price range in securities other than those dealt in on the New York Stock Exchange or the New York Curb Exchange is given any notice whatsoever. Most newspapers carry transactions on these two Exchanges, but no reports of outside markets. Where a security is not dealt in on an Exchange, one who wishes to buy or sell the security may not turn to the morning paper and see the record of the actual transactions of the day before and the closing "bid and asked", he must apply to an outside dealer to inquire what he will give or what the customer must pay for the security in question. This situation must necessarily leave the customer more or less at the mercy of the dealer, it leaves him largely out of touch with realities.

There is, in so far as we know, no practice generally among dealers to have in their files extensive information in respect to the companies whose securities they are prepared to buy or sell. It is true that some brokers and investment houses dealing in securities in the outside market have organized statistical departments with information on file. In general, however, this applies only to the greater cities. As against this, the New York Curb Exchange has a very large amount of information on file which information is open for inspection by the public.

The average dealer does not pretend to do more than furnish general advice. Indeed, as a dealer, unless he be engaged in the distribution of new securities, he is hardly expected to advise, but he is at his office to make prices to those who wish to deal with him. Moreover, his advice is that of a principal looking out for his own interests and not that of an agent whose duty it is to furnish his customer with impartial advice. The interest of the dealer is in the profit he may make for himself acting as a principal, the interest of an agent or broker buying and selling securities for his customer on an Exchange is in his commission, fixed by the Exchange.

Another important factor to be considered in relation to the outside market as contrasted with the recognized Exchanges is the lack of a control over the individual as against the control through an organized body. The outside dealer answers to no one other than his customer; the Exchange member is, to the contrary, accountable for his conduct not only to his customer but to the Exchange as well. Moreover, as frequently happens, the customer has little or no means of ascertaining the standing of the outside dealer and takes a very wide chance when he forwards his securities for sale or his money for purchase to one whom he may know only through advertisement. On the Exchange, to the contrary, it is the duty of the Committee on Business Conduct, assisted by its



accountants, to keep in touch with and supervise the financial standing and business methods of its members and member firms

The facts in respect to transactions on an Exchange may be ascertained and compiled by the public authorities and others interested. We are confident that the Attorney General of this State would readily admit that his investigation of trading in these so-called unlisted securities was facilitated by reason of the fact that they were traded in upon a recognized Exchange. In the present Senate investigation, the Sub-Committee and its able counsel obtained valuable information as to the securities business, particularly as to its extent, by reason of having organized Exchanges through which and to which inquiries might be directed to a known membership. No similar opportunity was open to it in respect to the vast amount of business which is done in the outside market. Indeed, the outside market has necessarily no extensive or adequate records.

It has sometimes been claimed that the public is deceived, when it reads the record of transactions on the Curb Exchange, into believing that all securities named are fully listed. As a matter of actual fact, as has been said above, and this is deemed of great importance, no security is dealt in on the Curb Exchange today which is not officially listed, that is to say, listed upon the official action of the Exchange itself.

The Exchange has urged that a clear demarcation be made in the press between these securities. Many newspapers distinguished in their reports between "fully listed" and "admitted to unlisted trading." The difference is given on the ticker and in the publications of the Exchange, including the Exchange Bulletin. But even though the public should be misinformed as to the difference between securities listed and unlisted on the Exchange, it may well be argued that the average investor is perhaps wiser in buying intelligently a seasoned unlisted security rather than placing his funds in the initial stages of a new enterprise fully listed upon the Exchange. The Exchange has continued to use the phrase, "admitted to unlisted trading" only because it does not desire to deceive those who define "fully listed" as including only listing upon the application of the company issuing the securities.

Occasional objections have been voiced that the New York Curb Exchange admits securities to unlisted trading without the express approval of the company issuing the securities and at times retains a security on its list against the express opposition of such company. The overwhelming majority of companies, whose securities are admitted to unlisted trading upon the New York Curb Exchange, are either satisfied with the market that exists on the Exchange or have no interest therein.

In the past, the Exchange has itself too freely admitted securities to unlisted trading, particularly in cases where, at the time of admission, no active market in the security existed in the East or in New York. The Exchange has recognized these mistakes and on its own volition, since January 2, 1933, has removed from dealing by reason of inactivity 696 issues of stock and 247 issues of bonds.

Whenever a complaint has come to the Exchange from a company and a request made for removal of its securities from unlisted trading, the officials of the company have been invited to confer with the Officers and Committees of the Exchange or to state their views in writing. Where this has not been possible, representatives of the Exchange have gone to the companies to confer with their officials and obtain the facts. In cases where substantial and adequate reasons for removing a security from unlisted trading were presented, the Exchange was glad to drop the security from the list. Often, when the operation of the Unlisted Trading Department was explained to them, companies have withdrawn their requests to have their securities removed from trading.

Officers of companies occasionally base their request for removal upon the claim that the market upon the Exchange does not represent or express real values (it is significant that such a reason is generally advanced when the tendency is downward), that fairer prices may be obtained when the security is dealt in outside an Exchange where contact is close between the dealer and the company, its officials or holders of the security interested in seeing its the price kept up. This presents, indeed, a challenge to an Exchange.

A market on an Exchange such as the New York Curb Exchange is an open, free market where buyers and sellers with knowledge of trading conditions and with actual bids and offers may employ an agent to meet agents for

other buyers and sellers. It represents a broad market and a real market as against a market limited by the capacity of a few outside dealers to take and place the securities offered. It is a market familiar to the investing public of the entire country. It is a market which does not "fold up" when the pressure on dealers becomes too heavy, creating thereby a moratorium in the security with the resulting embarrassment to an owner who has to realize on his security.

The problem is presented as to which is better for the holders or prospective investors. With an Exchange market they know each day, for better or worse, the actual conditions. In the outside market, however, they have no assurance, even if they are so fortunate as to know the quotations, that a nominally quoted market will, upon a test, turn out to be sustained, and thereby real. An Exchange market, reporting daily, serves continuous notice to holders of securities of actual conditions and trends. The owner is warned; his financial standing, in so far as the particular securities are concerned, is revealed to him each morning. When he decides to act, the transaction is concluded and reported immediately. He may call his agent to account before a tribunal which has before it the records and will protect him. But in an outside market, such transactions are personal; there is no supervision; no examination; no control.

The fact is occasionally stressed by company officials that a reorganization is imminent. The Exchange has made it a point to consider the effect of public quotations in such a corporate emergency; but the problem remains to be answered as to whether or not the public fares better, when it is asked to exchange securities in a reorganization, if it relies on the one hand upon prices made by the company or by dealers acting for the company or its reorganization managers or, on the other hand, upon prices in the open market upon a national Exchange. The former, that is, the outside market, and its prices may, by reason of its lack of publicity and control, be greatly to the advantage of the company, by reason thereof, its refinancing may cost less, its stockholders may fare better. But how about the bond holders and the new purchasers? In the last analysis, it is the new investor, the one who is out but who is invited in who should not be deceived but who should know the real public market.

A maturing bond may sell upon the Exchange at 50; this is the price in a free market. This may not represent the ultimate value. This is, however, the present actual value. The issuing company may believe it difficult and expensive to induce an exchange or new capital on this basis. In an outside market a few purchases may lift the level twenty-five points. The exchange or purchase is then made on this higher basis. Is this, however, the value upon which the owner of the bond should make his decision or the public be invited to subscribe, or should the actual public market be the test? It is a prime essential of the new era that the owner or purchaser should be fully informed of all facts in relation to his holdings or to his prospective purchases. Is the outside, the unregulated, the dealer market a fairer index of real values than the market on an Exchange?

As against these conditions and the contentions of companies and dealers, the Curb Exchange believes that the prices of its securities on its floor represent values obtainable and realizable at the moment; that it affords to the nation generally a place where those who wish to sell have a far better chance of getting prices, fairer in the circumstances by reason of the wide dissemination of Exchange quotations throughout the entire investment field of the country than if the same owners are confined to finding their purchasers through a more or less unknown group.

It is for these reasons that the Exchange is not necessarily led to remove a security because the company objects. If it be shown that injury to the company or to its stockholders will result from a continuation of trading, trading will be suspended. There may be refinancing, when widely published quotations may interfere with plans, but even here it is difficult to see why the public should not know the actual prices which securities bring on a broad scale in an open market rather than to follow more or less ignorantly and blindly the optimistic hope of banks and officers of companies. This is the source of much of the difficulty between companies and outside dealers and the Exchange.

It must be remembered in this connection that the Exchange does not admit securities to unlisted dealing when primary distribution is taking place. But when the security is in the hands of the public, the market should be real and substantial; not confined to a few houses which specialize to their profit in the

security. The owners are entitled to the widest possible field of purchasers—that is, the buyers of the nation.

It is undoubtedly easy to maintain a market when it is difficult to learn prices, where owners do not know from daily observations of Exchange transactions what prices are, the extent of the activity and the tendency of the market. They take everything for granted, and may wake up to a grievous surprise.

Complaints are sometimes made that markets on the New York Curb Exchange, as well as on Exchanges generally, by reason of publicity, particularly in a declining market, have disturbed holders of securities and have induced sales that might otherwise not have taken place. It is undoubtedly true that knowledge of declining prices makes for unsettlement and sales, and that an advancing market induces purchases. We believe, however, that it is preferable for the public to face conditions rather than to hold on or to purchase on a foundation of ignorance.

Stock Exchanges both in their early days and in the more recent past, have not been free from criticism, much of it justified. On the whole, however, it is believed that the Exchanges have come in for much unwarranted denunciation merely because they are organized and constitute focal points towards which the searchlight of public opinion may be directed in much the same way as "Wall Street" has always been blamed for all of the dishonesty and over-reaching which from time to time are "turned up" in the financial world. It is easy to point to something definite and concrete, and difficult to lay hold of that which is unorganized.

But the problems of recent years have been less questions of listing and of the safeguards surrounding the admission of securities to trading than of protecting the public against its own speculative fervor and against the machinations of the unscrupulous. These are largely trading problems induced, not alone by the unscrupulous or by greed, whether specific or nationwide, but by national and international policies for which the stock Exchanges as well as the individual investor are not solely responsible.

Criticism of the Exchange comes from Exchanges in other parts of the country which feel and, in the past at least with justification, that the action of the New York Curb Exchange in admitting a security to unlisted trading, where it is already listed upon another Exchange, is unfair. There are many such Exchanges, each of which fulfills an important and valuable function. They provide the facilities for the purchase and sale in their various centers of securities, when an active market exists in such centers. However, the grounds for such criticism have to a very large degree been removed and in the future, no security will be admitted to unlisted trading upon the New York Curb Exchange merely because an active market in the security exists on some other Exchange or elsewhere in the country. Today the basic principle is that there must be an active market in the security in the section of the country which the New York Curb Exchange particularly serves and especially in New York. For the reasons heretofore advanced, it is believed that the Curb Exchange is justified in permitting a market on its floor where an actual market in the security exists here.

A security is listed upon a local out-of-town Exchange because the security is issued by a company which is a local enterprise or because the security is known locally. The issuing corporation recognizes this. Transactions in the stock are at first limited to those in the neighborhood who are familiar with the industry. There is little general distribution; but as the local market becomes active, investors in other financial centers take notice. They give orders which are executed "over-the-wire" or "over-the-counter." The former are to the advantage of the members of the Exchange of listing as well as to the company which is securing a broader field for its securities and for its products. But there comes a time when a substantial number of stockholders, for example, live in or about New York. The same condition may prevail in any other financial community. There is a center of interest other than in the original community. It is at this point, when the market is active in New York, that the Curb Exchange believes that it is in a position to render service to the New York holders or purchasers of the stock to enable them to buy or sell on an Exchange in New York and to complete the transaction here rather than in the distant city. Application is made to admit the security to trading. The application must be by a regular member of the Exchange, himself a stockholder. There must be sufficient distribution in and around New York to warrant the belief that an active market exists in New York. The authorized issue must not be less than 100,000 shares. There must be submitted balance sheets and

profit and loss statements covering a period of not less than two years immediately preceding the date of application. There must be furnished the history and description of the business from its inception to date, a tabulated record of dividends on all classes of stock from initial payment to date, a tabulation showing fully the funded indebtedness and an official copy of the latest annual report of the corporation in the form as issued to its stockholders. All the pertinent factors are then considered by the Listing Department and are passed upon by the Committee. If approved, the application goes to the Board of Governors which must be satisfied before giving its visé. If it be accepted as a Curb stock, the public throughout the country becomes aware of the security by reason of newspaper reports of transactions. It may attract investors in many quarters who do not base their decisions to buy solely upon the merit of the security but also because of the market upon the Curb which gives it a banking value. Here in New York are banking facilities to care for the largest transactions. Here is the financial center. It may be that the members of the Exchange of issue may lose orders. The Curb members will certainly profit. On the other hand, the wider knowledge of the security may increase the business on the home Exchange. In any event, it would seem inconceivable that a company, by listing upon a small Exchange might prevent a security, no matter how important it might have become, from being dealt in on any other Exchange.

Or take the converse. A security may be listed on no Exchange. A market may arise in New York. It is admitted to the Curb Exchange. It becomes a nationally known stock such as several now on the Exchange. Would it be in the public interest for the Curb to be compelled to cease trading in this stock because the company, perhaps for selfish reasons, listed the stock on an Exchange, say for illustration, in Arizona.

A substantial market in a security admitted to trading on the Curb Exchange could not be abandoned without tremendous financial disaster. The public has learned to rely on Curb quotations. Bankers use them for purposes of credit. To cease trading in such securities in order that a local Exchange should become the sole market place might produce a financial crisis. It would benefit the distant Exchange to a degree; it would give plenty of orders to the outside market; but it would leave the public confused and alarmed. It might cause bankers to call loans based upon New York quotations. The market upon which all have relied for values and for sale would have disappeared and no local or outside market would afford an adequate substitute.

Some securities are fully listed on several Exchanges. This occurs when the company itself desires numerous distribution points for the sale of new capital issues. On the other hand, a security may be distributed following listing on a small Exchange and the company may have no interest in new financing. It may be content to have the market at home. But if a market be created in New York, the New York Curb Exchange enters in, to provide the public interested in a security with a market which is recognized throughout the country.

In past years, securities were admitted to the Curb Exchange when there was no market here, when the security was local. This was not a proper exercise of the function of the Curb Exchange. Now, the requirements forbid this. An active market must be here in advance of, and as the reason for, admission.

It is undoubtedly desirable that adequate information should be available to the public as to every security bought or sold in the United States. The New York Curb Exchange believes, moreover, that all trading should take place upon the floor of an Exchange where it will always be subject to proper regulation and control; but so long as such an enormous amount of trading takes place off or outside any Exchange and until the day comes when all trading is required to be upon Exchanges, it is believed that it is in the public interest that trading in so-called unlisted securities should be permitted on an organized Exchange when an active market exists in the security in the neighborhood of the Exchange, and where sufficient information is on file with the Exchange to give to the investor substantial information in respect to the security. No Exchange is more sincerely or honestly run than the New York Curb Exchange, and barring the New York Stock Exchange, no Exchange is so nationwide in its scope, or offers more efficient and modern facilities. As against trading upon a recognized and organized Exchange and trading off an Exchange, and unless and until a security may not be bought or sold other than on an Exchange, the issue would seem to be overwhelmingly in favor of Exchange trading.

Dated, New York, February 23rd, 1934

The **CHAIRMAN**. Mr. Lockwood, you will please state your name, place of residence, and occupation.

**STATEMENT OF WILLIAM A. LOCKWOOD, ESQ., EAST HAMPTON, LONG ISLAND, COUNSEL FOR THE NEW YORK CURB EXCHANGE**

**Mr. LOCKWOOD**. Mr. Chairman and gentlemen of the committee:

The New York Curb Exchange comes to you this morning to present certain problems which arise by reason of the pending bill, S. 2693, which problems are peculiar to our organization.

I think it may add weight to what I am going to say if I burden you with a few figures: The New York Curb Exchange is the second largest securities exchange in the United States. It occupies solely for its own purpose a 10- or 12-storied building running between Trinity Place and Greenwich Street, New York City. It has 550 regular members and 420 associate members. All of these members are subject to the constitution and rules of the Curb Exchange.

The **CHAIRMAN**. Five hundred and fifty members, did you say?

**Mr. LOCKWOOD**. The New York Curb Exchange has 550 regular members, and 420 associate members.

The **CHAIRMAN**. All right. You may proceed.

**Mr. LOCKWOOD**. According to the New York Times analyst the total number of sales of stocks on the New York Curb Exchange in the year 1927 was 93,437,156, and of bonds \$831,783,000. In 1933 the transactions were 100,916,602 shares of stock, and \$944,374,000 of bonds.

During that period the ticker service of the Curb Exchange has been extended all over the country. Its transactions are published daily in newspapers throughout the country. It has its own stock-clearing corporation, the Securities Clearing Corporation.

Transactions in stocks alone on the New York Curb Exchange equal or exceed transactions taking place on all other securities exchanges in the country except that of the New York Stock Exchange.

This additional factor may be of interest to you gentlemen of the committee: The market value of all securities dealt in on the New York Curb Exchange as of November 23, 1933, were common stocks approximately \$11,000,000,000, preferred stocks approximately \$2,000,000,000, and bonds approximately \$4,600,000,000; or a total of market value dealt in on the Curb Exchange as of November 23, 1933, approximately \$17,000,000,000. That will give you gentlemen an idea of the important of this exchange in the economic functioning of the country.

I desire to take up with the committee three specific points in which this bill affects our exchange peculiarly:

First is the question of foreign securities which are dealt in on our exchange. In the year 1933 there were American depository receipts for foreign stocks dealt in on the Curb Exchange, outstanding to the amount of upwards of 7 million shares, and in 1933 approximately 4½ million of those depository receipts were dealt in.

I might explain that those receipts represented the deposit of shares of foreign companies with American trust companies or banks, and each of the companies whose security is dealt in, with us in:

the form of a receipt, is listed on one of the big foreign exchanges. The depository, and the exchange itself, has information on file in respect of these securities.

Senator ADAMS. Mr. Lockwood, just as a matter of curiosity let me ask you: How does the volume of trading on your exchange and on the New York Stock Exchange compare with the volume of trading on the London and Paris Bourses, if you happen to know? I am asking more as a matter of curiosity, perhaps, than of interest in this situation here.

Mr. LOCKWOOD. As to that I do not know. But our trading is approximately one quarter to one fifth of that on the New York Stock Exchange. But I do not know how it compares to the trading on foreign exchanges.

Senator ADAMS. All right.

Mr. LOCKWOOD. Now, in the matter of foreign bonds, in 1933 we traded in 74 million dollars of them. As I have said, there are three problems, and this is one of them, for if the bill as proposed is enacted into law in its present form, these depository receipts, these bonds, may no longer be dealt in on our exchange, because it is inconceivable that foreign companies will file the information required.

The securities are all distributed, that is, in respect of stocks are distributed in advance of the issuance of the depository receipts, so that you are dealing here with a condition where thousands of American citizens hold these certificates or receipts, and these bonds, and if they be thrown off the Curb Exchange, will have to find their market on the outside.

The second point which I desire to raise, and quite an important one, concerns our specialists as they deal in odd lots. On our exchange a specialist in full lots is also a specialist in odd lots. In other words, a specialist on the New York Curb Exchange, when he execute an order in a full lot is bound automatically to take all orders on his books at a differential below the full-lot price. That is, he may have an order for 10,000 shares of stock in odd lots, and the sale by him, or purchase by him, of 100 shares of the full lot, makes him liable to take all the odd-lot shares, in this case 10,000 shares, which are on his books. Now, if the odd-lot specialist, or the full-lot specialist—

Senator ADAMS (interposing). Do you have the same rule as to units traded in on the New York Curb as has the New York Stock Exchange?

Mr. LOCKWOOD. Yes.

Senator ADAMS. There must be units of 100 shares.

Mr. LOCKWOOD. Generally speaking, 100 shares.

Senator ADAMS. Do you have the same situation as to specialists on your exchange that the New York Stock Exchange has?

Mr. LOCKWOOD. We have the same situation with specialists generally, but not in respect of odd lots, because in the case of the New York Stock Exchange they have three or four odd-lot houses, while we do not have odd-lot houses. Accordingly, a specialist on our exchange has to be the means of taking or furnishing to all purchasers or sellers of odd lots a market at a differential of one eighth or one quarter below the full lot.

Senator ADAMS. The odd-lot trading goes exclusively through specialists on the Curb market?

Mr. LOCKWOOD. Yes. In other words, he acts in a dual capacity. Now, if the specialist is prevented from protecting himself by making the necessary commitments in order to take care of his odd lots, it means that the odd lots will not be traded in, that is, at the regular differential. They will have to be bought or sold at what can be obtained, and they will not get the benefit in the full-lot price.

Senator ADAMS. All right.

Mr. LOCKWOOD. Now, the third and perhaps the most interesting point to you gentlemen is what we call our unlisted department. Let me preface that by saying: No security is dealt in on the New York Curb Exchange which is not officially listed, but the word "unlisted" is a misnomer. It is a phrase or title which has come down through the years, and—

Senator TOWNSEND (interposing). Officially listed where?

Mr. LOCKWOOD. Officially listed by the board of governors of the New York Curb Exchange. This word "unlisted" has come down through the years and we have not changed it to some such words as "member listing", which I will explain later, because there are many people in the country who understand that fully listed as meaning listed on the application of the company itself.

Now, what we call our unlisted stocks are stocks listed on the application of a regular member of the Curb Exchange. In that case the regular member has to be a stockholder of the company. The purpose of that is to insure to the exchange all official reports which are issued by the company.

I think you may be interested in knowing what some of the requirements are for the admission of a security to so-called "unlisted trading" on the New York Curb Exchange.

Senator TOWNSEND. Will you state what examinations are made, also?

Mr. LOCKWOOD. I think, Senator Townsend, that will come in in what I am going to say now.

Senator TOWNSEND. All right.

Mr. LOCKWOOD. The unlisted companies are never those of new enterprises. That may interest you. They are never those of new enterprises. They must have had a minimum experience of 2 years.

Senator TOWNSEND. Do you mean that a new company could not list its stock unless it had been in existence for 2 years?

Mr. LOCKWOOD. A new company will be admitted to full listing on application made by the company itself. But we do not take into our unlisted department securities which have not had an experience of at least 2 years. Our exchange is in respect of its fully listed securities generally speaking a primary exchange. In respect of primary companies we do not feel that they should come into the unlisted class. They are not distributed. They have no experience, and we would not have the control over them which we do have in respect of unlisted. We have to take all papers which are submitted, voluminous papers, and our full listing requirements call for as much information as is required by the New York Stock Exchange; and those papers are carefully studied.

Now, that is in the case of the full-listed securities. In the case of the so-called "unlisted," as I have said, they are companies of

long experience. Indeed, an examination of 241 companies taken in serial letters in order, showed that—well, I have forgotten exactly, but I believe this is it: Of the 241 companies at time of application the average period of corporate existence had been 25.7 years. In other words, the most of them are old-established companies, and they are all established for at least 2 years.

Senator ADAMS. Mr. Lockwood, one sees in the daily papers reports of transactions on the New York Curb Exchange. Do they include both the listed and the unlisted stocks without distinction?

Mr. LOCKWOOD. Most newspapers, and the Associated Press in its service throughout the country, distinguish between fully listed and unlisted by means of an asterisk. We have endeavored to induce newspapers to make a clear demarcation in their publications as between the fully listed and the so-called "unlisted". All literature of the Curb Exchange, including its weekly bulletin, makes clear that distinction. Indeed, the ticker service makes the same distinction.

Now, if I may call attention to one of our principles, one of our beliefs, in respect of these securities with its long experience, companies which have weathered the economic stress and strain for so many years; if I may present a record which may be studied by the investor, which is after all, perhaps, as significant as anything which he may find in the way of statistics for examination. What we require of an unlisted company, of one making application for an unlisted company, is the following; that, is, this is the portion of it which I think will interest you: No stock will be admitted of which the authorized issue is less than 100,000 shares; no bonds will be admitted of an issue of less than \$5,000,000; there must be an adequate market in and around New York City; it must be an active market. As I said before, the company must have had years of actual operation—not less than 2 years—and show a record of actual and satisfactory earnings for such period. The company must have established and maintained the principle of periodic annual audits by independent accountants. And, as I say, must maintain or continue that principle, because it is a rule of the curb exchange if a company ceases to maintain that practice the security will be stricken from the list.

Senator ADAMS. Is that so regardless of whether it is listed or unlisted?

Mr. LOCKWOOD. Well, this is an unlisted security.

Senator ADAMS. All right.

Mr. LOCKWOOD. Balance sheets and profit-and-loss statements for a period of 2 years must be submitted. These statements must appear in Poor's, Moody's, or one of the standard statistical services, or an official statement must be given to the curb exchange. We have to have a history and description of the business, a tabulated report of dividends, a full description of the funded indebtedness, an official copy of the latest annual report, a statement from an officer of the company or from the transfer agent or registrar of the stock of the number of stockholders among whom the shares of each class of stock applied for are distributed, a statement from a responsible officer of the company as to any options outstanding by the company or of any options or calls on the stock known to said officers.



Now, there is another factor there which I think will be of interest to you. It is the material which is filed with what is called the listing department of the New York Curb Exchange. When that is received the financial statements are all sent by the curb exchange to an independent certified public accountant whose duty it is to examine and break down those balance sheets, profit-and-loss statements, and so on, and report to the committee such criticisms or comments as he may feel in his independent capacity should be brought to the attention of the committee. In other words, we have expert assistance in the analysis of the statements submitted by other independent accountants.

You may very well ask me: What is the difference between our fully listed and our unlisted companies? It is true that the fully listed companies have to sign an agreement by which the company applying will carry out certain specified requirements, and will also comply with such future requests or demands as we may make. We have more material on file in the case of a fully listed company; at the same time in the case of unlisted companies, as you will note from the list of requirements I have already given you, we do have quite adequate information, which, on examination, will furnish to a prospective purchaser knowledge of the business, its years of experience, its balance sheets, and so forth.

The CHAIRMAN. What are the charges for listing?

Mr. LOCKWOOD. The charge is \$1,000.

The CHAIRMAN. That does not depend upon the size of the company?

Mr. LOCKWOOD. Not on our exchange.

The CHAIRMAN. What are the charges for trading?

Mr. LOCKWOOD. The charge is \$100, which is paid by the member applying for unlisted trading.

The CHAIRMAN. All right.

Mr. LOCKWOOD. A practical illustration of what our unlisted companies are, of what they do, what their standing in the community is may be emphasized to you gentlemen when I tell you that of our so-called "unlisted" stocks 75 percent have already adopted the principle of periodic annual accounting by an independent accountant, and 97 percent of our companies issuing bonds have adopted that principle, or a total of all securities dealt in on our so-called "unlisted department" of 82 percent.

It may also interest you to know that as of December 31, 1933, as I recall it, 42 percent of our unlisted companies were dividend-paying companies.

Senator TOWNSEND. What date was that?

Mr. LOCKWOOD. December 31, 1933. Our bond list may have been observed by you gentlemen. If not, I think it would interest you to see the character of the bonds which are traded in on our exchange. The average price in December last was, as I recall, 64 plus. Only 19 of the upwards of 600 issues are fully listed. All the rest of those high-class bonds are admitted to unlisted trading.

Senator TOWNSEND. What percentage of your bonds are paying interest, or what percentage are in default, if you know?

Mr. LOCKWOOD. I can give you that exactly, sir.

Senator TOWNSEND. I wish you would.

Mr. LOCKWOOD. On July 1, 1921, out of a total of 476 bond issues admitted to unlisted trading 3 issues were in default on interest payments. On November 1, 1933, out of a total of 643 bond issues admitted to unlisted trading only 83 issues, including 18 certificates of deposit representing underlying bond issues in default, were in default.

Senator TOWNSEND. All right.

Mr. LOCKWOOD. Now, gentlemen of the committee, the theory underlying the practice of the New York Curb Exchange in maintaining this department is this: When an active market in a security which meets our requirements exists in New York City, it is felt that in the interest of the public, that is, in the interest of the owners of those securities and of the prospective purchasers of them, that that market should be on an exchange, an organized regulated exchange, rather than in the outside market.

On the exchange an order is given by a stockholder, or by a prospective purchaser, to a man who as a broker meets another broker, or another member who is a broker, who represents the other side of the transaction. It is a pure agency in which the purchaser or the seller pays only the stipulated rate of commission. The transactions are immediately made public over the ticker. They are published throughout the country. They may be checked. We have committees who will, if any complaint is received in respect of the order, call for the books of the members who executed the order; and there they have the time stamp, the actual record of the transaction.

Now, these factors are not necessarily true of the outside market. There the transactions are generally between dealers. And what we feel is that our promise of an active market in New York is of great value, not only to the people of New York City, because as this market grows it becomes national in the case of some securities, but throughout the country the citizens, securities owners, may observe each morning the actual transactions on the Curb Exchange of the day before, with the closing bid and offer. And if they wish to sell or to purchase they may telegraph and will get immediate execution and an immediate report. These, we feel, are most important factors.

Now, gentlemen of the committee, sections 11 and 12 of this bill, if enacted in their present form, will practically, if not entirely, eliminate this market. It will eliminate the so-called "unlisted" market without question, for the reason that no security, in accordance with the present provisions of the bill, should it be thus enacted, may be traded in on a national exchange unless the company itself, not only files a registration statement but at the same time applies to the exchange for listing.

As I have said, 82 percent of all our securities are unlisted. The value of those securities as of November 23, 1933, that is, of those unlisted securities which I have described to you, and which would be thrown out of the exchange and into an outside market in event of the passage of the bill in its present form, the valuations, as I say, of the common stocks were approximately \$10,400,000,000, of preferred stocks \$1,700,000,000, and of the bonds \$4,500,000,000, or a total of approximately \$17,000,000,000.

Senator ADAMS. Did you say 82 percent of the securities listed on the curb?

Mr. LOCKWOOD. No; 82 percent of the securities dealt in.

Senator ADAMS. Oh, 82 percent of those dealt in are unlisted. How does the volume of trading on the curb exchange, if you have it convenient, show up?

Mr. LOCKWOOD. I have that and will give it to you.

Senator ADAMS. Thank you.

Mr. LOCKWOOD. I am informed by those who know that it is approximately the same percentage, that about 18 percent would be in the listed securities.

Senator ADAMS. All right.

Mr. LOCKWOOD. Now, in order to give this a further human touch, we have figured that in 34 of our approximately 600 companies whose securities are admitted to unlisted dealing, that in the case of 34 of those companies only, there are 2,424,727 holders of stock. So we have the problem, gentlemen of the committee, of these billions of dollars of securities, with these millions of holders, which are now dealt in on an organized and regulated exchange, being by this bill thrown from that exchange to such market as they may acquire.

Now, gentlemen of the committee, this problem it strikes me may not be considered except in connection with the over-the-counter problem itself. But the framers of the bill have sought to accomplish some control, have sought to enforce full listing on exchanges, with corresponding filing of statements, by making a differentiation in the security value, the loaning collateral value, between listed and unlisted securities.

The CHAIRMAN. Do you mean to say that the issuers of securities will not make application for registration on securities exchanges and that that will eliminate them?

Mr. LOCKWOOD. I am glad you bring that up, Senator Fletcher, because there are any number of corporations whose securities are bought and sold in this country which have not and will not make application for listing. Several factors enter into that. There is the factor of indifference, as to securities which have been entirely distributed. There is no desire to finance. There is the question of expense. There also enters in at times the feeling, I imagine, that the exchange market being a free and open market is perhaps not so favorable to quotations as the over-the-counter market. That may be so. In any event these companies have not and, in my opinion, will not apply for listing on any exchange. There is nothing in it for them anyway by way of advantage because they are not concerned with financing or with what the stock does.

Senator BULKLEY. These are all unlisted stocks, are they?

Mr. LOCKWOOD. As I have said, Senator, 82 percent of our securities, of which there was a market value last November of approximately 17 billions of dollars, all represent companies which have been in existence for many years, it may be safe to say at least for 15 years, all these securities must go from our exchange if the bill is enacted as it now stands.

Senator KEAN. And that represents about 17 billion dollars?

Mr. LOCKWOOD. Yes; about 17 billion dollars market value as of that recent date.

The CHAIRMAN. All right. You may go on.

Mr. LOCKWOOD. Now, I take the liberty of bringing to the attention of the committee the fact that this unlisted department of the Curb Exchange offers a method of regulating the purchase and sale of securities which has been tested and found adequate. And I also take the liberty of making the assertion that it is not in the public interest that these securities should leave an exchange. An exchange is an entity. An exchange is something which you are seeking to regulate. You are seeking to protect the investors of the country, and one of the means you are using is in the matter of control of the exchanges themselves, in the matter of exchange practices. In respect of that purpose we are certainly entirely in sympathy.

Now, gentlemen of the committee, the present bill also, as I have heard stated here, and as you yourselves may have observed, goes beyond the exchanges themselves, and of their members, into matters of collateral value, and control of companies, and even, as has been stated here by Mr. Corcoran, the bill has a social significance. It will be observed also, and has been mentioned here, that section 14 which seeks to regulate the over-the-counter markets, is indefinite, intangible, and that no one of the proponents of the bill whom I have heard, has stated that he has any definite idea in mind as to what can be done under this section.

Now, we again present to you that with this great national exchange, this great national regulated exchange, there is opportunity for control provided we be allowed to continue and to cooperate

Senator ADAMS. During what some of us regarded as an orgy of speculation, which went on in 1928-29, was there any distinction that could be drawn for or against any one of these four classes, in fact, to better distinguish as between one or the other; that is, you had the New York Stock Exchange; you had the New York Curb Exchange, with its listed and unlisted, and you had the over-the-counter market. That is, can you say that any one or other of this group was less effective in that it more tempted speculation?

Mr. LOCKWOOD. Generally speaking, Senator Adams, I would say that the so-called "unlisted" securities on the New York Curb Exchange have stood up as well as the securities on any exchange. As I have told you, 42 percent of those were dividend-paying stock as of December 31, 1933. I have no comparison, and I will not attempt—

Senator ADAMS (interposing). I wanted to know if any one showed greater resistance to this speculative mania than others.

Mr. LOCKWOOD. That I could not say without examination.

Senator ADAMS. I am wondering what the benefit of the regulations really has been.

Mr. LOCKWOOD. The regulations at that time were not the regulations which are in effect today on the exchanges. There is no question about that. And we submit this thought to you: That the rules and regulations adopted by the New York Stock Exchange and by the New York Curb Exchange as they exist today certainly restrain manipulation and restrict activity. In the last analysis all market movements rely on a great deal, in their initial stages at least, the things which are now prohibited, the manipulative practices which are prohibited now by both exchanges. And I do not

believe it is conceivable that the exchanges would, as a matter of self-interest let me say, vary those rules, or let up on their enforcement.

That, however, brings me to a thought I should like to present to your committee this morning: There is no question but what Congress and the people of the country demand regulation of stock exchanges. If my premise be correct, that the present rules are an effectual restraint—and certainly if section 8 of the pending bill, with certain changes, were enacted into statutory law the urge to regulate these other activities, these outside activities, would, it seems to me, be very much lessened—to that end the New York Curb Exchange is prepared to recommend the passage of a licensing bill, with requirements as to rules and regulations of exchanges, and that there should be put in as a definite statutory prohibition subsections in section 8 those things a crime.

Now, if that be done, we have left open for further consideration matters of margins, specialists, segregation of activities, company reports, listing requirements, all of which are matters of dispute. I think you have head enough here to know that there is not a unanimous consensus of opinion in respect of any of these.

Now, we recommend that the bill—and you may say it would emasculate it, but from my point of view let us say that the bill retain those provisions which are aimed at prevention of manipulation, manipulative practices, which after all are the high danger spots, any excessive speculation; and that these other matters be left to a commission, the matters I have spoken of in which there is no consensus of opinion, for such commission to examine and report back to Congress on two lines:

One is, which of these practices should be covered by direct prohibitions, if any; and, second, which should be subject to general regulatory power.

If you feel that you must pass a registration section, I have to suggest that that might be modified in the following manner, in a manner which would leave these exchanges which deal in so-called "unlisted" securities, free to continue their services to the public.

Before saying this, however, I do feel that the whole question of admission to dealing on exchanges, not necessarily the question of listing upon exchanges but the problem of admitting to dealing on exchanges, should be given very careful consideration, because there are other exchanges in this country which deal in securities, so-called "unlisted", which fulfill in their communities the same function which we fill, which the New York Curb Exchange performs in New York City.

If, however, as I have said, the Congress deems it necessary to have a registration section, I would suggest that the filing with the Federal Trade Commission, or such other regulatory body as may be designated, should be necessary by a company if it intended to have its securities listed; but that if the company which filed with the Federal Trade Commission did not itself make application to the exchange, the exchange would not be authorized to register for dealing in its stocks, or register for dealing in its bonds, unless proper information was on file with the Commission. The Com-

mission would be authorized to send copies of that information to exchanges, and exchanges might adopt such other regulations and requirements as the exchanges deemed wise before admitting a security to what I would call registered for dealing.

Now, that would take care of securities where a listing application was made. We would have a further section which would authorize exchanges, under such rules and regulations as the regulatory body or the Federal Trade Commission might specify, to authorize these exchanges to admit to dealing other securities, and that the newspapers in interstate commerce should clearly differentiate in their reports as between the two categories. In other words, registered for dealing, which would bring to the mind of anybody who read the quotations that those securities were actually registered in Washington, that their reports were registered. And admitted to dealing on the exchange would simply mean that the exchanges were dealing in securities under rules and regulations as the Federal Trade Commission or other regulatory body might deem to be in the public interest.

So, gentlemen of the committee, we are trying to bring to you something constructive. I think our purpose to cooperate is shown by the positive suggestions which we have advanced, and I emphasize the word "constructive" because we feel that with the assistance of Congress we may be further helped in making permanent that which is good and in eliminating any evil which may subsequently develop. In other words, we hope that the act insofar as we are concerned and insofar as the public is concerned, the public which is interested in our securities, will be constructive and not destructive.

I am very grateful to you for hearing me.

The CHAIRMAN. You have made some very helpful suggestions, and we appreciate hearing both Mr. Grubb and yourself. We will consider all that you have submitted here and the things which you have placed in the record, these pamphlets which you have submitted to us.

Mr. LOCKWOOD. We are glad to cooperate in any way that we can.

The CHAIRMAN. I think some specific instance might be mentioned which developed before this committee that might be worth while calling to your attention. A man and his wife had saved \$2,000. They were poor people, and they saw quoted on the Curb Exchange the stock of a corporation organized in one of the Midwestern States, quite a considerable corporation in its best days, at \$1, and they decided to place an order for 2,000 shares. They got together their \$2,000 and sent it on to a broker in New York with an order to purchase those shares. The broker purchased the stock and sent the certificates to them. Then they began to look into the corporation for the first time, I mean the corporation that issued the stock. They found that the corporation had been in the hands of a receiver for over 6 months and that bankruptcy proceedings were pending. Upon inquiry of the referee in bankruptcy, they ascertained that the assets of the corporation would not pay the debt owned by it to the Government, and therefore that the stockholders would receive nothing. That brings up the suggestion whether or not the Curb Exchange ought not to take off its list, if it is listed,

or ought to permit to be quoted, the stock of any corporation that has been placed in the hands of a receiver.

Mr. Lockwood. Senator Fletcher, the practice of the New York Curb Exchange in that respect is as follows: We do not suspend from trading a security because of receivership. If a receiver be appointed we endeavor to secure at the earliest possible moment a statement from the receiver of the assets and liabilities, and if we do not get that within a reasonable time our practice is to suspend the stock for a while. If we do get the statement and it shows assets which may be available for stockholders, we feel in that situation, with the statement on file, a showing officially from the receiver of what the assets are, that the stock should be continued for the benefit of those who have been stockholders. But on the statement of facts that you gave, Mr. Chairman, there is no question but what the security should have been stricken from the list.

Senator ADAMS. I know from experience of a member of the committee who bought some stock in a company listed on the New York Stock Exchange, which is in the hands of a receiver, and he watched it from time to time, but it has now disappeared from the list, so that he does not know what has happened to his stock.

The CHAIRMAN. Might I suggest on the same point that we get the attitude of the New York Stock Exchange on that?

Senator ADAMS. Yes; I think we should have it.

Mr. REDMOND. Mr. Chairman, that is a problem which has given us concern for years. After all, we have no means by which we can get official notice of even the appointment of receivers promptly enough so as to put the public on notice of the fact. When we do get that information we publish a notice, which is sent to all members, that a receiver has been appointed. But there are many, many instances in which a company goes into receivership for the purpose of reorganization where there is a very real value for its stock. Now we endeavor to get the information so as to determine whether there is anything in the way of a residual value, and if there is to leave it on the list, and if there is not, to strike it from the list. Our great difficulty, however, is to get receivers or trustees in bankruptcy to give us any statement as to what assets are going to be available for stockholders.

We recently had a case involving a chain store, and quite frankly they said that dependent upon the decision of the Supreme Court in regard to whether the claims of landlords were valid claims in bankruptcy, the common stock was either valuable or worthless, and that they could not forecast the decision of the Supreme Court. That decision was handed down and the stock apparently has a substantial residual value.

I might add that that matter has been under discussion by the committee on stock list of the New York Stock Exchange for years. We have recently tried to get all corporations that are in receivership to give us the balance sheets of the receivers. We got it in one case and found it was more misrepresentation than no information at all, because the receiver issued a statement of his operating income without deductions of any kind whatsoever for depreciation and that one item alone turned what looked like a fine operating statement into red figures.

It is a very difficult problem, and one which I think the exchanges, both the New York Stock Exchange and the New York Curb Exchange, as well as others, realize requires great study, and possibly the cooperation of our courts in giving prompt information to the public as to appointment of receivers and trustees in bankruptcy.

The CHAIRMAN. I thank you very much, Mr. Redmond. I think there may be chances in the case of a simple receivership of the stockholders getting something for their stock. I can see that, Mr. Redmond, or can see where that is possible, but when a receivership is followed by bankruptcy it seems to me that closes the door and there is no chance, or at least very little, for the stockholders receiving anything.

Mr. REDMOND. On that, Mr. Chairman, I am entirely with you, that we can draw a distinction between the appointment of an equity receiver and the appointment of a receiver in bankruptcy. But under bankruptcy now, and more particularly since the recent decision of the Supreme Court in the *National Radiator* case, apparently equity receiverships will be restricted to corporations having a public interest. Therefore, presumably, we will see more cases of bankruptcy than in the past. But even in bankruptcy there may be a residual value, as was the case in this chain-store matter.

The CHAIRMAN. I wanted to get the attitude of the exchanges in this matter.

Mr. LOCKWOOD. All exchanges seek to have on file for the benefit of prospective investors, or holders of securities, full information. Now, I think our general theory is this: That if we reach a situation where we can get no information the security should be suspended or stricken from the list.

The CHAIRMAN. It seems to me that ought to be done, or that some notice should be given to the public that the issuer is in the hands of a receiver. I think there should be something in the papers, where a stock is nearly up to a receivership, or a receivership is existing, or something of that kind, so as to notify prospective purchasers of the stock that it is not on the regular trading footing.

Now, are there any questions by members of the committee?

Senator KEAN. Mr. Chairman, I should like to ask a question or two of Mr. Lockwood.

The CHAIRMAN. You may proceed, Senator Kean.

Senator KEAN. Mr. Lockwood, you have practically the same rule in regard to short selling that the New York Stock Exchange has, I believe.

Mr. LOCKWOOD. We have, generally speaking, the identical rule, and the rules covering all securities traded in on the New York Curb Exchange are somewhat the same.

Senator KEAN. So that you have the right to ask your members for the names of customers who have sold stock short.

Mr. LOCKWOOD. We not only have that rule, but we do ask for it.

Senator KEAN. Have you asked your members to make report on sales of stocks short, I mean on the New York Curb Exchange?

Mr. LOCKWOOD. We have not.

Senator KEAN. Will you ask, for the benefit of this committee, that you be furnished with a report from them from the 1st of January of this year to the 9th of February on the sales of air stocks on your board and of their customers?



Mr. LOCKWOOD. Sales or transactions? Do you mean reports on transactions?

Senator KEAN. Yes.

Mr. LOCKWOOD. Very good, sir.

Senator ADAMS. Mr. Lockwood, do you have any instances where the same stocks are listed both on the New York Stock Exchange and on the New York Curb Exchange?

Mr. LOCKWOOD. It is in our constitution that no securities shall be traded in on the New York Curb Exchange which are dealt in on the New York Stock Exchange.

Senator ADAMS. That would not apply to local exchanges in other cities, however, I take it?

Mr. LOCKWOOD. It does not.

The CHAIRMAN. Are there any other questions of Mr. Lockwood by members of the committee? [A pause, without response.] If not, we are very much obliged to you, Mr. Lockwood.

Mr. LOCKWOOD. And I wish to thank you gentlemen for hearing me.

Senator ADAMS. Senator Kean, that request made by you does not apply to odd lots, does it?

Senator KEAN. No; I did not mean odd lots of air stocks.

Senator ADAMS. Did you gentlemen understand that?

Mr. GRUBB. Yes. I understood that it applied to the round numbers list only.

(Thereupon Mr. Grubb and Mr. Lockwood left the committee table.)

Senator GOLDSBOROUGH. Mr. Chairman, I have a letter from the Baltimore Chamber of Commerce, protesting against the passage of this bill in its present form and setting out reasons why they make the protest. I should like to have it made a part of the record.

The CHAIRMAN. The committee reporter will make it a part of the record and return the letter to you, Senator Goldsborough.

Senator GOLDSBOROUGH. I thank you.

BALTIMORE CHAMBER OF COMMERCE,  
OFFICE OF THE SECRETARY,  
Baltimore, March 5th, 1934

HON. PHILLIPS LEE GOLDSBOROUGH,  
United States Senate, Washington, D C

DEAR SIR: At a meeting of the Board of Directors of the Baltimore Chamber of Commerce held Monday, March 5th, 1934, the following preamble and resolution was adopted, viz:

Whereas as National Securities Exchange Act of 1934, Bill S. 2693, was conceived with the laudable purpose of correcting certain admitted abuses existing in the various security markets, and

Whereas all right thinking Stock Exchange members and dealers in securities would welcome the correction of such abuses, yet this bill, as at present written, attempts an impracticable degree of regulations of credit agencies;

Curtails the proper functions of banks,

Seriously restricts loans when credit expansion is desired and advocated as a recovery measure;

Removes from availability money in banks not members of the Federal Reserve System in preventing them from lending on any security listed on a national securities exchange to any member of such exchange;

The restrictions placed on unlisted securities would place an extreme hardship on small corporations in financing or refinancing themselves: Therefore be it

Resolved, That the Baltimore Chamber of Commerce protests against the passage of bill S 2693 in its present form, and be it further

*Resolved*, That a copy of this resolution be sent each of the Senators and Representatives from the State of Maryland and to Senator Duncan U Fletcher, Chairman of Senate Committee on Banking and Currency

Very truly yours,

(Signed) JAS B HESSONG,  
*Secretary*

The CHAIRMAN. I believe Mr. Wetsel wished to be heard. If he will now come forward to the committee table we will be very glad to hear him.

**STATEMENTS OF A. W. WETSEL, WETSEL ADVISORY SERVICE, INC., AND J. J. MITCHELL, ESQ., ATTORNEY FOR WETSEL ADVISORY SERVICE, INC., NEW YORK CITY**

The CHAIRMAN. Mr. Wetsel, please state your name, place of residence, and occupation.

Mr. WETSEL. My name is A. W. Wetsel. I reside in New York City. I am president of the Wetsel Advisory Service, with offices in the Chrysler Building. The organization that I head is an independent investment counseling organization. We have clients all over the United States, as well as in Canada and foreign countries. We serve through various mediums, one being a weekly bulletin in which we discuss general market conditions, and the outlook as we see it, and make such specific recommendations for purchases or sales as we think conditions warrant.

One other channel through which we serve the public is in the management of their funds. We have the entire funds before us, which we make recommendations on.

The CHAIRMAN. What is that fund derived from?

Mr. WETSEL. Their capital. They give us the entire list of their securities which they have, and such cash as they have. They place a certain fund, which may be \$100,000 capital. They may, at the time they come with us, own securities in the sum, say, of \$50,000, and have \$50,000 cash. We take charge of the entire fund.

The CHAIRMAN. What do you charge for your services and what are they based on?

Mr. WETSEL. Our weekly bulletin sells at \$60 a year. The supervisory service or management service, as we call it, has a sliding scale of fees. The basic rate is 1 percent of the entire capital per annum.

The CHAIRMAN. For the benefit of investors or for the benefit of those who have securities to sell?

Mr. WETSEL. I am glad you raised that point, because our interest is solely that of the investor. We have no securities whatever to sell, and do not own any securities. We act in no capacity whatever as broker, or go-between, between buyer and seller, except so far as our judgment goes, as to whether stock should be bought or held or sold.

The CHAIRMAN. We will be glad to have your views about this pending bill now.

Senator KEAN. Before you start, Mr. Chairman, if I may, you charge them for the bulletin \$60 and 1 percent?

Mr. WETSEL. No. That is an entirely separate service.

Senator KEAN. That is a separate service.

Mr. WETSEL. Yes.

Senator KEAN. So that, if I give you \$100,000 or \$10,000, your charge is 1 percent per year for managing that?

Mr. WETSEL. That is true on \$100,000 or over. On anything less than \$100,000 and down to \$10,000—we do not take any less than \$10,000—we charge 1 percent up to \$50,000, one quarter of 1 percent from that up to \$100,000, and then 10 percent of net realized profits.

Senator KEAN. Do you call profits interest?

Mr. WETSEL. No. Deductions are made, of course, in computing profits, for 6 percent interest on the entire fund. All commissions and all other charges are deducted before profits are computed.

I might say at this point that the only excuse we have for being in business is that we have made a study for many years of the causes and effects of price movements. Any conclusions we arrive at as to whether a stock should be bought or held are based upon our experience in connection with the causes and effects of movements.

I have prepared a statement here to save the time of the committee. I will not read it all.

Senator KEAN. Have you copies of it?

Mr. WETSEL. Yes. Any conclusions we have drawn concerning the bill that is now under discussion are also based upon our experience as to causes and effects of price movements.

With your kind permission at this point I would like to introduce Mr. J. G. Mitchell, who is our attorney. I think he can discuss these high lights probably a little more intelligently than I can. I have prepared a statement, but I think he is probably more capable of discussing these points.

The CHAIRMAN. Very well, Mr. Mitchell.

Senator GOLDSBOROUGH. May we have a copy of the statement?

Mr. WETSEL. Yes

Mr. MITCHELL. My comments will be very brief. Mr. Wetzel has stated here a number of principles which are drawn from his experience, and which I will only just refer to in that way.

Senator KEAN. What is the name of your corporation?

Mr. WETSEL. A. W. Wetzel Advisory Service.

Mr. MITCHELL. As Mr. Wetzel has intimated, the approach is entirely from the standpoint of the investor. If the investor succeeds, the service succeeds. Otherwise both lose.

There are two elements in the bill with which, from that standpoint, we are particularly concerned. One is with reference to marginal requirements.

The CHAIRMAN. That is section 6.

Mr. MITCHELL. Section 6, Senator.

It would seem, from a reading of that section, that the real purpose of the bill is to maintain a certain flexibility, but it would appear to us that that objective has not entirely been reached, and there is an element of uncertainty still there. Our thought was that, whereas there is a limit of loan there of 40 percent, which must be extended and maintained, one of the effects would be, in practice, to have a lower loan value, and, despite the fact that section 9 prohibits stop-loss orders, there would, in practice, have to be a stop-loss order against every deposit of collateral. In a declining market the possibilities of liquidation would be enhanced by this arbitrary marginal restriction.

Our thought was that a greater flexibility might be permitted, and discretion in the Federal Trade Commission. I do not think that is contrary to the real purpose of the bill, because there are two provisos, in character, in connection with that section. One is to establish lower loan values, and the other is to promulgate rules and regulations which would have somewhat the effect of amending that section, so that it seemed to us that while Congress was about it it might just as well, under proper restrictions, make the provision for marginal requirements less arbitrary so that the Federal Trade Commission might meet the exigencies of any given situation as they arise.

The other is with reference to section 8, particularly subsection 5-A. That is generally captioned "Manipulation." It would seem there that there is an element of uncertainty in that subsection, and it would have the effect, rather, of penalizing the intelligent counsellor.

There is a very definite desire on the part of the reputable members of the profession that the shyster and the quack be eliminated. We do not want to compete with tipsters, as far as that goes, but it would be impossible to determine in advance what would be the result of any statement regarding a security, provided that statement came within the purview of the act in respect of its transmission. It is addressed to the protection of the average investor, and it constitutes a crime if the expression of opinion is erroneous, if the party expressing it has reason to believe that it may induce a purchase or sale, and that seems to be without regard to the ultimate effect, whether it did induce.

It has occurred to us that while the Commission might not take such a legalistic view of it, it has possibilities of extortion on the part of unprincipled persons, where they receive some opinion and the opinion does not conform absolutely with the subsequent history of the security.

We have just one other suggestion, and that also from the standpoint of the investor, that in conjunction with the Federal Trade Commission, in the administration of this act, there be some board which might bear some analogy to the Federal Reserve Advisory Board, consisting of business interests, those who have their securities listed on the exchanges, and representation by the investors, as well as by the exchanges, so that there might be an immediate cooperation on the part of those who have an intelligent appreciation of the market situation throughout the country, and can bring immediate information to bear on the situations as they arise, in cooperation with the Commission.

The CHAIRMAN. Are there any questions?

Mr. WETSEL. May I make one statement?

The CHAIRMAN. Yes.

Mr. WETSEL. The question was raised here with Mr. Grubb about stock companies that have gone into receivership or bankruptcy. My observation on that has been that the public does not seem to either look into the securities they are buying, or else they forget. I have had quite a lot of experiences where clients have written us asking whether we would advise the purchase of some common stock, and in a great many cases it is a company which, as a matter of

common knowledge—it would appear to be common knowledge, at least—is in receivership. Perhaps it is some prominent company. On occasions, in bankruptcy, they either do not see it or they forget it, or else they do not examine it, one or the other.

My point is that it seems to me that the public ought to examine more carefully into the stock that they contemplate purchasing than they do. Our policy, incidentally, in that connection is to steer our clients away from securities of companies that are in receivership. On numerous occasions we have doubtless prevented them from making considerable profit, but, nevertheless, it is a policy with us. I could cite a number of stocks of companies that have been in receivership, and even bankruptcy, which were selling for a few cents or a dollar a share a year ago, and today some of them are 5, 6, or 7 dollars. So, occasionally we get some criticisms from our clients whom we told not to buy the stock of a company that was in receivership.

Senator KEAN. You recommend to your clients securities, do you not? You recommend that they buy, do you not?

Mr. WETSEL. Yes, sir.

Senator KEAN. Under this bill the penalties are pretty great if you recommend anything, and there happens to be some mistake on the typewriter.

Mr. WETSEL. We are not likely to have such mistakes, I think, but the penalties are, as Mr. Mitchell has outlined, rather severe for those making statements that would even tend to encourage purchases of stocks that might go in the opposite direction from that desired.

Senator KEAN. That might lead somebody, years afterward, to sue you on something that you could not very well refer to years afterward?

Mr. WETSEL. That is right.

Senator KEAN. Because the market went down.

The CHAIRMAN. Do you receive funds and handle them in your own way, without any consultation with the client or customer?

Mr. WETSEL. We have no funds and no securities in our possession. We do not take physical possession of funds or securities. We have a few accounts where we have what we call "discretionary powers", or power of attorney, for example, with a trust company. We give our order in a few instances, only at the request of the client, who might be at some far distant point, or might be away from home for some time. We give our orders direct to the trust company or the broker, under power of attorney, to buy or to sell, and the confirmation is, of course, mailed directly and promptly to the client. We have only a few of those, and only when requested.

The CHAIRMAN. Do you handle any foreign securities?

Mr. WETSEL. You mean do we recommend foreign securities?

The CHAIRMAN. Yes.

Mr. WETSEL. We do not. I might say at this point that we specialize or concentrate on what we term "active stocks", that is to say, stocks for which there is a good market. We avoid very rigidly the stocks of any company that are erratic, and they are usually erratic only because they have a small capitalization. We, of course,

then recommend only the leading companies. Probably we would not recommend over 100 to 150 stocks out of the entire 800 on the New York Stock Exchange.

Senator KEAN. In other words, you do nothing but recommend to your clients stocks that are quoted in large volume every day, so that they could get in or out?

Mr. WETSEL. What we term "active stocks." There are times when even the most active stocks are relatively inactive. We have a recent example in American Can, which almost did not open day before yesterday at all. There was one small sale, as I understand, about 20 minutes to 3. That situation has not happened in that stock to my knowledge in 10 years. That is ordinarily an active stock, but in certain market phases the most active are frequently inactive.

The CHAIRMAN. If there are no other questions we are very much obliged, Mr. Wetzel.

Mr. WETSEL. Thank you, sir.

The CHAIRMAN. We will give your suggestions consideration.

(Mr. Wetzel submitted the following statement for the record:)

#### MEMORANDUM BY A W WETSEL ON THE NATIONAL SECURITIES EXCHANGE BILL

The primary purpose of the national securities exchange bill as I apprehend it is to protect the investing public, and particularly those individuals of that large group who have only limited opportunity to determine the value of listed securities or their prospective market activities.

The other and more affirmative aim, in common with other measures taken by this Congress and administration, is to contribute to our economic recovery.

The bill contemplates the attainment of these ends by the regulation and control by the Government, through the agency of the Federal Trade Commission, of all the activities of securities markets. It is highly important, if this far-reaching responsibility shall be assumed, that the machinery created shall be effective rather than destructive, and that it shall function in harmony with established principles and effect the affirmative purpose of promoting rather than retarding the national prosperity.

#### MARKETING PRINCIPLES

I therefore respectfully submit the following considerations, which are the outcome of some years of observation and experience in the securities and commodity markets

1. The market price of securities, especially of common stocks, bears little relation to bookkeeping values

For example, in 1929 Westinghouse Electric had a book value of \$87. It sold as high as \$292 per share in that year. In 1932 the book value had dropped to \$80 per share, and the stock sold as low as \$15. In 1932 Montgomery-Ward could have burned all its buildings and mechanical equipment, paid all its loans and accounts payable, retired all its outstanding preferred stock, and still had a liquidating value of about \$16 for every share of common stock. But the stock sold as low as \$4.

2. The market price of common stocks does not follow the changes in earnings, especially of reported earnings

American Tobacco earned \$11.53 per share in 1929 and in 1932 earnings were \$8.46, a decrease of only 26 percent. Yet the average price for 1932 was approximately 60 percent below that of 1929. At the low point in 1932 this stock had declined 70 percent from the high price of 1929. The earnings and market price of this stock for the years 1932 and 1933 offer a further significant contrast. During 1932 it sold as low as 44—in 1933 as high as 94. Yet it is now estimated that the company earned only \$3.50 for 1933, or less than one half that of 1932.

3. The rate or absence of dividend is an unreliable criterion by which to judge an investment. Dividends do not prevent declines nor their lack substantial advances

American Telephone sold above 300 in 1929. In 1932 as low as 71. Meanwhile its dividend had not been changed. Radio Corporation advanced from around 50 to well over 500 from 1927 to 1929. It has never paid a dividend.

4 Business activity, as reflected by accredited indexes, seldom moves in advance of security prices. On the contrary business activity almost invariably trails the stock market by anywhere from 3 to 7 weeks.

It is my own view that stock prices do not "discount" business improvement or retrogression, but that a major rise therein may actually be the cause of business improvement. Conversely, a major decline may cause a falling off in business activity, since the value of the stocks and bonds listed in the security exchanges represents the capital, and in a very important sense, the buying resources of the country.

In this relation the following facts are worthy of studious consideration:

At the top of the bull market in 1929 the market value of the stocks listed on the New York Stock Exchange alone was in round figures \$89,000,000,000. Bonds on this exchange had a market value of about 47 billions. A total of 136 billions.

Consequently carloadings, steel production, automobile production, and corporate earnings were the highest in the history of the country.

July 1, 1932, the market value of stocks on the same exchange was 15 billions and the bonds 37 billions, a total of only 52 billions. There was a corresponding decline of business activity.

In this connection it will be of interest to observe that according to one authoritative index agricultural commodity prices showed an average of \$1.471 in July 1929 and fell off to \$0.709 in July 1932. When the stock market turned upward in July 1932, making the greatest proportionate advance in the history of the exchange in the short space of 7 weeks, business did not show improvement until 5 weeks later.

5 The sequence of events in respect of market movements is the reverse of the general belief.

Rapid advances are not followed by precipitate declines. Conversely slow, steady advances are not necessarily an indication of soundness and regaining health. On the contrary they are usually followed by a collapse. This is the experience of at least a hundred years. It would appear to be the manifestation of a law that operates almost uniformly in respect of security and commodity prices, steel production, electric-power output, carloadings, and business activity generally.

6 The existence and influence of pools has been exaggerated in the public mind. The rule is that they can successfully operate under modern market conditions only in correspondence with the general trend, and upon stocks the total of whose floating supply is relatively small. Quite often the operators themselves are the greatest losers.

7 The market must in my judgment be considered from the standpoint of an entity, in many respects distinct from the aggregate commercial and industrial activities of the Nation. It is not independent, as seems often to be assumed, but subject to law which is both powerful and regular in its operation, so that its sequences may be observed and ascertained with a remarkable degree of accuracy. I am therefore led to the following conclusions:

(1) Manipulation of prices of securities is limited to certain selected issues with a relatively limited floating supply.

(2) No manipulator or group of manipulators is able appreciably to influence the movements of the market as a whole. The whole power of the Government is unable to stem the tide of economic law, as was demonstrated by the futile though sincere and strenuous effort of the last administration to arrest a major decline.

(3) Economic recovery is dependent to a degree greater than is generally apprehended upon a freely functioning market.

(4) The free functioning of the market should not be interfered with on the one hand by dishonest manipulation of traders or hampered by unnecessary legislative and bureaucratic restrictions on the other.

If these deductions are made the guiding principles of your legislation, I feel that a double result will be achieved—the investor will be protected as such, and his interests as an integral element of the economic structure will be conserved and prompted.

## CALL LOANS BY CORPORATIONS

The newspapers recently gave considerable headline space to figures submitted here regarding loans on call made by industrial corporations. The peak amount loaned during 1929 appears to have been less than \$766,000,000, or six tenths of 1 percent of the total value of securities and nine tenths of 1 percent of the total value of stocks listed on the New York Stock Exchange in that year. Even if the 20 billions featured by the sensational press, for the purpose of appeal to public passion, had any significance, it would still represent less than 15 percent of the total market value in 1929.

My previously expressed confidence that even vast financial resources are helpless against the general trend and can only be thrown into and carried along by the powerful current remains unshaken.

## SUGGESTIONS

It is with these principles in mind that the following observations and suggestions are submitted:

## MARGINAL REQUIREMENTS

In respect of marginal requirements I would urge a greater flexibility. It would be my own view that the ratio should be left to the discretion of the supervisory body. It would almost seem that this is the purpose of the bill, but it is hedged about with many uncertainties. I submit the following probable effects of the provisions as they now stand, for your consideration:

(a) Brokers and bankers would be compelled to consider the act as establishing maximum loans and in practice lend and maintain loans of a lower percentage.

(b) Stop-loss orders would be a practical necessity on all securities held as collateral, despite their prohibition in section 9 (b), since the bill makes the maintenance as well as the extension of the loan in excess of the limits provided a criminal act.

(c) The act (sec. 6 (b)) authorizes the Commission to prescribe "lower loan values." This injects an element of continuing uncertainty into all loans against collateral in the form of listed securities.

(d) In a declining market two influences would operate:

1 Brokers and bankers holding listed securities as collateral would be compelled to dump them as soon as the loan was in excess of these marginal ratios.

2 The disposition to exercise discretionary power to lower loan values would probably be greater in a declining than in a rising market. The fear of such action would be a further depressing influence, and together with the other influences might precipitate a panic.

(e) Section 6 (d) giving the Commission discretionary powers in derogation of the act affords no sufficient reassurance to investors in a declining market, for the following reasons:

1 The Commission's action in a highly nervous market could not be sufficiently rapid to be effective.

2 The Commission might well hesitate to assume the responsibility of making rules and regulations which would be in conflict with the categorical provisions of the act.

3 The Commission might easily lay itself open to the charge of partiality, and for that reason alone hesitate to assume the responsibility.

4 The provision contemplates, in effect, an amendment of a legislative act by the Commission by a rule or regulation. If the Commission undertook this responsibility, there would still be uncertainty in the minds of brokers and bankers as to whether the categorical provisions of the act or those of rules and regulations promulgated under this section were binding.

5 The uncertainty would be intensified by the fact that while individuals may be exonerated of crime, the bill contemplates extraordinary civil liabilities, the measure of which would be ascertainable at the close of the litigation.

(f) While section 6 (d) purports to exonerate any person complying with the rules and regulations, it would not appear that such compliance by the broker or banker is mandatory. His disposition would naturally be to play safe. It would seem to be absurd to charge him with crime for obeying the mandatory provisions of the law, where they were in conflict with rules promulgated under it by the Commission.



## MANIPULATION

Section 8 (5) (a) as it stands would have the effect of denying to investors and prospective investors recourse to the judgment and experience of everyone skilled in finance. No banker or trust officer would dare express an opinion concerning a security, whether or not the opinion was acted upon or given for that purpose. The phraseology is highly uncertain and indefinite. It is ostensibly addressed to the protection of the "average investor." How the mathematical process implied in this term can be applied in this connection I do not know. The crime is committed if the person expressing the opinion "has reason to believe" that it "may induce" a purchase or sale. And the burden rests upon the speaker to prove that he acted in good faith and, in the exercise of reasonable care, had no ground to believe that the statement was "false or misleading."

However innocent or casual an expression may have been, and however unproductive of action, if it is in fact erroneous, the burden of showing that the person uttering it is not guilty of a crime rests upon the person charged. It is doubtless true that the Commission would not take so legalistic a view in the enforcement of the law, but I do not understand it to be the purpose of Congress to play into the hands of unscrupulous, unofficial persons, who are alert to every opportunity for extortion and blackmail.

This act, while highly remedial in its purpose, cannot do away with the necessity for sound advice, any more than the regulation of the professions of law and medicine constitutes every man his own attorney or physician. By all means stamp out the shyster and quack. But take into consideration at the same time the fact of human infallibility in the banker, the trust officer, and the profession of investment counselor, as you have in the other professions I have mentioned.

## POWERS OF THE COMMISSION

Arbitrary and almost unlimited powers are vested in the Commission. I have no disposition whatever to detract from the ability and high purpose which animate its members, but the responsibilities which this bill would impose seem to me to presuppose superhuman intelligence. I have recommended a wider discretion in some matters, but I do so with the reservation that the entire responsibility should not rest upon the Commission.

## ADVISORY BOARD

To my mind a more satisfactory arrangement would be effected by the creation of an advisory board with coordinating powers, somewhat analogous to that which functions under the Federal Reserve Act. This board may well consist of representatives of the leading exchanges and of commerce and industry. The Commission would by this means have available the highest judgment based upon past experience and a knowledge of the exigencies of the moment throughout the entire country. I might add that at least one representative of the investing public, independent so far as possible of the other interests, should in my opinion be included in the advisory board's membership. This would not deprive the Commission of any essential authority. It would bring to bear upon their action the intelligence of informed and experienced men.

And this brings me back to the proposition I previously submitted that the investor be considered in his other and more important relations to industry. If such a board includes industrial and commercial leaders they will seek to conserve the interests of industry and commerce as they are affected by and involved in the great financial markets.

I feel that I cannot stress too heavily the desirability of this arrangement. The modern industry that is denied access to financial resources will find itself in a predicament equivalent to one whose raw material is unobtainable. All the foregoing suggestions, I feel, conform with the sentiments embodied

## VIEWPOINT OF THE ADMINISTRATION

In the President's message to Congress of even date with the introduction of this bill He said among other things

"It (referring to the National Securities Act) should be followed by legislation relating to the better supervision of the purchase and sale of all property dealt with on exchanges"

I would respectfully emphasize the President's phraseology, "better supervision", which seems to me to coordinate with the purpose also administratively expressed that business be governmentally supervised only under such restraints as may be necessary in the public interest, and in full cooperation with those whose experience has brought them to positions of outstanding commercial and industrial influence

All of which is respectfully submitted

**STATEMENT OF BENJAMIN C. MARSH, EXECUTIVE SECRETARY  
PEOPLES LOBBY, WASHINGTON, D.C.**

The CHAIRMAN. Mr. Marsh, give your name, residence, and occupation.

Mr. MARSH. My name is Benjamin C. Marsh. I am executive secretary of the Peoples Lobby, with offices at 113 First Street NE., here in Washington.

Mr. Chairman and members of the committee, first I want to express our appreciation for the very thorough investigation which this committee, with the cooperation of its counsel, has made. I would like to ask, Mr. Chairman, if I might have read into the record of this committee an article by the chairman which appeared in the Liberty, out yesterday, entitled "Our Financial Racketeers: A Startling and Uncompromising Declaration of War on Those Who Have Betrayed Their Trust in High Places in Caring for Other People's Money."

I am sure it would be illuminating to have the chairman's conclusions based upon the investigation that the committee has made, read into the record.

The CHAIRMAN. If there is no objection, it may be inserted in the record. Is it necessary to read it? You can just have it inserted.

Mr. MARSH. I did not want to read it myself.

The CHAIRMAN. Of course, the chairman is not responsible for the headlines.

(The statement submitted by Mr. Marsh, entitled "Our Financial Racketeers", by Senator Duncan U. Fletcher, is here printed in full as follows:)

**OUR FINANCIAL RACKETEERS—A STARTLING AND UNCOMPROMISING DECLARATION  
OF WAR ON THOSE WHO HAVE BETRAYED THEIR TRUST IN HIGH PLACES IN  
CARING FOR OTHER PEOPLE'S MONEY**

(By Senator Duncan U. Fletcher, chairman of the United States Senate Committee on Banking and Currency)

For approximately twenty months the Senate Committee on Banking and Currency has been conducting an investigation into stock-exchange and banking practices. The facts brought out in the public hearings are of such vital importance to the proper conduct of our financial institutions that they cannot be ignored, and we must not permit them to be glossed over. For a final array of the facts and an ultimate appraisal of their values, it is best that we await the conclusion of the hearings and the report of the committee and its counsel; for immediately ahead of us, I believe, is some of the most valuable information which the committee shall be privileged to present. In the meantime, it is not inappropriate that we review briefly the developments to date

Similar investigations have revealed practices just as startling as the present. Unfortunately, however, we seem not to have profited as greatly from the fund of knowledge developed as we should have. My primary purpose in discussing these matters at this time arises from the firm resolution that we shall be neither intimidated, misdirected, nor lulled into a false sense of security. The discreditable, unethical, vicious practices uncovered in this investigation must, in so far as legislatively and administratively possible, be eliminated from the practices of those individuals and institutions controlling the most vital factors of our economic system.

The present investigation had its inception in Senate Resolution 84 in April, 1932. Its scope was such as to confer upon the committee powers generally believed to permit them to investigate stock-exchange and banking practices, "and the desirability of the exercise of the taxing power of the United States with respect to any such securities." Subsequently Senate Joint Resolution 206, Senate Resolutions 239, 371, 373, and 56 were passed to strengthen and continue the powers of the committee. Early in the life of the Seventy-third Congress a minor crisis developed when the powers of the committee were challenged while it was attempting to investigate individual transactions for income-tax purposes. The Senate responded by passing Senate Resolution 97, which contributed in bestowing upon this committee probably the broadest authority ever conferred by Congress on any similar grouping of its members.

It would be premature to even outline the report and the conclusions of the committee. It is possible now to state only generally the principal subjects studied and enumerate some of the questions which have been investigated and to indicate the scope of the evidence on these matters which point to immediately needed reforms.

The evidence thus far has established beyond question that there have been grave abuses, the continuance of which must not be condoned. In fact, if confidence is to be restored, the general public must be given to understand that such abuses will not be tolerated. The restoration of confidence needed goes farther than the mere scope of individual and corporate transactions and practices. The need extends even unto that of state and federal government. This committee has been charged with dragging out skeletons, muckraking, and even the destruction of confidence. From the mass of correspondence which has flooded this committee, however, in my estimation the committee's most constructive work is to be found in the revelation of facts and the bolstering of public confidence. The result has been that the financial leaders and institutions of the past have found that the public has more confidence in the committee and governmental bodies in general, and more hope in the protection of corrective legislation and administrative supervision, than it has had in them.

Men in high places have betrayed their trust. In theory the corporation official, whether in a bank or other corporate capacity, is a trustee of "other people's money." Investigation shows that this feeling of trusteeship has come to be very rare in financial circles.

The acts of financial crooks and racketeers make it plain that efforts must be made to safeguard legitimate depositors and investors. Manipulation and rigging of markets have been shown, though the intents, purposes, and ill effects are either denied or condoned.

Banking and investment corporations have been pyramided, and affiliates acquired, without rhyme or reason other than to serve selfish interests.

Bankers have become at one and the same time private bankers, commercial bankers, investment bankers, owners or trustees and wreckers of railroads, tunnels, skyscrapers, motion-picture enterprises, public utilities; industrial corporations, public defenders in rallying their banks in united support of a collapsing market on the one hand and selling it short (on margin) on the other. They have, as in the spring and summer of 1929, so the testimony reveals, availed themselves of the rediscount privilege and thrown hundreds of millions of dollars into the call-loan-money market in defiance of the belatedly aroused Federal Reserve Board. They have supported the market until their syndicate and pool operations were completed, then withdrawn their support, sold the market short (on margin)—even the stock of their own banks and corporations. To the extent that these latter practices prevailed, these individuals and corporations dictated and controlled the monetary policy of this nation—even that of the world—according to the interests of a private purpose in lieu of a public purpose. The heavy toll upon the nation of the ensuing debacle is evidenced in part in the loss of four billions of dollars per month in national income.

Giant banking superstructures such as those organized in the Detroit area coerced the management of unit banks, organized pools and trading accounts for market operations, padded their assets, falsified their statements to the general public, and declared huge unearned dividends as a matter of policy in order to "bolster" public confidence and cover up their unsound condition.

To climax these operations, we must add, the investment departments of our commercial banks have accepted funds from trusting clients and placed them in securities of which they and their affiliates were the sponsors.

In the light of these facts, the national and state banking holidays are a mere matter of arrested developments. There is strong evidence that, under the cloak of "dollar diplomacy," our big commercial bankers have stuffed the portfolio of their small interior correspondents with worthless foreign securities, as well as flooded the country generally; that they have employed sons of the presidents of borrowing nations while negotiating loans and underwriting flotations, salvaged their own loans while misrepresenting the facts in their underwriting statements, and become recalcitrant in demanding that sinking funds be maintained for the protection of the American investing public. They have not hesitated at misinforming the public with respect to the financial condition of the foreign governments and corporations whose securities they were floating, nor have they hesitated to become "construction contractors" making successful bids on projects they have sponsored in order to reap added private gains. Finally, the Department of State has been shown to have dangerously approached the point of passing on the merit of foreign securities.

Heretofore we had been told that "little" bankers were incompetent operators of "holes in the wall." Now events seem to show that in many instances even "big" bankers cannot be entirely trusted to handle "other people's money" without rigid supervision.

Huge deals running into the millions are "noted" only in the "minds" or on "confidential memoranda," not in the minute books of banks and corporations. Probably never are these facts and underlying purposes revealed to stockholders to whom these men should be accountable, nor are they made known to the general public when floating security issues.

We are often led to believe from the testimony that the recipients of large salaries, fees, bonuses, and commissions spend the greater part of their time either spending their income and organizing personal corporations for "tax purposes" or running or participating in "pools," "syndicates," "trading accounts," etc., to support the market.

Holes in existing laws have been exposed, calling for their prompt plugging. The sieve-like character of the income-tax laws has been revealed.

On the other hand, the lack of regulatory legislation has consigned "lawless" banking to the "banker's code of ethics," according to which bankers apportion the field into noncompetitive areas, as was, for instance, testified to in railroad financing. The same practice over in the commercial field may likewise be made to serve their purpose by restricting credit alternatives with the ultimate capture, even destruction, of profitable and legitimate enterprises to the detriment of security holders and the general public.

Ethics may be better than law—but who has the temerity to teach a *higher* code to some bankers?

Elsewhere I have dealt with the provisions of the Banking Act of 1933. Here it suffices if I call attention only to the fact that the above act provides for the separation of the securities affiliates from commercial banking, contains restrictions against the making of loans for speculative purposes, eliminates interest on demand deposits, and lastly has set into motion federal machinery for the insurance of bank deposits. This latter provision, in my estimation, is the most valuable contribution of the act and will necessitate a far more thorough and rigid examination of commercial banking than we have ever had. As a direct result of this supervision I expect many of the abuses and malpractices of former banking to be done away with.

Some of the facts brought out by the committee with respect to income taxes are fantastic. One multimillionaire has paid no income taxes in the United States for three years, even though he paid income taxes in England. This, he pointed out, was due to the difference between the British and the American laws. Another avoided income taxes by "selling" securities to his daughter at a lower price than they cost him. She was not at the time aware of the fact that she had become the purchaser. Not a cent of money passed in the transaction. A little later, on the same terms, these same securities were put back in the father's name.

Still another, as I recall, went into the tax-avoidance business on a whole sale scale. He organized three American and three Canadian corporations. Through a circuitous route he helped them legally avoid payment of taxes to the United States Treasury, despite the fact that he later covered these funds into one corporation. In addition, we found these corporations financing and functioning in a wider capacity in the investment, banking and stock-speculation fields.

Another individual, through the creation of "living trusts" for members of his family—managed by himself—together with transactions for both his and their account, was able to sell the market short in one account, borrow from another on the note of the first, carry for years a short position with a tremendous potential profit, suspend the payment of taxes and stand the chance in the end of avoiding them entirely. Others executed similar transactions between themselves and their wives, with substantially the same results as that between daughter and father.

The fallacy of the law lies in its treating speculative gains and losses on a basis of equality with legitimate profits and losses. One is lost or gained by gambling in the wares of stock and commodity exchanges, whereas the other must be put in the category of legitimate profits and losses of capital assets and legitimate income. To me it is inconceivable that capital arbitrarily shrinks in December and recovers its attractiveness at the end of an arbitrarily fixed, subsequent 60- or 90-day period. In my estimation, such transactions are a gambling connivance, entered into for the deliberate legal avoidance of taxes, economically and socially vicious in their effects, the losses of which should be neither cushioned nor compensated for by the government taxing policies. The gain from such transactions should at least be appropriated to the same extent as are legitimate transactions, if not further penalized. Such transactions are wholly vicious and should be exterminated.

"Bear raiding" and "bulling" the market are advocated as a corrective purgative. It is common knowledge, however, that during the boom years of 1928 and 1929 the quoted prices of securities were almost incredible. Testimony before this committee reveals both the "why" and the "how." The "why" is found in the enormous profits garnered by operators in the market. The "how" is arrived at by viewing the parade of pools, syndicates, trading accounts, etc., testified to by participants called before this committee. These individuals, working mostly under cover of secrecy, aided through campaigns of the most vicious type of misrepresentation and misinformation, and aided through being able to work with other people's money, manipulated the market up and down until the prices of securities reached on the Exchange bore no discoverable relation to the value of the properties represented. The market was "churned," "supported," "stabilized," "depressed," "revived," "sagged," "recovered" in the course of developing a speculative mania.

Whereas the existence of such operations has been denied by officials of the New York Stock Exchange, subsequent testimony before this committee has established the fact that all these types of transactions were indulged in by individuals both off and having membership on the exchange. Even specialists on the floor managed trading accounts, pools, etc., in the very stocks for which they were acting as specialists.

Since the passage of the Securities Act the business of underwriting securities does not look so attractive as it did to many of the fiscal agents. The reason is that the security holders, prospective security holders, the general public, and the government must know the facts—the truth. Above all, they must know who gets the money and upon what terms he gets it.

The Securities Act was designed to protect the public from paying \$52 per share for 20-cent stock as a result of misinformation. Knowing the facts, it may, if it wishes, pay from \$50 to \$75 per share for 20-cent stock, or condone preferred lists. Nevertheless, it must have the facts in advance of its commitment. There will be no difficulty experienced in raising long-time funds on the part of legitimate enterprises which are guided by honesty and good faith. At the present time there is reason to believe that industry has been amply, even extravagantly financed. The trouble now, in part at least, even if it exists at all, is to find new industries offering safe and sound investment opportunities justifying credit.

To stockholders of those existing corporations alleged to be in need of new financing or refinancing, whose present officials and directors have refused to authorize such financing, my advice is—get a new set of officers and directors who will state and subscribe to the facts.

Opponents of the Securities Act really wish to be left free to do as they have done in the past. They magnify penalties—as if the act would be worth anything without the penalties! They quail at the liability imposed. They seem to like scenic directors.

“The attention of government and of the general public must focus on worthless short selling, as it presently will assume alarming proportions.”

In my opinion, Congress has ample legislative power, and a correlative duty to exercise that power, for the passage of proper regulatory stock-exchange legislation. The line of demarcation between stock-exchange regulations and that of the recently enacted Securities Act is relatively indistinct. For this reason I am not clear in my own mind just how close together the administration of these two pieces of legislation should be.

I am of the firm conviction, however, that some permanent body should be created with which all pertinent stock-exchange information should be filed, either directly or subject to its call, particularly the compulsory registration of all pools, syndicates, trading accounts, etc., together with the names of all participants and subparticipants, as well as a weekly report of the activities in behalf of such accounts.

To point out some of the possible correctives

First of all I suggest that the monetary policy of this nation be administered by the federal government, wholly independent of the control of speculators, bankers, and all vested interests. The sound recovery for which all constructive interests and interested persons are striving is a more substantial and healthier recovery than that which can be produced as a result of frenzied finance. An increased demand for products and services and sound securities is needed. Misinformation, rigging the market, and other customary practices of the past must not be tolerated.

Officials and directors ought to be prohibited by law from dealing in the securities of the corporation with which they are connected or affiliated. This kind of thing in the past has been scandalous, morally wrong, and injurious to the proper marketing or handling of securities. The broker can do comparatively little without the protection of bank or company officials who either control the supply of securities or the funds to create the demand for them. The broker acts on orders.

I believe there should be legislation requiring every company, corporation, or association to have its transfer books open to every qualified stockholder, so that, should any stockholder want to know who his associates or partners in the business are, he could obtain a full or partial list. The average stockholder knows practically nothing of what is going on and has no way of expressing his views to his fellow stockholders.

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Senator Fletcher says:

The vicious practices uncovered in this investigation must be eliminated.

The restoration of confidence needed goes farther than individual and corporate practices. The need extends even unto state and federal government.

Investigation shows that the feeling of trusteeship has come to be very rare in financial circles. The acts of financial crooks and racketeers make it plain that efforts must be made to safeguard legitimate depositors and investors.

Our big commercial bankers have salvaged their own loans while misrepresenting facts. They have not hesitated at misinforming the public.

Holes in existing laws have been exposed, calling for their prompt plugging. The sieve-like character of the income-tax laws has been revealed. Ethics may be better than law—but who has the temerity to teach a higher code to some bankers?

Opponents of the Securities Act really wish to be left free to do as they have done in the past.

Mr. MARSH. The headlines summarize the very careful analysis which the chairman has made, and I think it is very fortunate that that article was published at this juncture.

Stock exchanges are the inevitable product of an economic system under which rewards go to legalized robbery and honest labor, like virtue, is its own punishment.

The Fletcher bill will inconvenience the Forty Thieves, or, I might say, the financial racketeers, quoting the chairman, who have run stock exchanges, and boost the stock of certified accountants, but will not materially mitigate the gambling desperation which leads to financial suicide in the market, until honest production is paid an honest, that is, an adequate, wage.

This bill is intended to protect investors, who have always been the chief concern of our Government, but it ignores the fact that the total capitalization of corporations and other business undertakings is probably nearly 175 billion dollars too high, and that if the N.R.A. is to be anything but a failure, scores of billions of watered stock must be wrung out of this capitalization, wages increased, prices reduced, and income redistributed through taxation.

The Commissioner of Internal Revenue reports—and I have the report here—that at the close of 1931 the total reported “Assets” and “Liabilities” of 381,088 corporations were, roundly, \$296,497,000,000. The main divisions were as follows: Manufacturing, \$63,801,000,000; construction, \$2,474,000,000; transportation and other public utilities, \$72,337,000,000; trade, \$17,900,000,000; finance—and we come, now, to one of the immediate things concerned in this hearing—finance, which it classifies as including banking, insurance, real estate, stock and bond brokers, and so forth, \$121,043,000,000. The total assets of these 381,088 corporations are reported as 115 billions of capital dollars. It is obvious that both the total assets and the capital assets are fantastic, and I do not need to tell this committee that our so-called system of stock markets is based upon these fantastic values. I regret that I cannot give later figures, Mr. Chairman, but they are the last Government figures.

Senator WALCOTT. What is the basis, Mr. Marsh, of estimating those values? Are those par values of stock, or market values? How does he arrive at those figures?

Mr. MARSH. These are figures prepared by the Commissioner.

Senator WALCOTT. How does he arrive at them?

Mr. MARSH. I do not know.

Senator WALCOTT. Don't you think that is very important?

Mr. MARSH. I do. I can read the details, if you want.

Senator WALCOTT. I do not want details, but I want to find out how he arrives at them.

Mr. MARSH. I will give the aggregate. They are only by industrial groups, and I have added them for these totals. I cannot make the addition here. The items are as follows:

Under “assets”, cash, notes, and accounts receivable, inventories, investments, tax exempt; investments other than tax exempt; capital assets, lands, buildings, equipment, less depreciation; then miscellaneous assets.

Under “liabilities”, notes and accounts payable; bonded debt and mortgages; miscellaneous liabilities; capital stock, preferred; capital stock, common; surplus and undivided profits, less deficit. Those are the liabilities.

Senator KEAN. You have said that this is mostly water, or in large part water. Do you include railroads in that?

Mr. MARSH. Railroads and many public utilities.

Senator KEAN. Do you include railroads?

Mr. MARSH. Many of them, yes. I cannot say which ones.

Senator KEAN. Mr. Eastman stated before the committee last year, on a question by Senator Long in connection with the same matter, that the value of the railroads of the United States was 25 billions of dollars, and that the outstanding securities of railroads were 19 billions of dollars. Would you think that was water?

Mr. MARSH. I am going to make a suggestion later which will bear on that, but—

Senator KEAN. Next we will take the banks. The banks pay in—they must pay in at least 100 percent, if not 120 percent. Would you think that was water?

Mr. MARSH. I did not get that.

Senator KEAN. The banks must pay in, in cash, 120 percent to organize.

Senator WALCOTT. On the par value.

Senator KEAN. On the par value. Would you think that was water?

Mr. MARSH. It would depend a little bit—

Senator KEAN. That is cash.

Mr. MARSH. Cash. It would depend somewhat upon what profits they were making. For instance—

Senator KEAN. No. I am talking about starting them.

Mr. MARSH. Starting them?

Senator KEAN. Yes. Every stockholder of a bank must pay in 120 percent in cash. Would you think that was water?

Mr. MARSH. It would depend upon whether the value went down or not.

Senator KEAN. You say that—

Mr. MARSH. The capital stock would probably be genuine.

Senator KEAN. All their capital stock is genuine, because it has to be paid in in cash.

Senator WALCOTT. The assets may shrink from bad management.

Mr. MARSH. Precisely.

Senator KEAN. But that is not water.

Senator WALCOTT. Of course not.

Mr. MARSH. How was it that the stock of the First National Bank in New York went up to 1,000?

Senator KEAN. Because it earned money, and they kept the money in the assets, and they had the money there to show that that stock was worth more than a thousand dollars a share.

Mr. MARSH. That would indicate, then, that there had been improper supervision by the Government of those banks, or they never would have made those profits.

Senator KEAN. No. If you make a profit of 6 percent, and you pay out only 2 percent, or none—for instance, I will take the Chemical Bank of New York. The Chemical Bank in New York did not pay a dividend for more than 10 years. Everything it made it put back into the business. That was cash, was it not?

Mr. MARSH. Yes; it was cash, but why the bank should be permitted to perform a function which the Government should retain for itself is more than I can see. I am not here as an apologist for the banks, you understand.



Senator KEAN. No; but I am talking about your statement that this is mostly water.

Mr. MARSH. May I refer to that statement? I cannot give positive figures.

Senator KEAN. No; but I am talking about your statement that most of this is water.

Mr. MARSH. I say—

Senator KEAN. I think I have proved to you that it is not water.

Mr. MARSH. You have not proved anything until we all get the figures as to the capitalization of banks as compared with the total capitalization of other corporations. I am not prepared to do that now, but may I answer your question? There is a resolution in the pocket of a Senator here which I hope will come up shortly for a thorough investigation of the capital structure of all corporations.

Senator WALCOTT. But, to go back to my question, Mr. Marsh, your hypothesis here is, quoting some article here, that there are "X" billions of dollars of value, supposedly, and that you have to shrink that down to a very much reduced figure before we can get a fair start. We ought to find out how you are figuring "X" billions as the capital assets of the country.

Mr. MARSH. That is probably what it is, and I am very glad it has evinced an interest, to show that such a study should be made, so that people will then know what they are investing in.

Senator WALCOTT. You were quoting figures.

Mr. MARSH. I quoted figures from the Government.

Senator WALCOTT. I do not see what basis those figures have in this investigation unless you know how those figures were made up. You say you do not.

Mr. MARSH. I have never been a Federal official, but this committee is one which has the opportunity—and I am sure it will avail itself of that opportunity, in view of your question—to ascertain on what basis.

In last week's issue of LaFollette's magazine, the Progressive, there is a statement by Dr. C. E. Warne, professor of economics at Amherst College. [Reading:]

Of every \$100 which thrifty Americans save and think they invest in industry—stock, bonds, et cetera—\$13 actually goes into productive capacity or working capital for industry, and \$87 is absorbed immediately in the churning about of financial maneuvers. These figures are based upon an analysis of the new industrial security issues during the years 1925 to 1931, as reported by the Commercial and Financial Chronicle

I cannot vouch for them.

Senator WALCOTT. All right. Take that, and see what that means. In less than 12 months you could have a shrinkage, and probably we did have a shrinkage of somewhere around 70 or 80 percent, following England going off the gold standard, which was September 19, 1931. You take a statement of that sort as representing the shrinkage of our actual wealth. It has nothing to do with our actual wealth. Let us get down to facts here. About all you are trying to do is to ask this committee to investigate the truth or accuracy of your statement. That is not our business.

Mr. MARSH. I am surprised that the propriety of doing that had not appealed to you formerly, Senator, because it seems to me that

is necessary that that be done before you can say that you have a sound stock market.

Senator WALCOTT. We do not say that.

Senator KEAN. We do not say that, because we know that last year, when Mr. Eastman made the statement that the value of the railroads was 25 billions of dollars, the total securities, I think, were 19 billions, and that they were selling for less than 10 billions of dollars in the market. What do you think of that?

Mr. MARSH. I have had some interesting correspondence with Mr. Eastman on that subject, after reading his report. I do not agree with his conclusion. He is entitled to his views, and, as a freight payer myself, or consumer, who still has the privilege of paying the freight on everything, I am going to say that the railroad values—

Senator KEAN. Did you expect to get it free?

Mr. MARSH. Get what free?

Senator KEAN. The freight.

Mr. MARSH. Not at all.

Senator KEAN. We all pay the freight.

Mr. MARSH. Precisely; and that is the reason that we are now facing the impossibility of ever getting back to prosperity—we never had prosperity, if we are going to maintain or attempt to maintain the present volume of public and private debt with interest charges, roughly, of \$250,000,000,000 total, the present capitalization of corporations and present land values—you have 1 year of experimenting, and conditions are worse today, in my judgment. I do not mean any criticism, but I try to be temperate in my statements. I think conditions are worse today than when we started, because of the large increase in Government borrowing, among other things.

Senator WALCOTT. Because of what?

Mr. MARSH. One reason is that the Government has borrowed so much.

Senator KEAN. And that is a tax on you and me.

Mr. MARSH. And I should be taxed heavier, and I think anybody with any reasonable income—this is not the Finance Committee, but you raised the point. I will say yes.

Senator KEAN. What do you think we had better do about all this debt?

Mr. MARSH. I see no other thing to do except to write down interest rates and principal, as well as capitalization.

Senator KEAN. You mean they ought to default on all their debts?

Mr. MARSH. When you cannot pay debts, you can call it default, but you cannot squeeze debt payments out of bankrupt debtors. I am getting a little afield, Mr. Chairman.

Senator WALCOTT. You mean you would have the Government default in its obligations?

Mr. MARSH. I am not suggesting that the Government default. I understood the question related to private debtors.

Senator KEAN. No; all public debts.

Mr. MARSH. On public debts the Government can do what the British Government did. It just refunded 2,000,000,000 pounds 2 years ago, at a reduction of  $1\frac{1}{2}$  or  $1\frac{3}{4}$  percent.

Senator KEAN. That was with the consent of the people.

Mr. MARSH. It was rather an indirect consent. The Government told them to take it or leave it, and I think all but 5 percent was taken at the lower rate.

Senator WALCOTT. They did not cancel any part of the debt. They canceled only the interest rate, and that was with the consent of the bondholders. That was not a default.

Mr. MARSH. No; that is not a default. That method is ahead of us, in my judgment.

Senator WALCOTT. You said you did not see any way but to default in the debts.

Mr. MARSH. No.

Senator KEAN. We are talking about public debts now. What would you do with the public debts?

Mr. MARSH. Reduce the interest rate promptly.

Senator KEAN. How would you reduce that?

Mr. MARSH. The same way you went off the gold standard.

Senator WALCOTT. That would mean then that we could not borrow any more.

Mr. MARSH. It would mean you would have to begin to run the Government for the benefit of the people, and, instead of borrowing from the rich, tax them, which you have to do to get out of this mess.

Senator WALCOTT. Do you not think we are doing it now?

Mr. MARSH. We do not. I have not the figures here.

Senator WALCOTT. No taxes?

Mr. MARSH. Nothing, compared with what England, France, Germany, Italy, and the rest of them are doing. That is aside from this discussion, but those are the facts.

Senator WALCOTT. You would advocate doing what they have done, in order to bring about the same conditions in this country as they have over there, which would be bankruptcy.

Mr. MARSH. We are going to have that without citing European countries as a precedent, in my judgment.

Senator WALCOTT. That is a matter of opinion.

Mr. MARSH. Surely

The CHAIRMAN. Getting back to the original proposition about water, I do not think anybody will question that many of the railroads issued watered stocks.

Senator KEAN. Mr. Chairman, I take exception to that, because what I say is that over a long period of years they have been putting back into the property the money they earned, so that their watered stock has become worth more than the stock was originally issued for.

The CHAIRMAN. We will not go into that.

Mr. MARSH. Mr. Chairman, I do not feel like asking permission to read into the record the matter upon which the Senator has raised the question, as to the railroads, but I would like to summarize some of the figures which I gave in an address recently on public ownership of railroads, it will be very brief, if I may. I do not have the figures with me. I have the figures of the United States Steel Corporation which I am going to ask the privilege of reading into the record a little later.

May I come now to this suggested amendment to this act? In order to protect the public interest referred to in the bill, we suggest the following amendment [reading]:

No corporation partnership, nor business shall be permitted to list its stocks or bonds, or any form of security on any public stock exchange—

I think you might possibly put in "curb exchange." [Continuing reading:]

Or to sell it otherwise unless it has a certificate from the Federal Trade Commission attesting

- (a) That its capitalization is bona fide
- (b) That it is observing fair trade practices, and is not a beneficiary of tariffs, patents, trade agreements, or monopolization of natural resources
- (c) That it has paid a fair wage to all its employees
- (d) That neither it nor any of its officers or principal stock holders, have evaded any corporation or individual income tax, corporation excess profits tax or any other Federal tax.

The Federal Trade Commission before granting such certificate shall investigate for each applicant for certificate, how capital assets are recorded in the accounts, whether at investment cost, or at appraised market value, and particularly with respect to natural resources owned, the nature and current value of investments, the extent to which capitalization has been increased through "write-ups", and as a result of mergers, the nature of notes and accounts receivable and payable, the liabilities not distributed, the growth and purposes of surplus and undivided profits

Of course, you realize that while your bill would go into effect the 1st of October this year, this provision could not be complied with within that time. It would take a year or such a matter, unquestionably.

Senator KEAN. There are more than 100,000 people interested in the Steel Corporation, are there not, stockholders in the Steel Corporation?

Mr. MARSH. I do not know. It may be 200,000.

Senator KEAN. The American Bell Telephone Co. has over 300,000 stockholders. How is the company going to find out whether every-one of those paid an income tax, or whether they did not?

Mr. MARSH. I did not make it clear. I say the principal stockholders. That would be rather revealing.

Senator KEAN. How would you get the principal stockholders? For example, I own the principal stock of a company. If they came to me and asked me to see a copy of my income tax, I would tell them, "It is none of your business. The United States has a right to look at it, but I will not let you look at it."

Mr. MARSH. I presume they could check up through the Bureau of Internal Revenue, as they are doing in this effort to get \$500,-000,000 additional revenue, which is so much needed.

Also I assume—and I trust you will not regard it as a violent presumption—that the creator of every corporation, to wit, the Government, is greater than the created. That has not been the practice.

Senator KEAN. Yes; but the Government did not create these corporations.

Mr. MARSH. Did they create themselves, without incorporation?

Senator KEAN. Oh, no. The sovereign States created them.

Mr. MARSH. The sovereign States used to say they would look after their unemployed. They have already fallen down, most of them. I am not blaming them. We are rapidly realizing that it is

impossible to let States undertake work or functions which the Federal Government has got to assume. It has got to go through pretty thoroughly on that proposition. In line with the suggestion in your article, Senator Fletcher, I would say that we advocate that this committee, as I have personally requested of you, immediately draft a bill for the nationalization of the banks. You say in your article [reading]:

To point out some of the possible correctives:

First of all I suggest that the monetary policy of this Nation be administered by the Federal Government, wholly independent of the control of speculators, bankers, and all vested interests. The sound recovery for which all constructive interests and interested persons are striving is a more substantial and healthier recovery than that which can be produced as a result of frenzied finance.

To that we would like to say "Amen" to indicate our hearty concurrence.

The question came up as to why there should be this investigation of capitalization. I would like to make this point. When you pass this act, when Congress passes it, and it is signed, there will be a very prevalent opinion among the majority of the American people, in our judgment, just as there was when the new securities act was passed, that since the Government took a hand and investigated the issuance of securities, the Government approved the present capitalization, and practically gave the assurance that these were sound investments. I know that is not the intent of your bill for the control of the stock exchanges and other exchanges, but investors will be much safer if they realize what the actual situation of overcapitalization of corporations is. There is no doubt, Senator, that there are going to be more losses where things have been written up so that they cannot be sustained.

I go back to a book written on the United States Steel Corporation in 1912—

The CHAIRMAN. By whom?

Mr. MARSH. By Dr. Charles R. VanHise. At that time, I think, or about that time, he was president of the University of Wisconsin, at Madison. He pointed out that the Bureau of Corporations, which was precedent to the Federal Trade Commission, made an estimate of the value of tangible assets acquired by the Steel Corporation in 1921, and the corporation made its own estimate. The estimate of the Bureau of Corporations as to the tangible values in 1901 was \$682,000,000. The United States Steel Corporation's estimate was \$1,457,000,000, the difference being 775 million. I cannot tell—

Senator KEAN. Do you know what that difference was based upon?

Mr. MARSH. It was largely based, according to my recollection—it is a long time since I discussed it with the official of the Bureau of Corporations who made the appraisal—it was largely based upon an excessive valuation put upon the ore holdings of the United States Steel Corporation; the United States Steel Corporation's control of a railway; and some good will, and so forth.

Senator KEAN. Was it not largely on the ore holdings, and have not those ore holdings proven their value since then?

Mr. MARSH. Our organization advocates public ownership of all natural resources, the Government to pay only for the value the owners have created, because we cannot see any other—

Senator KEAN. But the point is this. As I understand it, those ore holdings were questioned, and the suit was brought up to the United States Supreme Court and was finally decided in favor of the corporation. Also, since that time those ore holdings have warranted those figures.

Mr. MARSH. The American people, with the cooperation of the Supreme Court, will have to decide what measures are necessary to insure general happiness—

Senator KEAN. But that is not the question we are talking about.

Mr. MARSH. Pardon me for a moment. I will come back to that. The Supreme Court, in two recent decisions, based, presumably, upon the existence of an emergency, which is apparently a continuing emergency, has recognized the right of Congress to legislate to meet an existing situation. In my judgment the Supreme Court—and it is notable that the Republicans were not all in the minority in that decision—the Supreme Court will not declare unconstitutional any legislation which is necessary to maintain the integrity and comfort of the American people.

You had a question, Senator?

Senator KEAN. I just wanted to say that we were talking about the value of this ore, and you said that that ore ought to be written off \$600,000,000. As I understand it, that ore has proven to be worth what the Steel Co. said it was worth at that time; but, of course, at that time I think it was very doubtful, personally, because they could not look under the ground any farther than I could. But since that time, as I understand it, this ore has proven its value, and they have gotten the values of the ore as shown in that report.

Mr. MARSH. That raises this question. What gave any value to those ores? The necessities of the American people.

May I give the capitalization a year ago of the United States Steel Corporation? The consolidated balance sheet, was not, as in this earlier year, \$1,457,000,000. On December 31, 1932, the alleged total assets of the United States Steel Corporation were, in round figures, \$2,158,732,000, and at that time they placed a value—that was December 31, 1932—they placed a net value on their property of \$1,611,974,000.

Mr. Chairman, I do not want to take more time of the committee, except to point out that if these various agencies which the Government has set up to protect the consumer are effective, there will have to be, not an increase, but a rather striking reduction in the capitalization of most corporations, because there will not be very much more large net incomes.

Restoring prices to the 1926 price level, and permitting price fixing-up, or inflation, will start a 1929 bull-and-crash market.

In conclusion, I want to express again our appreciation of the work this committee has done, and to point out that the shrieks of horror from these gentlemen who have objected to any regulation is adequate proof that such regulation is needed.

For several months industry has been governing itself, with disastrous results, as indicated in the hearings of the code committees here this week and last week, the consumers being heard last week. It is not within reason that any stock exchange or curb exchange would or could regulate itself. The need for your bill, I believe, is imperative.

There are some minor points which I will not take the time to discuss. We want to express hearty agreement with the principle, and appreciate the courtesy of the chairman and the members of this committee in continuing this investigation, so distasteful to the financial racketeers.

The CHAIRMAN. Is that the only amendment you suggest, Mr. Marsh?

Mr. MARSH. That is the only important one. There are some details. First, there is the matter of whether you can keep these things out of the mails or not. I had some minor amendments I was going to go through. If you want me to take the time, I can do so. I studied the bill very carefully, of course.

For example, section 17, starting on page 31, says [reading]:

Sec. 17 (a). Any person who shall make or any person, including any director, officer, accountant, or other agent of such person, who shall be responsible for the making of any statement in any application, report, or document filed with the Commission, which statement is, in the light of the circumstances under which it was made, false or misleading in respect of any matter sufficiently important to influence the judgment of an average investor shall be liable to any person (not knowing that such statement was false or misleading) who shall have purchased or sold a security—

And so forth.

I do not know how definitely you can establish the information of the person. It simply occurred to me that that might be a little difficult to establish.

Then, on page 43, under "penalties", the provision is as follows: I will have to read it to illustrate my suggestion. [Reading:]

Sec 24 Any person who willfully violates any provision of this act or any rule or regulation made thereunder, or any person who shall make, or any person, including a director, officer, accountant, or agent thereof who willfully is responsible for any statement in any application, report, or document filed with the Commission, which statement is, in the light of the circumstances under which it was made, false or misleading in any matter sufficiently important to influence the judgment of an average investor—

And so forth.

I am not a lawyer. I do not know how the courts would construe the words "average investor." The proper definition of an average investor is a bankrupt investor, but I think that probably would not qualify as a legal definition. To illustrate, I have here the Investor's Pocket Manual, issued by Fenner, Bean & Ungerleider September 1933. I do not quote this in derogation, because I have seen a good many, but there is practically nothing there, so far as I can see, which would protect the investor by giving him the really basic facts which would be brought out by this affirmative action requiring the Federal Trade Commission to certify the actual status of a corporation. I do not suppose the courts would throw the bill out on the difficulty of defining an average investor, but when there is punishment of a fine up to \$25,000 or imprisonment for 10 years it becomes an important matter.

This bill of yours is the first step. I am afraid it is going to be a disappointment unless, concurrently with the enactment of this law, if not as part of this act, the Federal Trade Commission is given the affirmative duty of certifying to the accuracy of the capitalization of these corporations and as to their financial stability.

Section 18 of your bill confers some of those powers upon the Federal Trade Commission, particularly section 18 (b), but it is not as explicit as the amendment which we have suggested.

The CHAIRMAN. Very well, Mr. Marsh. We are much obliged to you. You will give the reporter any material you wish to put in the record.

Mr. MARSH. May I have your permission to file just a few of these figures with respect to railroads?

The CHAIRMAN. All right. We will be glad to have it.

(Statement referred to by Mr. Marsh:)

Mr. Eastman reports, that omitting debts to the Reconstruction Finance Corporation (about \$400,000,000) funded-debt maturities of the railroads for the next 5 years total \$1,533,700,751, and adds, "Many railroads have an insecure floating-debt situation."

In 1926, the total compensation paid railway employees was \$2,946,114,000, in 1932, \$1,512,816,000, a reduction of \$1,433,298,000, or nearly half

Mr. Eastman quotes the Bureau of Valuation of the Interstate Commerce Commission as estimating "that the original cost of railway carrier property, other than land, as it existed on December 31, 1932, plus land valued as of June 1, 1933, and plus allowance for working capital, was in the neighborhood of \$26,232,000,000. Original cost of lands is not known, but it was probably materially less than the value as of June 1, 1933. Making all due allowance for this fact, however, the original cost of railroad carrier property would not fall below \$24,000,000,000. On December 31, 1932, the total railroad capital actually outstanding was \$23,573,556,588, made up of \$10,226,070,233 in stock, and \$13,347,486,355 in funded debt."

The Bureau of Valuation, however, estimated the cost of "reproduction new less depreciation of land" as above "plus working capital", at about \$20,971,000,000

The current value of railroad stocks is about \$11,000,000,000, and concerns under any real new deal are usually worth little if any more than their stocks. Seventeen to eighteen billions dollars would be a generous price to pay for the railroads

The CHAIRMAN. I wish to say that the committee has replied to everyone who has asked to be heard on this bill and has arranged for a hearing and advised them by telegraph or otherwise. So far as we know, all who have applied have been given the privilege of appearing, and we have heard them. We expected that we would be able to get through with the hearings the last of this week, probably today. At the last minute today some requests have been made for others to appear, and we will have to go on tomorrow to accommodate such of those as we can hear tomorrow. It will be impossible to conclude the hearings this week, but we do not propose to extend them indefinitely. We are going to conclude them early next week. There are some things that we will offer at that time, and we have yet to hear from some reports on the air-mail inquiries. We will take this up early next week, with the effort to conclude the hearings the early part of next week, so that the committee will then take the bill and consider it in executive session, together with any amendments that may be offered or proposed, and endeavor to get the bill concluded next week, if possible, and reported out.

I have made similar statements frequently, but there are people who seem to think that they can come on any time they like and that they may prolong these hearings by that process. We can not afford to do that.

We have notified some persons to appear tomorrow, and we will try to finish the main hearings tomorrow. After that we will see



what we can do to accommodate those whom Senators have signified they would like to have heard. We give notice now that anybody who wants to be heard on this bill should say so, so that we can get to a conclusion of it. I think so far we have heard all who have applied. We have not refused to hear anybody who asked to be heard up to this time.

The committee will be in recess until 2:30.

(Whereupon, at 12:50 p.m., Thursday, Mar. 8, 1934, a recess was taken until 2:30 p.m. of the same day.)

#### AFTERNOON SESSION

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

The CHAIRMAN. The committee will come to order, please.

Mr. REDMOND. Mr. Chairman, may I hand you for your information, as well as the information of other members of the committee, a copy of a pamphlet entitled: "German Regulation of Stock Exchanges 1896-1908."

The CHAIRMAN. The pamphlet just handed to me by Mr. Redmond will be made a part of the record.

(The pamphlet is as follows:)

GERMAN REGULATION OF STOCK EXCHANGES, 1896-1908, BY J EDWARD MEEKER,  
ECONOMIST, NEW YORK STOCK EXCHANGE

#### ECONOMIC BACKGROUND OF THE GERMAN EXCHANGE LAW

The most recent instance of an attempt by a great industrial and financial nation to impose governmental regulation upon stock exchanges and speculative transactions on them, occurred in Germany during the years 1896 to 1908.

The marked prosperity of Germany in the latter part of the '80s, following the international crisis of 1873, provided a great incentive to speculative activities. The latter in turn brought with them abuses and irregularities on the part of many banking institutions. Gradually these abuses produced a climax. In 1888 there was a speculative corner in coffee at Hamburg, in 1889 there occurred a sensational break in sugar; and in 1891 a spectacular decline in grain prices occurred on the Berlin Boerse, which conducted dealings in commodities as well as in securities. In the fall of 1891 a new depression seemed imminent. The sharp speculative declines brought forth wide protests from speculators who had suffered from them financially. In addition, several Berlin banks failed, owing to their misuse of deposits in speculation.

#### THE "EXCHANGE INQUIRY COMMISSION"

These developments were soon reflected in German legislative quarters. The Reichstag was flooded with petitions requesting intervention by the government to halt alleged abuses among the banks and in the stock and commodity exchanges. Bills against speculation in general were introduced in the Reichstag as early as November, 1891. Under this constant pressure, the government finally agreed to have a thorough investigation of the situation and accordingly appointed the "Exchange Inquiry Commission" to undertake it. In February, 1892, the Chancellor appointed 23 members (later increased to 28) to serve upon this commission. Its chairman was Dr Koch, then president of the Reichsbank, and its members included prominent bankers, merchants, lawyers, government officials, representatives of agriculture and professors of political economy. This commission was first convened on April 6th, 1892, in Berlin, and remained in office a year and seven months. It held 93 meetings at which 115 witnesses were called, including 39 stockbrokers, 16 grain brokers, 10 land owners, 10 millers and other prominent experts and authorities. The published hearings and report of this commission were exceedingly voluminous and consisted of four volumes, aggregating considerably over 4,000 pages.

On the whole, the Exchange Inquiry Commission Report was thoroughly conscientious and conservative, its recommendations were in the main impartial, judicious and prudent. It dealt with a variety of technical operations on the Exchange and endeavored to minimize abuses without crippling the normal and necessary functions of the exchanges. The report took the attitude that speculative exchanges were essential to business, and refused to recommend any serious interference with speculative trading in securities or produce.

"THE EXCHANGE LAW OF 1896"

Unfortunately this wise and temperate report was not followed in the legislation which was actually enacted. The Boerse had become a political issue, and the belief was widespread in Germany that the previous declines in prices had been due to its rules and practices rather than to the world-wide economic forces which during the early '90s produced depression throughout the world. Particularly bitter was the powerful East Prussian agrarian party, because of the sharp decline in grain prices which it mistakenly blamed upon the exchanges rather than upon the world over-supply. In this temper, the Reichstag was in no mood to accept the calm and temperate conclusions of the Exchange Inquiry Commission, but instead broke loose from it to frame and enact the "Exchange Law" (Boersengesetz) of 1896. The new law became effective January 1st, 1897.

It had been the feeling of the Reichstag that there were three principal evils in connection with speculation on the exchanges: (1) the manipulation of commodity prices against the interests of producer and consumer alike; (2) the manipulation of security prices and the alleged influence of the Stock Exchange upon industrial enterprises, and (3) speculation by inexperienced persons of small means, who almost always lost money in the end. To minimize or obviate these real or alleged evils, the Exchange Act of 1896 accordingly resorted to three principal provisions: (1) dealings on credit on the German exchanges in grain and flour were forbidden, (2) similar dealings on the German exchanges on credit in certain classes of shares, principally mining and industrial shares, were forbidden; and (3) a "Stock Exchange Register" was required to be established, wherein all speculators entering into Exchange transactions of a speculative character must inscribe their names. This register was to be open to public inspection, and if a speculator failed to register his name in it, his contract was to be declared a mere wager under the law and thus was rendered void.

The late Professor Henry C. Emery of Yale, testifying before the Senate Committee on Banking and Currency in 1914 on Senate Bill 3895 (63rd Congress, 2nd Session) declared:

"\* \* \* it was distinctly intended by the adoption of these methods that the facilities allowed for speculation, which made speculation easy, should be disturbed, that the machinery was altogether too easy, that it made it possible to have too much speculation, that it was too easy to sell short, that it was too easy to sell over and over again a large amount of stock so it would be transferred a great many times; that something should be done so there should not be so much speculation; that by restricting the amount of speculation, by limiting the market, by keeping a certain class out of the market and making it harder for those in the market to deal, some of the evils of speculation would be avoided."

FAILURE TO HALT SPECULATION

In all countries there has always been a real difficulty in defining exactly what a speculative transaction is. In Germany, speculation had come to be associated with time contracts which were regularly made in securities and produce on the German exchanges. Consequently the German law makers in the Reichstag assumed that if time contracts were forbidden, speculation itself would be stopped, and the Exchange Act specifically forbade such time contracts. This prohibition did not, however, halt speculation, but simply led to other and more roundabout methods of conducting it. The Exchange Act also limited its provisions to dealings on the exchanges, under the erroneous theory that speculation had occurred and could occur only there. At once this assumption was seized upon as a means of avoiding the consequences of the Act. The produce brokers on the Boerse simply left the Boerse building in a body, set up an organized market in another building, claimed that this

was not officially an Exchange in the meaning of the law, and went on dealing in grain futures. When the State courts ruled that this new market was an exchange, the brokers moved again to another building where each broker had a separate office, but no common meeting place or trading floor and again claimed that this was not an exchange. In this way, the original organized and centralized produce market on the Exchange was forced by the Exchange Law to reverse the previous course of its evolution and to degenerate into a crude "over-the-counter" market with direct settlements and less actual regulation than had been in force during the days when the market was more highly organized.

Even though the Exchange market was forced back in its development from an orderly and organized institution into the unorganized chaos out of which it had originally developed, speculation was not in point of fact halted and was rendered all the more dangerous because of the lack of effective regulation in this unorganized market. So intolerable did this situation become that in 1900, the produce brokers returned to the old Berlin Exchange building and were allowed to carry on their old speculative business by crude evasions of the law. This was all the more remarkable because it occurred in the State of Prussia, where a violation of law was regarded as a shocking matter.

Meanwhile the agrarian party realized that their own business, on behalf of which this legislative crusade against the Boerse had been undertaken, was being seriously impaired by the very law upon whose enactment they had so vigorously insisted. With the disorganization of the Berlin produce market, there was no longer a central price indicator for grain, and farmers could no longer learn the value of their crops. The agrarians refused to admit that they were wrong at first, and demanded that the government furnish such prices for grain. This led to an equally surprising discovery on the part of the government as to the value of organized speculation. For the government inevitably found it impossible to establish satisfactory grain prices without an organized speculative exchange market through which such prices could be obtained. The farmers who no longer knew the price of their own crops continued, however, to demand that the State perform this impossible task. Accordingly a few months after the passage of the Exchange Law, the State established a central bureau to determine prices for the information of farmers. Local bureaus were established in various parts of Germany which reported to this central bureau. All such prices, however, naturally had to be local cash prices and reflected simply past transactions, but not present and future conditions. It was also found that the elimination of short selling in grain, as far as its effects could be determined statistically, was to lower grain prices and render them less stable.

In respect to securities, similar evasions of the Exchange Law occurred attended by a similar disruption of the former highly organized and highly regulated market for securities. Security transactions, instead of being made openly on the Exchange, were effected secretly over-the-counter, without the necessity of respecting the ordinary regulations which formerly were imposed upon Exchange transactions. In these over-the-counter dealings, much of the business flowed to the great German incorporated banks, who did not need to borrow money as did the smaller brokerage concerns. Thus, the result of the Boerse Act was to build up between the large financial institutions a private over-the-counter market in securities, wholly dominated by a few great banks. This unregulated money trust squeezed out the small broker, whose living came to depend almost wholly on orders given him for execution by the great banks.

Finally, the "Exchange Register" proved a failure. The theory behind this register was the theory that large Exchange operators would register willingly enough, but that small speculators would fear the publicity of registration and therefore give up speculating. In this way, it had been hoped, the small man could be forced out of the speculative market. Actually, however, almost no one registered at all. This placed a premium upon dishonesty, since the penalty for not registering was having one's contract voided as a gambling wager. On account of the uncertain legal character of speculative transactions, conservative men kept out of the market or transferred their transactions to other countries. Dishonest men, on the other hand, would put in orders to buy and to sell the same security at the same price, and then repudiate the order which showed a loss, by declaring that they had not registered and in consequence it was void. Thus, instead of eliminating undesirable speculators and allowing responsible speculators to perform a necessary economic task, the register scheme favored the reckless and hampered the conservative speculator, and

also spread fraud throughout German finance. At length the government itself in its official reports, was compelled to admit that the law had "proved injurious to the public" and that "the dangers of speculation have increased"

#### PERVERSION OF THE EXCHANGE'S NORMAL FUNCTION

Ready security markets can be maintained only by a free flow of essentially speculative bids and offers. By interrupting this flow and placing artificial obstacles in the way of ready speculation, the German Exchange Act succeeded in largely destroying the ready market for German securities which had previously existed on the Berlin Boerse. This fact was clearly recognized by the eminent Dr Koch, president of the Reichsbank, in an article in the Deutsche Review for July, 1908, in the following words: "Experience has taught us that there is not at all times a ready market for pledged securities." It was found that fluctuations in price under the Exchange Act increased rather than decreased. Short selling having been restricted, there was a greater tendency at times of prosperity to develop inflated bull movements in prices, which crashed with all the more violence when business activity lessened. Testimony to this effect can be found in the authoritative work, "The German Great Banks," republished in English as one of the National Monetary Commission studies. Speaking of the results of the Exchange Act in forcing business from the Exchange, this work (p 771) declares:

"There is a large number of buying and selling orders coming to the great banks which they can offset against each other, thus taking over the function of the Exchange. Only such orders as cannot be offset are taken to the Stock Exchange. \* \* \*

"The result has been that the Boerse, in addition to the disorganizing effects of the Stock Exchange legislation, has suffered also the loss of ever-increasing amounts of business. This impaired its most vital function, that of proper price determination, and led to most serious consequences, especially during critical times, as may be proved by very lamentable examples."

The study goes on the declaration that this flow of business from the organized exchange market to the private inter-bank or intra-bank market (what we in America would term the "over-the-counter" market) threatened to destroy the ability of the Exchange to reflect actual intrinsic and market values for German government and German company securities under the law of supply and demand.

#### BUSINESS DRIVEN ABROAD

Undoubtedly the ill-advised German Exchange Act had the effect of driving out of German markets and into the markets of other countries much business which had formerly been done upon the German exchanges. Professor Henry C Emery, in his well-known brochure "Ten Years' Regulation of the Stock Exchange in Germany," declared in this regard:

"Finally, the effect of interference, increased cost, and legal uncertainty was to drive business to foreign exchanges and diminish the power of the Berlin Exchange in the field of international finance. The number of agencies of foreign houses increased four or five-fold, and much German capital flowed to other centers, especially London, for investment and speculation. This in turn weakened the power of the Berlin money market, so that even the Reichsbank has at times felt its serious influence."

The Commission which Governor Hughes appointed in 1908 to study the question of speculation upon security and commodity exchanges in New York in its report bears similar testimony:

"Foreign brokers, seeing a new field of activity opened to them in Germany, flocked to Berlin and established agencies for the purchase and sale of stocks in London, Paris, Amsterdam and New York. Seventy such offices were opened in Berlin within one year after the law was passed, and did a flourishing business. German capital was thus transferred to foreign markets. The Berlin exchange became insignificant and the financial standing of Germany as a whole was impaired."

The opinion of German economic authorities fully confirms these American conclusions. The statement of Dr. Wachler in the German Bank Inquiry of 1908-1909 (also translated and published in the National Monetary Commission studies) makes the following comment:

"The Boerse legislation has undoubtedly been injurious to German economic life. \* \* \* The German exchanges have evidently lost in interna-

tonal influence since the enactment of Boerse legislation. In spite of the greatest efforts on the part of the Boerse, of industry and commerce, they have certainly not gained ground in international business. That is a great loss to the political power of Germany. The advantages gained and the peaceful victories achieved by means of our industry and commerce are the best foundation and the greatest, to the extension of our political power, even more effective, perhaps, than the increase of the army and navy. But it is precisely in international business that commerce and industry require the support of the German banks and exchanges."

Much the same opinion is expressed elsewhere in the same official hearings by Herr Schinckel "In the domain of practical matters, the Boerse law has left us with a legacy in the swarm of brokers who rejoice our heart with foreign speculative securities, and who bring more foreign securities into Germany and into the possession of Germans than are enumerated in the statistics of stock and bond issues published by the Reichsbank." As a conclusion to this aspect of the matter, the findings of the Hughes Commission Report can again be referred to as follows:

"Germany is now seeking to recover the legitimate business thrown away twelve years ago. She still prohibits short selling of grain and flour, although the effects of the prohibition have been quite different from those which its supporters anticipated. As there are no open markets for these products and no continuous quotations, both buyers and sellers are at a disadvantage; prices are more fluctuating than they were before the passage of the law against short selling."

#### MANIPULATION FACILITATED, NOT CURTAILED

It has been pointed out above that the German Exchange Act had the effect of forcing business from the open organized market on the Exchange into a private market within individual great German banks or between these banks. As a result, only odd balances of stock which could not be crossed on the books of a single bank or which for one reason or another it was not desirable to buy or sell between the banks over-the-counter, were sent into the market on the Exchange. This resulted in making Exchange transactions easy to manipulate, and to provide an additional motive for such manipulation, in order that the larger security orders executed confidentially outside of the Exchange market could be transacted on the basis of published Exchange quotations as favorable as possible to those executing the larger orders privately outside. Thus the Berlin exchange markets in securities tended to become only a species of show-window for the greater volume of dealings occurring privately in the outside market. As Professor Emery puts the matter "The advantages of a broad, open market were lost. The object of the Act had been to lessen the speculation influence over industrial undertakings. Its effect was to increase it." Elsewhere the same authority has stated on this point "In other words, the result of this experience was to prove practically what I have maintained for years from my theoretical study of this subject, that the most easily manipulated market is the limited market. The market you cannot manipulate is the big, open, easy, facile market where everybody can trade with the least restriction."

Authoritative German opinion fully corroborates the above statements. In the German Bank Inquiry Hearings referred to above, Herr Schinckel stated:

"Finally it is to the Boerse laws that we are indebted for the excessive concentration of business in the great banks, which I as well as others deplore. These are evils which when once introduced could not be removed by the amended law, being evils that do not admit of a remedy. For you cannot ask, for instance, that the great banks which have become altogether too big to suit my taste—a tendency it was impossible for them to escape—shall split up again into smaller ones."

#### STRAIN ON THE MONEY MARKET

For a variety of reasons the Exchange Act of 1896 strained and, on occasion, demoralized the Berlin money market. For one thing the purchase of foreign securities caused an export of capital, which provided a considerable drain upon it. For another, the less efficient methods of clearing and settling contracts made in the demoralized over-the-counter market which the Act produced,

as contrasted with the greater efficiency in the use of capital by the centralized stock clearing and settling system attending the former market on the Berlin Stock Exchange, required a greater proportionate amount of bank funds. This fact is referred to frequently in the German economic and financial literature of the time.

OPPOSITION TO AND GRADUAL REPEAL OF THE GERMAN EXCHANGE ACT

The Boerse law of 1896 was widely condemned by the best informed authorities within Germany. Even at the expense of repetition, it is worth while to include some of these criticisms by Germans here.

The report of the Disconto-Gesellschaft for 1902 states that

"The unfortunate Boerse laws continue to be a grave obstacle to business activity,"

and again in 1903,

"The Boerse will not be able to resume its important economic functions until the restrictions upon trading for future delivery have been removed."

The report of the Dresdener Bank for 1899 states.

"The danger which lies in the ban put on speculation, especially in the prohibition of trading for future delivery in mining and industrial securities, will become manifest to the public if, with a change of economic conditions, the unavoidable selling force cannot be met by dealers willing and able to buy. It will then be too late to recognize the harmful effects of the Boerse Law."

The report of the Deutsche Bank for 1900 states

"The prices of all industrial securities have fallen. This decline has been felt all the more as, by reason of the ill-conceived Boerse Law, it struck the public with full force without being softened through covering purchases of speculative interests."

Again in 1904.

"A serious political surprise would cause the worst panic, because there are no longer any dealers to take up the securities which, at such times, are thrown upon the market by the speculating public."

Again in 1905:

"In our last report we referred to the great danger which may be brought about through delaying the revision of the Boerse Laws, and we are now pointing to it again because we consider it our duty to impress again and again a wider circle of the public with the economic value of the Stock Exchange and its important relation to our financial preparedness in times of war."

Again in 1906

"If it had still been necessary to furnish proof of the regrettable fact that the German exchanges are no longer able to accomplish their task—equally important to the welfare of the people as to the standing of the Empire—the trend of events during the past financial year in general, and the result of the last German Government issues in particular, would have furnished that proof."

Speaking before the Third German Bankers' Convention at Hamburg in September, 1907, Privat Dozent Doctor Jaffe said:

"In spite of the fact that the Boerse Law, which is now recognized even by its framers as a complete failure, has injured German economic life very deeply, not only are all conceivable hindrances placed in the way of improving it but new means are sought for hindering the progress of our industrial life, and for this purpose the legal regulation of deposit banking is proposed."

In similar vein, and on the same occasion, Geheimer Oberfinanzrat Mueller, director in the Dresdener Bank, remarked:

"The result of the Boerse Law may be designated as an effective paralysis of an arm of our economic body. Whether the course recognized by our legislators as necessary will be followed—that of repairing the injury and of giving back to a paralyzed arm the necessary mobility and elasticity—the future will show. The experiment which is recommended for the banking system by a surgeon unskilled in this sphere is an operation on the vitals of the body politic."

German financial literature of the period abounds with just such criticisms as these. Sometimes, the attack on the Boerse Laws were of sufficient length to publish in book form. Such was Struck's "Die Effektenboerse" (The Stock Exchange), wherein the author advances the question, "Will it be easier to solve the problem which has fallen to the Stock Exchange in the present economic system, to have the latter exist as a free and independent institution

enjoying unrestricted autonomy, or will it prove more advantageous to place it under Government control?" and answers it by concluding that the former course is wiser, that severe Government investigations accomplish nothing, beyond the point of satisfying a carelessly speculating public for the time being, and that Exchanges, in order to fulfill their mission, must be left pretty much to themselves

These pointed expressions of public opinion had their counterpart through this period of legislative attempts to revise the obnoxious Boerse Law of 1896. Such a bill was vainly proposed in 1904, two more followed in 1906, and still another in 1907. These early attempts at revision, though in themselves unsuccessful, laid the way open for eventual repeal. The Committee of the Federal Counsel (which was hostile to speculation and which had originally passed the Act of 1896) stated in its report on the bill proposed in 1904.

"The dangers of speculation have been increased, the power of the market to resist one-sided movements has been weakened, and the possibilities of using inside information have been enlarged."

Another attack by the agrarians upon grain futures brought matters to a head. The much-enduring produce brokers apparently lost their equanimity, and threatened that if a further policy of legislative harassment was to ensue, they would "strike" and close the produce market on the Boerse entirely. The prohibition against grain futures was not removed, but no new restrictions were placed upon the produce market. On the other hand, after a lengthy discussion and vigorous agitation, the Boerse Law of 1896 as it related to security dealings was considerably modified in certain stringent provisions—so much so, in fact, that it amounted to a repeal of that part of the Act of 1896. The Exchange register provision was repealed entirely. This action, as the Hughes Commission Report states, proves conclusively that

"Insofar as the Reichstag in 1896 had aimed to prevent small speculators from wasting their substance on the Exchange, it not only failed, but \* \* \* added a darker hue to evils previously existing.

"\* \* \* all persons whose names were in the 'Handels-register' (commercial directory) and all persons whose business was that of dealing in securities, were declared legally bound by contracts made by them on the Exchange. It provided that other persons were not legally bound by such contracts, but if such persons made deposits of cash or collateral security for speculative contracts, they could not reclaim them on the plea that the contract was illegal."

The previous restriction against industrial security futures was also withdrawn, although these contracts were still made subject to the discretion of the State. By a law then passed (1908), the Government might, in its discretion, authorize speculative transactions in industrial and mining securities of companies capitalized at not less than \$5 000,000.

The CHAIRMAN. Mr. Sewall, you will please come forward to the committee table if you wish to be heard.

Mr. SEWALL. I thank you, Mr. Chairman.

#### STATEMENT OF ARTHUR W. SEWALL, PHILADELPHIA, PA.

The CHAIRMAN. Mr. Sewall, please state your name, place of residence, and occupation.

Mr. SEWALL. My name is Arthur W. Sewall. And do you wish my business address?

The CHAIRMAN. Yes.

Mr. SEWALL. 1600 Arch Street, Philadelphia, Pa.

The CHAIRMAN. What is your occupation, Mr. Sewall.

Mr. SEWALL. I am president of the General Asphalt Co. I am on the board of the Federal Reserve bank, the Baldwin Locomotive Works, the Insurance Co. of North America, and so on.

The CHAIRMAN. If you wish to discuss the bill, just proceed in your own way and we will be very glad to hear your views.

Mr. SEWALL. That is very kind of you. I should like to give to the committee such impressions as I for one have, which I might say are quite spontaneous. They are not the offerings of a man who is deeply informed on the technique of the subject, but a man who is responsible for the business affairs of certain institutions; or perhaps I should say the impressions of men who are responsible for the business affairs of certain institutions.

The CHAIRMAN. We will be very glad to have them.

Mr. SEWALL. Historically speaking, I might say that on Friday, February 23, 1934, there was a gathering of upward of 200 executives of manufacturing concerns, insurance companies, banks, as well as business men. My impression of that meeting, which I was able to survey with some care while sitting in the rear row of that large room, was that they were all brought together without any attempt to provide any hard and fast or cut and dried program, but men speaking their minds on the subject put up to them.

At this meeting the following resolutions were adopted:

*Resolved*, That it is the sense of this meeting that the "National Securities Exchange Act of 1934" in the form now before the respective Committees of the Senate and House of Representatives of the United States Congress is detrimental to the business interests of this country and to the individuals interested in the welfare of the corporations, it produces a conflict of authority between the Federal Trade Commission and other constituted governmental agencies competent to regulate the corporations subject to their jurisdiction, such as financial institutions, railroads and public utilities, and appears to destroy completely the jurisdiction of many State regulatory bodies.

*Resolved*, That it is the sense of this meeting that the "National Securities Exchange Act" should be opposed in its present form, and that unless so amended that its harmful and objectionable features are eliminated, the passage of this bill by the United States Congress should be opposed and the efforts of those represented by this meeting should be directed to accomplish its defeat.

*Resolved*, That the Chairman of the meeting be and is hereby requested and authorized to appoint a committee of such number as he may deem proper to act for the interests represented by this meeting with power to take such steps as in their judgment may seem necessary to bring to the attention of the members of the Senate and House of Representatives of the Congress of the United States the reasons why the "National Securities Exchange Act" should not be passed in its present form.

Mr. Joseph Wayne, Jr., president of the Philadelphia National Bank and president of the Philadelphia Clearing House Association presided and, as authorized by this meeting, appointed the following committee: Mr. Benjamin Rush, president Insurance Co. of North America, Philadelphia; Mr. Arthur W. Sewall, president General Asphalt Co., Philadelphia; Mr. Harrison Hoblitzelle, president General Steel Castings Corporation, Eddystone, Pa.; Mr. William A. Law, president Penn Mutual Life Insurance Co, Philadelphia; Mr. Edward B. Leisnering, president Westmoreland Coal Co., Philadelphia.

The above committee presents as follows its recommendations and conclusions to which it solicits your helpful and invaluable attention:

Our statement deals with our appraisal of the probable effects on business corporations resulting from the passage in present form of the identical bills introduced before the Senate and House entitled "A bill to provide for the registration of national security exchanges operating in interstate and foreign commerce and through



the mails and to prevent inequitable and unfair practices on such exchanges, and for other purposes."

The title in no way suggests the full intent of the bill and this is significant inasmuch as many business men believe it to cover only the purposes indicated in the title and undoubtedly do not comprehend the extraordinary authority over business which the bill proposes to give to the Federal Trade Commission.

Throughout the bill we find references to "any person who transacts business in securities." This clause is subject to wide interpretation and if retained should be clearly defined to exclude those who buy or sell securities primarily for investment or for legitimate corporate purposes as distinguished from those who are primarily engaged in the transaction of a security business as such. It is assumed that this is the intent of the bill.

Section 3, definition no. 9 contemplates regulation by the Federal Trade Commission of all types of corporations, partnerships, associations, and so forth, including railroads, banks, trust companies, savings funds, insurance and utility companies. This proposed supplementary regulation of the latter groups, even though modified to obviate conflict with present Federal, State, or other regulatory authorities, would at least render administration of such corporations increasingly difficult and add to their cost of doing business.

Section 6, in prohibiting the customary use of unlisted securities as collateral and materially raising the marginal requirements on listed securities for collateral purposes, would seriously restrict the obtaining of credit by individuals and corporations. Corporations would be handicapped in borrowing for legitimate corporate purposes on collateral consisting of their own marketable, investment, or treasury securities. Furthermore, the power given to the Commission to prescribe lower loan values than those as computed by the formula described in section 6 would, where exercised, have an immediately unfavorable effect on the corporation's general credit in all of its business dealings. At a time when every effort of the Government is being expended in fostering the extension of credit it seems anomalous that serious consideration should be given to certain provisions of this bill which, without apparently sound reason, would unduly curtail the purchasing power of the individual and corporation by diminishing their facilities for credit.

Section 8, subsection (a) (5) reverses the usual doctrine of one being innocent until proven guilty by unfairly, in our opinion, placing the burden of proof on a corporate officer in the event "an average investor" sues him for damages on the grounds that he was misled with respect to any of various items on the published balance sheet or other statements.

Section 8, subsection (a) (7) as it now stands would deny a corporation the right, except under such rules and regulations as the Commission may prescribe, to either buy or sell its stocks or bonds in any appreciable volume as this would necessarily to a greater or less extent have the "effect of pegging, fixing, or stabilizing the price of such securities." This might prove disadvantageous to corporations purchasing bonds or preference stocks for sinking funds or retirement or selling Treasury bonds or stocks for purposes of

raising working capital. This subsection would be improved by striking out the words "or effect."

Section 8, subsection 9 denies a corporation the privilege of acquiring an option to purchase, through the means of securities, control or ownership of another corporation. We believe the privilege referred to is a legitimate one and should not be prohibited.

With respect to section 10 referring to the segregation and limitation of the functions of broker, specialist, and dealer, we wish to raise the question, without endeavoring to answer it, as to whether or not the segregation provided for would have the effect of increasing the financing costs to corporations in general at such time as they endeavor to raise capital through the issuance of new securities. It is suggested that this matter be given careful consideration to make sure that it does not work a hardship on business particularly with regard to the security flotations of small enterprises.

Section 11, subsection (c) (I) grants the Federal Trade Commission broad powers to enforce compliance by corporation officers, directors, and stockholders, not only with the act but also with any amendments thereto and with any rules and regulations which they may make thereunder. This omnibus authority is in addition to specified information which must be periodically furnished under 11 (II) and (III) and further blanket authority under 11 (c) (III) to call for any files of the corporation or its affiliates which the Commission may desire.

Section 11 is the crux of the bill insofar as business is concerned. We believe it to be neither necessary nor desirable to put American business under Government control. With a full recognition of the desirability of eliminating the unethical and destructive practices of the few, we do not wish to see the vast majority of business men, whom we must concede are honestly motivated, fettered by a multiplicity of rules, regulations, and authorities, nor do we believe it will be advantageous to the public interest to have managements obliged to devote an increasing percentage of their time to collaboration with accountants and lawyers in the preparation, filing, and dissemination of reports.

The cost of making the reports required by sections 11 and 12 are impossible to estimate with exactness in advance for several reasons, one of which is that only the minimum number of reports required are stated and the number of additional reports which the Commission may further require is left entirely to their discretion. Nevertheless we believe that such costs as would be experienced upon the application of these provisions would be a serious burden on business and that the net benefits, if any, to be derived therefrom would be entirely incommensurate with the costs; furthermore it is conceivable that much of the information filed would result in harmful effects by virtue of its appropriation by competitors both in this and foreign countries. We believe that the rules with respect to publicity of information as made mandatory in this bill are unnecessary for the education of the stockholder inasmuch as a stockholder today can in almost any case secure from the officers of his corporation any legitimate information he desires which is not inimical to the interests of other stockholders. As a matter of fact is it not true that "the average investor" or stockholder will not

today even take the time to read, much less study, the report of the board of directors and the financial statement which is mailed to him once a year?

The mailing of a complete stockholders' list to each stockholder each time he was solicited for a proxy, as required under section 13 (a), would be obviously burdensome and expensive and an undesirable procedure. Stockholders' lists widely distributed would fall into the hands of unscrupulous persons who might use them for an endless number of extraneous and even nefarious purposes.

Section 14 would destroy the market and therefore the liquidity of securities of any corporation which did not subject itself to the rules and regulations of the Commission. This would have the effect of forcing the many small companies throughout the country, whose securities are unlisted, to abide by the same Commission regulations and subject them proportionately to the same additional expense burdens as would be imposed upon the larger corporations. The so-called family or closed corporations, whose stockholders were so fortunate as to not require the securities thereof as collateral, would enjoy exemption.

Section 17 (a), as is the case with section 8, subsection (a) (7), reiterates the un-American principle of placing the burden on the accused to prove he is innocent.

While the penalties specified throughout the act are severe, we do not object to them as such, except for the all-important fact that the wording of many of the prohibitions and regulations are so indefinite as to put even the most honest and conscientious business official in jeopardy of the unscrupulous litigating stockholder and the vagaries of court interpretations.

In conclusion, we believe, for the reasons pointed out above, that the burdens and the additional expense incident thereto imposed upon corporation officers, directors and stockholders, and business generally, by virtue of the placing of American business under Government control, as contemplated in certain sections of the bill in question, would not be in the public interest, and under any circumstances we believe that any legislation with respect to business should be entirely divorced from legislation dealing with the control of security exchanges.

Mr. Chairman, the memorandum which I have presented to you is signed by the names of those whom I first read. All of those concerned in this report are engaged in some branch of industrial activity.

I may, if you will permit me a minute or two longer, express this one feature as an experience we have been observing during the last 2 or 3 years: We have all sorts of accounts made up, currently and at periods during each year; but since some laws of States, counties, and the Federal Government have come into existence I have found, after counting them up the other day, that we have to put out now 176 statements of various kinds in the way of accounts, of various lengths and on various subjects, in addition to those we used to find desirable to get from our staff in an attempt to run our businesses profitably.

Now, it is not merely that we have to go to the expense of printing 176 reports, which is an average of about two reports a week, but it takes the time of those responsible, as well as of those who

are carrying out orders. And with the difficulties of conducting business profitably in these days, any economies that might be possible through an avoidance of additional orders which would make more and more reports necessary, certainly would be something that would mean a great deal to business, generally speaking.

And if I might add one more word—

The CHAIRMAN (interposing). How often do you make reports now?

MR. SEWALL. Well, they run a little in blocks, but they average at the rate of two a week. There is a total of 176 reports in the course of a 12-month.

The CHAIRMAN. By one corporation?

MR. SEWALL. Yes, sir; of the corporation of which I am president. Do not understand, if you please, that I am speaking only of Federal reports, but of various reports which have come to be required of us by States, counties, cities, and other bodies politic, which are not things we would make up for our own internal work in handling the business.

But I can see, or at least I think I can see, that if this bill were enacted into law as drawn, we should have to put in a lot more days' work, provide more room space for offices, more men to look after those doing the work, more men to digest it, and while it might be a great work for the Nation, and if so the Nation has a right to it, whatever it thinks it ought to have, but if that information already provided is clear enough, then business should be spared any additional imposts, I mean any others than those under which it is struggling now. And it is not an easy matter to make profits at the present time.

One other point which, if you will permit me without seeming to be pertinent or too long—

The CHAIRMAN (interposing). The committee is very glad to hear you.

MR. SEWALL. I take a great deal of pride in thinking that the American people who are engaged in industry have that kind of temper in their make-up which enables them to do the work of honest men and to do it with devotion and activity and with a rare sense of duty and propriety. On the other hand, nobody is made either by gifts of money or by having somebody else do work for him which he should do himself. When you take from a man his obligation to do this, that and the other it renders him more and more a mollusk. We do not want mollusks in this country. We want men who have backbone. And the way to get backbone is to make people work and take their responsibilities and not shirk them.

The CHAIRMAN. Make them have some self-reliance, is that it?

MR. SEWALL. Yes, sir. That is the basis upon which we have lived and worked. And it is the one element in this country of free and independent activity that if we are to stand up amongst the nations of the world it will be through the development and persistence of that quality in our humankind who are in business in this country.

Now, if it is a fact that in the case of any human being you please we are to be propped up by anything that savors of creating bureaus of government, State, city, county, or Federal, whereby you will

take away the responsibility and the administrative necessities of their work, why, you will in that way, as has been done many times since Caesar's time, and was attempted also as Capt. Lemuel Gulliver says in "Gulliver's Travels" in the land of the Lilliputians, and you surround people with strings and ties and other elements that will busily engage a bureau; yes; perhaps a hundred bureaus that go to make up bureaucracy, you will undermine the life and the strength and the health and the glory of the people all the time you are doing it.

Now, may I thank you gentlemen for your very courteous hearing.

The CHAIRMAN. We are very glad to have heard you.

The CHAIRMAN. May I ask you just one question?

Mr. SEWALL. Yes, sir.

The CHAIRMAN. A great deal of what you have said has been an economic discussion, and some very helpful philosophy about it; but coming right down to the purpose of this bill, do you feel, from your knowledge of business and your experience and observation, that there is or is not any real need for some kind of governmental supervision or regulation of security exchanges in this country?

Mr. SEWALL. I think, Mr. Chairman, that, judging by what I have read and what little I have thought from intimate contact, the subject which we now cover under the stock exchange act title certainly needs some intelligent rebuilding and reframing, but I think that that should be done as a step by itself, and perhaps you might call it as a preliminary step. But there will be some shock in that, I mean in the readjustments, and I do not see the present necessity of going further than that.

I would advocate, as one who is in business, that his business be nurtured to the extent of developing the correction and the application of the remedy for the stock exchange situation, without in the same act pushing out into the unknown and perhaps creating something that will so stagger the people who try to live up to it that it would be inexpedient to do it at the same time that you are doing the other thing or on so little investigation and study.

I should not say a thing like that, because I do not know how much you have given to it and how much study has been applied, but I for one, as a business man, feel very much without a chart which can show me where we can go in doing these different things that are apparently latent in the bill so far as outside work is concerned; I mean other than the stock exchange matters. If those per se can be handled, you might say that we are saying, "Let John do it", but I do not mean it that way; I mean that it is all right to build, but perhaps we might build too fast in legislation. The United States Senate will be here next year and the year after and interminably. Let it take one step at a time, because business certainly is a sensitive thing.

The CHAIRMAN. Are there any questions, Senator?

Senator KEAN. Mr. Sewall, you have presented here a list of names, and, simply for the purpose of the record, I would like to have you give us a short description. The Insurance Company of North America—how big is that? Is that a mutual company?

Mr. SEWALL. No, sir; that is a stock company. It is the oldest insurance company in America. It was started by Benjamin Frank-

lin. They have 90,000,000 assets, and they do an all-around general insurance business. It has never side stepped any policy. It has never gone through a receiver's hands. It is 140 years old, in round figures.

Senator KEAN. The General Asphalt Co.?

Mr. SEWALL. The General Asphalt Co. is an umbrella company under which the Barbour Asphalt Co. who, as you know, is in the paving business, and the Bermudas Co. and other companies who refine crude oil, of which we get some, and who work up different products of a considerably large variation for the application and use of goods in roofings and floorings and things of that sort.

Senator KEAN. And the General Steel Castings Co.?

Mr. SEWALL. They are the corporation owned one third by the American Locomotive Works, one third by the Baldwin Locomotive Works, and I have forgotten who owns the other third. They have patents on equipment by which they can cast in one casting a steel underbody to a railroad car or a pullman car or a locomotive, and, instead of having a dozen units entering into the running gear of a locomotive, here you have a thing that is like this table the full length of the locomotive, and there is no chance for giving and wearing and working, and that today is the only apparatus under which gigantic cars and locomotives can be sustained and propelled.

Senator KEAN. And the Penn Mutual Life Insurance Co.?

Mr. SEWALL. Well, there is a great life insurance company. I think they have 300,000,000 of policies out. They rank not up with the Prudential and the Equitable and those three or four giants—Metropolitan—but there are somewhere between three and five hundred million policies out.

Senator KEAN. And they are a mutual company?

Mr. SEWALL. They are a mutual company, and they are very solid financially.

Senator KEAN. And they are very much interested in securities?

Mr. SEWALL. Very much; yes, sir.

Senator KEAN. And now we come to the Westmoreland Coal Co.

Mr. SEWALL. That is an anthracite coal mine.

Senator KEAN. No; it is also soft coal, perhaps more soft coal than anthracite.

Mr. SEWALL. Well, you know more about it. I know very little about it.

Senator KEAN. They are one of the most successful coal companies in the United States.

Mr. SEWALL. I am very glad to hear that. I would like to be associated with them.

Senator KEAN. I just wanted to get that into the record to show what kind of companies you represent.

Mr. SAPIERSTEIN. Mr. Sewall, in the reference that you made to section 10 there was an implied criticism of the section based upon the idea that the section might increase the financing costs to corporations of new issues. Now, section 10 treats with the segregation and limitation of the functions of the broker, specialist, and dealer. Could you amplify that idea of yours and show us in what way the costs of the issuance of securities of corporations would be increased or might be increased by virtue of section 10?

Mr. SEWALL. In my desire to answer you successfully, may I call upon Mr. Hoblitzelle, who will perhaps give you a clearer exposition of it than I can.

Mr. SAPERSTEIN. With the chairman's permission I should be very glad to hear from him; yes.

**STATEMENT OF HARRISON HOBLITZELLE, PRESIDENT OF THE  
GENERAL STEEL CASTINGS CORPORATION, EDDYSTONE, PA.**

The CHAIRMAN. Very well Mr. Hoblitzelle. State your name and residence and occupation.

Mr. HOBLITZELLE. Harrison Hoblitzelle, president of the General Steel Castings Corporation, Eddystone, Pa.

The CHAIRMAN. Very well, Mr. Hoblitzelle; you have heard the question. You can answer it in your own way.

Mr. HOBLITZELLE. Gentlemen, in the report you will notice that we have suggested that the question be raised, but we are not endeavoring to answer that question for the reason that it is a little out of our bailiwick. Being business men and not in the financial business, we cannot speak with authority on that, or experience, on that particular section. But we think there is a possibility that investment houses which are segregated as to their purposes may have to charge larger spreads, large brokerages, if you will, where they are confined to a single line of business. As I say, that is out of our bailiwick. We simply wish to raise that question, as we said, without endeavoring to answer it. It is a question which the bankers are equipped to testify about. We are not. But we are under the impression that there is a possibility at least that, by splitting up those functions, it may be that we will be required as business men who may ultimately have to refund or seek additional loans, to pay larger brokerages, which, of course, we do not want. If we get out an issue of bonds, we do not want the underwriter to say, "Well, our costs have gone up. We haven't the same possibilities of distributing overheads that we had before. Instead of requiring three or four points spread, we may require more."

Senator KEAN. I would like to call your attention to the situation in Paris, where to float any issue of bonds you have to allow a spread of over 6 percent.

Senator TOWNSEND. For what reason?

Senator KEAN. For the reason that the market there is not so broad and that people do business in a different way; they go around from house to house and the people have a day that they wish to do their investments, and the broker has to go, instead of having a broad market on the exchange, he has to go and visit people, and you have got to call on them, and the consequence is you cannot float an issue in Paris for less than 6 percent. Whereas here we float lots of issues of the same kind that pay 6 percent in Paris, and they have been floated in the United States, for 1 percent.

Mr. SEWALL. Did I get the drift of your question, or perhaps we haven't heard it right yet?

Mr. SAPERSTEIN. What I was driving at was that I merely wanted to get your point of view.

Mr. SEWALL. Yes, sir.

Mr. SAPERSTEIN. We have a great deal of testimony by dealers and by brokers and by specialists as to the effect upon their business of this section 10. Now, I want to get the viewpoint of people like yourself as to why this section should increase the costs of the issuance of new securities. We have also, during the course of our investigation before the subcommittee, had a great deal of testimony by investment bankers, who said that their interests and the interests of the corporations which they represent, as well as the interests of the public, were identical, and that in ascertaining the price at which a security was to be brought out they had to take into consideration on the one hand what the public would pay for that security and on the other what the corporation could afford to take for that security, and the difference would be their spread. Those conditions would remain the same. They would still have to take into account what the public would pay on the one hand and what the corporation could afford to take on the other. And if there were no profit in between them, the security of course would not be brought out. If there were, the profit would be the same whether section 10 were in effect or not.

Mr. HOBLITZELLE. However, is it not true that your costs of doing business provide the fundamental basis for the price which you must ask either for your goods or your services?

Now, the question here is one of diversity factor, which is recognized in almost any business. In other words, if you are in the business of making farm machinery and you are also in the business of making perhaps railroad equipment, you have a chance of distributing your overhead. In other words, when the farm-machinery business may be dull you may be enjoying a good demand for railroad equipment. That is hardly a direct analogy, but it brings up the factor we had in mind there; that is, the diversity factor.

In other words, the business which is diversified has low-average costs as a rule. They are put in a position where they can get lower average costs.

Now, if you segregate the functions of the dealer and the underwriter, it may be that the underwriting business in a certain year might be very lean, and consequently when the time did come for them to underwrite some issues they would have an accumulation of past costs which they would have to distribute in some way or other, and their costs would form—under ordinary circumstances; it had not prevailed during the past few profitless years, but in most instances your costs form—the fundamental, the irreducible basis for determining your selling price.

That was the main point we had in mind there. It was just a question that we wanted to raise and call the attention of this committee to, without endeavoring to testify as to whether it would or whether it would not, because we are not, as I say, equipped to answer it.

The CHAIRMAN. You can recognize a possible conflict of interest between a broker who is representing someone else on a commission and one who is a dealer, being the same man in the same stock. As a broker it might be to his interest to consummate the transaction as a broker, but as a dealer it might be to his interest to buy or sell that same stock. There is a temptation there sometimes that might be of consequence.



Mr. HOBLITZELLE. Yes, sir; we appreciate the motives which are undoubtedly behind the provision.

Senator KEAN. But I think that was pretty well covered, Mr. Chairman, under the rules of the stock exchange.

The CHAIRMAN. Well, they have not been able to do very much about it yet. But that might help some.

Senator KEAN. You can see, of course, that if a broker and an underwriter and a dealer in various bonds, at one time where there was a bond market to deal in bonds, another time there is a stock market to deal in stocks, another time there is a municipal market to deal in municipalities, another time it may be that there is underwriting and you can go into that; so that you can keep your office going. While in the last few years I think everybody has lost money, they might have lost a good deal more if that had not been true—isn't that right?

Mr. HOBLITZELLE. Yes, sir.

Mr. SEWALL. Yes, sir; that certainly is true.

The CHAIRMAN. Anything else? That is all, Mr. Hoblitzelle. Thank you very much.

Mr. SEWALL. May I thank you, Mr. Chairman, and the committee, for the privilege of appearing before you? I appreciate it very much.

Mr. HOBLITZELLE. Thank you very much, gentlemen.

The CHAIRMAN. We are very glad to have you. Now Mr. May.

**STATEMENT OF GEORGE O. MAY, SOUTHPORT, CONN., A MEMBER OF PRICE, WATERHOUSE & CO., CERTIFIED PUBLIC ACCOUNTANTS, NEW YORK CITY**

The CHAIRMAN. Mr. May, state your name and place of residence and business.

Mr. MAY. My name is George O. May; residence, Southport, Conn.; business, Price, Waterhouse & Co., certified public accountants, 56 Pine Street, New York.

The CHAIRMAN. Mr. May, you have seen this bill and examined it. If you wish to be heard on it, we will be very glad to have your views in your own way.

Mr. MAY. Thank you, sir. I do not wish to deal with the strictly stock-exchange regulation features of the bill. That is outside my province. I wish to limit myself to a subsidiary but still important part of the bill, the provisions regarding accounts and reports. That is principally sections 12, 17, and 18 (b).

Practically my whole point of view is based on this fact, that accounts are necessarily the result of the application of accounting conventions and judgments to facts and are not pure statements of fact, and I think any sound legislation on these points must give more weight to those considerations.

The CHAIRMAN. Do you favor the idea of providing for a uniform system of accounting?

Mr. MAY. I do not, Senator; as I will come to later. Not at the present time, certainly.

For some years I have been chairman of the committee of the American Institute of Accountants that was appointed to cooperate with stock exchanges in improving matters of that kind.

In 1932 the New York Stock Exchange asked that committee to study and report to it on the general form of development of the stock exchange activities which the accountants thought would be most beneficial to the public interest. My committee made a report, which was put in evidence before the subcommittee by Mr. Frank Altschul, the chairman of the listing committee of the stock exchange, in December 1932. If I might, I would like to read just two sentences from that report as indicating what I have in mind and what impels me to come here. The committee, after a long study, began its report in this way [reading]:

It believes that there are two major tasks to be accomplished. One is to educate the public in regard to the significance of accounts, their value and their unavoidable limitations, and the other is to make the accounts published by corporations more informative and more authoritative.

And after discussing that at some length they concluded in this way [reading]:

But even when all has been done that can be done, the limitations on the significance of even the best of accounts must be recognized, and the shorter the period covered by them the more pronounced usually are these limitations. Accounts are essentially continuous historical records, and as is true of history in general, correct interpretations and sound forecasts for the future cannot be reached upon a hurried survey of temporary conditions, but only by longer retrospective and a careful distinction between permanent tendencies and transitory influences. The investor who is unable to or unwilling to make or secure an adequate survey will be wise not to rely on the results of a superficial one.

The point that I wanted to bring home to the committee, or emphasize to the committee, is that accounts for a short period, while they are useful to people who deal in securities, may easily be given an exaggerated importance by people and thereby result in more harm than good to the small man, with whom I imagine you are particularly concerned.

My feeling on this question, I think, must be very much that which the committee feels in regard to the larger subject. You want to do everything that you can to make buying and selling securities, particularly by the small man, safer and surrounded with more information. But you must realize that all you can do will not reduce the risks that he is bound to run very greatly, and there is always the danger that by legislating you create a feeling of confidence in the securities that are offered which legislation cannot possibly impart to them.

Now, that is the thought that is in my mind. I attach great importance to accounts, but I think there is always a danger that people will attach too much importance to them, and I think undoubtedly a large part of the stock markets of 1929, the outrageous prices that were reached then, was attributable to people basing values on large earnings for short periods of time, which were not representative of the permanent earning capacity of the business. Whilst I think, therefore, that you should do what you can to give investors ample information, you should not do it in a way that can possibly encourage them to attach more importance to them than they properly deserve.

The specific suggestions that grow out of that, first of all, are in the section 12, which provides for audited quarterly statements, and personally I have never favored the suggestion that has been made

that the stock exchange should uniformly require quarterly statements. In a great many cases they are helpful. In some cases they are more apt to be misleading than helpful. That is particularly true in the case of companies where inventories play a very large part in a determination of their results. The difference in the inventory valuation at the beginning or the end of a quarter may make all the difference between a profit and a loss. That is true, for instance, of packing houses and leather companies and the like.

So that I would suggest that a provision should be left in the bill so that the regulating body could dispense with the quarterly statements in any case where they thought that the publication would not be in the public interest.

Senator TOWNSEND. Would you suggest semiannual statements or yearly statements?

Mr. MAX. Personally, I was going to suggest the second point, Senator, if I may go on, is that I would strongly oppose audited quarterly statements, although it may seem to be against my interest as an accountant to take that position. But my opposition is not because of the expense, although that would be considerable. It is not because it would delay the publication of the quarterly statements—and if they are to be published at all they ought to be published promptly. It is because of the thing that I have just been emphasizing, that if you certify them people will think that they are something absolute and accurate, that they can rely on implicitly; whereas, being for a short period, they must necessarily be arbitrary and estimates.

Therefore, my suggestions on that would be to eliminate the provisions for quarterly audits and to provide a power in the regulating body to dispense with quarterly statements, particularly in any case which they might think it was expedient.

Now, I think myself, as far as audits are concerned, an audited statement once a year ought to be sufficient. But there is one very practical consideration which I would like to bring to your attention. I think the committee has an opportunity to do a very useful thing by a very simple measure, quite apart from the general purposes of the bill.

If the amount of auditing required were expanded as this bill would necessitate, it would tax the resources of the accounting profession. The great difficulty of the present position is that nearly all companies end their year at December 31, and if the amount of work to be done at December 31 were so enormously increased as this bill would increase it, then I do not think it would be within the capacity of the accounting profession, by any reasonable expansion, to take care of that work within a reasonable period after the end of the year.

And to meet that situation I would like to suggest that there should be a discretionary power so that not all auditing statements would have to be at the end of the calendar year. I suppose convenience for tax purposes and so on has led a lot of companies that used to close their year at other periods to turn to the calendar year. A few still stick to some other period. The large packing houses close their accounts at the end of October. Well, September and October would be a much more natural time for the automobile companies and the tire companies to close than December 31. The

railroads all used to close at June 30. Now they have all shifted to December 31, June 30 is a much more natural time.

I would like to see introduced into the bill a provision which would help to distribute the work of auditing over the year. I think it would enormously increase the value of the audit to the investor. It would increase the efficiency of the audit. It would reduce the cost, and it would be indefinitely more convenient to all the regulating bodies and statistical people who have to study audited accounts when they come in, and under present conditions get them all in a bunch at the end of the first 2 or 3 months of the calendar year.

That is a very small and noncontentious suggestion, which I think would have very great practical consequences for good.

Senator KEAN. Would not it be just as well to have them all come in on the 1st of July as June 30?

Mr. MAY. If you could get them distributed. Of course, the ideal thing would be to have a quarter on the 31st of March, a quarter on the 30th of June, but you never could get that. But I think if you left some flexible provision in so that the regulating body could work it out as might seem to the general interest, that would be a very helpful measure which would have a general advantage quite apart from the provisions of this particular bill.

Mr. SAPERSTEIN. As the section now stands, Mr. May, there is no date fixed for the filing of those statements, and that matter is left to the discretion of the Commission.

Mr. MAY. I understood that it was fixed as far as quarterly audited statements were concerned.

Mr. SAPERSTEIN. It does not indicate upon what day. It says simply that they shall file with the exchange or the Commission in accordance with rules and regulations to be prescribed by the Commission and in such form and in such degree as the Commission may by rules and regulations prescribe in the public interest. That more or less leaves it for the Commission to indicate upon what dates these shall be filed, does it not?

Mr. MAY. Of course, if you require quarterly statements subject to the reservation that I have suggested before, and provided that once in each year, under regulations of the Commission, quarterly statements should be audited, that would satisfy us. I only want to suggest the idea. The exact form you take is a matter that is a simple matter of draftsmanship. That is the point I had on section 12.

My point on section 17 is on exactly the same ground. Quarterly statements particularly are very largely matters of judgment. If the investor is to get the benefit of that at all, he should get the reports promptly; and, that being so, I think it is not right or wise to impose a penalty for errors, either of judgment or of fact, in statements prepared under those conditions.

I would like to see the provisions of section 17 limited to misrepresentation in statements. I think, as a broad question of public policy, it is not wise to impose liabilities on the basis of errors of judgment or of fact, where the facts are not definitely known and where judgment necessarily has to be exercised in order to reach a conclusion. That is the suggestion that I have on section 17.

The **CHAIRMAN**. Most of these corporations make at least annual reports for their own benefit, do they not?

**Mr. MAY**. There should be an annual report, of course, sir. But I think, as a matter of fact, if I am not going too far afield, that a quarterly statement really is a part of what I may call the "paraphernalia of speculation" rather than the machinery of investment. It is a very striking thing. I do not think that there is any doubt that in Europe there are relatively more investors in securities and fewer speculators. The speculators do their speculating on the race track, and they have lotteries to a greater extent. It is a very significant thing that statements more frequently than annual are practically unknown in Europe.

When this question came up I cabled to my associates in London on this question and asked them how far quarterly statements were known in London. They said they did not know of any company that ever published a quarterly statement. One or two published half-yearly statements, but the great majority published them only annually.

I telegraphed to my associates on the continent of Europe and they said, "Neither we nor any of our friends whom we have consulted know anything of any corporations on the continent that publish statements more often than annually."

I do not think that is a mere coincidence. I think, as a matter of fact, a quarterly statement serves a useful purpose to the intelligent investors, and it is useful to the person who is stirring up speculation. I think, particularly, if you had audited quarterly statements you would be imposing a very heavy financial burden. The cost would be quite considerable. It would be practically on the investors in corporations for the benefit of speculators in securities, if it benefited anybody at all—which I do not imagine is quite the line that you are endeavoring to follow.

The English income tax is framed on a different theory from ours. Companies are taxed on the basis of the year ending within any calendar year. They choose their own most convenient dates; say, March, April, June, September, and October. Quite a lot stick to March.

**Senator KEAN**. Michaelmas is the usual date, is it not?

**Mr. MAY**. The 25th of March used to be the beginning of the year in England.

**Senator KEAN**. A great many of them have Michaelmas.

**Mr. SAPERSTEIN**. It was suggested by the previous witness that one of the dangers inherent in section 12 was that the information contained in these statements might be appropriated by competitors in this country or in foreign countries. Is there anything in your experience that would lend color to that suggestion?

**Mr. MAY**. Of course there is a certain weight in that always, but I think, generally speaking, that is a little too much weight attached to that. That has been a ground of opposition in England to the publication of any results. I think business men are naturally secretive. Of course the point has merit. I do not think you should require information in too great detail. I would not attach very great importance to it, and I do think that when a corporation tries to get the benefit of greater liquidity for its securities by creating a

market for them, it has got to pay some price for it; and reasonable publicity is part of the price.

The CHAIRMAN. What are your objections to a uniform system of accounting?

Mr. MAY. That is a subject that I have given a great deal of thought to. The fact of the matter is that accounting, especially industrial accounting, is essentially a matter of judgment, and you cannot put judgment in strait-jackets.

In the second place, uniformity, if I may say so, is illusory; it does not exist. Take the railroads and regulated corporations generally, and you will see a manual an inch thick, containing detailed specifications as to where everything from a toothpick to a locomotive shall be charged; but then you will find that the large maintenance accounts and the large loss and damage accounts, and so on, are distributed over the year or more than a year on the basis of a budget estimate, and they do not represent actual expenditures at all. So that you do not get the uniformity and you do not get the detailed accuracy that you think you do.

Take a large matter like depreciation. The variation in practice under a uniform classification is notoriously wide. The only safe thing is this: You have got to rely on judgment, and judgment ought to be attended by responsibility for the consequences that ensue. If you have uniform accounting it has got to be prescribed by somebody on the basis of general principles, and without any knowledge of the specific cases to which it will be applied. Rules are laid down by people who have no responsibility for the consequences that ensue, either legal or moral. That is one of my great objections to it. My other objection is that uniformity means a uniformly low standard. That is necessarily so. You cannot compel anybody to be conservative. Laws can only lay down minimum standards. It requires recognition of moral and ethical responsibilities to get anything higher than that; and I have no doubt in the world that the result of the regulation of railroads and public utilities has been to make their accounting less conservative than that of business corporations generally. I think any accountant who has studied the subject would agree with that view. Certainly that is true in my own experience with railroad accounts and business corporations which I audit. I think it is bound to be so. You would get a superficial uniformity which is not real. People are misled; the general public are misled into thinking that accounts are uniform and that the accounts of different companies are in fact strictly comparable when, as a matter of fact, they are not.

The CHAIRMAN. I would like to have you illustrate that. I can get your general view, but if you will illustrate it, it will make it a little clearer. I do not think I quite understand it unless you can illustrate it.

Mr. MAY. When I first started in the practice of accounting in New York, nearly 40 years ago, nearly all the railroads, when they laid down heavier rails in the place of lighter ones, charge the whole cost of the rails into operating expenses. Now they are required to show the excess weight of the old rails over the previous rails in capital. That is theoretically defensible, but it is practically unwise, in my judgment. All the way through the distinction of what shall be

charged to capital and what shall be charged to expenses, which is the fundamental question of all accounting, the whole tendency of regulated accounting has been to throw things into capital instead of throwing them into expenses.

Senator KEAN. Would you not think that charging the difference between a light rail and a heavy rail to capital, since the rates of the railroads are based on their capital, is against the public interest?

Mr. MAY. You touch the point. In the case of regulating bodies, of course, it ties into the whole question of regulation, and I agree with you, Senator, that it is an indispensable adjunct of the system of regulation, but nevertheless that particular effect of it I think is unfortunate, even if it is inevitable. When you get into general business you do not have the same considerations of rates based on capital structure, and I think only the unfortunate consequences would persist and the benefits would not be derived. That is my view of it. I have given the subject a great many years of thought.

Senator KEAN. In other words, the piling up of capital in public utilities and in the railroads makes the capital so high that they can go to the commissions and demand higher rates than they otherwise would be able to charge?

Mr. MAY. That is one phase of it, Senator. But of course the elements on which the rates are based are (1) return on capital, and (2) the actual expenses incurred. At the same time it increases the amount they get by way of return on capital, it decreases the amount they get as operating expenses.

I think it is getting rather far afield, but I would be glad to pursue it, if it would be of interest.

Senator KEAN. I think it would be interesting.

The CHAIRMAN. Very well.

Mr. MAY. The system of regulation has inevitably tended to bring about that result, coupled with the theory of valuation which has practically prevailed in the Supreme Court decisions. The position has been like this. When a public utility or a railroad, or whatever it might be, put in its claim for its rate base it added a whole lot of expenses, like overhead expenses, which in ordinary practice are charged off into expenses, and it took off only what was called observed depreciation. Now, regulating bodies were in this position, that being forced to accept that by the Supreme Court decisions, if they at the same time allowed these companies to charge the same kind of expense into operating expenses and to charge off larger depreciation, they would be making the public pay twice, and therefore, as they could not prevent them from going into capital, because of the Supreme Court decisions, they said, "All right, you must take it out of expenses"—which was the only alternative left to them, and the result has been, as I say quite confidently, that the accounting of public utilities and regulated corporations generally is less conservative than that of business corporations; and it is because I am not convinced of the benefit of regulation, and uniform accounting would bring everybody down to the standard of the lowest, which is the standard which can be logically established to be the minimum—the fear of that is why I am opposed to uniform accounting. Of course it would make things much simpler for us.

Senator KEAN. If they charge it off in operating expenses, that is one charge-off for that year. When they put it into capital account it goes on forever?

Mr. MAY. That is true.

Senator KEAN. Therefore it is a continual charge against the public?

Mr. MAY. That is true

The CHAIRMAN. Are you discussing section 18?

Mr. MAY. That is the section that gives the power to prescribe uniform accounting. That is what I was coming to next.

I think those are the points that I wished to deal with, and I wanted to come down rather than to make a prepared statement, because this is a subject that is much better developed by questions, and I thought if there were any questions that you wished to ask I would like to answer them, because my only object is to be helpful. I am not here in the interest of anybody. So far as the accounting profession is concerned, your bill would apparently create a lot of additional work, so I would not be popular in the profession if I came down here and opposed it too strongly, perhaps. But I have tried to look at the public interest.

Mr. SAPERSTEIN. Is it your suggestion that section 18 (b) be eliminated altogether?

Mr. MAY. I think so. As I understand, the Department of Commerce is at this time, through a very able committee, studying the whole question of uniform accounting. It is a very large subject, and it does not seem to me to be directly relevant to the main purpose of this bill. I think it is a subject that would be better studied on its merits and dealt with, if at all, in that way, on the basis of the results of a study such as the Department of Commerce is now making. That would be my view of the matter.

The CHAIRMAN. If we had a uniform system, it would be much simpler for the accountants, would it not?

Mr. MAY. Yes; but the real value of accounting is a matter of informed and independent objective judgment. If you are going to just follow mechanical rules you can get into very, very disastrous situations by doing so. I think anybody who has had any practical experience will say that.

Senator KEAN. It would be physically impossible, almost, would it not, with many of these large companies dealing all over the world, to make inventories every quarter?

Mr. MAY. In the case of some of these companies it would be absolutely prohibitive.

Senator KEAN. For instance, take the Bell Telephone Co. I think you audit them, do you not?

Mr. MAY. No; we do not.

Senator KEAN. Do you audit the Steel Co.?

Mr. MAY. Yes. That is not so difficult. We happen to be discussing the question with the Standard Oil Co. of New Jersey just now in regard to what an annual audit might cost.

Senator KEAN. What kind of a figure did you give them, if I may ask?

Mr. MAY. I told them it was so enormous that we could not make any commitment. But I should say an annual audit of the Standard



Oil of New Jersey would probably cost, with all its several hundred companies included, certainly a quarter of a million, possible more.

Senator KEAN. A quarter of a million dollars each time?

Mr. MAY. Yes. That would be doing it the quickest possible way. It would be doing it at the end of the year and not working on it all the way through. I should say the cost of quarterly audits would probably be at least three times that of an annual audit. I think \$750,000 for the Standard of New Jersey would be a very low figure for quarterly audits. The consequence would be that of course the interval required after the statements are prepared by the company, for the completion of the audit, would make the quarterly statements almost out of date. They would be merely able to get the June statement out unaudited by the time they could get the March statement out audited.

Senator KEAN. That is one of the things I wanted to get at, that with many of these companies a public audit would probably not be finished much before the next audit began.

Mr. MAY. There is an old Latin statement which applies very well to quarterly statements. A quarterly statement that comes out promptly is valuable, but if they come out too late—

The CHAIRMAN. If it is convenient to you, the committee would be very glad to have you submit a memorandum on this subject.

Mr. MAY. I would be very glad to do so, Mr. Chairman.

The CHAIRMAN. We will put it into the record.

Mr. MAY. I have got some notes prepared. I have got the draft of a statement here, but I thought I could handle it better in this way in the first instance.

The CHAIRMAN. We will be very glad to have a further memorandum.

Mr. MAY. I will discuss it at length.

The CHAIRMAN. I believe that is all, Mr. May, unless somebody wants to ask you some questions.

Senator KEAN. I have nothing more.

Senator TOWNSEND. I have no questions.

The CHAIRMAN. Do you want to ask any questions, Mr. Redmond?

Mr. REDMOND. No, sir.

The CHAIRMAN. Thank you very much, Mr. May.

#### THE NATIONAL SECURITIES EXCHANGE BILL (SENATE 2693)

##### MEMORANDUM SUBMITTED TO THE SENATE COMMITTEE ON BANKING AND CURRENCY

In response to the request of the chairman made at the conclusion of my testimony before the Committee on March 8, I submit a memorandum regarding the suggestions which I then respectfully offered. These suggestions were briefly as follows:

###### Section 12:

(a) Insert a provision enabling the regulating body to dispense with the filing of quarterly statements in any case or class of cases in which it might deem such statement likely to be misleading or the filing thereof undesirable for any other cause

(b) Limit the requirement of certified statements to the filing annually of one balance sheet and one statement of income and profit and loss for a full year

(c) Make the provision regarding certified statements sufficiently flexible to permit of the distribution of the auditing required so far as possible over the year in such way as may be most desirable in the general interest

**Section 17:**

Limit the liability under this section to cases in which the issue of false or misleading statements is shown to have been wilful

**NOTE.**—The provisions in this section regarding the measure of damage seem open to criticism, but if the liability is limited to wilful misstatement this point becomes of minor importance

**Section 18:**

Strike out section 18 (b), or amend it so as to limit the authority of the commission to the power to prescribe what information shall be set forth in balance sheets and earnings statements.

Of these suggestions, that looking to the distribution of audit work more evenly over the year is put forward because on the basis of a long and wide experience I am convinced that the adoption of this simple proposal would add very greatly to the efficiency of audits and enable them to be conducted at lower cost and prove generally convenient to all those who are concerned with the study of audited accounts after they have been issued. All the other suggestions are inspired by a profound conviction of the importance of recognizing in any such legislation that accounts are not statements of fact, but necessarily represent the results of the application of accounting principles and judgment to facts.

The misconceptions on this point have been so widespread that it may be worth while to present an illustration which will emphasize the point I have made. I take one from the field of motion pictures, which has now become an important branch of industry. The income of a motion picture producer is, of course, derived mainly from rentals, and is largely dependent on the cost of the picture and the length of its run. In connection with the production of the picture many stage properties are required which may or may not be useful in other productions, so that the cost may or may not be chargeable in total against the picture for use in which they are purchased in the first instance. The studio will naturally have large overhead expenses which must be apportioned between the pictures which have been or are expected to be produced during the year. Some principles have to be adopted for apportioning this overhead expense, and there is need for the exercise of a considerable amount of judgment in applying the principles and dealing with such expenditures as those for stage properties. Supposing the cost of the picture to be satisfactorily determined—what proportion of this cost is to be charged against each dollar of rental received?

In the early days, the simple rule was adopted that all rentals were applied against the cost until the cost was recovered, and thereafter all rentals were profits. Obviously, such a result was conservative but quite unscientific. If the picture as a whole produced a profit, some part of each dollar of rental received should be deemed to be profit. After careful research it was discovered that the earnings of the ordinary picture followed a more or less well-defined curve, being naturally greatest in the early days of presentation and gradually tapering off to zero at the end of, perhaps, two years. Consequently the practice became general (and has been recognized by the Bureau of Internal Revenue) of computing the income on the basis of writing off the cost of the picture against the rentals on the basis of such curves. Clearly, however, there is even greater need for the exercise of judgment in determining the precise shape of the curves to be used, and naturally when this has been done the experience of every picture will not conform to any such curve, so that constant watchfulness and the exercise of constant judgment is necessary to insure proper statements of income.

The need for judgment in selecting and applying accounting principles or conventions which I have shown to be necessary in this case is necessary in greater or less degree in almost every business—certainly in every case in which either the exhaustion of fixed property or the carrying of inventories is an incident of the business. It is not true only of complex businesses. I chose for illustration on another occasion the case of one of the unemployed who engaged in the business of selling apples on the street corner and continued in it for only four days, and showed that the same situation (of course, on a small scale) existed in that case.

*There is no dispensing with judgment in the preparation of accounts.* Obviously, those most intimately associated with the business possess in the highest degree the knowledge which is necessary for the exercise of judgment. But they are not disinterested. The method of audited accounts which in-

volves in the first instance the preparation of accounts by the officers of the company who are most familiar with its operations, and the examination thereof by qualified independent accountants possessing a wide general knowledge of business and able to take a disinterested and objective view of the position is, I believe, now generally recognized as the best combination that has been evolved for producing satisfactory accounts

In so far as principles of accounting are necessary for the purpose, I think corporations should be allowed to exercise judgment provided that they recognize certain fundamental principles which are so well established that they may fairly be given general application, and provided, also, that these principles are definitely laid down and consistently followed. This method of dealing with the problem, I note, has recently been recommended by the Twentieth Century Fund as a result of its survey of the Stock Market ("Stock Market Control" by Evans Clark and others, page 174). Care must, however, be taken to limit the requirements of auditing so as to avoid making them unduly burdensome on the corporations and the investors therein.

With these general observations, I will proceed to a discussion of the specific suggestions which I have made.

**SECTION 12** It follows from what I have said that there is room for error or difference of opinion in regard to the earnings of a business corporation for any period, and, broadly speaking, *the shorter the period the greater relatively becomes the possible margin of error*. The extent thereof will vary with different businesses, it will be wide in any case in which inventories are large in proportion to profits, particularly if the inventory consists mainly of commodities which fluctuate in value. Thus monthly or quarterly statements of earnings of a packing house or a leather company are of little value and probably as likely as not to be misleading unless accompanied by very full explanations.

It is sometimes urged that such statements are at least valuable because comparison with the corresponding period of a preceding year can usefully be made. But unless much more than the bare results are published, this will not necessarily be true. Innumerable illustrations could be cited to demonstrate this point. I will take only one—a comparison of the earnings of a corporation engaged in the sale at retail of winter clothing for quarters ending in December and March respectively with the corresponding figures for the preceding year may be quite misleading if in one year winter has come early and in the other, late, so that in one case business was delayed until after January 1 which in the other case matured in December.

I have always been opposed to the suggestion that the New York Stock Exchange should make the publication of quarterly statements a uniform requirement for listing, and therefore I urge that power at least should be given to the regulating body to waive such a requirement in any case in which it believes that to do so would best serve the public interest.

If quarterly statements are to be published, I feel strongly that it is the duty of those who are seeking to help the public to emphasize the fact that while such statements may have value, that value is distinctly limited. This, for two reasons—first, that as I have already pointed out, allocations of profits to short periods of time can only be approximate and arbitrary, and, secondly, that the value of securities depends on the future, and that statements of past results are valuable mainly as they afford an indication of the reasonable expectations for the future, and profits for a quarter or other short period are an entirely unsafe basis on which to rest an estimate for the future.

The Committee is naturally anxious to do what it can to put those possessing inside information and the members of the general public as nearly as possible on an equality in dealing in securities, but it is faced with the insuperable obstacle that the advantage of the insider rests upon the fact that he has knowledge and qualifications for estimating the future which are not possessed by and cannot possibly be extended to the general public. His advantage is not that he knows what the past earnings have been, but that he can judge what future earnings are likely to be—and no one would suggest that corporation executives should be compelled by statute to prophesy.

To require that quarterly statements should be certified by accountants would be to ascribe to them an importance which they cannot possibly merit. This is the principal reason which leads me to suggest the elimination of this requirement from Section 12. Other reasons are that to require that quarterly statement should be audited before being published would involve a substantial

delay in the presentation of figures which owe a large part of any value they possess to their timeliness, and that it would involve a very heavy burden of expense I have no means of estimating how great this burden of expense would be, but it would certainly run to very large figures I should not regard this as a fatal objection, but I should regard the expenditure as not merely wasted, but as actually being devoted to an undesirable end

I believe, however, that in this matter Congress has an opportunity to take a very simple but very effective step to improve present audit practice. The most serious problem which the auditors of the accounts of listed corporations have to face is that audits are required at the close of the fiscal year, and that the great majority of corporations end their fiscal year with the calendar year, with the result that there is an enormous congestion of work in a few months. The existence of this condition adds to the cost and detracts from the efficiency of audits, and it could easily be avoided by a simple provision such as I have proposed

In many industries, December 31 is a most unnatural time for closing the accounts. In a few instances, this fact has been recognized and another closing date has been selected—thus the packing houses generally close their accounts at the end of October. But assumed convenience in income-tax affairs and similar considerations have led many corporations to adopt the calendar year as their fiscal year, although accounts for a period ending at some other date would be more informative. The natural closing date for automobile and tire companies would be September 30 or October 31. Formerly all the railroads closed their accounts at June 30. A discretionary provision such as I have suggested would admit of the work of auditing being distributed more equally over the entire year, thus not only reducing the cost and increasing the efficiency of audits, but contributing to the convenience of the exchanges and regulating bodies, and others who are called upon to scrutinize audited accounts when issued. I recognize that in the past audits of corporations other than financial institutions have usually been made at the close of the calendar year, but any inconvenience that might result from a change in this respect would be trivial in comparison with the advantages to be derived from a better distribution of the work of auditing over the entire year. Of course, the requirement of quarterly audits as proposed in the bill would itself result in the equal distribution of work over the year which I regard as so desirable but only at an undue expense to the corporation and the investors therein

#### Section 17:

I urge that the liabilities imposed by Section 17 should be limited to cases in which the issue of false or misleading statements is shown to be wilful, because I am convinced that it is contrary to the public interest to impose such liabilities for honest error, either of fact or of judgment. Particularly is this true in respect of statements which are so largely matters of judgment as quarterly statements of profits. It is notorious that sometimes the most truthful statement may be the most misleading because of the unwarranted inferences to which it gives rise.

In the long run, the main part of the financial burden imposed by this section will fall upon the corporation—that is upon the investors, whereas the benefits thereof would accrue mainly to speculators, and I do not believe it is wise to place burdens on investors for the benefit of speculators.

The provisions of the section relating to the measure of damages seem to me to be open to serious objection because, as has already been pointed out to your Committee, they would enable damages to be recovered which would bear no relation to the damage actually suffered, and this seems to me to be a vicious principle, particularly if it is to be applied to cases of honest error, either of fact or of judgment. If the section is limited to cases of wilful misrepresentation, I do not suppose anyone would be concerned over a possible undue liberality in the measure of damages

#### Section 18

I now turn to Section 18 (b), which confers on the regulating body not only the power to prescribe the form in which accounts shall be presented, but how profits shall be computed

I have said, and it cannot be too often repeated, that accounts necessarily represent the result of the application of appropriate accounting principles and judgment to facts. Upon the soundness of the judgment employed first in choosing and then in applying the guiding principles depends the value of the

resulting accounts. Sound judgment can be based only on intimate knowledge and ample experience, and its exercise should be attended with responsibility. I believe the provision is unwise in so far as the sub-section would vest the right to exercise this judgment in a commission which would have no responsibility, legal or moral, for the consequences that might ensue, and would necessarily lay down general rules which might or might not fit the specific cases to which they would have to be applied. I recognize that similar powers have been vested in the Interstate Commerce Commission and other bodies, but while our theories of rate regulation probably necessitated some such procedure in the case of railroads and other public utilities, the results are to my mind none the less unfortunate because they may have been inevitable.

In the first place, the idea that uniformity can be attained and the exercise of discretion rendered unnecessary by rules, however detailed, is entirely illusory. Today, after more than a quarter of a century of intensive development of the accounting classifications of the Interstate Commerce Commission, it is still possible to produce widely different accounting results from a slight difference in the form of treatment of substantially identical transactions. Moreover, under those classifications, while manuals running to hundreds of pages exist in which the treatment of innumerable items large and small is prescribed in meticulous detail, it is still necessary to allow the railroads to determine the monthly charges to many important operating accounts on the basis of budget estimates of future expenditures. In respect of other important elements, such as depreciation, the practice of regulated companies still varies widely. Meantime, the uninformed public assumes a uniformity and a comparability between accounts of different railroads and utilities which does not exist and can never be attained.

In the second place, uniformity necessarily means a uniformly low standard—indeed, laws can do no more than lay down minimum standards, higher standards can come only as the result of the recognition of ethical and moral obligations. The accounting standards of the majority of industrial corporations with which I am acquainted are distinctly more conservative than those of regulated corporations.

In 1932, a committee of the American Institute of Accountants, as a result of a study of the general question, rendered a report, a copy of which was put in evidence before the Senate Committee by the chairman of the Committee on Stock List of The New York Stock Exchange on January 12, 1933. In that report, the Committee recommended to the Exchange, *inter alia*, to use its influence—

“To make universal the acceptance by listed corporations of certain broad principles of accounting which have won fairly general acceptance, and within the limits of such broad principles to make no attempt to restrict the right of corporations to select detailed methods of accounting deemed by them to be best adapted to the requirements of their business; but—

(a) To ask each listed corporation to cause a statement of the methods of accounting and reporting employed by it to be formulated in sufficient detail to be a guide to its accounting department; to have such statement adopted by its board so as to be binding on its accounting officers, and to furnish such statement to the Exchange and make it available to any stockholder on request and upon payment, if desired, of a reasonable fee

(b) To secure assurances that the methods so formulated will be followed consistently from year to year and that if any change is made in the principles or any material change in the manner of application, the stockholders and the Exchange shall be advised when the first accounts are presented in which effect is given to such change

(c) To endeavor to bring about a change in the form of audit certificate so that the auditors would specifically report to the shareholders whether the accounts as presented were properly prepared in accordance with the methods of accounting regularly employed by the company, defined as already indicated.”

I believe that this method of approach to the problem would prove more practically effective than an attempt to institute uniform accounting. I understand, however, that the Department of Commerce is at the present time conducting a study into the whole question of uniform accounting and uniform statistics. Legislation on the subject does not seem to me to form an essential part of a law the primary purpose of which is the regulation of stock exchanges and stock exchange practices, and I would urge that Sub-section 18 (b) should

be eliminated and the whole question dealt with on its merits in the light of full information such as I trust will be developed through the inquiry to which I have referred

Respectfully submitted

GEORGE O MAY,  
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MARCH 10, 1934

**STATEMENT OF WOODLIEF THOMAS, DIVISION OF RESEARCH, AND  
STATISTICS, FEDERAL RESERVE BOARD, WASHINGTON, D.C.—  
Resumed**

The CHAIRMAN. Mr. Thomas, you have been before the committee before. I think Mr. Redmond desires to ask you to elaborate somewhat on the London situation.

Mr. REDMOND. Mr. Thomas, when you appeared before the committee the other day you described very briefly the British system of the fortnightly settlement, and you mentioned the carry-over system. Would you describe that a little more in detail as to how contracts are carried over from one settlement period to the next?

Mr. THOMAS. That, I think, is a practice in London. It varies in so many respects from that in New York that it is almost necessary to at least mention some other differences before one can very accurately describe or indicate the matter of the carry-over system, or, perhaps, the reasons why such a system can work better or would work differently there than it would here, for example. I think it is hard to know which is cause and which is effect; so I should like simply, first, to enumerate some of the important differences between the London market and the New York market in ways which are concerned with the carry-over system.

The first is the relationship between the client and the broker, or the manner in which a client may arrange his accounts.

I think it is more customary in England for a client or a purchaser of stock who wishes to carry it on credit to go through a bank than it is to go through a broker. They have an elaborate system of branch banking, so that outside of London one can simply go to his bank and have the transaction carried through.

Mr. REDMOND. Is not that also influenced by the fact that the London Stock Exchange does not allow its members to have any offices except in the city of London, i.e., in the financial district of London proper?

Mr. THOMAS. Yes; I should think it would be influenced by that. I was not aware of that ruling.

Mr. REDMOND. There was a combination, then, of the branch banking system, which covers the whole of England, plus the restriction of the London Stock Exchange on its own members having branches outside of London, which results in concentrating a large measure of security transactions that normally reach the market through the banks?

Mr. THOMAS. Yes; I think that would be correct. Brokers are also not permitted, under the rules of the London Stock Exchange, to advertise or solicit business. The members of the exchange are not. There are some outside brokers who are not members of the

exchange that do that, but nothing like the extent to which it is done in this country.

Also the brokers are somewhat more careful about the selection of their clients. They demand references in regard to character and credit ratings, and they are not permitted to deal with anyone except a principal, as it is called; that is, someone who has in his official capacity the right to sign his own name.

The CHAIRMAN. What is the reason for prohibiting brokers from advertising and soliciting business?

Mr. THOMAS. I can think of several of them. I do not know what reason they would give you in London. It is probably a matter of professional ethics and custom.

Senator KEAN. I think that is it. It is just like a doctor.

The CHAIRMAN. Or a lawyer.

Mr. THOMAS. They consider themselves rather professional.

Then, the institution of the jobber is very important in connection with the various systems of settlement that exercise in London. At least, I think it is a very direct relationship. Brokers deal with the public, and are not permitted to trade for their own account, while jobbers, who are also called "dealers", can deal only with members of the exchange. Jobbers do not deal with the public. Individual jobbers specialize in individual securities or groups of securities.

Quoting from a book by Charles Duguid on The Stock Exchange [reading]:

The jobber is strictly forbidden to receive orders direct from the public or provincial brokers, and the broker must not receive a commission from more than one party on one transaction, and he must not execute an order with any nonmember unless he can thereby deal to greater advantage than with a member

Senator KEAN. What is the title of that book?

Mr. THOMAS. It is called "The Stock Exchange, London."

Mr. REDMOND. Is it also true that brokers having orders to execute must, in the first instance, deal with jobbers?

Mr. THOMAS. Yes; I think that is true. That is my understanding.

Mr. REDMOND. And that is the great difference between the specialist system in this country and the jobber system, in that the jobber who is solely a dealer has a monopoly, so to speak, and other brokers cannot make transactions between themselves; they must deal through a jobber?

Mr. THOMAS. Yes; that is my understanding.

Senator KEAN. In other words, if you wanted to buy 10,000 shares of stock at the market or near the market, you would have to go to the jobbers in that stock and ask them what they would sell it to you for?

Mr. THOMAS. Yes.

Senator GORE. I thought you went to a broker.

Senator KEAN. You would go to a broker, and the broker goes to a jobber, and the jobber makes a price on 10,000 shares.

Senator GORE. And the brokers themselves do not deal direct on the exchange?

Mr. THOMAS. That is my understanding. They do not deal with each other.

Mr. REDMOND. If one customer gave his broker an order to buy a hundred shares of stock and another member of the public gave another broker a like order to buy, those two brokers would come to the jobber and one of them would have to buy at the price at which he was offering the securities and the other to sell at the price at which the jobber was buying, and the two brokers could not make a direct transaction between themselves?

Mr. THOMAS. In dealing the broker will ask the jobber for quotations on a given stock, and the jobber will reply with two quotations, the lower for buying and the higher for selling. Usually jobbers stand ready to fill all orders of reasonable size, whether for buying or selling. In order to keep their books in balance, that is, to avoid taking too active a position, either for a rise or a fall, jobbers adjust their prices in accordance with the relative volume of buying and selling orders, and they make their profit on the turn, as they call it; that is, on the range between their buying and selling quotations. Jobbers do, however, at times take definite positions, either from choice or necessity, and they thus serve in the capacity of professional speculators. That is, they provide a market always.

The institution of the jobber, in such an official and limited capacity, is peculiar to the London Stock Exchange. It is generally considered that jobbers assure an open market for stocks and operate toward stability of prices by standing prepared to fill all demands and also by opposing movements in individual stocks unjustified by their intrinsic merits. It is considered an advantage that brokers, representing the public, and jobbers, supplying, and taking stocks, are separate and distinct. Jobbers cannot, of course, prevent fluctuations and at times they may even intensify them. It is always necessary, however, for jobbers eventually to reverse their positions in order to balance their books. Jobbers also have a distinctive task in connection with carrying and financing the floating supply of stocks.

The CHAIRMAN. Are jobbers members of the exchange?

Mr. THOMAS. Yes, sir. There are about 4,000 members of the exchange, both brokers and jobbers, and in addition there are about 2,000 clerks who are authorized to deal on the floor; so that altogether there is a much larger exchange. You have more of a market on the floor.

Senator GORE. What is the proportion of jobbers to brokers?

Mr. THOMAS. I do not know. I have never been able to find that out. Do you know, Mr. Redmond?

Mr. REDMOND. I think it is fairly evenly divided, depending upon the period of activity. In an active period, I think, there are apt to be more jobbers than brokers.

Mr. THOMAS. I have a statement here that there are more jobbers than brokers. I do not know where I got it. I have a note, but I have not been able to check it up.

Senator GORE. They turn in the order to buy or sell to a jobber?

Mr. THOMAS. He deals with the jobber. The broker does not turn in his order to the jobber. He goes to the jobber to bargain, as it is called—

Senator GORE. That is what I understand.



Mr. THOMAS. And the jobber tries to balance his books so that he will have as many buying as selling orders; but if he gets more buying orders than he gets selling orders he lowers his price.

Senator GORE. He is an intermediary between the selling broker and the buying broker?

Mr. THOMAS. Yes, sir.

Senator KEAN. And he makes the difference?

Mr. THOMAS. He does that himself. He does not bring them together.

The CHAIRMAN. He buys at one price and sells at the other?

Senator GORE. That is a little different from the specialist, is it not?

Mr. REDMOND. Entirely different; and the size of the differential depends, does it not, upon the activity of the stock?

Mr. THOMAS. Yes; and the nature of the market. I am not sure about this, but I think the jobber is always required to quote the price.

Mr. REDMOND. He is always required to make a market in the securities in which he specializes.

Mr. THOMAS. And sometimes when the market is in very bad condition you will find all the jobbers out to lunch.

Mr. REDMOND. They have informal ways of avoiding rules.

It is also common, is it not, for brokers with large contracts, with contracts at a fixed price away from the market, to leave those orders with the jobber just the way orders are left with the American specialist?

Mr. THOMAS. I was not aware of that. I think it is quite possible.

Mr. REDMOND. I understand that was the system where you had a large order away from the market, and the jobber filled it as his position permitted him to do so, but he was not under any agency duty about that. He did it whenever he wished, because he was the dealer.

Mr. THOMAS. That brings us up to the question of term settlements. Most of these transactions—

Senator GORE. Let me ask another question, if I may. Suppose one broker has an order to sell a given stock at 50. Another turns in an order to buy at 51. What would the jobber do in that case?

Mr. THOMAS. I do not know what they do with orders at fixed prices. Perhaps Mr. Redmond knows.

Mr. REDMOND. Is it not true, Mr. Thomas, as your memorandum stated, that it is the duty of the jobber to quote a market?

Mr. THOMAS. He will quote a market.

Mr. REDMOND. Therefore the broker in the example you use, Senator, would go to the jobber and say, "What is the market?" and the jobber would quote the market, say, 50, or 50½, and if the man had a selling order at 50 he would sell it at 50, whereas the man who wished to buy would have to pay 50½, and the jobber would make the half point profit.

Mr. THOMAS. I suppose if they had an order at a price and the market was not at that price, the broker would have to wait until the market came at that price. Or could he leave it with the jobber to transact?

Mr. REDMOND. He could leave it if it is above or below the market, but the example Senator Gore gave was where the man had an

order to buy at 51 and to sell at 50. That automatically would have to create a market, would it not?

Mr. THOMAS. Yes; that is true.

Mr. REDMOND. But if you take a case the reverse of that, and said that a man wished to buy at 50 and sell at 51, the jobber could quote a market in between those two, just the way the specialist does, and continue trading with other persons.

Mr. THOMAS. Most of the transactions that are made on the London Stock Exchange are made on a term basis, and deliveries and payments are not effected until the end of the term. There are 24 terms in the year. Twenty of them are 2 weeks' duration, and 4 of them are of 3 weeks' duration, mostly fortnightly. That is the reason we have the term "fortnightly settlements."

A trader dealing through a broker may buy or sell any number of times within the course of an account, as they call it. But at the end of the account these transactions are, in theory, all settled. Sellers deliver the stocks and receive payment, and buyers take delivery and pay the purchase prices, and many clients who wish to take up the stock purchased, or dispose of stock previously held, will settle their deals in this manner and have the stocks transferred either in their own names or to the names of the new purchasers. But speculative traders who may not wish to pay for their stocks yet can cover by selling before the end of the term, so that the commitments balance; that is, commitments for stocks balance. The prices may differ—that is, they may have sold for more than they bought the stock for—so that they will have a cash balance coming to them, or they may have a loss. So that in this manner you can get a large volume of transactions effected within the 2 weeks' period without having to make any transfers of money or of stocks at all, because they are balanced out before the end of the period. That permits quite a lot of trading without any transfers.

The CHAIRMAN. Does the jobber have to have considerable capital?

Mr. THOMAS. Yes, sir. I am coming to that later. A client may, however, not have sold out. He may have entered into a contract to purchase a stock and not have sold it at the end of the term, but he does not wish to take it up and have it transferred in his name and pay for it. He can then carry over, as it is called. That is, he can carry it over to another term.

Senator KEAN. That is, another 14 days.

Mr. THOMAS. Another 14 days. In principle, this transaction involves a new and double bargain. That is, a buyer, for example, wishing to carry over will arrange for his broker to cover his previous purchase by a sale for current account, and at the same time buy again for the next settlement account.

Senator GORE. It is like transferring from one month to another, cotton or wheat?

Mr. THOMAS. Exactly the same type of transaction.

Mr. REDMOND. That is the closest analogy, I think, Senator Gore, to American practice.

Mr. THOMAS. In effect, of course, those purchases and sales are not actually made. The broker will go to a jobber and will say "I want to arrange a carry-over" and the jobber, having already

sold more stock than he has purchased, will be perfectly willing to do that, or another jobber may have bought more than he sold, and will be willing to arrange a carry-over. In that way not only is a large volume of transactions effected for which no payment is made and no credit is extended within the term, but you may get a considerable volume carried over by simply having credits and debits exchanged between members of the stock exchange.

In effect, to do that, if every transaction is carried over, that means that there are as many short accounts as there are long accounts, but with the institution of the jobber that is quite possible, because the jobber may be perfectly willing to be short or long for a period, or different jobbers may balance their accounts in different ways.

Both these transactions are effected at a fixed price. That is, I may have purchased a stock at 100. At the end of the term I wish to carry it over, and the stock exchange authorities will fix a price. They may say 99, in which case I have lost one point, but I have bought it for the next account at 99, so that I have a chance of gaining that point back in the next account, if I again sell it at 100.

The carry-over transactions do not have to be effected between the same parties involved in the original purchases, although they may be.

In the final analysis, most of the burden of carry-over falls upon the jobbers. Not only do they need to arrange for the carry-over of their own net positions, but also brokers acting for their clients will request jobbers to continue bargains that have been made during the term. The result of this is that to a large extent opposing transactions might be canceled among the jobbers, but there is usually some margin that needs to be carried over.

There is a lot of detail here with regard to the details of the settlement.

Senator KEAN. A broker charges his client a commission on each transaction?

Mr. THOMAS. No. As I understand he charges only on the initial transaction.

Senator KEAN. What does he charge for a carry-over?

Mr. THOMAS. I do not know.

Senator KEAN. There is a regular fixed carry-over fee, fixed by the stock exchange.

Mr. REDMOND. I so understand, Senator, that there is a different fee applicable to a contango. Mr. Thomas, this method of trading for a term, with open contracts, and then carrying the balances of those contracts forward into another term, has quite a different effect upon the British banking system than our American practice of practically daily—it is now every second day—settlement, isn't that true?

Mr. THOMAS. You still have daily settlements.

Mr. REDMOND. Yes. We have daily settlements, delayed by one day.

Mr. THOMAS. Yes.

Mr. REDMOND. But under our daily settlements the full weight of speculation is carried into the banking system.

Mr. THOMAS. Yes.

Mr. REDMOND. Whereas in the English system these open contracts, although potentially a danger to the banking system, do not have to be settled, do they?

Mr. THOMAS. No; they do not have to be settled.

Senator GORE. They have a sort of clearing arrangement.

Mr. THOMAS. Although, in effect, let me develop that point a little, if I may.

Mr. REDMOND. Surely.

Mr. THOMAS. In discussing the question of financing the stock market, which is the point in which I was primarily interested, one of the principal features of term settlements is that short term, in and out trading in securities, may be engaged in at will, without result to the money market. It cannot be said that such trading is done without credit. It is, in effect, entirely carried out upon the basis of a distinctive type of credit which is confined to the stock market. For the period between settlements buyers receive and sellers grant credit. A broker transacting a purchasing order for a client grants credit to the client and receives it from the jobber making the sale. The postponement of delivery of securities purchased gives the seller the collateral. He still has his collateral or his securities.

It is significant, however, that in a transaction between members of the stock exchange no additional collateral is required. That is, there is no margin at all, and, in fact, most brokers do not require margins from their clients during the term. Some houses, especially those of outside brokers who have a wide and varied clientele of active stock traders, may demand a margin deposit upon the opening of an account. The practice in this regard depends largely upon the customer, and most of the houses are exceedingly careful about accepting only customers with the highest credit rating.

Senator GORE. That is what protects them against these little fellows we are perplexed by over here, is it not?

Mr. THOMAS. Yes. In fact, the stock exchange ruling about dealing only with principals insures a higher type of customer. I think there is a similar ruling in our stock exchange.

When settlement days arrive and payments must be made, more important financing requirements arise. Brokers will receive funds from clients who have purchased stock that they wish to take up—that is, stock that they wish to have transferred to their own names—and from those who have suffered losses on covered or continued bargains. If they have lost, the client has to put up the difference on settlement day, and they will need to pay out money to clients that have sold stock holdings, and those with profits on their accounts. These receipts and payments should be approximately balanced by reverse transactions with jobbers. That is, brokers pretty generally come out even.

In the case of clients who wish to carry over their bargains brokers will arrange carry-overs with jobbers and will need neither to receive nor to pay out any money, except the differences. Thus the burden of financing falling upon the brokers is relatively small. Most of it falls upon the jobbers. If a jobber, in the course of an account, has bought securities of a value exceeding that of securities sold, he will need to pay out more than he gets in. Since from

every purchase there has been a sale, and since jobbers specializing in individual stocks have close relations with each other, it might be thought that a complete offset would be possible, sellers lending to the buyers. This, in fact, is the end aimed at by the carryover system, and is to an appreciable extent accomplished. A perfect balance, however, is possible only when all transactions not covered during the course of the account are continued or when cash sales equal cash purchases. Also there are a number of other things that may affect this balance, so that you do not get a perfect balance there, such as payments of costs, interest, taxes, profits, losses, and so forth. In times of rising prices withdrawal of profits may be an important element in increasing members' borrowings, and in times of falling prices payments for losses. Also, on registered securities 10 days are permitted for deliveries, and sometimes that will delay the settlement and make it necessary to pay out more money than they get in, or to receive more than they pay out.

Mr. REDMOND. Is it not true that it is these offsetting factors which make the total volume of jobbers' loans that you referred to the other day so insignificant as compared to the American call loans?

Mr. THOMAS. Yes; I think that is in general true, although in the final analysis the floating supply of stocks, that is, the amount of stocks in the jobbers' hands—all jobbers taken together—less the capital held by the jobbers, determines the amount that the jobbers have to borrow. The floating supply may be much smaller in London than it is in New York, relative to the amount of transactions that remain outstanding. That is, there may be offers to buy and sell which balance each other, and it is not necessary for the jobbers to hold as many securities behind them. That is, our brokers have to hold securities representing all the long accounts, and it is only to the extent to which they have been able to borrow from other brokers on short accounts that there is any offsetting in our case, but in the end it amounts to the same thing. The floating supply determines the amount of borrowing that needs to be done, I think.

Mr. REDMOND. But the floating supply in the American market actually consists of the open commitments that have been taken up by customers and paid for.

Mr. THOMAS. Yes.

Mr. REDMOND. Whereas in England the floating supply represents simply this residual balance—

Mr. THOMAS. That the jobbers hold.

Mr. REDMOND. That the jobbers hold, because the open commitments of customers have not yet been settled.

Mr. THOMAS. That, I think, is the important difference.

Mr. REDMOND. So that a comparison of the amount of brokers' loans in England and brokers' loans in this country would not give you a fair picture of the comparative size of the speculative markets.

Mr. THOMAS. No; I think that is correct.

Mr. REDMOND. There was some comment the other day as to the very small amount of loans in the English market to brokers as compared to the American total, and I wished to bring that point out through Mr. Thomas.

Mr. THOMAS. The difference is that in effect the jobbers carry that burden in England.

Mr. REDMOND. Yes; the jobbers carry it, as you say.

The CHAIRMAN. What about puts and calls?

Mr. THOMAS. I do not know.

Mr. REDMOND. They do trade in options, do they not?

Mr. THOMAS. Yes.

Mr. REDMOND. Which are very analogous to our puts and calls, Mr. Chairman.

Senator KEAN. Are you familiar at all with puts and calls in London?

Mr. THOMAS. I am not familiar, because I did not go into that at all.

Senator KEAN. My advices are that there is a perfectly tremendous business in puts and calls.

Mr. THOMAS. I think there is more option trading there, as I understand it, than there is here; also more trading in options on new issues. There is a tremendous amount of speculation there; but, again, that does not involve credit. It is all extended.

Mr. REDMOND. That is really the essential difference between the two systems, that the British keep open contracts instead of settling the open contracts and putting the weight on the banking system.

Mr. THOMAS. I would like to answer one question, which Senator Fletcher raised, and that is with regard to the jobbers' capital. I think it probably is true that in London the jobbers contribute relatively more capital to the business than they do in New York. The jobbers are generally grouped into substantial and very wealthy firms, which carry their own resources, not only with a considerable volume of the securities in which they specialize—that is, they hold a stock and inventory of securities—but sometimes in addition they carry a supply of the so-called "gilt-edged stocks", that is, governments, municipals, and the like, to be used for collateral purposes, and all requirements not covered by capital are borrowed by jobbers from banks, from other members, directly from private corporations or individuals, or from money brokers.

Mr. REDMOND. Mr. Thomas, do you think that the total capital of the jobbers in England exceeds the capital of the brokers, let us say, in New York?

Mr. THOMAS. I should say, relative to their commitments, it does. Don't you think so?

Mr. REDMOND. That might be true if you disregarded the fact that—

Mr. THOMAS. I mean an individual jobber as compared with an individual brokerage house here.

Mr. REDMOND. Yes; but is not that due to the fact that the brokerage house in this country has its contracts settled, and therefore his obligations represent the total that is due, whereas in England your jobber, being separated from the broker, is not carrying forward the customers' accounts?

Mr. THOMAS. I would have to think about that.

Mr. REDMOND. One other question with regard to the size of speculation in England and the figures you gave the other day. As I understand it, you made a study relatively recently in England.

Mr. THOMAS. At the time that I was in England the stock market was, in effect, closed. That is, there were no term settlements. That was 2 years ago.

Mr. REDMOND. Isn't it true that the volume of speculation in England since the war has been very much less than it was before the war?

Mr. THOMAS. So I am told. Both contango business and margin business has declined considerably from what it used to be.

Mr. REDMOND. That might be due to the fact that their former market in American securities has now been transferred to our American markets in very large degree.

Mr. THOMAS. That might be.

Mr. REDMOND. And then, too, English industry, of course, has been at a very low ebb since the war. It is only recently, within the last year, that it has shown signs of increased production. Are you familiar at all with the time that it took the London stock exchange to settle the fortnightly settlement of July 1914?

Mr. THOMAS. It was not settled until after the war, was it?

Mr. REDMOND. I am under the impression that it was not settled until the early part of 1922.

Mr. THOMAS. I think it was something like that. It was rather remarkable.

Mr. REDMOND. That, of course—

Senator KEAN. In other words, outstanding contracts were made from 1914 to 1922; is that right?

Mr. REDMOND. I understand, Senator, that they were settled gradually, as it was possible, piecemeal, but that the completion of the settlement required close to 8 years.

Senator KEAN. We settle every day.

Mr. REDMOND. We settle every day.

Senator KEAN. It took England from 1914 to 1922.

Mr. REDMOND. 1922 is my advice.

Senator KEAN. Before they settled their outstanding contracts?

Mr. REDMOND. And that was commonly considered to be due not only to the advent of the war, but to the fact that during the war they had no continued term settlements into which open contracts could be carried forward, and therefore the full weight of that settlement ultimately fell upon the banking system.

Mr. THOMAS. Yes.

Senator GORE. Was it because of a break in prices?

Mr. REDMOND. No. They declared a moratorium, Senator Gore, so it was not so much a break in prices, but the fact that the banking system, which normally had not this weight of settlement on it, suddenly was faced with carrying the entire weight of the open contracts.

Senator GORE. The moratorium lasted how long?

Mr. REDMOND. The moratorium lasted practically through the war, as I remember it.

Mr. THOMAS. In effect, you could build up a system of commitments under term settlements which would correspond to the system of brokers loans for others that we had in the third quarter of 1929, where investment trusts and corporations were floating new securities and selling them to speculators and taking the profits and lending them to speculators to buy the securities with. Then, when the market broke in October of 1929, they took the money out and threw the burden on the banks, of lending funds to traders.

Mr. REDMOND. Of course, it is true, Mr. Thomas, that very few investment trusts were intelligent enough to do that, but as soon as they sold their securities they proceeded themselves to try to buy them.

Mr. THOMAS. Yes; they did.

Mr. REDMOND. With rather disastrous results to our investment trust structure.

Senator GORE. State that again. I did not get it.

Mr. REDMOND. As soon as they sold their own securities they then went into the market and bought other securities.

Mr. THOMAS. As I understand, most investment trusts did not lose on what they bought in 1929, or what they bought before October 1929. They lost on what they bought after October 1929 and in 1930. They came into the market after the big collapse and purchased.

Mr. REDMOND. Some of them did buy heavily, particularly those that were set up in the early part of 1929. They bought securities in large measure and suffered very big losses.

Mr. THOMAS. Yes.

Mr. REDMOND. May I ask just one set of questions in regard to the control of credit in this country as it existed in the 1929 period? The Federal Reserve System, theoretically at least, has various methods of influencing the volume of credit, has it not?

Mr. THOMAS. Yes; the volume of reserve funds.

Mr. REDMOND. Which, in the last analysis, would represent the volume of credit which might be used.

Mr. THOMAS. Not necessarily.

Mr. REDMOND. I said in the last analysis.

Mr. THOMAS. In the last analysis it might represent it, if the banks used the reserve funds. It depends upon the extent to which the banks are using the reserve funds.

Mr. REDMOND. True; but if the banks were not leaning on the reserve system at all, then probably you would not have an excessive amount of credit.

Mr. THOMAS. That depends on whether they could get reserve funds from other places than the Reserve System.

Mr. REDMOND. The various methods of control are, first of all, your open market transactions, are they not, which can influence to some degree the current price of credit?

Mr. THOMAS. Yes; other things being equal.

Mr. REDMOND. Other things being equal. Of course, we have to discuss this question in a vacuum.

Mr. THOMAS. Yes.

Mr. REDMOND. The second, and a much more potent weapon, of course, is a change in your discount rate.

Mr. THOMAS. That is one of the factors.

Mr. REDMOND. That factor has a direct influence to the extent that banks are borrowing from the Reserve System.

Mr. THOMAS. Yes, sir.

Mr. REDMOND. And, potentially, an influence even if they are not.

Mr. THOMAS. I would not like to say to what extent that is true. There is a difference of opinion on that.

Mr. REDMOND. But, is it not true that, taking the experience of England, it has been the control of the discount rate which has nor-



mally allowed the Bank of England to prevent excessive movements in the use of credit?

Mr. THOMAS. Not in stock-exchange credit in England; no.

Mr. REDMOND. It has had a great influence.

Mr. THOMAS. I think that has had very little influence on the volume of stock-exchange credit in England. I think a more important factor in the stock-exchange credit in England are the traditional practices of the joint-stock banks themselves. Customarily they attempt to maintain only a very limited amount of funds in the stock exchange, and to keep that as a rather fixed proportion to their total deposits.

Mr. REDMOND. But, is it not true that the English have still another method of influencing the volume of speculative credit in the securities market, and that is their Lombard loans, which is a thing unknown to the Reserve System here?

Mr. THOMAS. You mean the Bank of England?

Mr. REDMOND. Yes. In other words, their loans against security collateral other than governments.

Mr. THOMAS. Yes; against gilt-edge securities.

Mr. REDMOND. And by increasing the rate on security loans they could increase the amount of credit available, or rather, influence the amount of credit available for security speculation.

Mr. THOMAS. If funds were being borrowed from the Bank of England for the purpose of security speculation, yes.

Senator KEAN. Is it not true that if the Bank of England puts up its rates the stock market goes down in London?

Mr. THOMAS. I do not know.

Senator KEAN. If you had watched it, you would see it.

Mr. REDMOND. You would not subscribe to Bagehot's famous statement that a 6-percent rate would draw gold from the ground, would you?

Mr. THOMAS. Yes; I think that is true.

Mr. REDMOND. I think we all admit that the method of controlling credit by discount rates, or the rate charged for Lombard loans is an influence that can work only when other factors are more or less in balance.

Mr. THOMAS. They work differently at different times. A 6-percent rate at the present time would be very detrimental to stock-market trading, I suppose.

Senator GORE. What is the rate now?

Mr. THOMAS. The discount rate in New York, in the Federal Reserve bank, is  $1\frac{1}{2}$  percent.

Senator GORE. I mean in the Bank of England.

Mr. THOMAS. I do not know.

Mr. REDMOND. I do not know whether I have it here or not.

Mr. THOMAS. About 2 percent, I should say. Not in London. I do not know to what extent the bank rate in London would affect the stock market, except psychologically. It certainly does not operate through any restriction on credit.

Senator GORE. The Bank of England is a sort of bankers bank. To what extent do they make these loans?

Mr. THOMAS. The Bank of England can make loans to the market, but generally does not. Their loans mostly go to bill dealers, but

there is some relationship between the bill market and the stock market.

Senator KEAN. In other words, there are people that draw on London to finance bills, and they are discounted by the discount houses, and the discount houses in turn have access to the Bank of England, is that right?

Mr. THOMAS. Yes; that is right. So far as the supply of basic reserves is concerned, the Bank of England and the Federal Reserve bank have considerable influence, and also indirectly upon rates; but there are two sides, of course. The other side is the demand for the particular credits. The tremendous volume of excess reserves at the present time receives very little response from the market, whereas in 1929, even at the risk of borrowing from the Federal Reserve banks, the member banks were still lending—that is not putting it right. In 1929 there was such a demand for funds that member banks had to go to the Federal Reserve banks in order to meet the demand; so that we cannot entirely ignore the demand factor.

Mr. REDMOND. Were you thinking particularly of the period in 1929 when the banks took over the loans for the account of others?

Mr. THOMAS. Throughout 1928 and 1929 the banks were borrowing from the Federal Reserve banks.

Mr. REDMOND. Yes.

Mr. THOMAS. They did not increase their brokerage loans. They maintained them at a fairly stable amount—decreased them some.

Mr. REDMOND. Is it not true that in the fall of 1927 the discount rate of the reserve banks was reduced?

Mr. THOMAS. That is true.

Mr. REDMOND. That was in the face of a rising volume of security or speculative loans?

Mr. THOMAS. Yes.

Mr. REDMOND. From the fall of 1927 on there was a more and more rapid increase in the volume of brokers' loans, but, as I remember it, through 1928 no change in the discount rate.

Mr. THOMAS. In 1928 the Federal Reserve banks raised their discount rates. The Federal Reserve Bank in New York raised its rate from 3½ to 5 percent. The Federal Reserve bank sold a large volume of Government securities in the open market and borrowings of member banks raised to over \$1,000,000,000 for the first time in a great number of years.

Mr. REDMOND. But were not those increases in the rates late in 1928, and only by gradual amounts?

Mr. THOMAS. No; there was one increase in the rate, as I remember it, in February, another in April, and another in August.

Mr. REDMOND. But they were, as I remember it, by halves of 1 percent.

Mr. THOMAS. Yes.

Mr. REDMOND. There was not any courageous raising of the rate.

Mr. THOMAS. A 1½-percent increase in the rate inside of 7 months is more than had ever been necessary before in the history of the Reserve System.

Senator GORE. The sale of these securities was supposed to be deflation, was it not?

Mr. THOMAS. That is the theory.

Senator GORE. Those little levers will not control when the weight gets so heavy.

Mr. THOMAS. When the demand is so great simple pressure on the supply of credit alone is hardly sufficient.

Mr. REDMOND. Yet when the Federal Reserve Bank did raise its discount rate by a full 1 percent in 1929, as I remember it, the panic followed within a period of a relatively few weeks.

Mr. THOMAS. Do you think the panic would have followed in the same period if the Federal Reserve Bank had raised its discount rate by 1 percent in 1928?

Mr. REDMOND. I do not think the panic would necessarily have followed, but I am wondering whether Bagehot, whom I am quoting rather freely, was not right when he said that as a basis of policy, the discount rate should be lowered gradually and raised courageously, never less than by 1 percent.

Mr. THOMAS. All these are important questions of policy that I do not feel qualified to pass upon.

Mr. REDMOND. I do not want to ask you questions that you feel you cannot answer. The facts are simply for the basis of the record. The sequence of the facts is such that the rates were raised gradually until 1929.

The CHAIRMAN. What was the discount rate in October 1929; do you remember?

Mr. THOMAS. Six percent.

The CHAIRMAN. When was it fixed at 6 percent?

Mr. THOMAS. August 1929.

Senator GORE. Did they raise it in the spring? There was a good deal of discussion about it, I know.

Mr. THOMAS. No.

Senator KEAN. They ought to have raised it before.

Mr. REDMOND. The French and German systems, which you have referred to, are somewhat similar to the English, in trading for a term settlement, are they not?

Mr. THOMAS. Yes.

Mr. REDMOND. And are they likewise similar in the fact that they have highly organized branch banks.

Mr. THOMAS. That is right.

Mr. REDMOND. Which concentrate the security business in the market much more than our system here does.

Mr. THOMAS. The German banks are both banks and brokers.

Mr. REDMOND. They are a little of everything, are they not?

Mr. THOMAS. Yes.

Mr. REDMOND. They run industry and own industry, very largely.

Senator GORE. They are the principal brokers, are they not?

Mr. REDMOND. I think so.

The CHAIRMAN. Is there anything else?

Mr. REDMOND. No, Mr. Chairman. I want personally to thank you and Mr. Thomas for giving me this opportunity.

Senator KEAN. I would like to ask him two or three questions.

The CHAIRMAN. Proceed, Senator.

Senator KEAN. From 1914 to 1921 England was unable to settle its accounts. That is, they could not settle their day-to-day accounts in all that period. Is that right?

Mr. THOMAS. I do not know. I have just been told by Mr. Redmond—

Mr. REDMOND. I think, Senator, the fact was that they ceased trading for the term settlement during the war and had to carry over the settlement of July 1914, and settled it gradually, as business revived, after 1919, and did not start trading for the term settlement again for a considerable period after the war; but I do not think it is fair to say that they could not settle it. They did not settle it.

Mr. THOMAS. They settled accounts in the interim.

Mr. REDMOND. Yes. They were on a cash basis.

Mr. THOMAS. They ran on a cash basis at that time.

Senator KEAN. Do you know of any other period in English history where they did not settle the accounts?

Mr. THOMAS. No. I am not familiar with that history.

Senator KEAN. Are you familiar with the settlements in London?

Mr. THOMAS. I am as familiar with the mechanism of settlements in London as I have indicated here. I do not know much more.

Senator KEAN. That only means that you have looked in the book and seen that they call for a settlement every 2 weeks.

Mr. THOMAS. I have talked to a great many people who have engaged in it.

Senator KEAN. But you have not asked them about the failures of their system. You have asked them about the custom.

Mr. THOMAS. As a matter of fact, when I was there, at that time they were not using the system of term settlements. They had ceased to use it at that time.

Senator KEAN. I think I have nothing further.

The CHAIRMAN. That is all then. Thank you, Mr. Thomas.

The committee will now adjourn until tomorrow morning at 10:30.

(Whereupon, at 4:50 p.m., Thursday, Mar. 8, 1934, an adjournment was taken until tomorrow, Friday, Mar. 9, 1934, at 10:30 a.m.)

# STOCK EXCHANGE PRACTICES

FRIDAY, MARCH 9, 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), Adams, Bulkley, Townsend, Kean, 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; and Roland L. Redmond, counsel to the New York Stock Exchange.

The CHAIRMAN. The committee will come to order, please. There were three persons expected to appear this morning, but one of them is ill, and another one is detained in some other way, and the third one is unable to be here today. We will have at least one of them present on Monday, and we will have other persons to appear or matters to consider on Monday.

Senator TOWNSEND. Mr. Chairman, I wish to offer for the record a telegram sent to me by Mr. Leland Lyon, president of the Atlas Powder Co., Wilmington, Del. I should like the telegram made a part of the record and returned to me for my file.

The CHAIRMAN. The committee reporter will make the telegram a part of the record and return it to you for your files as requested.

[Telegram]

WILMINGTON, DEL., *March 9, 1934.*

Hon. JOHN G. TOWNSEND, JR.,  
*Washington, D. C. :*

While fully in accord with the President's recommendation for proper legislation for the protection of investors for the safeguarding of values and so far as it may be possible for the elimination of unnecessary and unwise speculation, we consider that the Fletcher-Rayburn National Securities Exchange bill if enacted would be thoroughly harmful to the industrial life of the country and would adversely affect the interests of all citizens. This bill in our opinion is unnecessarily and dangerously harsh in the restrictions it would impose in regulation the legitimate conduct of exchanges and would result in depriving industry of access to private capital. Further, we believe the attempt to place in the hand of a Federal Commission control of the essential functions of corporate management goes immeasurably beyond anything contemplated by the President's statement and would seriously endanger the interests of all employees and stockholders of every corporation. Other measures have been suggested by competent and disinterested authorities which in our opinion would accomplish the purpose advocated by the President without the destructive effects on industry which would undoubtedly result from the passage of this bill.

LELAND LYON, *President Atlas Powder Co.*

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Senator TOWNSEND. Also, Mr. Chairman, I have a copy of a letter written by J. P. Morgan & Co. to you, as chairman of the committee, copies of which were sent to each member of the committee, as I understand, and which I should like to have made a part of the record.

The CHAIRMAN. That will be done.

(The letter above referred to is as follows:)

MARCH 8, 1934

HON DUNCAN U. FLETCHER,

*Chairman Committee on Banking and Currency,  
United States Senate, Washington, D C*

DEAR SIR. The New York Times this morning says that Senator Robinson of Indiana, speaking in the Senate, cited testimony before the Senate Banking and Currency Committee that J. P. Morgan & Co., and others, had sold aircraft stock shortly before cancelation of the contracts, as evidence that "international bankers" had advance information.

Any suggestion that J. P. Morgan & Co. had advance information of the action referred to is entirely without foundation.

The 4,500 shares of stock in the United Aircraft Co. sold by us January 26 to February 1 as reported to your committee by the New York Stock Exchange, constituted part of the miscellaneous collateral securities for a large loan to C. E. Mitchell, made in 1929, concerning which loan your committee has full information. We have desired to realize on this collateral as opportunity offered, and accordingly the 4,500 shares of United Aircraft stock and some other securities in unrelated enterprises have been sold. These sales were made upon our own judgment without any suggestion from the borrower or others. We had no information, suggestion, or intimation from anyone affecting the airplane industry or the general situation beyond what was a matter of common knowledge and public information in the press.

We are sending copies of this letter to the members of your committee.

Very truly yours,

J P MORGAN & Co

The CHAIRMAN. I have a letter from the Swartwout Co., Cleveland, Ohio, addressed to me, which I wish the committee reporter to make a part of the record.

*THE SWARTWOUT Co.,  
Cleveland, Ohio, March 5, 1934*

Senator FLETCHER,

*Senate Office Building, Washington, D C.*

DEAR SIR: We have been besieged with requests to protest against the Fletcher-Rayburn bill, and inasmuch as those people who have an ax to grind usually make the most noise, even though they be in a minority, we thought we would like to offer a few words of support.

We have read this bill through very carefully, and although there are some things in it that may cause us a little inconvenience, there is nothing whatever that will prevent us running our business in a perfectly honest and straightforward way that we have followed for the last quarter of a century. And, if it will help to eliminate some of the abuses that have been prevalent, we certainly will be happy to put up with a little inconvenience.

We are a company doing a national business and our stock is listed on the Cleveland Stock Exchange, although not widely distributed. We wish you success, and want to assure you that we believe that our Senators are a level-headed group of gentlemen and quite capable of making a correct decision in such a case without a flood of protest or advice from the outside.

Yours very truly,

*THE SWARTWOUT Co.,  
D K SWARTWOUT, Jr.,  
Vice President and General Manager.*

The CHAIRMAN. Of course, the committee has received numerous letters and other communications in regard to the bill, S. 2693, but we will not encumber the record at this point with them. They can be taken up later.

Mr. Bernard Winfield wishes to submit some criticisms of the bill, followed by some recommendations, and we are glad to have them for our consideration.

(The matter above referred to follows:)

BERNARD WINFIELD,  
New York, March 1, 1934.

*To the Senate Committee on Banking and Currency and to Members of the House Interstate and Foreign Commerce Committee:*

The purpose of this communication is (1) to call attention to a provision of the proposed National Securities Exchange Act of 1934, which, if retained in its present form will (a) at least partially defeat the primary purpose of the act, and (b) legislate certain legitimate business out of existence; and (2) to recommend a method of revising that provision in such a way as to help accomplish the expressed purposes of the act, without working undue hardship on honest business enterprises.

A study of the proposed act indicates that among its purposes are the prevention of sudden and unreasonable fluctuations in security prices and the prevention of manipulation which results in such violent fluctuations.

Among the provisions of section 8, designed to prohibit manipulation of security prices, paragraph (9) of subsection (a) of that section prohibits all use of puts, calls, straddles, or other options of comparable type or character. Whereas other methods and instruments of stock trading are regulated, the use of puts, calls, etc., is prohibited.

In view of the fact that, when employed in certain ways and in connection with certain transactions, puts, and calls may help to prevent the sudden and unreasonable fluctuations in prices, which the act aims to prevent, and beyond this may actually foster conservatism in trading (and to that extent prevent excessive speculation), may we submit for your consideration the advisability of regulating rather than prohibiting the use of puts and calls?

#### DEFINITION OF PUTS AND CALLS

A "put" is an option to sell stock; a "call" is an option to buy stock, both forms of options must be exercised within a limited period of time, usually 30 days or less, in both cases at a stipulated price below the current market in the case of a put and above the current market in the case of a call. The stipulated price is usually within 10 percent of the current market. A "straddle" is a contract, either or both to buy and to sell stock at the market price prevailing at the time it is made, exercisable within a stipulated period of time. The purchaser of any of these option contracts pays a premium to the writer, who is the person or company agreeing to buy or sell stock within the time and at the price stated.

Puts and calls should not be confused with long- or short-term options given in return for services or other considerations, including the privilege of buying stock below the current open market price prevailing at the time the option is given. Puts and calls are bought and paid for with cash, and such contracts expire within a comparatively short time.

Thus, when the buyer of a security also purchases a put, he insures himself of a place to dispose of that security at a specified price, the seller of a security, by purchasing a call, insures himself of a place to repurchase at a specified price, thereby establishing the limit of possible loss on the transaction. Used in this manner, puts and calls are literally a form of insurance policy.

#### AN INSURANCE INSTRUMENTALITY

It is everywhere recognized that the insurance of risks is not only legitimate, but highly desirable. Shippers insure cargoes, manufacturers and merchants insure credit risks, employers and automobile owners insure against liability, property owners against fire loss. The carrying of certain forms of insurance protection is required by law.

Considered in the sense that insurance companies use the term "risk", all investing or trading in securities is a risk, every purchase or sale involves risk. The only practical way that such risks may be insured at the present time is by the purchase of put and call options, supplementing the purchase or sale of securities. Since one of the evident purposes of the act is to reduce

the element of risk, it would seem reasonable not to deny the investor or trader the opportunity to insure his risk. It is not necessary to eliminate the insurance functions of puts and calls in order to prevent such options from being used for manipulative purposes.

#### A PREVENTIVE OF VIOLENT PRICE FLUCTUATIONS

One of the principal factors contributing to a precipitous, panicky decline in security prices is fear—fear that prices may continue to drop. Another contributing factor is lack of financial resources to carry stock through a substantial decline, even though it may be only temporary. On a declining market, fear liquidation and forced liquidation both tend greatly to increase the extent of a decline in prices and intensify its disastrous consequences.

The investor or trader who holds a put as insurance against an unlimited decline in price knows that he can realize a fixed price for his securities and therefore is not influenced to liquidate through fear, nor is he forced to liquidate through lack of financial resources. If options existed to purchase or sell all securities within 10 percent of their current market price, such sudden and unreasonable fluctuations as have been witnessed at times during the past 4 years would have been impossible.

It is not intended by the preceding statements to imply that puts and calls form a guaranty against undesirable fluctuations in security prices. The extent to which they are effective is determined by the extent to which they are used by investors or traders. Whereas puts and calls have for years been widely used in England for insurance protection, they have been thus used in the United States to but a limited extent, due chiefly to the American investor's lack of understanding of this method of insuring against unlimited losses in security transactions. Investors and traders should be educated in the proper use of puts and calls, not prohibited from using them.

When security prices decline suddenly and to great extent, it is because there is a lack of buyers. When they advance unreasonably, it is because of a lack of sellers. A put, exercisable at a given point, creates a buyer, a call creates a seller. These options, therefore, help to maintain a balance between buyers and sellers.

#### LEGITIMATE MOTIVES OF PUT AND CALL WRITERS

Since the purpose of investing in securities is to employ capital profitably, it is obvious that an investor or investment institution, with entirely honest motives, may desire to either to accumulate or liquidate shares of a certain stock, and in the process of doing so to obtain prices as favorable as possible. It is a demonstrable fact that the writing of puts and calls helps to achieve this entirely legitimate objective.

If an investor evidences his willingness to purchase stock at a specific price by writing a put, or his willingness to sell stock at a specific price by writing a call, he collects a cash premium for entering into such contracts, thus earning money on his capital investment. Should such contracts result in the actual purchase or sale of stock, the open market price received or paid is more favorable than the market price current at the time the put and call is originally written. Between the more favorable purchase or sale price and the premium income, the investor who writes option contracts is able to achieve his objectives of employing capital profitably and accumulating or liquidating stock on favorable terms.

It hardly seems logical or reasonable that an investor or investment institution should be prohibited by law from endeavoring to employ his capital profitably by contracting to sell securities above the current market, or to buy them below current price levels, especially when the stabilizing influence of such contracts is considered.

#### MUTUALLY ADVANTAGEOUS

The preceding statement, briefly setting forth certain legitimate advantages accruing to both the writers and the buyers of puts and calls, indicates that such transactions may be simultaneously advantageous to both parties. An insurance company makes money by underwriting risks, yet the insured also



benefits. The writer of puts and calls, like the insurance company, enters into the contracts to make money, but the investor or trader who pays a premium for puts and calls also benefits—by the insurance protection which he thus obtains.

Actuarial principles may and are employed in writing puts and calls, the same as in underwriting other forms of risk.

#### STRENGTHENING MARGIN ACCOUNTS

Evidently the provisions in section 6 relating to margin requirements are intended to deter those financially ill-equipped from speculating in securities; to prevent sudden and wide fluctuations in security prices through forced liquidation of weakly margined accounts; and to prevent impairment of capital of brokers carrying margin accounts. Proper use of puts and calls helps to avoid these unfortunate contingencies

Puts and calls act as a strengthening factor in margin accounts. It has long been against the rules of the New York Stock Exchange for traders who hold puts and calls to carry accounts on any less margin than in required otherwise. Thus, when a trader holds a put or a call, the broker carrying his account is doubly protected. Should the price of stock fluctuate to the point where the trader's margin is wiped out, and should the broker be unsuccessful in either obtaining more margin or closing out the trader's account, the put or call, as the case may be, protects the broker from loss.

The element of strength which puts and calls imparts to margin accounts would obviate the necessity of sustaining many such losses by both traders and brokers as have bestrewn the records of the past 4 years.

#### RECOMMENDATIONS

Assuming that the act, insofar as its provisions apply to puts and calls, is intended to prevent price manipulation, violent fluctuations, and reckless speculation, and further assuming that the act is not intended to deny the investor or trader the advantages of insurance protection, it is suggested that puts and calls be not prohibited, but regulated; and that such regulation be provided for by revising sec. 8 of the bill so that it includes the following provision:

"That all transactions in securities against a put, call straddle, or other option, be subject to the same rules and regulations with reference to margin requirements, pool operations, short selling, or manipulation, as apply to other transactions"

Respectfully submitted.

BERNARD WINFIELD

The CHAIRMAN, Judge J. Harry Covington, counsel for the American Institute of Accountants, has submitted on behalf of John L. Carey, secretary of that Institute, some suggestions in regard to the pending bill, which will be made a part of the record for consideration by the committee.

(The matter above referred to is as follows:)

COVINGTON, BUEHLING, RUBLEE, ACHESON & SHORB,  
Washington, D C., March 8, 1934

HON. DUNCAN U FLETCHER,

Chairman of Committee on Banking and Currency,  
United States Senate, Washington, D C.

DEAR SIR: Incident to the hearings on the bill, H R. 7852, proposing to enact the "National Securities Exchange Act of 1934", the American Institute of Accountants herewith presents a memorandum brief which it requests to be incorporated in the hearings.

This brief sets forth the views of the public accountants respecting certain changes in the bill which are believed to be essential for reasonable and effective administration, and properly to limit the responsibility of the public accountants.

Sincerely yours,

J. HARRY COVINGTON,  
Counsel for American Institute of Accountants.

## MEMORANDUM SUBMITTED BY AMERICAN INSTITUTE OF ACCOUNTANTS

This memorandum is respectfully submitted to the congressional committees which have under consideration the so-called "national securities exchange bill of 1934", on behalf of the American Institute of Accountants, national professional accountancy organization.

## ANNUAL AND QUARTERLY AUDITS

Section 12 (a) (2) of the bill would require every issuer of a security registered on a national securities exchange to file with the Federal Trade Commission annual and quarterly reports, including among other things a balance-sheet and profit-and-loss statement certified by an independent public accountant.

We approve the requirement of at least one report each year certified by independent public accountants. This is in accord with what is commonly regarded as good practice.

It is preferable that the certified report be rendered as of a date marking the end of the natural business year of the company concerned (which is not necessarily Dec. 31), i.e., the date most closely coinciding with the termination of the annual business cycle, which is also usually the date at which inventories are at their minimum. The work of the regulatory body would be facilitated by spreading the closing dates of various industries in accord with their natural fiscal periods, and resulting financial statements would be more valuable for comparative purposes. It is suggested that there be inserted in section 12 (a) (2) a provision making it clear that annual reports are to be filed as of the date marking the end of the natural business year of the company concerned.

However, there is serious question in our minds whether the requirement of quarterly reports certified by independent public accountants is desirable in all cases.

Accounts are essentially continuous historical records and accounting statements for brief periods of time are less significant and valuable than for longer periods of time. On the basis of personal judgment and convention certain charges and credits must be assigned more or less arbitrarily to one period or another and when the period is as short as 3 months it is very difficult to prepare accounting statements which are not open to the danger of misleading the uninformed reader. Items of income or expense, which are extraordinary or unusual in either nature or amount influence the net result shown for a given quarter to a greater disproportionate extent than they would influence the net result shown by an annual statement which includes the same items. Many businesses are of a highly seasonal nature, e.g., automobile, department stores (with Easter and Christmas seasons), flour milling, and other industries related in one way or another to agriculture, and the real result of the operations is not dependent on a few months—as quarterly—but on at least the full annual cycle. It must, therefore, be recognized that the results shown by quarterly statements cannot be stated with the same degree of accuracy as statements for a longer period, such as annual statements.

It is not intended to be argued that corporations generally should not inform their stockholders quarterly of the corporation's progress, but it should be recognized that such quarterly statements are to a greater extent dependent upon estimates than needs to be the case with statements for longer periods. Neither is it argued that more frequent than annual examinations of corporate accounts are not desirable, but to require that quarterly statements must be certified would tend to give them a weight and authority beyond that which they inherently possess, and might well lead investors to place an undue reliance thereon.

In view of the foregoing, it would be unreasonable, and indeed improper, to place upon public accountants, with respect to quarterly statements, the heavy burden of responsibility set forth in section 17 of the bill.

If it is considered essential that independently audited statements be submitted more often than once a year, there would be less objection to semiannual reports than to those covering only 3 months.

## LIABILITY

Section 17 (a) of the bill provides that accountants may be sued for damages if they have made any statement which is false or misleading in respect to any

matter sufficiently important to influence the judgment of an average investor. It will, of course, become the duty of the courts to determine what might influence the judgment of an "average investor", as the courts have had for many years the duty of determining what might be the actions or the judgment of a "reasonable man". The term "average investor" has had no judicial determination. It is, in fact, novel to the law, and the type of person who is an "average investor" may vary greatly in different parts of the country. We suggest, therefore, that the phrase "an average investor" appearing in section 17, page 32, line 2, be changed to "a reasonable man." The action and the judgment of "a reasonable man", and consequently matters which would influence that action or judgment, can in harmony with the existing general law be readily determined by the courts.

It is necessary for us to object most strenuously to the measure of damages outlined in section 17 (b) and (c). Under these provisions it is possible that an accountant who had made an honest error might be held liable for an amount which would have no relation whatever to the amount of damage occasioned by his error. The accountant is an expert exercising his professional skill and judgment for a fee. It seems to us that there is no precedent in law or equity on the basis of which such an expert should be exposed to immeasurable liability in the absence of fraud.

It seems perfectly possible that under section 17 (b) and (c) an investor who had sustained loss might, if he discovered an error in the statement certified by an independent accountant, sue that accountant for a sum much greater than the amount of the damage occasioned by the accountant's error. Such a provision would be likely to encourage unwarranted suits against accountants and would impose upon the profession the heavy financial burden of defending such suits even though the courts found the accountants blameless.

No reputable accountant has any desire to deny or ignore his responsibility to those who rely upon statements which he certifies. The courts under existing law have already imposed upon accountants a financial liability quite sufficient to deter any accountant from deliberate fraud or deceit. A public accountant's reputation for probity is his chief asset and no one would be willing to risk the professional destruction which certainly follows discovery of a dishonest or a careless act.

It seems to us that the measure of damages imposed upon accountants by section 17 (b) and (c) is of a punitive character which is unreasonable and unwarranted by the record of the accountancy profession in the United States, and we respectfully request that it be modified.

#### UNIFORM ACCOUNTING

Under section 18 (b) of the bill the Federal Trade Commission would have power to prescribe uniform accounting for industry. This provision we believe does not belong in a bill designed to regulate national securities exchanges. It is a matter of such great importance that it should be considered as a separate problem. We understand that a committee on uniform accounting and statistical reporting for industry appointed by the Secretary of Commerce is now giving thought and study to the matter.

The application of attempted uniformity in the keeping of the accounts of public utilities and railroads has not, it is believed, tended toward the presentation of more dependable financial statements by companies in those fields than has been the case with industrial companies. On the contrary, it is believed that there has been a greater advance in the accounting practices and in the recognition and treatment of such problems as those arising with respect to allowances for depreciation of plant and property, etc., in the case of representative industrial companies than in the fields subject to governmental regulation of accounting. Uniformity of principles is vastly more important than superficial uniformity of form.

It should also be observed that, if public accountants are to have imposed upon them the heavy burden of responsibility set forth in section 17, there is a gross inequity in having a body which obviously does not, and can not, have the background of professional training and experience in accounting essential to enable it to speak the last word on such a subject and the immediate first hand contact with new problems constantly arising, empowered to prescribe the form or manner in which the financial statements to be certified by the

public accountant shall be prepared. Rigidity of form may be dangerous because it cannot in the very nature of the case foresee and prepare for the disclosure required with respect to new developments or situations having an important bearing upon the statement of the results of a company's operations or of its financial position. A sufficient, and at the same time more reasonable, requirement is that the Federal Trade Commission may call for the disclosure in the financial statements of any information which it deems essential to the completeness or clear understanding thereof.

I In the final analysis, the problem of disseminating reliable financial information to investors is not dependent upon the application of uniform accounting methods or upon a rigid uniformity in form of the statements to be submitted to investors. Further, the introduction of uniform accounting methods or of uniform forms of financial statements will not solve the problem.

Accordingly, we believe it inappropriate and undesirable from the point of view of the investor that there be included in this bill a provision authorizing the Trade Commission to prescribe accounting forms and methods. We respectfully recommend the elimination of section 18 (b).

Representatives of the institute would be glad to enter into discussion of any of the questions raised herein.

Respectfully submitted

JOHN L. CABY,

*Secretary, American Institute of Accountants.*

*NEW YORK, March 6, 1934*

The CHAIRMAN. There is no one else here this morning, I believe, who desired to be heard? [A pause, without response.] Unless some member of the committee has something to suggest, we will now adjourn until 10:30 Monday morning.

(Thereupon, at 11:05 Friday, Mar. 9, 1934, the committee adjourned to meet at 10:30 a.m. Monday, Mar. 12, 1934.)

# STOCK EXCHANGE PRACTICES

MONDAY, MARCH 12, 1934

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

The committee met at 10:30 a.m., pursuant to adjournment on Friday, March 9, 1934, in room 301 of the Senate Office Building, Senator Duncan U. Fletcher presiding.

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

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; and Roland L. Redmond, counsel to the New York Stock Exchange.

The CHAIRMAN. The committee will come to order, please. Will Mr. Whitney please come up to the committee table?

## STATEMENT OF RICHARD WHITNEY, PRESIDENT OF THE NEW YORK STOCK EXCHANGE—Resumed

The CHAIRMAN. Mr. Whitney, Mr. Pecora wants to ask you some questions in connection with the additional data to be submitted to the committee this morning.

Mr. PECORA. Mr. Whitney, as to the additional data you expected to receive from the members of the New York Stock Exchange in reply to a questionnaire you addressed to them a week ago Saturday, that is, on March 3, 1934, respecting transactions in the so-called "aviation stocks", have you that data here now?

Mr. WHITNEY. Yes, sir. We have the originals right here on the table before you. I might explain that we have brought in both the originals and duplicates of the originals.

Mr. PECORA. Mr. Chairman, I wish that they might be received in evidence but need not be spread on the record of the committee's hearings.

The CHAIRMAN. All right; they will be received in evidence and marked for identification.

Senator KEAN. Mr. Chairman, I suggest that Mr. Whitney file with the committee a copy of the questionnaire that he sent out to the members of the New York Stock Exchange.

Mr. PECORA. That has already been made a part of the record of the committee's hearing, Senator Kean.

Senator KEAN. All right.

Mr. WHITNEY. Yes, sir; that is a part of your record as of March 3, 1934, I believe.

Mr. PECORA. Have you a tabulation of these returns made by the members of the exchange, Mr. Whitney?

Mr. WHITNEY. If I might explain?

Mr. PECORA. Certainly.

Mr. WHITNEY. We are handing you the original answers made by the members of the New York Stock Exchange to the questionnaire, and you will find those originals in the packages here on the table before me. And we have duplicates of these original answers in our hands. I wish to apologize, perhaps, for the condition of some of these original answers made by members of the exchange, because they have been worked on, and check marks have been made upon them in order to get the compilations of the purchases and sales in the case of each one of these, I believe, seven so-called "aviation stocks." There were some sixty-odd thousand tickets which had to be written up from these original returns, and sorted by names as well as by stocks.

I have also here one of these compilations made of all trades from December 1, 1933, to February 9, inclusive, in United Aircraft & Transport Corporation stock. I have some 10 copies of this compilation for the use of the members of the committee, which we will also make available to you.

The balance of the trades, in the case of the other so-called "aviation stocks", we will have ready for you just as soon as they can be made available.

Mr. PECORA. Could you give us some idea when that will be?

Mr. WHITNEY. I think by Thursday or Friday of this week all will be ready to be submitted to you.

The CHAIRMAN. Does that apply to one company, and do you mean that you will have the same compilation made as to the other stocks?

Mr. WHITNEY. Yes, sir. This applies as to a compilation for one company, being the United Aircraft & Transport Corporation stock; and we will get the other compilations ready for you on Thursday or Friday of this week. You have here on the committee table the original answers, and also there are duplicates that we have made, having made up individual tickets for each trade made during that period of a little over 2 months, and they have been sorted, as I say, by names and by stocks; and from that data compilations have been made and are now being made. But the compilation is only available this morning as to the one company. This has been a stupendous task, as you may well imagine.

Senator ADAMS. I hope, Mr. Whitney, you are not purposing to render a bill to the committee of the cost to you of this work.

Mr. WHITNEY. Would you be good enough to permit me to do so?

Senator ADAMS. I am afraid the chairman would not permit that.

Senator GOLDSBOROUGH. Will these compilations cover all of the several corporations?

Mr. WHITNEY. Yes, sir. We have a compilation for but one company here this morning, but when we complete the work the compilations will cover all of the companies as to which request was made for information.

The CHAIRMAN. That material may be received in evidence and marked for identification. And the subsequent material as it comes

in may be likewise received in evidence and marked for identification.

(The several volumes of original replies submitted, being answers received from members of the New York Stock Exchange in response to its questionnaire under date of Mar. 3, 1934, was marked "Whitney Exhibit No. 7 for identification, Mar. 12, 1934", and the data is to be turned over to Mr. Pecora.)

The CHAIRMAN. Now the question arises: What will the committee do with this data? It seems to me that all of this data ought to be referred to Mr. Pecora, general counsel to the committee, for his examination and report. And it is now for the committee to decide whether this material should be made public or await a report on it from our general counsel.

Senator KEAN. I move that it be made public.

Senator GOLDSBOROUGH. I see no objection to it.

The CHAIRMAN. We haven't the data in shape to be made public.

Mr. PECORA. This portion now introduced represents the returns made by the members of the New York Stock Exchange as to transactions in United Aircraft & Transport Corporation stock. There are seven other issues involved. I see no objection to making this public, Mr. Chairman.

The CHAIRMAN. Very well, this will be made public.

Mr. WHITNEY. Mr. Pecora, I have forgotten whether there were seven or eight requested, but we have and will have whatever they are.

Mr. PECORA. I believe there were eight different issues, but two of them referred to securities of one company.

Mr. REDMOND. Two of them were Curtiss-Wright issues.

Mr. PECORA. There were seven companies, but a total of eight stock issues.

Mr. WHITNEY. What I want to say is, that whatever your request was, you will receive compilations covering those stocks, this compilation now presented being only for the one stock.

Mr. PECORA. It would be a matter of great convenience to me if I might have two copies of this compilation instead of one, so that I might send one to New York to be worked on by the committee's staff up there.

Mr. REDMOND. Here is another copy of the compilation for you, Mr. Pecora.

Mr. PECORA. I find there are eight corporations, with two issues in the case of one corporation, being the Curtiss-Wright Corporation, making nine issues in all.

Mr. REDMOND. Very well. Whatever the questionnaire shows I am sure is right.

Mr. PECORA. All right. If this may now be marked.

The CHAIRMAN. That will be received in evidence and appropriately marked for identification.

(The compilation for the United Aircraft & Transport Corporation stock was marked "Whitney Exhibit No. 8 for identification, Mar. 12, 1934", and the data was turned over to Mr. Pecora.)

Mr. PECORA. Now, Mr. Whitney, have you the minute books of the various committees of the New York Stock Exchange called for about a week ago?

Mr. WHITNEY. Mr. Redmond says they are here.

Mr. PECORA. May they now be produced and marked for identification, and made available to me so that I may examine them?

Mr. WHITNEY. I wish to stress again, Mr. Chairman, the very confidential nature of some of the matter contained in these minute books, relating to outsiders as well as to members of the New York Stock Exchange. I therefore desire very earnestly to request that that fact be fully realized.

Mr. PECORA. I am going to say, Mr. Whitney, that full heed will be given to the situation you have in mind and now call the attention of the committee to. That is why I am now asking that these records may merely be marked for identification and not actually placed in evidence. I will go over them with the members of my staff, and we will only utilize for the committee record such portions thereof as are pertinent to the inquiry.

The CHAIRMAN. They will be marked for identification and referred to the general counsel of the committee as they are now produced.

Mr. REDMOND. Mr. Chairman, I produce first the report submitted to the committee on publicity of the New York Stock Exchange and dated April 21, 1931, which was covered by your subpoena.

The CHAIRMAN. That will be received and appropriately marked for identification.

(The report of the Committee on Publicity of the New York Stock Exchange, dated Apr. 21, 1931, was marked "Whitney Exhibit No. 8-A for identification, Mar. 12, 1934", and will be referred to Mr. Pecora.)

Mr. REDMOND. I now produce the minute book of the Conference Committee of the New York Stock Exchange for the period from the inception of that committee in June of 1925 down to date. I might explain that there have been held a number of meetings by this committee subsequent to June 14, 1933, the minutes of which have not been included in this book but still are in draft form, it being the practice to write those minutes up only periodically.

The CHAIRMAN. The book will be received and marked for identification.

(The minute book of the conference committee of the New York Stock Exchange from June of 1925 to date was marked "Whitney Exhibit No. 9 for identification, Mar. 12, 1934," and the same will be turned over to Mr. Pecora.)

Mr. REDMOND. I now produce minute book no. 10 of the governing committee of the New York Stock Exchange, containing the minutes of said committee from June 27, 1929, to May 3, 1933. This book covers a longer period than was referred to in the subpoena, but I produce the volume because the minutes of 1930 are included in it.

The CHAIRMAN. The same will be received and marked for identification.

(The minute book of the governing committee of the New York Stock Exchange from June 27, 1929, to May 3, 1933, was marked "Whitney Exhibit No. 10 for identification, Mar. 12, 1934," and the same will be turned over to Mr. Pecora.)

Mr. REDMOND. I produce minute book no. 11 of the minutes of the governing committee of the New York Stock Exchange, covering



the minutes of said committee from May 9, 1933, up to and including February 20, 1934. I might explain that I believe there have been one or more meetings of the committee since that date which have not been recorded in the minute book due to the fact that these minute books have either been in transit between Washington and New York or were being held here awaiting production before this committee.

The CHAIRMAN. Let the book be received and appropriately marked for identification.

(Minute book no. 11 of the governing committee of the New York Stock Exchange was marked "Whitney Exhibit No. 11 for identification, Mar. 12, 1934," and will be turned over to Mr. Pecora.)

Mr. REDMOND. I produce the minute book of the committee on business conduct of the New York Stock Exchange, containing the minutes of said committee from December 29, 1930, to September 21, 1931.

The CHAIRMAN. Let the same be received and appropriately marked for identification.

(The minute book of the committee on business conduct of the New York Stock Exchange from Dec. 29, 1930, to Sept. 21, 1931, was marked "Whitney Exhibit No. 12 for identification, Mar. 12, 1934", and will be turned over to Mr. Pecora.)

Mr. REDMOND. I produce another minute book of the committee on business conduct of the New York Stock Exchange, containing the minutes of said committee from September 22, 1931 to June 30, 1933.

The CHAIRMAN. The same will be received and appropriately marked for identification.

(A minute book of the committee on business conduct of the New York Stock Exchange for the period from Sept. 22, 1931, to June 30, 1933, was marked "Whitney Exhibit No. 13 for identification, Mar. 12, 1934", and the same will be turned over to Mr. Pecora.)

Mr. REDMOND. I produce another minute book of the committee on business conduct, containing the minutes of said committee from February 2, 1933, to February 21, 1934. I might explain that the minutes of the committee from February 8 to February 21, 1934, appear in this volume in draft form only, because they have not yet been approved by the committee on business conduct, and that there have been several meetings of this committee since February 21, 1934, which have not been recorded in this minute book because these books have been under subpoena here in Washington.

The CHAIRMAN. The same will be received and appropriately marked for identification.

(The minute book of the Committee on Business Conduct of the New York Stock Exchange for the period from Feb. 2, 1933, to Feb. 21, 1934, was marked "Whitney Exhibit No. 14 for identification, Mar. 12, 1934", and the same will be turned over to Mr. Pecora.)

Mr. REDMOND. Mr. Pecora, the same subpoena under which I am producing these various minute books called for a certain financial statement of the New York Stock Exchange, or rather certain financial statements. Do you wish them produced at this time?

Mr. PECORA. If you will.

Mr. REDMOND. I now produce an envelope containing reports of the finances of the New York Stock Exchange for the years 1931, 1932, and 1933. The report for 1932 includes comparable figures for the year 1931, and therefore that single report covers 2 years. Do you want these now, Mr. Pecora?

Mr. PECORA. If you will just have them marked for identification.

Mr. REDMOND. Do you wish each report separately?

Mr. PECORA. Yes; if you will.

Mr. REDMOND. I produce first the report of finances for 1931 and 1932.

The CHAIRMAN. The same will be received and appropriately marked for identification.

(The financial report of the New York Stock Exchange for 1931 and 1932 was marked "Whitney Exhibit No. 15 for identification, Mar. 12, 1934", and will be turned over to Mr. Pecora.)

Mr. REDMOND. Next I produce the report of finances for the year ended December 31, 1933.

The CHAIRMAN. The same will be received and appropriately marked for identification.

(The financial report of the New York Stock Exchange for the year ending Dec. 31, 1933, was marked "Whitney Exhibit No. 16, for identification, Mar. 12, 1934", and will be turned over to Mr. Pecora.)

Mr. REDMOND. I produce the financial statements of the New York Stock Exchange Building Co., an affiliated company of the exchange, for the year ended December 31, 1932. This report contains in a separate column comparable figures for the year 1931, so, in effect, it covers both years.

The CHAIRMAN. It will be received and appropriately marked for identification.

(The reports of the financial condition of the New York Stock Exchange Building Co. for the years 1931 and 1932 were marked "Whitney Exhibit No. 17 for identification, Mar. 12, 1934", and the same will be turned over to Mr. Pecora.)

Mr. REDMOND. I produce the financial statement of the New York Stock Exchange Building Co. for the year ended December 31, 1933, and with that statement, and I ask that it may be marked as a part of the same exhibit, the balance sheet of No. 39 Broad Street Corporation, a subsidiary of the New York Stock Exchange Building Co.

The CHAIRMAN. That will be done, and they will be received and appropriately marked for identification.

(The financial statement of the New York Stock Exchange Building Co. for the year ended Dec. 31, 1933, together with a balance sheet of No. 39 Broad Street Corporation, a subsidiary of the New York Stock Exchange Building Co., were marked "Whitney Exhibit No. 18 for identification, Mar. 12, 1934", and the same will be turned over to Mr. Pecora.)

Mr. REDMOND. I produce the financial statement of the Stock Clearing Corporation for the year ended December 31, 1931.

The CHAIRMAN. The same will be received and appropriately marked for identification.

(The financial statement of the Stock Clearing Corporation, a subsidiary of the New York Stock Exchange, for the year ended Dec.

31, 1931, was marked "Whitney Exhibit No. 19 for identification, Mar. 12, 1934", and the same will be turned over to Mr. Pecora.)

Mr. REDMOND. I produce the financial statement of the Stock Clearing Corporation for the year 1932.

The CHAIRMAN. The same will be received and appropriately marked for identification.

(The financial statement of the Stock Clearing Corporation, a subsidiary of the New York Stock Exchange, for the year 1932 was marked "Whitney Exhibit No. 20 for identification, Mar. 12, 1934", and the same will be turned over to Mr. Pecora.)

Mr. REDMOND. I now furnish the financial statement of the Stock Clearing Corporation for the year ended December 31, 1933.

The CHAIRMAN. The same will be received and appropriately marked for identification.

(The financial statement of the Stock Clearing Corporation, a subsidiary of the New York Stock Exchange, for the year ended Dec. 31, 1933, was marked "Whitney Exhibit No. 21 for identification, Mar. 12, 1934", and the same will be turned over to Mr. Pecora.)

Mr. REDMOND. I produce the financial statement of the New York Quotation Co., an affiliate of the New York Stock Exchange, for the year ended December 31, 1931.

The CHAIRMAN. The same will be received and appropriately marked for identification.

(The financial statement of the New York Quotation Co., an affiliate of the New York Stock Exchange, for the year ended Dec. 31, 1931, was marked "Whitney Exhibit No. 22 for identification, Mar. 12, 1934", and the same will be turned over to Mr. Pecora.)

Mr. REDMOND. I now produce the financial statement of the New York Quotation Co. for the year ended December 31, 1932.

The CHAIRMAN. The same will be received and appropriately marked for identification.

(The financial statement of the New York Quotation Co., an affiliate of the New York Stock Exchange, for the year ended Dec. 31, 1932, was marked "Whitney Exhibit No. 23 for identification, Mar. 12, 1934", and the same will be turned over to Mr. Pecora.)

Mr. REDMOND. I now produce the financial statement of the New York Quotation Co. for the year ended December 31, 1933.

The CHAIRMAN. The same will be received and appropriately marked for identification.

(The financial statement of the New York Quotation Co., an affiliate of the New York Stock Exchange, for the year ended Dec. 31, 1933, was marked "Whitney Exhibit No. 24 for identification, Mar. 12, 1934", and the same will be turned over to Mr. Pecora.)

Mr. REDMOND. I now produce the financial statement of the New York Stock Exchange Safe Deposit Co. for the year ended December 31, 1931, this company likewise being an affiliate of the New York Stock Exchange.

The CHAIRMAN. The same will be received and appropriately marked for identification.

(The financial statement of the New York Stock Exchange Safe Deposit Co., an affiliate of the New York Stock Exchange, for the year ended Dec. 31, 1931, was marked "Whitney Exhibit No. 25 for identification, Mar. 12, 1934", and the same will be turned over to Mr. Pecora.)

Mr. REDMOND. I now produce the financial statement of the New York Stock Exchange Safe Deposit Co. for the year ended December 31, 1932.

The CHAIRMAN. The same will be received and appropriately marked for identification.

(The financial statement of the New York Stock Exchange Safe Deposit Co., an affiliate of the New York Stock Exchange, for the year ended Dec. 31, 1932, was marked "Whitney Exhibit No. 26 for identification, Mar. 12, 1934", and the same will be turned over to Mr. Pecora.)

Mr. REDMOND. I now produce the financial statement of the New York Stock Exchange Safe Deposit Co. for the year ended December 31, 1933.

The CHAIRMAN. The same will be received and appropriately marked for identification.

(The financial statement of the New York Stock Exchange Safe Deposit Co., an affiliate of the New York Stock Exchange, for the year ended Dec. 31, 1933, was marked "Whitney Exhibit No. 27 for identification, Mar. 12, 1934", and the same will be turned over to Mr. Pecora.)

Mr. REDMOND. Mr. Pecora, although not expressly covered by the subpoena I have here a report of the Trustees of the Gratuity Fund of the New York Stock Exchange. This fund, as you know, is administered by trustees pursuant to the constitution of the exchange, and in the past its income has been reflected in various financial statements of the New York Stock Exchange. I have this data here in case the committee feels it would be necessary for them to be made a part of the record in order to complete the financial picture of the New York Stock Exchange.

Mr. PECORA. So long as you have them I suggest they might assist us in making a breakdown of the picture, therefore would be glad if you would put them in evidence.

Mr. REDMOND. Then I produce the Report of the Trustees of the Gratuity Fund of the New York Stock Exchange for the year ended December 31, 1931.

The CHAIRMAN. The same will be received and appropriately marked for identification.

(The Report of the Trustees of the Gratuity Fund of the New York Stock Exchange for the year ended Dec. 31, 1931, was marked "Whitney Exhibit No. 28 for identification, Mar. 12, 1934", and the same will be turned over to Mr. Pecora.)

Mr. REDMOND. I now produce the Report of the Trustees of the Gratuity Fund of the New York Stock Exchange for the year ended December 31, 1932.

The CHAIRMAN. The same will be received in evidence and appropriately marked for identification.

(The Report of the Trustees of the Gratuity Fund of the New York Stock Exchange for the year ended Dec. 31, 1932, was marked "Whitney Exhibit No. 29 for identification, Mar. 12, 1934", and the same will be turned over to Mr. Pecora.)

Mr. REDMOND. I now produce the Report of the Trustees of the Gratuity Fund of the New York Stock Exchange for the year ended December 31, 1933

The CHAIRMAN. The same will be received and appropriately marked for identification.

(The Report of the Trustees of the Gratuity Fund of the New York Stock Exchange for the year ended Dec. 31, 1933, was marked "Whitney Exhibit No. 30 for identification, Mar. 12, 1934", and the same will be turned over to Mr. Pecora.)

Mr. REDMOND. Mr. Pecora, in connection with these financial statements I wish to draw attention to the fact that they represent separate financial statements of the New York Stock Exchange and its affiliated companies, and that, therefore, there are large inter-company payments, either debits or credits, so that a combination of these figures would not truly reflect the financial position of the exchange as a consolidated institution, unless the intercompany items are eliminated. There is no consolidated balance sheet of the New York Stock Exchange other than the report of the finances made by the treasurer of the exchange to the governing committee in accordance with the constitution, which I have handed you, I think, as the first of the exhibits submitted here. But that, of course, is not strictly speaking a consolidated report, eliminating the inter-company transactions or items.

Mr. PECORA. We will be glad to bear in mind that explanation of the reports.

The CHAIRMAN. Mr. Redmond, what is the nature of this gratuity fund?

Mr. REDMOND. The reports of the trustees of the gratuity fund of the New York Stock Exchange?

The CHAIRMAN. Yes.

Mr. REDMOND. Under the constitution there is a fund administered by trustees, and on the death of a member of the exchange they pay to certain of his heirs a fixed sum of money. That fund has been built up over a period I think of more than 50 years by means of contributions paid in by members of the exchange whenever a member dies. They have contributed in the past slightly more than the amount which is paid to the heirs of a deceased member, and therefore the fund has accumulated and is in the nature of a mutual insurance fund. But it is administered by trustees.

The CHAIRMAN. Very well.

Mr. REDMOND. Mr. Chairman, may I simply say that I do not know what I am to do with these minute books. I understand that they are now before the committee for identification.

The CHAIRMAN. They have been referred to Mr. Pecora.

Mr. REDMOND. Of course, strictly speaking, Mr. Pecora, I am only too delighted to have them marked for identification, and do not misunderstand me on that point, but I do want to know when these books will be made available to the exchange. In regard to the governing committee, the minutes are very important, because that is a very active committee, and we are of course anxious to get these books back to New York as promptly as possible.

Mr. PECORA. Mr. Redmond, I will endeavor to read these minutes during the next 2 days, and then probably we can arrange to have them sent back to New York.

Mr. REDMOND. I would rather have them returned to me here, as promptly as may be possible, so that I can send them back to New York.

Mr. PECORA. All right. And they can go back to the offices of the New York Stock Exchange, but be available there to the members of our staff.

Mr. REDMOND. If the committee so requests, but I feel that we should have a specific request from the committee. I might again explain that these books are of a highly confidential nature; that they contain information which might threaten the financial life of many men who are engaged in business, and who have been engaged in business for many years, and we feel that we must guard them very jealously with a view to there not being any leakage in any way.

Mr. PECORA. I assure you, Mr. Redmond, that every precaution will be taken by me to prevent any "leakage" as you term it.

Mr. REDMOND. I have no doubt of that, Mr. Pecora, and if the committee authorizes it I will make the books available to members of your staff, but we do want to know that they will only be made available to the proper parties, under the proper conditions, and that this highly confidential data will be properly protected.

Mr. PECORA. I think the most expeditious way of handling these exhibits is, as has been done here, to offer them and have them marked for identification, and at the same time it will make their contents available to the members of the committee.

The CHAIRMAN. What do you mean by that, Mr. Pecora?

Mr. PECORA. I mean that I will look them over while they are here in Washington, and that I will devote as much time as I can during the next couple of days to that task. That I will then return them to Mr. Redmond, so that he may send them back to the officers of the exchange in New York, with the understanding that the members of the investigatory staff of the committee, authorized by me, may have access to them; and that appropriate instructions will be given to the end that it will prevent any "leakage", as Mr. Redmond calls it, of the contents of these books. It is not my desire to present to the committee any of the contents of these records that do not relate to the subject matter of our investigation.

Mr. REDMOND. I trust, Mr. Chairman, that I will be afforded an opportunity, in the event any contents of these minute books are to be placed in public evidence, to present to the committee, if I feel it is necessary so to do, the dangers that might arise from the publication of this highly confidential data.

Mr. PECORA. I will go so far, Mr. Redmond, as to say that I will be very happy to tell you in advance, after we have made an examination of these records, what portions of them in our opinion ought to go into the record. That will give you a chance to appear before the committee and urge such objections as you may then be advised you should, urge against such publication.

Mr. REDMOND. I appreciate that, Mr. Pecora, and I take it that I can count on getting these books by Thursday of this week. These are minute books of committees that are quite active and therefore the books are in more or less constant use.

Mr. PECORA. I fully understand that they are original records, and of great value to the New York Stock Exchange in the conduct of its business, and assure you I do not want to be responsible for their safety any longer than I can help.

Mr. REDMOND. That is fine.

The CHAIRMAN. With that understanding we will proceed now. Mr. Whitney, have you anything further to say, or has Mr. Redmond anything further to say?

Mr. WHITNEY. No, Mr. Chairman, unless there are questions that you or the other members of the committee wish to ask me with regard to these matters.

The CHAIRMAN. Does any member of the committee wish to ask Mr. Whitney any questions?

Senator KEAN. Not yet. I want to read over these statements first.

Senator GOLDSBOROUGH. I have nothing to ask at this time.

Senator ADAMS. I have no questions.

The CHAIRMAN. Very well, Mr. Whitney, we are much obliged to you for coming and making this complete answer to our subpoena and our questions here.

(Thereupon Mr. Whitney left the committee table.)

The CHAIRMAN. Is Mr. Potter present?

Mr. POTTER. Yes, Mr. Chairman.

**STATEMENT OF WILLIAM C. POTTER, OLD WESTBURY, LONG ISLAND, N. Y., CHAIRMAN OF THE BOARD, GUARANTY TRUST CO. OF NEW YORK**

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

Mr. POTTER. My name is William C. Potter. My residence is Old Westbury, Long Island; and I am chairman of the board of the Guaranty Trust Co., of New York.

The CHAIRMAN. Request has been made by a member of the committee that you be invited to come down and let us have your views on this bill. You have examined the bill, I take it?

Mr. POTTER. Yes, sir.

The CHAIRMAN. Give us your views about it in your own way.

Mr. POTTER. Mr. Chairman and members of the committee, I appreciate very much the honor of being called before your committee. There are only certain features about this bill that I pretend to have any views upon. In order to save your time as much as possible I have put those views in the form of a memorandum. It would take me about 15 minutes to read that memorandum if I might be permitted to do so without interruption. It would take longer if I were interrupted. I will be very glad to read it to you if you choose to handle it in that way.

The CHAIRMAN. I think that is a very good procedure.

Mr. POTTER. I then can answer questions, or will try to.

Mr. PECORA. Have you copies of your memorandum, Mr. Potter?

Mr. POTTER. Yes; I have some, and would be glad to distribute them.

Shall I proceed, Mr. Chairman?

The CHAIRMAN. Yes; proceed, Mr. Potter.

Mr. POTTER. It is my purpose to discuss only such features of the pending bill as affect banks and the continuance of certain functions and services which they now perform.

I want to avoid making useless comment upon any provisions of the bill, the intent of which is not embrative of banks and banking transactions. I realize from remarks of Senator Fletcher and Mr. Pecora quoted in the newspapers, and from a review of Mr. Corcoran's remarks before this committee, that certain features of the bill will probably be changed or at least clarified. If I do touch upon some provisions of the bill, the amendment of which is under consideration, I can only apologize for taking up the time of the committee, as I only have the bill as it is written to guide me.

Before considering any of the detailed provisions of the bill, may I remind the committee that the banks of this country do not confine their activities solely to banking, but are daily called upon to render many other services to their customers and the communities which they serve. These services relate very generally to all forms of intangible personal property which are referred to in this bill as securities. A very large proportion of the people of this country turn to their bankers for advice with respect to their investments and the purchase and sale of securities.

Furthermore, banks are called upon constantly to act as the agent of others in the care and custody of securities, the placing of orders for their purchase and sale and in the completion of such transactions, including the receipt or delivery of securities against payment or receipt of the purchase price, and in the safe transmittal of such securities. Many people are utterly unfamiliar with the manner in which such transactions should be carried on, or the agencies which should be employed for such purpose, and turn to their bankers in recognition of their experience and expertness in such matters. These services extend not only to individuals throughout the country, but in a very large measure to business corporations as well.

I believe that the members of this committee will concur in the view that it is desirable that the banks of this country should continue to advise their customers and to render such services.

Permit me to indulge in a further general observation. It seems to me that the regulation of the banks, so far as the National Government is concerned, should be confined to the Comptroller of the Currency, the Federal Reserve Board, and other agencies within the Federal Reserve System. I doubt the wisdom of divided responsibility with respect to such matters, and it seems to me obvious that the banks should not be subjected to the jurisdiction of two arms of the Government whose purposes and policies might at times conflict.

The point of these remarks will be indicated in my discussion of certain particular features of the bill.

Your attention is particularly called to the definition of the words "broker" and "dealer." As above explained, banks are daily engaged "in effecting transactions in securities for the account of others." They also necessarily engage in "buying and selling securities for their own account through a broker or otherwise." I assume from other portions of the bill that it is not your purpose to include banks within the definition of brokers or dealers. If this be so, I submit that these definitions should be changed, or that some specific statement should be made that banks are not included in such definition.

Mr. PECORA. I might just interrupt to say that I think that that assumption is a sound one.



**Mr. POTTER.** I just did not want to pass it by without making that statement.

There is another expression used in the bill which gives me concern, because it would seem to be broad enough to include banks, although I do not assume that it is the purpose of this committee to so include them. The phrase to which I refer is found in section 6 (a) and in several other sections of the bill. It reads: "Any person who transacts a business in securities through the medium of any" member of an exchange. Section 6 (a) prohibits any such person from making any loans or extensions of credit on any security not registered upon a national securities exchange.

Then I repeat the same remarks about that; and I imagine that the same answer is forthcoming.

I come now to a matter of greater moment; that is, whether the margin requirements set forth in the bill should control the action of banks in making loans upon collateral security. I submit that no such rigid limitations should be placed upon the loans which may be made by banks.

I understand that the primary purpose of these margin requirements is to prevent undue speculation in securities. So far as member banks of the Federal Reserve System are concerned, it seems to me that their activities in this regard should be controlled by the Federal Reserve Board and other agencies of that system, and that the expansion of credit, when such expansion is necessary and desirable, should not be curtailed by such a formula; that the purpose of the bill in restricting undue speculation should be accomplished through some other means. In this connection permit me to remind you that business men and corporations, in borrowing funds from their bankers for use in connection with their business, are often called upon to furnish collateral therefor. I recognize that under the provisions of the bill the margin requirements specified would not prevent a bank from loaning to a greater extent on securities acquired by a borrower and paid for in full more than 30 days prior to making the loan.

However, I think it must be recognized that many business men and corporations find it expedient and desirable from time to time for business purposes to purchase securities, although at the time of making such purchases they do not have in hand immediately the full amount of cash to pay for such securities in full. This is particularly true during a period when a business is actively expanding and large capital expenditures are necessary. It seems to me, therefore, that it would be undesirable to place such a rigid limitation on collateral loans which may be made by banks. I would recommend that banks should be excluded from this section of the bill dealing with such collateral loans.

In this connection may I call attention to the fact that under section 3 (a) of the Banking Act of 1933 each Federal Reserve bank is required to—

keep itself informed of the general character and amount of the loans and investments of its member banks, with a view to ascertaining whether undue use is being made of bank credit for the speculative carrying of or trading in securities, real estate, or commodities, or for any other purpose inconsistent with the maintenance of sound credit conditions,

and the Federal Reserve Board is given broad power of control of the undue expansion of credit facilities of the Federal Reserve System. By section 7 of the same act the Federal Reserve Board is given power upon the vote of six of its members to fix from time to time for each Federal Reserve district—

the percentage of individual bank capital and surplus which may be represented by loans secured by stock and bond collateral made by member banks within such district

This section specifically states that it is the duty of the board to establish such percentages with a view to preventing undue use of the bank loans for the speculative carrying of securities. The board is further given power to direct any member bank to refrain from further increase of its loans secured by stock or bond collateral for any period up to 1 year under penalty of suspension of rediscount privileges at Federal Reserve banks.

Further control of member banks is conferred upon the Federal Reserve Board by section 30 of the Banking Act of 1933, which gives the Board power to suspend any officer or director of a member bank "for continued unsafe or unsound practices in conducting the business of such bank."

It would seem that these provisions of the Banking Act of 1933 should be regarded as sufficient to vest in the Federal Reserve Board control over the undue use of credit for speculative purposes. However, if such view is not entertained by the Congress, then I respectfully submit that such further control as may be deemed desirable be vested in the Federal Reserve Board.

Furthermore, it is my judgment that the establishment of minimum margins for banks is unsound and unnecessarily restrictive in principle. Flexibility is essential to sound credit relations, but the bill relates credit to market values only and ignores the more important relation of real value, as well as other considerations, such as character, general financial standing, and previous relationships, all of which are in theory and in practice important to the banker, as well as to the customer. Not every man can walk in from the street to borrow money of the bank, irrespective of how good his collateral may be. Relations with the bank must be established, and there are many other factors which enter into the making of loans by a bank on a sound basis. There are times when credit can be extended soundly with very little margin. For instance, when cotton was selling at 4.6 cents a pound, it was a very good security with little margin. When at 12 cents a pound it might require largely-increased margins and even then be less safe to loan against. The principle is the same in respect to loans upon other commodities, merchandise, and securities.

I am fearful that the margin requirements of the bill, not only as applied to banks, but as applied to the exchanges as well, will have a harmful, deflationary effect. These results would be contrary to the course deemed advisable by high authority as an integral part of the recovery program. To demonstrate, the low prices of securities during the past two years as compared to current market prices would very generally require banks to exact margin upon listed securities to the extent of 150 percent of the amount of their advances. To reduce loans to fit such a margin would undoubtedly

be accomplished in large measure through liquidation. Let us take the case of the Guaranty Trust Co., of New York, its loans to brokers upon collateral amount in the aggregate to approximately \$200,000,000. The listed collateral, exclusive of a comparatively small amount of unlisted collateral, securing these loans is presently valued at approximately \$250,000,000.

Section 6-C would require that these loans be reduced to approximately \$100,000,000. To go further in illustration, loans by New York City banks to New York Stock Exchange members alone as of March 1, 1934, were roughly \$850,000,000. The collateral securing these loans, I believe, approximates \$1,100,000,000 in present values. The provisions of the bill would have the effect of requiring that these loans be reduced to approximately \$450,000,000, or a reduction of \$400,000,000. I believe it is fair to say that this reduction would have to be accomplished in a large part by the liquidation of securities.

Section 7-A prevents exchange members or persons transacting a business in securities through a medium of such members from borrowing on registered securities from any person other than a member bank of the Federal Reserve System. This provision will exclude nonmember banks from lending to brokers upon registered securities. It will necessitate the liquidation of many loans now carried by nonmember banks, particularly in small communities, or will compel such banks to become members of the Federal Reserve System. If it is desirable that all commercial banks be members of the Federal Reserve System, it may be questioned as to whether this is the best way to accomplish it.

I further address your attention to subdivision (d) of section 6. This bill as drafted requires the Federal Trade Commission by rules and regulations to prescribe the times at and the specific methods by which values shall be calculated for the purposes of the section dealing with loans upon registered securities, also "the time within which initial and subsequent payments shall be made by the customer and the notice to be given and the method to be followed in closing out accounts."

By section 24 of the bill, such rules and regulations as may be made by the commission are given the force of law, and any person violating them is subject to a fine of not more than \$25,000 or imprisonment for not more than 10 years. Unless the whole section is modified so as to provide that it shall not apply to banks, then I submit that this subdivision should be modified so as to make it clear that the rules and regulations concerning "the time within which initial and subsequent payments shall be made by the customer and the notice to be given and the method to be followed in closing out accounts" should not apply to banks.

As I read this section, it would vest in the Federal Trade Commission power to prescribe rules and regulations which might prevent a bank from closing out accounts except at such time and by such method and under such conditions as the commission might deem appropriate. It is obvious that if the Commission should attempt to prescribe any such rules and regulations, it might have very far-reaching and disastrous effects on the ability of banks to meet the demand made upon them in times of stress. It would seem

to me inappropriate to subject banks to any regulations with respect to the calling or closing out of loans secured by collateral or in fact, any other loans. Full freedom of action should be permitted so that banks may continue to make such loans and also be in a position to call them in when that becomes necessary or desirable. However, if there is any evidence before this committee which would lead you to believe that the calling and closing out of such loans should be further regulated, then let me urge that such regulations should be committed to the Federal Reserve Board so that the banks may not be subjected to the possibility of the direction of one agency of the Government demanding liquidation, and the restrictions of another agency forbidding such liquidation.

Section 15 of the bill prohibits a person owning of record—I lay emphasis on the word “record”—or beneficially more than 5 percent of any class of stock of a company, from purchasing a security with the intent of selling it within 6 months, and further provides that if such a person does sell any security within 6 months from the date of purchasing the same security, the profit to be calculated in the manner mentioned in the bill may be recovered by the company who issued the security.

In acting as agent for others, banks represent many and varied interests. They also act as trustees of numerous trusts of widely divergent interests and where the duties of the trustee vary greatly.

To enable a bank acting as trustee to effect a prompt sale when the decision to sell is reached, most large banks and trust companies carry trust securities, where the trust instrument permits, in the name of a nominee. Otherwise, a sale may not be effected on either of the New York exchanges (I believe that the rules of other exchanges are more or less similar), unless the registered security is first transferred out of the name of the trustee. Many securities held by banks for other persons are similarly registered in the name of nominees.

Not infrequently the amount held by a bank for all such accounts would exceed 5 percent of a particular issue of securities, but the requirements of one account may require a sale while the interests of another would dictate a purchase of the same security at approximately the same time.

Unless there is some compelling reason to the contrary, I would, therefore, recommend that the holders of record should not be included in the provisions of this section. Further, that some expression be included in the bill to make it clear that where the same person acts as trustee of various and different interests, the respective trusts shall be deemed different persons.

As now drawn subdivisions (b) and (c) of section 8 make all persons who participate in any transaction in violation of subdivision (a) of the same section liable for heavy damages. When acting as agent for another, it is not unlikely that a bank might participate in the purchase of a security without knowledge that its principal was at the same time selling the same security through others. It would seem that the penalty provided should only apply to those who knowingly participate in the forbidden transactions.

There is another section of the bill which gives me some concern, but which so far as press reports would indicate has received little

attention. I refer to section 8 (a) (5), which relates to the circulation or dissemination of information regarding any security registered on a national security exchange. As drafted, this section would impose very severe penalties, which would seem to be of a punitive character and not related to the actual loss which an investor might suffer, upon any person who makes any statement of information which is "in the light of the circumstances under which it is made false or misleading in respect of any matter sufficiently important to influence the judgment of an average investor if the person disseminating such information has reason to believe that the circulation or dissemination of such information on his part may induce the purchase or sale of such security, and does not prove that he acted in good faith and in the exercise of reasonable care and had no ground to believe that the statement was false or misleading."

The committee will, of course, understand that when I suggest that this section of the bill should be eliminated, it is not my purpose to encourage the making of false or misleading statements with respect to securities by any person under any circumstances.

As this section is now drawn, it would seem to me that any of the regular investment services would find themselves conducting a most hazardous business if they continue to furnish information with respect to securities, and that financial writers, editors, and newspapers, might similarly regard the publication of any statement or comment upon registered securities a very hazardous undertaking. In my opinion this section would deal a most serious blow to the free and full discussion of corporate securities, which, although subject to some possible abuses, is of great importance. The freedom of the press in the discussion of corporations and their securities should be fully preserved, and should not be curtailed by permitting the one who purchases or sells a security to obtain punitive damages because of some misstatement or omission of some statement, which the person making the statement may have regarded as of no importance, but which some jury might be led to believe should have been made in order to render such statement not misleading.

Not only does the section render a person subject to punitive civil damages, but the willful violation of the section also renders him liable to a fine of \$25,000 or imprisonment for 10 years. As drawn this section places upon the person from whom damages are sought to be collected the burden of proving that he acted in good faith and in the exercise of reasonable care, and had no ground to believe that the statement was false or misleading. In other words, the accused is presumed to be guilty and must prove his innocence. If I am not misinformed, that is a new idea to be embodied in a criminal statute.

Senator ADAMS. Is not that section limited to statements in applications or reports filed with the Federal Trade Commission?

Mr. POTTER. I did not think so. I did not read it that way. It did not seem to me so.

Senator ADAMS. I did not mean to interrupt you beyond that.

Mr. POTTER. If I am mistaken, then this is all unimportant.

The standard which this section attempts to set up, that the statement must be "misleading in respect of any matter sufficiently important to influence the judgment of an average investor", is to my mind too indefinite and uncertain to render it safe for any person to

continue to furnish any information with respect to any security. For example, suppose a customer of the bank makes inquiry of me as to whether a particular company is doing well, whether its earnings are increasing or decreasing. I secure and give him information from our statistical department which shows that the earnings for a certain period have greatly increased or decreased. Let us further assume that such increase or decrease was due to some non-recurrent gain or expense, and that one of the vice presidents of my company had knowledge that the cause of such increase or decrease was due to such nonrecurrent item. Under the term of this section as drawn, my company may be subjected to the claim that the statement I made was false or misleading in that I did not mention that the increase or decrease was due to a nonrecurrent item; and to escape liability, my company must prove that it had no ground to believe that the statement was false or misleading. Not only may the company be subjected to the claim of the person to whom such statement was immediately communicated, but to the claims of all others to whom the statement may have been repeated. This section as now drawn is entirely impractical, and would do much more harm than good.

May I remind the committee that the Securities Act of 1933 already renders any person who sells any security liable to the purchaser if any false or misleading statement has been made in connection with the sale. I suggest the unwisdom of extending this liability to other persons who have no interest to gain in furnishing such information.

This section is in my opinion of particular importance to banks because of the fact that their customers constantly call upon the bank officers for information and advice with respect to their investments and purchases and sales which they contemplate making. Much of this information is given without any compensation. Other persons contract with banks to keep them advised with respect to their investments. I cannot believe that the committee will deem it wise to render it unsafe for a bank to continue to furnish such information and advice to its customers.

I have been informed that a person furnishing false and misleading information is not immune from liability under the common law. Is it not better to permit the common law to control with respect to those persons who do not profit through the sale of a security, rather than to run the risk of greatly curtailing, if not substantially cutting off, the free discussion of financial matters and corporate securities, and the furnishing of information and advice by bankers and others to whom investors turn for information?

In closing, I might mention that paragraph 2 of section 15 of the bill, although dealing with a matter more administrative than substantive, should not be passed without pointing out to the committee that it is not infrequent for banks to sell securities on cable instructions from abroad, which securities are not received by steamer for at least a week, and accordingly not deliverable within 5 days. I question whether or not it is wise to prohibit this type of transaction.

The CHAIRMAN. Do the members of the committee wish to ask Mr. Potter any questions?

Senator ADAMS. You referred in the latter part of your statement to the common law. Has your experience been that the common law has been exactly satisfactory in protecting us up to this time?

Mr. POTTER. Fortunately as yet I have not had much experience with the common law. I do not really know; I do not know that I can answer that.

Senator ADAMS. You do know that there have been a great many frauds and impositions practiced upon the investor?

Mr. POTTER. Yes.

Senator ADAMS. And the common law has not protected against those things?

Mr. POTTER. I suppose you are correct, Senator; yes, although I do not know that of my own knowledge.

Senator ADAMS. You do know that as a practical matter the investor has been imposed upon?

Mr. POTTER. In a great many cases.

Senator ADAMS. In a multitude of cases?

Mr. POTTER. A great many cases.

Senator ADAMS. And either there was a lack of law or a failure to enforce the law. I think in this section 17 (a) to which you refer it is limited to those statements filed with the Commission.

Mr. POTTER. Well, if that is the intention of the bill, then the remarks I made on that section of it of course do not apply.

Senator ADAMS. Of course it does hold those responsible who are responsible for the making of the statements in the applications as well as those who make the statements.

Mr. POTTER. So far as the application is concerned I have not anything to say about that. My remarks, as I think you understand, are confined almost entirely to the giving of information where requested about securities, in a very general way, in which one would have no interest whatsoever as to the sale.

Mr. PECORA. Mr. Potter, you say on pages 3 and 4 of your statement, beginning at the bottom line of page 3, that the purpose of the bill in restricting undue speculation should be accomplished through some other means.

What other means did you have in mind?

Mr. POTTER. Mr. Pecora, I think I ought to disclaim any particular knowledge or any valuable knowledge about the stock exchange. I really am not an expert on the stock exchange. I did not have any particular method. I did not come here prepared to propose any alternative method of controlling speculation, except the one which I have made with respect to the control of credit.

Mr. PECORA. Through the Federal Reserve Board?

Mr. POTTER. Yes, sir.

Senator ADAMS. There has not been an opportunity yet to observe the operation of the Banking Act of 1933 as to its effect on excess speculation.

Mr. POTTER. No, sir; that is true.

Senator ADAMS. We have not been affected with any excess speculation perhaps, except in a limited spot.

Mr. POTTER. No, sir; that is true. But as I have said, it seems to me that is the proper way to do it.

Senator ADAMS. That was the intent of that bill in part.

Mr. POTTER. Yes, sir; undoubtedly. And I think they have complete power from a practical point of view. It is only a question of whether they use it or not. If they use the power that they are given, I should think they could control it absolutely.

Mr. PECORA. On page 5, Mr. Potter, of your statement, next to the last paragraph, you say:

It would seem that these provisions of the Banking Act of 1933 should be regarded as sufficient to vest in the Federal Reserve Board control over the undue use of credit for speculative purposes

Do you think that that power extends to the extension of credit by nonbanking corporations?

Mr. POTTER. It seems to me so, Mr. Pecora. I mean to say, I think it would prevent absolutely the introduction of credit into the stock market, let us say, from corporations and individuals, as was done in 1929.

Mr. PECORA. You do think that some such power should be lodged somewhere, don't you?

Mr. POTTER. Yes, sir.

Senator ADAMS. Mr. Potter, you are conscious of the fact that there has been a good deal of complaint that the banks were not making loans? That is one of the common, curbstone criticisms of the day, that the banks were holding up the return of prosperity by refusing to make loans. Now, as I gather your view of this, it is that this is tending to put limitations upon the banks so that they could not make some loans?

Mr. POTTER. Yes, sir.

The CHAIRMAN. Do you approve of section 7, Mr. Potter, which provides that—

It shall be unlawful for any member of a national securities exchange or person who transacts a business in securities through the medium of such member, directly or indirectly, to borrow on any security registered on a national securities exchange from any person other than a member bank of the Federal Reserve System

Mr. POTTER. Well, I commented on that, Mr. Chairman. I am a proponent of a one-banking system, so far as that is concerned. But I think that you run great danger of creating a situation which will cause unnecessary and hurtful liquidation if that clause is left in the bill, because there are a great many bankers who are not members of the Federal Reserve System as yet and—I cannot personally predict when they will be—they are making loans on securities. I do not know of any way that those banks can get rid of those loans once the bill is passed other than by asking their customers to transfer them to some other bank or asking them to liquidate. In a great many cases, I think I am safe in saying in the majority of cases these nonmember banks are rather small banks; most of them are out in the country, and the kind of customers that they have would find it a little difficult, probably difficult, if not impossible, to find another place for their loans. The loans are small, and it would not pay them to go to the larger centers to get in touch with the larger banks who are members of the Federal Reserve System, and I think they would find it more practicable to just liquidate their loans, and that, it seems to me, is not desirable right at this particular time.



Senator KEAN. What effect would this have, Mr. Potter, on the exchange market?

Mr. POTTER. You mean the market of foreign exchange?

Senator KEAN. Yes. Suppose I sell my 60-day bills in London or Paris and I have so much money on hand temporarily as the result of selling those bills. I want to get the interest on that money.

Mr. POTTER. Yes.

Senator KEAN. The only place I can safely get it is by loaning it on the stock exchange, isn't it?

Mr. POTTER. Well, Senator, when you speak of yourself are you referring to yourself as a banker or an individual?

Senator KEAN. No; I am referring to myself as the public.

Mr. POTTER. An aggregation of individuals?

Senator KEAN. Yes. For instance, the Bank of Montreal or Bond Bros. or Morgan & Co. or Kuhn, Loeb & Co. or anybody else that deals with the exchange—Lazard Freres.

Mr. POTTER. There are other places where you can make investments, of course, of a short and liquid character.

Senator KEAN. You might be able to, but it would be much more difficult than simply sending it down and loaning it on the stock exchange, would it not?

Mr. POTTER. Loaning it on the stock exchange is just as easy, but no easier than buying bankers' bill or short-term governments or other securities of that character.

Senator KEAN. Yes; but you might be able to get a better rate.

Mr. POTTER. You would probably get a better rate by lending it on the stock exchange; that is true.

Senator KEAN. Therefore, in my exchange transaction I would make some money by loaning it on the stock exchange and might lose some money if I bought bills?

Mr. POTTER. That today would probably be true.

Senator KEAN. There are some other questions that I would like to ask you. I just wanted to bring out that it would interfere with the banking situation of the country.

The next question that I wanted to ask is: There are three agencies now to which the national banks are subject: One, Comptroller of the Currency, the other the Treasury Department, and the third the guarantee. Is that right?

Mr. POTTER. You mean the deposit guarantee?

Senator KEAN. Yes. You have three agencies that now examine you, look into you. They are all concentrated practically in the Treasury Department, are they not?

Mr. POTTER. Yes, sir. I am speaking of a national bank?

Senator KEAN. Yes. Now then, those three agencies have the power to control the amount of loans you make and also the amount that you lend, also control by putting up or decreasing the current rate, of your being able to borrow from the Federal Reserve Bank, and in that way they have the power to regulate the money market, do they not?

Mr. POTTER. I consider that they have the weapons in their hand to absolutely control the money market and control from all practical standpoints the direction in which credit shall be used.

Senator KEAN. Therefore, if they are charged by the Government with controlling the money market, to put this under the Federal Trade Commission would simply be adding another agency outside of the Treasury of the United States to interfere with their control of the money market?

Mr. POTTER. That is my firm conviction and belief.

Senator KEAN. That is all I have.

The CHAIRMAN. Do you think, Mr. Potter, that it is economically sound to place some restrictions and limitations on speculation?

Mr. POTTER. I am speaking as an amateur on this subject, Mr. Chairman. I do not profess to know much about speculation, strange as it may seem. But I think that it is perfectly evident that some supervision of the exchanges would be desirable, without doubt. That is about as far as my knowledge permits me to go.

The CHAIRMAN. You realize that the spirit of speculation that was rampant in 1929 had a good deal to do with the subsequent collapse in securities?

Mr. POTTER. Yes, sir. I realize it, and I proclaim it, and it is latent today ready to bob up at a moment's notice.

The CHAIRMAN. Precisely. And would not this section that I read to you, or this paragraph, have a tendency to restrict and limit speculation?

Mr. POTTER. Now, do you mind just refreshing my memory? I am stupid about it.

The CHAIRMAN. It says:

It shall be unlawful for any member of a national securities exchange or any person other than a member bank of the Federal Reserve System—

Mr. POTTER (interposing). Oh, yes. If I answer categorically to that question, it certainly would. But I do not believe it is necessary to have a clause like that in the bill in order to have the practical effect of controlling speculation, as far as all practical intents and purposes are concerned.

Mr. PECORA. Mr. Potter, do you happen to know what proportion of the commercial banks of the country are nonmembers of the Federal Reserve System?

Mr. POTTER. No, Mr. Pecora.

Senator ADAMS. More than half, Mr. Pecora.

Mr. POTTER. In number more than half, but in importance I think you will find the percentage is less. But I would not like to venture an opinion. In number I think you will find it is quite large and important, but I think in importance, in figures, it is not so much.

Mr. PECORA. On pages 6 and 7 of your statement you advance the contention that in order to adapt existing loans secured by collateral to the margin requirements of the bill it would involve considerable speedy liquidation, which you think would be harmful. Do you think that that objection could reasonably be overcome by the inclusion in the law of a provision for a reasonable period of time, say even several years, for the purpose of liquidating such loans, in order to adapt them to margin requirements?

Mr. POTTER. Having read Mr. Corcoran's remarks before this committee, my mind naturally went in that direction. He gave that some consideration. But in considering a loan to a broker, member of the stock exchange, by a bank one must remember that those loans

are diversified as a general rule, very much diversified, and that there are constant substitutions being made in them, and whether we recognize a loan of six months from now that was made today as the same loan is questionable. I do not know how you would cover that. But if you could cover the point, Mr. Pecora, in a practical way, it certainly would be better than the arrangement of the bill, as I see it now.

Mr. PECORA. Can you think of any more practical or immediately available method than by allowing a period of time for the adaptation of existing loans to margin requirements of the bill, whatever such margin requirements eventually might be?

Mr. POTTER. No; I have not been able to think of a better device, but neither have I been able to see how that device is quite practical unless you number the loans and you call a loan for a half million dollars no. 25, and it is a half-million-dollar loan, no more and no less, regardless of what collateral is substituted for the original collateral. It seems to me that would be a little difficult, but perhaps it could be worked out.

Senator ADAMS. Mr. Potter, in your inquiries or study have you been able to form any estimate as to the extent or the proportion of the speculation which was based on marginal transactions as against that which was based on actual ownership and borrowing and other ways?

Mr. PECORA. In connection with that, Senator, we have considerable data that has been compiled from the returns to questionnaires that were addressed by us from members of various stock exchanges throughout the country. The data will show the number of accounts of customers carried by brokers on margin and the number of accounts that were on a cash basis. I think they will perhaps show or indicate that situation much more definitely than any other figures that are obtainable. We will have those data before the committee very, very shortly.

Senator ADAMS. Mr. Potter, you spoke of being an amateur in speculation. Do you know anybody who really qualifies as an expert now?

Mr. POTTER. No, sir; I do not know as I do. But there are certainly some who know more about it than I do.

The CHAIRMAN. Are there any other questions?

Senator GOLDSBOROUGH. Mr. Potter, you disclaim being an expert on the stock exchange. Might I ask you if you have any opinion on the question as to whether section 9, I think it is, might prohibit short sales and stop-loss orders?

Mr. POTTER. Senator I do not have a copy of that bill before me. (A copy of the bill was handed to Mr. Potter.)

Senator GOLDSBOROUGH. I think it is page 20, sir. If that does prohibit such sales or stop-orders, do you think that is wise?

Mr. POTTER. Well, you refer to paragraph (b)?

Mr. PECORA. (a) and (b) both.

Senator GOLDSBOROUGH. (a) and (b) both.

Mr. POTTER. You will have to pardon me if I look at this a minute, because I have not put my mind on this before

Senator GOLDSBOROUGH. Yes.

Mr. POTTER (after perusing sections of the bill). Senator, I take it that this is a prohibition against short sales, is it not?

Mr. PECORA. Yes, except in accordance with such rules and regulations as may be prescribed.

Senator GOLDSBOROUGH. Some people I think rather interpret it as a prohibition.

Mr. POTTER. You are asking me something that I am not very well prepared on, but as I read it, it gives me an impression that it implies a prohibition or a suggested prohibition.

Senator GOLDSBOROUGH. I am asking your opinion as to the wisdom or unwisdom of that.

Mr. POTTER. I do not think my advice to you on that score, my opinion, would be worth much. It is a very big subject, and it is one that has been discussed by a great many people who know more about it than I do. In my business experience, entirely apart from speculation, but in the handling and deliveries of securities, not only my own but others, it has many times been almost a life saver to be able to use the market on the short side, in hedges and in other transactions. The common use of the words "short sales against the box" is an almost every-day occurrence, and it is practically convenient and necessary.

Senator GOLDSBOROUGH. Then as a matter of fact it is not without some good result?

Mr. POTTER. I should think not. But I do not want to pose as a proponent of the short sale, because I do not think I know enough about it to go very deeply into the subject.

Senator KEAN. Well, you do know that you get cables from abroad?

Mr. POTTER. Oh, yes.

Senator KEAN. And that it takes sometimes as long as——

Mr. POTTER (interposing). Two weeks.

Senator KEAN. Two weeks before you can receive the securities from abroad.

Senator GOLDSBOROUGH. Mr. Potter has touched that in his statement.

Mr. POTTER. Yes. We have had a good many cases, Senator, where the customers have undoubtedly good credit, and they would ask us to transfer from their account a large block or a small block of stock, and sometimes it would take them 6 months to dig it up. I mean to say that they have been mislaid or something.

Senator KEAN. Perhaps they were abroad and it was in their box and nobody had access to their box.

Mr. POTTER. Yes.

Senator KEAN. And in the meantime you had to borrow the stock?

Mr. POTTER. Yes. And I think it is perfectly legitimate for us to do that.

Mr. PECORA. Mr. Potter, you have referred to short sales against the box. Where a person holding securities at the time he makes a short sale thereof actually covers them, not through securities he owns but through the purchase of securities in the market, that virtually becomes an outright short sale, doesn't it?

Mr. POTTER. Oh, if he does that; yes.

Mr. PECORA. I might say for your possible information that in section 8 (a) (5), relating to dissemination of information, et cetera, and with respect to which you devoted a considerable part of your statement—

Mr. POTTER. Yes.

Mr. PECORA. Practically all of the considerations that have been urged by you in your statement have already received attention.

Mr. POTTER. I was afraid that was so, Mr. Pecora.

Mr. PECORA. You mean you were hoping that was so?

Mr. POTTER. I was hoping it was so.

Senator ADAMS. I should say, Mr. Potter, to clear up, that my comments were in reference to section 17 (a), not this section 8 (a).

Mr. POTTER. No.

Senator ADAMS. Because some of your remarks were appropriately directed at 8, and the part I was commenting on was section 17 (a), and perhaps that qualification ought to be made.

Mr. POTTER. Yes.

The CHAIRMAN. Any other questions?

Senator KEAN. I think, Mr. Potter, you covered the trust question, where you had a nominee with stock in his name so that you might control 5 percent of the company, but, of course, you would not really control it because you would have to ask the trustees whether they would vote the proxy.

Mr. POTTER. I would either have to ask the trustees or owners or beneficiaries.

Senator KEAN. Yes.

Mr. POTTER. I would like just to make one brief observation there. I differentiate between the owner of record and the actual owner, that is all.

Senator KEAN. In other words, for convenience sake, why you put the stocks in the name of a nominee?

Mr. POTTER. Yes, sir.

Senator KEAN. And you might have 5 percent stock?

Mr. POTTER. Yes, sir.

Senator KEAN. Whereas, if you came to vote, divided into the dozen accounts and so forth, you might not have one percent?

Mr. POTTER. Yes; the votes might offset each other.

Senator KEAN. Or they might offset each other. One group might vote for one set of directors and the other one might tell you to vote for another.

Mr. POTTER. Exactly.

Mr. PECORA. The ownership is to be treated as an entity with respect to the necessity rather than the nominee of record?

Mr. POTTER. It seems so to me, Mr. Pecora.

The CHAIRMAN. That is, I believe, Mr. Potter. We are very much obliged to you.

Mr. POTTER. You are very welcome, gentlemen. I appreciate the opportunity of coming before you.

The CHAIRMAN. It has been a very enlightening discussion.

Mr. Johnston.

**STATEMENT OF PERCY H. JOHNSTON, MONTCLAIR, N.J., CHAIRMAN OF THE BOARD AND PRESIDENT OF THE CHEMICAL BANK & TRUST CO., AND CHAIRMAN OF THE NEW YORK CLEARING HOUSE ASSOCIATION**

The CHAIRMAN. Mr. Johnston, just have a seat and give your name and address, and occupation.

Mr. JOHNSTON. Percy H. Johnston, Montclair, N.J.; chairman of the board and president of the Chemical Bank & Trust Co., New York, and in my appearance before your committee as the chairman of the New York Clearing House Association.

The CHAIRMAN. We want to hear your views about this bill, Mr. Johnston.

Mr. JOHNSTON. Senator, there is very little that I can add in addition to what Mr. Potter has said. Mr. Potter and myself have collaborated on this matter. Candor compels me to say that he did most of the work, because I have been laid up with the grippe; just got out of it a day or two ago.

Senator KEAN. So that you corroborate what Mr. Potter has said?

Mr. JOHNSTON. I am familiar with his statement and I am in sympathy and in accord with it.

I should like to say that I grew up in a country bank. I spent 6 years attached to the Treasury Department here examining banks from the Atlantic to the Pacific and from the Great Lakes to the Gulf. I have an apprehension as to how the country banks can get these collateral loans out. They always have them. They loan on an ice plant, grain elevator, every conceivable thing you can think of. They have no market, exchange, value anywhere.

Senator GOLDSBOROUGH. And many unlisted securities of local corporations?

Mr. JOHNSTON. Nearly all of the country banks' securities are unlisted securities. I do not believe that they can afford to list them. I am talking about the town I grew up in in Kentucky, 3,500 people, which probably have six or eight corporations, such as a lumber company, and so forth.

Senator ADAMS. Most of those securities would not qualify for listing on any exchange?

Mr. JOHNSTON. No, sir; and they could not afford to have the audits. The expense of having them certified every 3 months to some exchange would just be prohibitive.

In regard to placing the control of this subject in the Federal Trade Commission: At present my institution is subject to four different supervisory authorities: State of New York, the Federal Reserve Bank, the Federal Deposit Insurance Corporation, and the New York Clearing House Association.

Senator KEAN. And the Comptroller of the Currency?

Mr. JOHNSTON. No. We are a trust company.

Senator KEAN. Oh, yes.

Mr. PECORA. The Clearing House Association examination is purely voluntary. I mean your bank by being a member is examined?

Mr. JOHNSTON. Yes, sir. We can withdraw from the clearing house, of course, to avoid them.

Senator ADAMS. You could withdraw from the Federal Reserve?

Mr. JOHNSTON. Yes; but I should say it takes about a third of our year now to be examined and to make reports, and one does not conceive the enormous expense that is involved in all this amount of work. Now I hate to see added on another and probably conflicting authority.

I am quite sure that probably what we are aiming at here is to cure speculation. I wish there was some way to cure it. I think we would be better off. But I think you have got to change your race of human beings, because they like to speculate.

I think you have the control now. We had the control in '25, '26, '27, '28 and '29, and we did not use it. We had the control in the power of the Federal Reserve Board, and if the Federal Reserve Board had not bent its policy to meet the wishes of the Treasury, who wanted to borrow cheap money for the Government, but had raised these rates as they should have done, we could have stopped this speculation in its incipience in '27 and '28 and avoided this colossal crash that has come with such widespread disaster to everyone.

Mr. PECORA. In those times, Mr. Johnston, persons whose positions and experiences gave them perhaps the appearance of having some authority opposed the adoption of any measure that had the tendency that you now speak of, that is, to curb any speculation.

Mr. JOHNSTON. You mean the Federal Reserve Board?

Mr. PECORA. No; the persons outside the Federal Reserve Board. For instance, all that time the gentleman that was president of the New York Stock Exchange in a speech he delivered in January 1928 decried the notion that some persons were then giving expression to the fact that we were living at that time in a fool's paradise.

Mr. JOHNSTON. I do not doubt that, Mr. Pecora. I do not doubt that there were many people who wanted that speculation to go on, but I do claim that the central banks, rather than the Federal Reserve Board, which is the central bank in effect, had that power. I think every central bank in the world has that power. But inevitably they all color their operations to suit the treasuries of their country.

Mr. PECORA. And we have seen too that nonbanking corporations and individuals having large capital surpluses encouraged speculation by sending their money into the market.

Mr. JOHNSTON. Yes. That is where the bulk of the money came from. There was very little money that the big banks in New York for their own account loaned to the brokers, but it came from all over the world. There was a lodestone that drew this money to the high rates.

Mr. PECORA. Should not that be checked?

Mr. JOHNSTON. That has been checked now, because they have prohibited the lending of money for the account of other people like that.

Mr. PECORA. That does not prevent the nonbanking corporations from making the loans directly?

Mr. JOHNSTON. No; it does not.

Mr. PECORA. We have evidence here that some of them did make large call loans directly, not through the medium of banks.

Mr. JOHNSTON. Most of it was made through the banks, though, that have the facilities. I have no quarrel with you on that subject, sir.

Mr. PECORA. The banks in those cases merely acted as agents?

Mr. JOHNSTON. Yes.

Mr. PECORA. And got a very small commission?

Mr. JOHNSTON. Until the Clearing House Association prohibited the lending of money for the account of other people.

Senator ADAMS. When was that action taken by them?

Mr. JOHNSTON. That was after the horse left the barn.

Senator GOLDSBOROUGH. During that period of speculation in 1929 Prof. Irving Fisher still said the market was going up.

Mr. JOHNSTON. Oh, yes. Mr. Chairman and gentlemen, anything that is good for this Nation is good for the banks of New York. Anything that is bad is bad for them. I say this, as chairman of the Associated Banks of New York. The vast majority of those banks are commercial institutions whose primary purpose is to foster the commercial business of this country, and at no time, even during all this speculation, could a manufacturer or merchant fail to get money at at least one third the rate speculators were paying for money on the exchange.

I am hopeful that you will not so restrict it, by rules of the Federal Trade Commission, so that it will be difficult for us to go ahead and foster industry and manufacturing. Many industries and manufacturers, after 3 or 4 years of depression, have lost a substantial part of their capital funds, but in days gone by they had made money, and the stockholders had withdrawn it from these industries, and they had the estates, you might say, in their strong boxes. When they come to the banks they invariably go down in their strong boxes and take out some of their collateral and put it up to borrow. A bank lending money on securities, whether they are listed or unlisted, is entirely different from the way an account is handled in a stock-exchange house. I do not profess to be any authority on stock-exchange operations, but a stock-exchange operator is interested in his customer continuing to trade. The more he trades the better it is for the stock-exchange house, because they make commissions. That is not true at all of the banks. The banks look at it from an entirely different point of view. In most cases, if it is speculation, they discourage it.

Mr. PECORA. In other words, the broker finds to his personal interest to encourage speculation, as against investment?

Mr. JOHNSTON. He is bound to. That is the nature of his business.

Senator ADAMS. As a matter of fact, the banker is confronted with the complaint of his depositor, because the bank advises him not to speculate, and he says "Yes; you want to keep the money on deposit. You don't want me to make any money."

Mr. JOHNSTON. They would not pay the slightest attention to us in 1928 and 1929. Many big institutions talked to their clients and told them there was going to be a flood, but they did not believe it. Some few of them did.

Senator ADAMS. How did the commercial paper rate run, compared with the rate which was charged to brokers when the interest rates to brokers began to go high?



Mr. JOHNSTON. About 40 percent of the average of the rate of the brokers' loans.

Senator ADAMS. The commercial paper rate never did become excessive?

Mr. JOHNSTON. It never got over 6 percent, and the banks bought large amounts of it.

The CHAIRMAN. How do the commercial rates compare with the rediscount rate of the Federal Reserve?

Mr. JOHNSTON. They are about the same at present, Senator.

The CHAIRMAN. Do you know how they compared in 1929?

Mr. JOHNSTON. They were very close to it. Going back to 1919 and 1920, when we had the great commodity speculation, it was the raising of the rates of the Federal Reserve that stopped it. There is no question about that. It is almost inevitable that a country cannot have poured onto its shores vast sums of gold, which is the basis of credit, without having speculation, unless the central bank has a very stiff backbone.

Senator ADAMS. Some years back we had tremendous speculation here in one of our leading States in the country, down in the southeastern corner of the United States.

Mr. JOHNSTON. Yes, sir.

Senator ADAMS. Is there any way that that kind of speculation could be curbed? That had no bearing at all upon the New York Stock Exchange, and had little bearing on the transactions of the banks, and yet we know real estate down there went out of sight, and wrecked a great many people.

Mr. JOHNSTON. I do not know how you would check it. If people want to think that beach land along the shores of Florida is worth \$10,000 a front foot, I do not know how you can help it.

Senator GOLDSBOROUGH. We are having a lot of gold poured on our shores now. Do I understand you to mean that we will have speculation following in the wake of it?

Mr. JOHNSTON. I do not think we will. I think we have a different control now, but if you take the history of banking in all the countries of the world for 300 or 400 years, wherever there has been an accumulation of gold, speculation broke out.

Mr. Chairman, I want to be helpful in this thing. I have not the slightest interest in this thing, but I am fearful that this measure, as I have read it—you probably will amend—I am fearful that it will bring further deflation. Lord knows, we have had enough of it. We hear people talk about inflation. I wish we could have just a little. We have had the other for 4 years.

The CHAIRMAN. How do you think it will bring about deflation?

Mr. JOHNSTON. By forcing out, in the small banks of the country, their loans which would not qualify. I do not know who can take them up.

Mr. PECORA. If a period of time of several years is provided for—

Mr. JOHNSTON. They probably could make an adjustment, Mr. Pecora, if given enough time.

Mr. PECORA. That would be a way of relieving the situation from the undue liquidation that you speak of.

Mr. JOHNSTON. The thing I am trying to visualize is how we can take a town, say, of 5,000 people, with a dozen industries, local in

nature, and how we can qualify them to mark up the exchange values of securities in New York, Boston, Chicago, Baltimore, and the other big cities. I do not see how we can get the small communities to do that. It may be, and it may be that I am not smart enough to see it.

The CHAIRMAN. I think we can modify the bill in that respect so as to relieve that difficulty.

Senator KEAN. Mr. Johnston, there is just one question I would like to ask. You want to emphasize your belief that had the Federal Reserve bank, prior to 1929, put up the rates, that would have stopped this speculation?

Mr. JOHNSTON. They could have stopped it at any time within 60 or 90 days, if they wanted to. That can be done at any time, in any country, here or in any other central bank.

Senator GOLDSBOROUGH. I did not hear the question.

(The reporter read the last question by Senator Kean.)

Senator GOLDSBOROUGH. What is the answer?

Mr. JOHNSTON. Unquestionably; at any time, within 60 days.

Mr. PECORA. How could they have done it if there were nonbanking corporations and individuals possessed of large capital surpluses, who were only too ready and willing to take advantage of the high money rates which speculation produced?

Mr. JOHNSTON. In 1929, Mr. Pecora, there was about 8½ billions loaned in Wall Street, of which about 6 or 6½ billions were from nonbanking institutions, and in that amount there were some 450 million, probably, locally loaned in New York by the banks for their own account. Eight billions of it came from over the world. What did stop the speculation was the raising of the Federal Reserve rate. That is finally what stopped it, when they kept raising the rates. In my opinion they could have brought it to a crisis, if it had been necessary to raise the rate to 20 percent, or, as they did in one foreign country, raise it to 90 percent.

The CHAIRMAN. I think they admitted they could have done it, but they did not start soon enough.

Mr. JOHNSTON. The Treasury dominated the Federal Reserve. They wanted to keep cheap money, in order to borrow cheap money for the Government.

Mr. PECORA. An attempt was made in the early spring of 1929 to check it, and that attempt was nullified by the action of a certain bank in New York City, you remember.

Mr. JOHNSTON. I do not recall, but I know the Federal Reserve Bank in Chicago—

Mr. PECORA. That was the time when the National City Bank became active in that regard. There was an instance where the Federal Reserve Board sought to apply the brakes, but its action was nullified by the initiative and enterprise of a large commercial bank in New York.

Mr. JOHNSTON. The Federal Reserve Board tried to do it largely by admonitions and addresses.

Senator ADAMS. They had a good many admonitions on the other side at the same time, also.

Mr. JOHNSTON. Yes, sir. The Federal Reserve Bank of Chicago did raise the rate, and they were overruled by the Federal Reserve

Board here, which made them cancel it after they had publicly announced it.

The CHAIRMAN. Are there any further questions of Mr. Johnston?

Mr. JOHNSTON. I am very much obliged to you. I would like to assure you, Senator, on behalf of the great banks of New York, that I desire to cooperate with you and to help make things safe if we can.

The CHAIRMAN. We appreciate that very much. Thank you.

**STATEMENT OF GEORGE H. HOUSTON, VICE PRESIDENT, NATIONAL ASSOCIATION OF MANUFACTURERS, PHILADELPHIA, PA.**

The CHAIRMAN. State your name, residence and occupation.

Mr. HOUSTON. My name, Mr. Chairman, is George Houston; I am president of the Baldwin Locomotive Works. I am appearing here today on behalf of the National Association of Manufacturers. I appreciate the opportunity, Mr. Chairman, of stating industry's viewpoint on this subject.

I appear before you in opposition to Senate bill no. 2693, entitled "A bill to provide for the registration of national securities exchanges operating in interstate and foreign commerce and through the mails and to prevent inequitable and unfair practices on such exchanges, and for other purposes."

Previous witnesses before your committee have testified at length with respect to the detailed provisions of this bill. I shall not attempt to duplicate this presentation but wish to submit for your consideration the viewpoint of industry as a user of capital and a seller of securities.

The greater portion of all existing unemployment in industry is traceable in large part to the reduced volume of private capital flowing into private enterprise, and to the enormous losses sustained by business since 1929. Employment in industry will not again be restored to normal until these conditions are corrected.

Of the 49,000,000 persons normally gainfully employed in this country as shown by the Census of 1930 about 23,000,000 are engaged normally in the rendering of services and about 26,000,000 in the production of goods. Of the latter group, about 10½ millions are engaged normally in agriculture, about 5½ millions in the production of manufactured consumption goods, and about 10,000,000 in the production of durable goods. Col. Leonard P. Ayres, of Cleveland, has estimated that in December about 20 percent, or somewhat less than 10,000,000, of this employable personnel was unemployed. A little more than one half of these unemployed persons would be employed normally in the production of durable goods; about 1,000,000 in the production of manufactured consumption goods other than agricultural products, and the remainder in the rendering of services. There has been no appreciable unemployment in agriculture. Unemployment in the service industries is almost directly attributable to unemployment in the production industries. As the production of goods is increased, the rendering of services in connection with them, such as transportation, communications, and wholesale and retail trade will be increased. It may be said, therefore, that the restoration of normal employment is dependent upon the restoration of normal activity in the durable goods industries.

Durable goods are purchased largely with individual and corporate savings and through the use of credit. These resources are made available through the sale of securities. In the 10 years ended with 1930 American business was supplied with new capital, through the sale of securities other than for refundings, to the amount of about 4 billion dollars average per annum. In 1931 the volume of new capital supplied to private enterprise dropped to \$1,551,000,000; in 1932 to \$325,000,000; in 1933 to \$160,000,000 or 4 percent of the previous 10-year average. In general a deficiency has been accumulated since 1929 in the normal supply of private capital to private enterprise of about 9 billion dollars. A comparison of this situation with the volume of private capital flowing into private enterprise in the United Kingdom during 1933 of about 56 percent of normal indicates the presence of certain vital interferences with the normal supply of capital and credit to American business.

In many instances, corporate resources have been so diminished that normal operation is out of the question without replenishment of capital. This condition is indicated in the report issued recently by the National Bureau of Economic Research covering a study of the national income made by it in cooperation with the Department of Commerce in response to a request from the United States Senate. This report shows that the national income paid out in 1929 was about 2 billion dollars less than the national income produced, this difference representing largely an increase in the resources of American business. Since then, however, the national income paid out each year has been much greater than the national income produced, the difference representing a shrinkage in business resources.

In 1930 this shrinkage amounted to-----	\$4, 954, 000 000
In 1931 to-----	8, 637, 000, 000
In 1932 to-----	10, 603, 000, 000
In 1933 it is reasonable to assume that it was not less than in 1932, or about-----	11, 000, 000, 000

Or an aggregated shrinkage in business resources since 1929 of about-----	35, 194, 000, 000
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Normal employment in private enterprise will not be restored until the flow of new capital into business is again resumed. Business needs not only its normal supply of new capital but, over a period of years, it will require an additional supply to replenish the enormous shrinkage of recent years in its resources. This supply of capital can be obtained only by drawing upon the savings and credit resources of the country through the sale of securities.

The Securities Act of 1933 created a serious obstacle to recovery through its drastic regulation of the issuance of new securities by private enterprise. The Banking Act of 1933 created an additional impediment through the provisions of section 16 prohibiting national banks from participating in underwritings in securities after June 16, 1934. The national Securities Exchange Act of 1934, as proposed, would also interfere in a vital way with the essential supply of capital to business for the following reasons:

First: It attempts drastic regulation of the financial policies and accounting procedures of private business as well as the form of its financial reports. It also burdens business unnecessarily with expensive and intricate reports and records.

Second. It burdens officers, directors, and stockholders of private enterprise with such personal liability as effectually to discourage responsible men from undertaking corporate direction and supervision. It penalizes the holders of substantial blocks of any one security so greatly as to discourage the individual of large resources from using corporate securities as a medium for investment or from acquiring a sufficient amount of the securities of a company to warrant him in taking an active interest in its operation.

Third. It fixes rigidly by statutory provision the use of corporate securities as collateral (including use in marginal trading) thereby depriving the owner of a legitimate and proper enjoyment of his property, and to a large extent prevents the lender from the legitimate exercise of his own judgment in the carrying out of a purely private transaction. This provision would have a seriously deflationary influence during the period of its application and subsequently would retard the issuance of new securities.

Fourth. It so restricts and regulates the investment dealer and broker in the creation, initial distribution and subsequent exchange of corporate securities as to interfere seriously with the availability of credit resources and savings to the capital needs of private enterprise. In effect it prevents a free market for the securities of business.

The ostensible purpose of this bill is to regulate the national securities exchanges, with which purpose, properly undertaken and administered, there can be no dispute. It goes far beyond this purpose, however, in the regulation of business and the personal affairs of the investor. Taken together with the Securities Act of 1933 it will effectually bar the flow of private capital into American business. Regulation of the national securities exchanges should be undertaken under a statute giving a properly constituted regulatory body wide administrative latitude and flexibility. Such a regulatory body and possibly the direction boards of the exchanges themselves, might well be so constituted as to represent the various parties at interest, namely, the broker, the buying public, and the corporation whose securities are traded in. This bill should be rewritten to restrict its scope and alter its character in this manner, without permitting it in any way to hamper or discourage the flow of private capital into business.

The provisions which subject corporations to the control of the Federal Trade Commission and which increase the burdens of corporate financing to the point of prohibition are unsatisfactory for reasons similar to those which have been presented from time to time for liberalizing certain provisions of the Securities Act of 1933. All such provisions should be stricken out or modified to make them applicable only to the regulation of national securities exchanges and to transactions in securities.

The requirements that directors, officers, and large stockholders be required to disclose their holdings of securities and be prohibited from disposing of them in the manner and under the circumstances provided for, may be justified in principle but the extent to which such information is made public and the drastic penalties imposed for violations would result in discouraging many desirable men from accepting the position of director or executive officer of any

corporation. It would seem sufficient for the purpose if the information were lodged in proper form with the controlling officers of the exchanges upon which the securities of the corporation in question may be listed and/or with the Government agency having jurisdiction over such exchange, but without the publicity now attaching to such reports.

It is in the interest of permanent stability in business and sound management to have individuals continue to own substantial blocks of the securities of a given corporation. One of the greatest dangers facing business management today is that no one person will have a sufficiently large interest in any one enterprise to make it worth while to give an adequate amount of his time and attention to its direction and management, resulting in a form of absentee management that is most undesirable.

The many provisions of the bill fixing penalties and personal liability should be made less drastic and the basis for such liability should be modified. This bill carries the same objectionable provisions imposing the burden of proof upon the defendant in civil litigation and upon the accused in criminal prosecution, which have been criticized in the Securities Act of 1933. There is no justification for them and the existing rule of law should be maintained. Consideration should be given also to the impropriety of imposing any such liability upon individuals for misstatements unless made wilfully.

The prohibition against the use of unlisted securities as collateral and fixing by statute or by arbitrary action of the Federal Trade Commission of the collateral value of listed securities for loan purposes would prove an unjustifiable hardship upon the owner of such securities and a serious interference with their distribution and subsequent market value.

The seriously deflationary effect of the application of this provision to loans then outstanding and secured by listed and unlisted securities would be sufficient in itself to check recovery during the resulting liquidation, but when coupled with the practical prohibition that such liquidation would have upon the issuance and distribution of new securities it may be anticipated that no progress toward recovery would be possible during this period. Mr. Dickinson has brought out forcibly in his testimony on this bill before the Committee on Interstate and Foreign Commerce of the House of Representatives that the rigidity of this flat margin provision would check the desirable expansion of security issues during periods of depression just at it would probably check the undesirable expansion of speculation in boom periods.

If business needs capital for prosperity, it is in the public interest to not burden the securities issued by business for the procurement of such capital with such stringent regulations with respect to their use as collateral as to interfere with their free issuance, distribution, and retention. The present method of fixing the collateral availability of such securities by the Federal Reserve System appears to be entirely adequate for the protection of the public interest.

The Banking Act of 1933 required the separation of investment banking from commercial banking. This bill proposes to separate brokerage from security distribution. The first step—that is, the

separation of investment banking from commercial banking—has forced a reorganization of the largest channels in the country for the distribution of the securities of private enterprise. This second proposed step—that is, the separation of brokerage from security distribution—would force a further reorganization and rearrangement of such facilities. One of the serious obstacles to the marketing of corporate securities is the existing general disruption of the organizations previously engaged in the underwriting and distribution of such securities. Any further disruption of this character would further retard the essential distribution of such securities.

The provisions of this bill which have been criticized are calculated to reform past abuses without consideration of their effect upon present recovery. The abuses sought to be corrected are largely those of uncontrolled speculation upon the securities exchanges. The need for regulation of such speculation is well recognized, but it should be noted that speculation of this character occurs generally after a long period of prosperity and not at the bottom of a great depression or in the early stages of recovery. More than everything else, this country needs encouragement to recovery and to a return to the initiation by private enterprise of new ventures which will restore employment. This cannot be accomplished with enterprise in the strait-jacket created by the Securities Act of 1933 and heightened by this bill. It is held that adequate regulation of the national securities exchanges can be obtained without interference with industrial recovery and it is recommended that the scope of this bill be limited strictly to that objective.

The CHAIRMAN. You referred, Mr. Houston, to the shrinkage in business resources. Just what do you mean by business resources?

Mr. HOUSTON. Mr. Chairman, I would put it this way. I am referring to the report of the National Bureau of Economic Research, in their report to the Department of Commerce, which I understand it has transmitted to the Senate. Beginning with 1930, the sum total of items paid out by enterprise has been in excess of the value of the items produced by about 35 billions of dollars, including 1933, which is estimated.

The CHAIRMAN. By sums paid out, do you mean pay rolls, labor, and that sort of thing?

Mr. HOUSTON. Pay rolls and salaries, taxes, dividends, interest, royalties, and so forth. The disbursements of private enterprise have been in excess of the receipts by that amount.

The CHAIRMAN. Does that include salaries and bonuses?

Mr. HOUSTON. Mr. Chairman, I think you will find bonuses would be an infinitesimal part of that item. The detail of that is all set out very ably in this report.

Senator ADAMS. Mr. Houston, you recognize, I assume, that the replenishment of capital funds must, in the final analysis, come from the savings of the people, out of their production.

Mr. HOUSTON. That has been my argument for a long time, Senator.

Senator ADAMS. Has not the speculative era on the stock exchange had the effect of wasting away these savings?

Mr. HOUSTON. The shrinkage that I speak of here has nothing to do with the speculation upon the stock exchange.

Senator ADAMS. But has not that happened all through the country away from the great cities? The money was drawn toward those centers. That is, the savings which might otherwise have gone into industry went into speculative activities, with the idea of making money, not by producing something, but by an increase in capital values, without contributing anything to it.

Mr. HOUSTON. There is no question that up to 1929, for a period of time, there was an undue interest in the making of a profit outside the production of goods.

Senator ADAMS. In the long run, the profit has to come out of the soil or out of manufacturing.

Mr. HOUSTON. Out of the production of goods or the rendering of services. Those are the only two mediums we have for the production of economic profits.

Senator ADAMS. The shifting of values on the stock exchange does not produce or lose any actual capital values.

Mr. HOUSTON. That is true.

Senator ADAMS. That is what is disturbing some of us—the fact that the stock-exchange transactions have upset the economic activities, when they are really hardly a part of it.

Mr. HOUSTON. I would like to suggest that while without question there was very extensive speculation in that period, yet the speculation, as such, was only a contributing factor to the depression, and the depression, as such, would have been with us in some degree or other without that. We had to go through a period of readjustment, due to the enormous accumulation of debt that we have experienced in the previous 10 or 12 years, and the greater part of that was outside the field of speculation, in the sense that you use it.

Senator ADAMS. We really were consuming more than we were producing during that period, were we not?

Mr. HOUSTON. In physical goods, no. We produced everything that we had during the war, because we started the war with very small supplies, and we physically produced them, but the difficulty is that we got out of balance.

Senator ADAMS. The purchaser not only was spending this year's income, but he was anticipating his next year's income, and was borrowing on that. Then, when it slowed down, he reached a period where his income had already been anticipated.

Mr. HOUSTON. But we must bear in mind that every borrower had to have a lender, who was not doing that, except as the sum total of outstanding credit in the country was expanded. It was that expansion of credit, largely outside the field of speculation, which, you might say, was one of the really serious contributing factors. I do not want to belittle the effect of speculation, but the point I want to emphasize is this: Speaking from the point of view of industry, we feel that the correction of some of the defects of the decade ending with 1920 is being emphasized to such an extent that the recovery from the very tragic difficulties we are now in is being seriously interfered with.

The CHAIRMAN. There has been a shrinkage all along the line—shrinkage in values everywhere, and a shrinkage in everything except debts.



Mr. HOUSTON. That is true, Mr. Chairman.

The CHAIRMAN. Public and private debts of this country amount, it is estimated, to 235 billions of dollars, and we are paying interest on that. Is there any way we can find to relieve these debtors?

Mr. HOUSTON. Of course Mr. Chairman, the man who can find a ready answer to that will have solved our problems, but, in general, progress is being made in that direction. One way has been to reduce the value of the unit in which we pay the debts, by devaluation of the dollar. If that is followed by a rise in prices, as many of us hope it will be, and expect it will be, the ratio of debts to the value of our assets will not be so burdensome as it is now.

Mr. Chairman, I would like to again emphasize that some speculation at this time, from the point of view of those of us who are under heavy burdens of debt, is not an undesirable thing, if it will create a buoyancy to our asset values. What we need at the present time is a forward-looking outlook in anticipation of a profit. We have looked back at our mistakes for too long, and we have endeavored to correct them by drastic actions interfering with and curtailing the freedom of our future activities, so that, in effect, we have been put in a straight jacket. We no longer have the free play of private enterprise that has helped us out of these depressions in the past, and I want to emphasize the necessity, from the point of view of business, of giving that free play. Otherwise I do not believe that we can ever come out of a situation of this character.

As an example of just what I have in mind, I would like to read this telegram that just came to me this morning from C. C. Carlton, president of the Automotive Parts & Equipment Manufacturers, Inc., Detroit, Mich. (reading):

Have authority from automotive parts and equipment manufacturing industry comprising approximately 1,200 manufacturers, located in 315 cities in 39 States, employing at present 200,000 men, with prospective sales this year over \$800,000,000, to protest Fletcher-Rayburn bill in present form. Our products are consumers' goods and our factories will invest \$100,000,000 in capital goods in year 1934 if Congress will remove fear and uncertainty in order that leaders in our industry may deem it advisable to proceed with the present business prospects uninterrupted.

There is the type of forward-looking outlook that we need if we are to restore prosperity and employment. In my own personal opinion it must be restored by a substantial speculation in industry upon the prospects of the future.

The CHAIRMAN. Have you anything else, Mr. Houston?

Mr. HOUSTON. That is all.

The CHAIRMAN. We are very much obliged to you. You have made a very interesting statement.

I would like to insert in the record a telegram from Mr. J. R. Edwards, of Cincinnati, and a brief letter from him.

(Telegram and letter from J. R. Edwards to the chairman will be printed at the conclusion of today's proceedings.)

The CHAIRMAN. We will now take a recess until 2:30.

(Whereupon, at 1:10 p.m., Monday, Mar. 12, 1934, a recess was taken until 2:30 p.m. of the same day.)

## AFTERNOON SESSION

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

The CHAIRMAN The committee will come to order, please. Mr. Rippel, please come forward to the committee table.

Mr. RIPPET. I thank you.

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

Mr. RIPPET. My name is J. S. Rippel, of J. S. Rippel & Co., investment securities, Newark, N.J.

**STATEMENT OF J. S. RIPPET, OF J. S. RIPPET & CO., INVESTMENT SECURITIES, NEWARK, N.J.**

Senator KEAN. You are also a broker, aren't you?

Mr. RIPPET. Broker and dealer.

The CHAIRMAN. Well, Mr. Rippel, if you would like to discuss this bill the committee will be very glad to hear you.

Mr. RIPPET. It will only take me a few minutes if I may present a few brief views.

The CHAIRMAN. Proceed in your own way.

Mr. RIPPET. As president of the Newark Clearing House Association, I desire to bring before this committee a few facts in regard to the situation not only of our local banks but those throughout the State, in connection with the making of collateral loans. It must be kept in mind that banks in cities and towns outside of New York City, in order to be of service to their borrowers, must necessarily loan on such collateral or credit that the borrower can furnish. In this respect our so-called "country banks" differ with those located in New York City, where liquidity has been the prime incentive for the past 2 years, with the result that the assets of some of these institutions consist of Government bonds and cash and call loans up to the extent of 50 to 80 percent of the bank's deposits.

If this situation was forced on the country banks they might just as well, as far as being of service to the community, liquidate the institution and pay off their depositors and retire from business. I have a great deal of sympathy for the bank in a small town which has helped the community in loaning on what it considered sound assets at the time the loan was made and who now, by reason of a world-wide economic situation, finds that such assets are to a large extent frozen. Where judgment has been used in making the loans, these bankers should not be criticized nor condemned for what was beyond their control.

Banks in cities outside of New York State catering to local clientele, and particularly in a large industrial city such as Newark, must of necessity have a certain amount of their assets tied up in so-called "capital loans." The bank of which I am the head has a capital and surplus of \$5,000,000, with deposits of approximately \$15,000,000. Our position is probably stronger than most institutions by reason of the fact that we have a ratio of only 3 to 1. Unfortunately, the time is so short that I have been unable to secure the exact percentage of each class of investment, but we maintain

a liberal proportion in Government, municipal, rail, and other bonds, most of which are salable on short notice and constitute a secondary reserve for the bank.

We have a certain proportion in building and loan notes, a few bonds and mortgages, and a fairly large percentage in collateral loans. The latter, in some cases, have become undermargined, in fact undercollateralized, but we feel that some of the securities pledged against these loans having dropped in price as much as 50 to 80 percent, that within the next 2 or 3 years at the longest there will be a comeback which will make these loans amply margined. Probably 75 percent of these loans are on local securities such as bank, insurance, and miscellaneous stocks which prior to the depression enjoyed a broad market locally. All of these loans, without exception, were made to our own dealers who were borrowers of good standing and character and in some cases whose resources were 5 to 10 times the amount of the loan we made to them.

Should the law now proposed become effective it would lead to a great deal of demoralization in the local market, not to mention heavy losses that would be sustained by all of our banking institutions.

Our institution is one intensively local in character. It has built up its good will by reason of its fair treatment to all classes of borrowers. Two years ago in order to take care of the small borrower whose loan appeared to be too small to be entertained by the average bank but who, nevertheless, was in need of accommodation, we opened what is known as a personal loan department whereby we took care of this situation by loaning as little as \$25 and up to \$300 at 6 percent with the endorsement of two friends of the borrower.

I might say in connection with this department, that it has been one of the most satisfactory in the bank, the losses have been extremely small and the first few months, out of 1,500 loans; recourse was only had in 10 cases to the endorser. None of these loans would pass muster by an examiner but our experience has been that these small borrowers have been, with very few exceptions, prompt in their payment and made most satisfactory customers of the bank.

To appreciate the difference again between New York City banks and those located in other cities, it should be kept in mind that the former invariably make their collateral loans to brokers and it is an unwritten rule that when the margin has become exhausted the loan is closed out. This situation cannot apply to the second class as it would mean the loss of good will and accounts and there must be certain amounts of leniency shown to a worthy borrower whom the banker knows eventually can, and will make good. This local borrower cannot use his security in a New York bank as it is quite generally understood that these institutions will only loan on listed securities. I have on more than one occasion stated to our New York banking friends that as a matter of fact they loaned on quotations whereas we in our country banks gave more consideration to security.

This being the case, a strict and rigid rule is made by these New York institutions that if the margin on the loan is not maintained it must be paid off or sold out.

I feel the position of a local bank in loaning on securities is so different from that of a broker dealing on margin that the percentage

of margin which a bank should charge should be left as a matter of judgment, as no fixed rule can fairly be applied to all borrowers. Each case in a bank must be taken on its merits, whereas on the New York Stock Exchange it is simply a case of the margin being maintained and failure to do so means selling out the customer. At this time, with all classes of securities and every type of investment depreciated, it would be impossible for any of our banking institutions to secure from their borrowers the percentage of margin required by this bill.

This whole matter of loaning on local securities is of a very serious nature and it is hoped that the committee will consider carefully any drastic change that may be proposed. In view of what has happened in the past 2 years in regard to our banking situation, there are some advocates of not only State but country-wide branch banking who favor eliminating as far as possible banks in small communities.

I am not fully acquainted with the English or Canadian banking system which is so often referred to in discussion in regard to this matter, but I do say that I do not believe that we have reached a point in this country where it is either necessary or desirable that the small bank should be wiped out. These banks have rendered a valuable service to their communities and the bankers at the head are better qualified to judge the credit of their borrowers than the head of some large institution in another city who might control the institution as a branch.

Our experience in Newark has been with branch banking that the head of the institution absorbed is the man who controls the situation of the branch bank, and if he is promoted there is immediately a different feeling and a loss of business. I feel as some others, that without doubt there has been too many characters given in certain localities, one of the reasons being the competition between State banking institutions and national. I also think it desirable in small towns having two or three banking institutions that a consolidation be effected.

A solution possibly of taking care of capital loans which are constantly being offered to banks would be the broadening of the R.F.C. statute to a point where it could accept collateral which is now not eligible. As a member of the Advisory Board of the R.F.C. of the Second Federal Reserve District I know that there are loans which the committee is forced to turn down and which over a period of years would without doubt work out. Our committee in New York has endeavored to be liberal and helpful as possible with loans that are presented but we have staring us in the face at all times one of the conditions that the loan must be adequately secured. That means that we must take present-day values, which, in the case of real estate, is almost impossible to appraise by reason of the lack of offers to buy.

Another solution would be the proposed intermediary banks, which through our local institutions would make capital loans running up to 3 years. The next question would be, coming back to a point I raised before, What will the attitude of the bank examiners be in respect to these loans? If the same yardstick is applied to these loans as to others which are supposed to be more liquid, few banks would care to enter into this transaction.

Aside from the banking question, I desire to state that as a dealer in local investment securities that the provision in the stock exchange bill is of such a drastic nature affecting over-the-counter dealers in unlisted securities that it would cause a great hardship and an actual driving out of business of those dealers who have built up a business which in my case extends over a period of 40 years.

We are something more than simply brokers and traders in securities; we render a service to our clientele which I know is appreciated. Our attitude, for instance, in case of reorganization of a property or where defaults occur, regardless of what inducement the corporation might make, we stand by those to whom we have sold the securities and fight for all the possible benefits and protection of rights which they are entitled to. I have had three major battles with corporations on this point and am glad to say in each case we have saved millions of dollars to our customers.

That there will be a number of corporations and institutions which will have to adjust their debt before we are out of this depression goes without saying. On the other hand, there are any number who are perfectly able, if not at present, certainly will be within the next 2 or 3 years, to pay their just debts, who are starting to wriggle and squirm to find some means of compromising their indebtedness. Where we have sold securities in these particular corporations we propose to use every legitimate means to obtain a fair and just settlement for our customers and to prevent these corporations from taking an unfair advantage at this time.

I thank you gentlemen of the committee.

The CHAIRMAN. Any questions of Mr. Rippel?

Senator KEAN. I should just like to ask one or two questions.

The CHAIRMAN. Proceed, Senator Kean.

Senator KEAN. Mr. Rippel, you are a large dealer in securities in Newark, N.J., I believe.

Mr. RIPPEL. Yes.

Senator KEAN. And you very often buy stock in order to support the market, whereas you would do much better for yourself if you sold it as a broker.

Mr. RIPPEL. Yes, sir. Many times in the last 2 years I have had to buy stock in order to support the market, whereas I would have preferred not to do it.

Senator KEAN. In other words, you have lost money by trying to be a dealer?

Mr. RIPPEL. That is right.

Senator KEAN. And this bill if enacted into law would drive you out of business, would it not?

Mr. RIPPEL. Oh, indeed it would. If I may state it, in our city it is customary for bank and trust officials to call up a broker and ask for bids on securities. As to trading during the last 2 years on a declining market, we have had very few bids for some of our local securities, and at times, as Senator Kean would know, inasmuch as he is a Jerseyman, we have done the only thing that would make for a market for such securities, and if you take that right away I do not know what will happen, because frankly we have tried to stabilize the market, and in doing so it has been costly to us. But we hope there will come a time again when we may make some money on a rising market. But in our city we could not act

simply as broker, or on the other side, simply as dealer. For instance, we have orders from institutions, which orders we have to take on a strictly commission basis. And, again, we have to make bids on securities where we act as dealer.

The CHAIRMAN. You recognize, I take it, that there are on occasions a conflict of interest between broker and dealer, do you not?

Mr. RIPPEL. Yes. But that would not be so true in a town of our size. We have no stock exchange, and if I buy as a dealer that does not mean that I have an order on my books and that I can go right out and sell it. The other day 500 shares of stock in a certain company were offered, and which we could not sell immediately, although we did have an offer to buy 100 shares. And I believe that was at 7, and we sold 100 shares at 7½, but before we got rid of the rest of it the market declined. On the other hand, we bought the entire 500 shares. It was necessary in order to effectuate the deal to buy the whole 500 shares, because we could not buy it in 100-share lots. And, as I have already said, we have no stock exchange in Newark.

Senator KEAN. Newark has a population of about 500,000, I believe

Mr. RIPPEL. About 450,000, I think.

The CHAIRMAN. I thought there was a stock exchange in every place of that size throughout the country.

Mr. RIPPEL. No; we haven't one.

Senator KEAN. No; but they have a lot of dealers there, and brokers, but they do not have any stock exchange in Newark.

Mr. PECORA. Last summer it looked as if they were going to have one.

Senator KEAN. Yes. But they got fooled on that.

The CHAIRMAN. We are much obliged to you, Mr. RippeL, and the committee will be glad to read your views, those that are not now present.

Mr. RIPPEL. I thank you very much for the opportunity of appearing here.

(Thereupon Mr. RippeL left the committee table.)

The CHAIRMAN. Mr. Shaw, if you would like to be heard you may come forward and take a seat at the committee table.

Mr. SHAW. I thank you.

The CHAIRMAN. Mr. Shaw, please state your name, place of residence, and occupation.

Mr. SHAW. My name is A. Verle Shaw, of A. Verle Shaw & Co., investment counsellors, New York City.

#### STATEMENT OF A. VERLE SHAW, OF A. VERLE SHAW & CO., INVESTMENT COUNSELLORS, NEW YORK CITY

The CHAIRMAN. That is a new one. We have heard of investment trusts, and investment bankers, but I believe you say you are an investment counsellor?

Mr. SHAW. Yes, sir. We give advice to investors on securities.

Senator KEAN. We have had one investment counsellor before, Mr. Chairman.

The CHAIRMAN. All right. We will be very glad to hear from you regarding this bill.

Mr. SHAW. I come to speak in favor of the bill, S. 2693. I am of opinion that, with reasonable modifications, it will be to the advantage of investors to have this bill enacted into law.

I won't take up much of your time, but should like to go over just two or three objections which have been presented to the bill, and perhaps to make a suggestion or two.

Taking up first the question of margins and margin-buying, I am of opinion that in fact it would be a good thing if we could, for the benefit of investors as well as industry, have margin-buying as we understand it today prohibited.

In the first place, the broker already has conflicting interests so far as his clients are concerned, quite frequently, due to the number of transactions he is interested in carrying out. For instance, he is interested in carrying out a number of transactions at one and the same time, whereas it may be frequently to the best interests of the investor himself to carry out one transaction, and then to continue to hold the security for a long time.

When you permit a broker to lend money that allows him to increase the amount of capital with which his customer may deal; and, secondly, it is to his interest to advise his customer to conduct margin trading. So in the long run I think it would be better if the function of lending money were taken away from the broker and allowed only to the banker, and the bank is the proper place for that function.

Now, it seems to me——

The CHAIRMAN (interposing). We had a very interesting discussion of that matter by Judge Clark, of New Jersey, who took the position as I understood him that margin buying and margin trading was not necessary or essential to the financial structure, and that in fact there is no such thing in other countries.

Mr. SHAW. In some other countries there is no such thing at any rate. When a man makes a loan it seems to me he ought to have in mind a definite time when he is going to pay off that loan, and he ought to have a definite source from which he is going to secure the money with which to pay off that loan. Whereas, on the other hand, to rely on appreciation, on the thing bought, with the money thus secured, and the loan being a source of capital, and to then pay off the loan by that means is unsound. It is not a self-liquidating proposition. That is another reason why I think margin buying in the course of time should be done away with. I would not do it quickly, however.

The objection has been brought up that to compel margins to be brought down to this 40-percent limit, that is, to permit borrowing at 40 percent, of which 60 percent is on margin, would compel liquidation and thus start deflation again. I am rather of opinion that that would not happen at this time because margins are not as extended as they have been in times gone by, and there isn't the danger of reduction in price of securities that there was then.

As a suggestion I might say to you gentlemen, I think that Mr. Pecora's idea, expressed this morning, of pushing into the future the effective date for the pinning down of this provision, would be helpful, and that it might be made effective as of January 1, 1935, or even 1936.

Then I would go further, and after having left the 40-percent limit stay on the books for a year, I would bring that down to 30 percent, and at the end of another year I would bring it down to 20 percent, and at the end of another year I would bring it down to 10 percent, and at the end of another year I would wipe it out entirely. And by that time the stock market, or investment securities over the country, will have had time to settle down and add some appreciation, so that instead of solving the matter by liquidation it will be solved to some extent by increase in value of securities over that period of time, and perhaps it could be solved to some extent by persons putting up a little more collateral rather than reducing their loans.

Then as another corollary, let us say that you ease the restrictions on banks for their loaning. That is, do not make this restriction apply to the banks right off. I believe that some restriction on lending on the part of banks may be necessary as time goes on. At the same time perhaps that is the only way to control something like the Florida land speculation, which was not a stock-market matter at all, but just for the present I would be inclined to leave the restriction which you propose to apply to brokers, off the banks.

The CHAIRMAN. There have been several references made to the Florida land speculation. I want to say that that whole movement was initiated by people outside of the State of Florida; that people outside the State got all the profits out of it, and that now as to Florida lands the people are being advised to hold on and not to sell.

Mr. PECORA. The land is still there.

The CHAIRMAN. Yes.

Senator KEAN. But the people of Florida got the benefit of taxes on the lands there, didn't they?

The CHAIRMAN. No; it did not increase the assessed value of the property very much.

Senator KEAN. It did not?

The CHAIRMAN. No; you may go ahead, Mr. Shaw.

Mr. SHAW. Now, of course it has been said that the requirements of the bill are too rigid, and that they should be left flexible, and that it will be proven that what is a safe margin at one time will be quite unsafe at another time. That same thing is true of the speed of an automobile, but you have to set some regulation which will fit the speed to the majority of cases. So I think that a definite stand must be taken on margin requirements. So much for margins.

Now, on the matter of volume of trading: We have heard it said that a large volume is necessary, that we need a liquid market. It seems to me that we could have overproduction in the matter of security transactions just as we can have overproduction in wheat or hogs, and that there must be some limit put on security trading as being excessive. But I haven't heard any such limit mentioned by brokers or members of stock exchanges.

Take for example the number of transactions which went on in J. I. Case during 1930, 1931, and 1932. During the year 1931 in the matter of the capitalization of that company, it was sold 75 times, and during the 3-year period mentioned the company was sold 45 times a year, or on the average of almost once a week. There were



enough brokerage commissions made on those transactions to more than equal the total value of the company at the end of 3 years.

Mr. PECORA. It might be more accurate to say that the stock was traded in to that extent than to say that the entire capitalization of the company was sold a certain number of times.

Mr. SHAW. That is right. It was the floating supply of stock that was sold. Of course there were many shares which were never sold at all.

The CHAIRMAN. What was the cause of that?

Mr. SHAW. It was used as a gambling market by the speculators in Wall Street. Now, if that is good then we ought to have it apply to a great many more companies besides J. I. Case. In other words, if it is a good thing it should not be applied only to J. I. Case but to other companies. But that is just again the matter that came out in the Pujo investigation, when it was shown that the Reading Railroad was sold from 20 to 40 times each 1 of the 7 years between 1904 and 1912; that there were only 2 months out of the whole 7 years that it was not sold at least once.

Mr. PECORA. Again it might be better to say traded in to that extent instead of sold one or more times over.

Mr. SHAW. Yes; that is correct. But I do not believe it is of value to the investing community and to the industrial community to have that great amount of trading, that superliquidity in the securities which have already been sold to the public years before, because the cost of all that market-ability comes out of investors in the long run.

Now, in the matter of publicity—

Senator KEAN (interposing). How does that come out of an investor if he does not sell but sits on his stock?

Mr. SHAW. It does not come out of the investor who does not sell but sits on his stock. It comes out of the investor who goes in and uses those facilities.

Now, I believe that—

Mr. PECORA (interposing). It comes out of the investor as a result of the excessive speculation affecting the market price of the security.

Senator KEAN. Do you mean if he has to sell?

Mr. SHAW. Yes, sir.

Senator KEAN. If he does not have to sell it does not come out of him?

Mr. SHAW. Perhaps not.

Mr. PECORA. Well, it affects the market value of the stock.

Mr. SHAW. If it is carried to such an extreme that it affects the entire financial structure, as it did over the last 2 years, then he is affected regardless of the fact that he holds his security throughout the period.

The CHAIRMAN. You may proceed.

Mr. SHAW. As to the publicity features of the bill: Regarding publication of corporate accounts, I am entirely in favor of that, and particularly those provisions which compel the giving of information by directors and officers. Officers and directors of a corporation, to my way of thinking, are the trustees of that information for the benefit of the shareholders, who have hired them. And the best way of compelling corporate chastity is to compel corporate

nudism. So, let us have the facts given out, and it will limit manipulation, and I believe will work for reducing fluctuations in the stock market.

Senator KEAN. Suppose an officer or director is afraid to give out any information; what then?

Mr. SHAW. Afraid to give out any information?

Senator KEAN. Yes. Under this bill he is liable, if he does not give out all the information, to be charged with leaving out some information, so that he might very well decide to refuse to give out any information at all.

Mr. SHAW. I was speaking particularly of the information regarding his own transactions in the stock of the company. If I did not make that clear I am sorry.

Senator KEAN. I thought you meant public information.

Mr. PECORA. I think Mr. Shaw is referring to those provisions of the bill relating to transactions by directors and officers and by individuals owning 5 percent or more of the capital stock.

Mr. SHAW. True. I did not make that clear.

Senator KEAN. With respect to giving out information in regard to the company, at the present time, under the bill, if he gives out any information in regard to his company he is running a very grave risk.

Mr. SHAW. Yes. I approve of that provision of the bill.

Senator KEAN. You approve of his running the risk?

Mr. SHAW. No; not of his running the risk.

Senator KEAN. You approve of that being cut out?

Mr. SHAW. Yes.

The CHAIRMAN. If he tells the truth, that is all he is required to do.

Senator KEAN. He might leave out something.

Mr. SHAW. Suppress the truth.

The CHAIRMAN. That is as bad as not telling the truth.

Senator KEAN. Somebody might claim that he had left out something in some statement, some small fraction of something, and that might be construed against him. Therefore he will not give out any information.

Mr. SHAW. Yes.

Then, on the matter of putting the control of the exchanges under the Federal Trade Commission, it has been said that this would give a bureaucratic control of American corporate interests to the Federal Trade Commission. I do not believe the bill contemplates giving more control, or much more control, to the Federal Trade Commission than the stock exchange has already had over these corporations. From the point of view of the investor, it seem to me much safer to have it with the Federal Trade Commission than with the stock exchange members, because the stock exchange members and brokers are agents of the investor, and interested in something different from what the investor is, very frequently, so I think the best interests of the investor would be served by carrying out the provisions of the bill in that regard.

I think those are about the subjects I want to cover, unless there are some questions on something else.

Senator KEAN. Suppose a new company were organized. How would the broker, or anybody that went into that new company, borrow any money on the stock?

Mr. SHAW. Borrow it from a bank, not from a broker.

Senator KEAN. Then all loans would have to be made from a bank?

Mr. SHAW. Yes, sir.

Senator KEAN. Suppose the bank was not particularly interested, or did not want to loan on a new undertaking. How would you raise the money?

Mr. SHAW. Under present arrangements a brokerage firm would be hesitant to loan on a new security unless it had a market, and if it had a market, I think the bank would be willing to loan. Do you mean a security which has already been listed, Senator?

Senator KEAN. No. I mean a security which is not listed as yet, but is going to be listed. You say a broker would hesitate about going into it, but they do go into them, and they do borrow money, perhaps on other securities.

Mr. SHAW. It would be the investment banker who borrowed on a new issue.

Senator KEAN. Yes.

Mr. SHAW. He would borrow from a bank, but a broker would not loan on a new issue now, I believe.

Senator KEAN. He might. Then a market is created, and gradually the broker sells the stock to clients and various people, and the security is divided up.

Mr. SHAW. Yes. I would separate the two functions of the primary securities market, which should belong to the investment banker, and the dealer, from the secondary market which should belong to the broker; and I would push the securities out, in the case of a new issue, through the primary market, without much assistance of the secondary market of the broker.

Senator KEAN. You say it would all have to be cash. Would you require, on a new issue, that it all be cash?

Mr. SHAW. As far as the individual investor is concerned, I would.

Senator KEAN. I am talking about the broker now.

Mr. SHAW. Require the broker to put up cash for the entire issue?

Senator KEAN. Yes.

Mr. SHAW. No; I would allow him to borrow from the bank.

Senator KEAN. He could only borrow, under the terms of this bill, and if you put it up to 80 or 90 or 100 percent, he would be on a cash basis pretty soon, and it would be impossible to carry on that business.

Mr. SHAW. No; I would not make that restriction apply to the bank. I would let that apply only to the broker lending to the customer on listed securities.

Mr. PECORA. That is all the present bill does do. It does not restrict the bank.

Mr. SHAW. Does it not restrict the bank?

Mr. PECORA. It says [reading]:

It shall be unlawful for any member of a national securities exchange or any person who transacts a business in securities through the medium of any such member, directly or indirectly—

Mr. SHAW. Are you looking at section 6?

Mr. PECORA. Yes.

Mr. SHAW. Section 6 (c) says [reading]:

It shall be unlawful for any person to extend or maintain credit—  
and so forth.

Does not that include the bank? [Continuing reading:]

in an amount exceeding the amount which it is lawful for a member of a national securities exchange to lend—

and so forth.

Mr. PECORA. That is subject to the exception that the restriction does not apply in the case of a borrower who has owned the security for more than 30 days.

Senator KEAN. These securities we are talking about would be new securities. That is all I have to ask. I am very much obliged to you.

The CHAIRMAN. Mr. Pecora, do you wish to ask any questions?

Mr. PECORA. No, sir.

The CHAIRMAN. As I understand, you do not find any fault with the proposal in the bill placing this power of regulation and supervision in the Federal Trade Commission. You do not find any fault with that?

Mr. SHAW. I do not.

The CHAIRMAN. I believe that is all, Mr. Shaw.

Mr. SHAW. Thank you.

The CHAIRMAN. Mr. J. H. Doyle has written several letters and sent several telegrams indicating a desire to appear here. Finally he said that if he did not appear he would like to have permission to file a brief. We wired him on the 10th either to be present today or to send his brief. He does not seem to be here, and I presume he is transmitting a brief, which I will ask to have inserted in the record, when it comes, in lieu of his statement.

Is Mr. Calloway here? [No response.] He was in this morning.

Mr. PECORA. Is that Mr. Trowbridge Calloway?

The CHAIRMAN. Yes.

Mr. PECORA. He has sent a communication here. We have his printed communication.

The CHAIRMAN. I have another communication from Mr. J. R. Edwards, of Cincinnati, somewhat along the lines of the one inserted this morning, bearing on this subject. I will ask to have that inserted in the record.

(Letter, Mar. 8, 1934, from J. R. Edwards to the chairman, will be printed at the conclusion of today's proceedings. This document will appear only in the chairman's copy of transcript, to go to the Government Printing Office.)

The CHAIRMAN. A gentleman who does not wish his name to be used, who has had considerable experience in business as an accountant and auditor, I believe, has some views on this subject which he has put in writing, and he asks me to have them put in the record.

Senator KEAN. I do not think we ought to put them in the record unless he is willing to have his name used. Did he sign it?

The CHAIRMAN. No. We have a letter from him, but he did not want his name used.

Senator KEAN. I do not think we ought to put anything in the record unless people are willing to stand by it. I do not know what it is.

The CHAIRMAN. I will not insist on it.

Senator KEAN. If he will sign his name to it, then I think it should be put into the record. Otherwise it should not be.

The CHAIRMAN. Very well. There are four or five other people who have been unable to come, they said, and who have submitted statements. They are all signed, of course. If there is no objection, I can have those put in the record at any time.

Senator KEAN. Yes.

Mr. PECORA. Mr. Chairman, before you adjourn, may I suggest that there be read into the record a letter addressed to you by J. P. Morgan & Co., with respect to certain matters that have gone into the record before this committee in the last few days?

The CHAIRMAN. I think that was inserted by Senator Townsend. Perhaps this is a formal communication, and it ought to go into the record.

Mr. PECORA. The letter is addressed to you, sir, as chairman of this committee. It is dated March 8, 1934, and reads as follows [reading]:

NEW YORK, March 8, 1934.

DEAR SIR: The New York Times this morning says that Senator Robinson of Indiana, speaking in the Senate, cited testimony before the Senate Banking and Currency Committee that J. P. Morgan & Co and others had sold aircraft stock shortly before cancelation of the contracts as evidence that "international bankers" had advance information

Any suggestion that J. P. Morgan & Co had advance information of the action referred to is entirely without foundation

The 4,500 shares of stock in the United Aircraft Co sold by us January 26 to February 1, as reported to your committee by the New York Stock Exchange, constituted part of the miscellaneous collateral securities for a large loan to C. E. Mitchell made in 1929, concerning which loan your committee has full information. We have desired to realize on this collateral as opportunity offered, and, accordingly, the 4,500 shares of United Aircraft stock and some other securities in unrelated enterprises have been sold. These sales were made upon our own judgment without any suggestion from the borrower or others. We had no information, suggestion, or intimation from anyone affecting the airplane industry or the general situation beyond what was a matter of common knowledge and public information in the press

We are sending copies of this letter to the members of your committee

Very truly yours,

(Signed) J. P. MORGAN & Co.

The CHAIRMAN. I have here also a communication addressed to the New York Stock Exchange, which Mr. Redmond says may be inserted in the record.

Mr. REDMOND. That was produced to be inserted in the record which we furnished the committee last week.

Mr. PECORA. I will read it into the record now. Mr. Redmond, of counsel for the New York Stock Exchange, submits the following communication addressed to the New York Stock Exchange committee on business conduct [reading]:

NEW YORK, March 8, 1934.

NEW YORK STOCK EXCHANGE,  
Committee on Business Conduct,  
18 New Street, New York City

DEAR SIR: Reverting to your notice of February 15th, and our reply thereto of February 17th, may we supplement our reply with the following information for the period of January 26, 1934, to February 9, 1934.

This firm made no purchases or sales for its own account

On behalf of others we executed orders of sales for long account as follows:  
Through Richard Whitney & Co. United Aircraft & Transport Corporation  
Stock

Account C E Mitchell Loan Jan 26—2,000 shs. at 35¼, Jan 29—200 shs  
at 35¼; Jan 30—1,300 shs at 35½; Jan 30—500 shs at 36½, Feb 1—500 shs  
at 37¼

Your very truly,

(Signed) J P MORGAN & Co

The CHAIRMAN. Is there any person present who would like to be heard on the bill? [No response.] If there is not, I think we can announce that the general hearings are closed for the present. I shall call a meeting of the committee in the next day or two and have the committee take up the bill in executive session. By that time we may have some other people who would like to be heard. We will not absolutely close the doors. We will want to hear Governor Black. We have not heard from the Federal Reserve Board yet, and it may be that we will have some other people up here later, but for the present the hearings will be regarded as closed.

The committee will now stand adjourned subject to call. I expect to call the committee together in the next few days to take up the bill.

(Whereupon, at 3:30 p.m., the committee adjourned subject to call.)

CINCINNATI, OHIO, March 10, 1934

Senator DUNCAN U FLETCHER,

*Chairman Banking and Currency Committee*

Referring to proposed law to regulate stock exchanges, if you predetermine the marginal requirements you standardize the borrowing capacity of millions of gamblers, whereas the borrowing capacity should be based upon their financial status and their ability to repay. Putting it another way, a standardized margin for speculative purposes is a predetermined idea to extend credit to millions of gamblers who are not entitled to this dangerous form of credit. Furthermore, to predetermine marginal requirements legalizes the amount of funds loaned by brokers to their customers who sign no notes and do not reveal their financial status when there are many court decisions to the contrary. Any good lawyer can dig up many important cases where these gambling debts could not be collected by law. You cannot control speculation by regulating marginal requirements. It only legalizes the gambling debts. The proper solution is to prohibit brokers from lending credit to every Tom, Dick, and Harry of whom they know nothing and prohibit banks from making brokers' loans for unknown gamblers. This would force the gamblers to go direct to their local banks for their speculative accommodations where they would have to disclose their financial status and sign notes that would reveal the damaging fact that a large proportion were not entitled to credit. It is foolhardy to predetermine the amount of margin as Congress is attempting to do when every determining factor is extremely variable. No standard has or will ever exist in extending credit.

If you prevent brokers from granting credit and banks from accepting brokers' loans it places in the hands of the banks the ability to regulate speculative credit and prevent a diversion of capital from legitimate business into speculation when it is hurtful to business. But most important it would place a limit on the borrowing of other people's money for speculative purposes in the right place which specifically is whether the original borrower is entitled to credit and whether the money market will stand this extension. Millions of gamblers situated throughout the United States would have to go to their local banks for speculative credit whereas under your proposed law brokers could still grant credit with a lavish hand to millions of persons situated throughout the country and then the brokers would have to carry their extension of credit by borrowing from the New York City bankers on brokers' loans. Brokers' loans are the most dangerous form of credit because they have no element of self-liquidation. Non-self-liquidating loans are permanent loans which can never be paid off except through some form of forced liquidation,

and at the end of every speculative era brokers' loans are collectively liquidated which process is accompanied with disastrous results to the borrower and the country at large. This makes stock speculation on margin an unbeatable game. Your committee is getting into hot water by attempting to predetermine marginal requirements

J. R. EDWARDS

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J. R. EDWARDS & Co.,  
Cincinnati, March 9, 1934

Senator DUNCAN U. FLETCHER,  
Senate Building, Washington, D. C.

DEAR SENATOR FLETCHER: I notice that you are now revamping the proposed law to regulate the stock and commodity exchanges.

In doing this I believe great pressure has been brought upon you with respect to marginal accounts. Let me put this important proposition to you. To predetermine the marginal requirements is to standardize the borrowing capacity of millions of gamblers, whereas the borrowing capacity of the individuals should be based upon their financial status and their ability to repay. Putting it another way, *a standardized margin for speculative purposes is a predetermined idea to extend credit to millions of gamblers who are not entitled to this dangerous form of credit.* Furthermore, to predetermine the marginal requirements LEGALIZES the amount of funds loaned by the brokers to their customers who sign no notes and do not disclose their financial status, *when there are many court decisions to the contrary. Any good lawyer can dig up many cases where these gambling debts could not be collected by law.*

Therefore, Senator Fletcher, I want you to analyze the fact that when Congress begins to consider marginal requirements they are getting into hot water. The present law does not control speculation, *it legalizes the debts.*

I believe you should think seriously on this subject. Probably the thoughts conveyed in the above will be new to you.

Another suggestion I would like to make to you is with respect to your investigator, Mr. Pecora. Isn't possible for him to question witnesses with respect to marginal accounts and prove that *to standardize margin account is really a predetermined idea to grant credit to millions of gamblers who are not entitled to it.* In other words, it would be very helpful to your committee to bring this matter to public attention thru witnesses.

Very sincerely yours,

J. R. EDWARDS

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J. R. EDWARDS & Co.,  
Cincinnati, March 8, 1934

Senator DUNCAN U. FLETCHER,  
Chairman Committee on Banking and Currency,  
Senate Building, Washington, D. C.

DEAR SENATOR FLETCHER: The public press reveals the fact that the United States Chamber of Commerce at Washington, has launched a vigorous attack against stock exchange control. This attack is induced by either of two reasons. First, they may honestly believe that this will hurt industry and business, or, secondly, the insidious lobby of the New York Stock Exchange has reached them. Their reasons are those that are, or could be, advanced by the New York Stock Exchange to promote destructive speculation, which are diametrically opposed to the interest of business men in the United States in general, who the chamber is supposed to represent.

In other words, this national chamber is playing directly into the hands of the brokers and the New York Stock Exchange and not protecting the millions of business men, merchants, and employees. I am led to believe, and many thousands will also believe, that the insidious lobby of the New York Stock Exchange has reached this august body. Therefore their attack is worse than useless.

In the first place, every thinking person is in agreement that Federal control of the stock and commodity exchanges is necessary. The question arises how should this control be exercised. The speculative abuses should be corrected and same are fully covered in the proposed law to regulate the exchanges. It regulates the whole category of bootleg loans, washed sales, matched orders,

manipulation, misinformation, false statements, pegging prices, etc. There can be practically no disagreement on this.

The mooted question is margin accounts. Now let us stop and analyze these margin accounts. Many persons do not realize that margin accounts have two factors. First, "margin" is how much of their life savings the gamblers have to put up with the brokers. But more important is the second factor, which is how much the gamblers have to borrow of other people's money. Putting it another way, a margin account really means how much the gamblers are borrowing of other people's money.

The New York Stock Exchange is embroiling Congress in the questionable proceeding of determining how much margin will be required of the public when they gamble in stocks. If Congress reaches an agreement on the amount of margin required of brokers' customers, this in turn legalizes the amount of funds loaned by the brokers to their customers, who sign no notes and do not disclose their financial status when there are many court decisions to the contrary. Any good lawyer can dig up many cases where *these gambling debts could not be collected by law*. The question of the amount of margin is not the important part of the equation. It is how much second-hand credit is borrowed from the banks in the form of brokers loans and lent to the brokers customers. These brokers loans are the most dangerous form of credit, since they have no element of self-liquidation.

The proposed law is weak because it endeavors a petty regulation of the amount of margin required without considering whether the individuals are entitled to borrow and without placing a control on the funds borrowed. For instance, the brokers lend funds to anyone who will gamble on margin, without requiring them to disclose their financial status, to determine whether they are entitled to credit.

To predetermine the marginal requirements is to standardize the borrowing capacity of millions of gamblers, whereas the borrowing capacity of the individuals should be based upon their financial status and their ability to repay. Putting it in another way, a standardized margin for speculative purposes is a predetermined idea to extend credit to millions of gamblers who are not entitled to this dangerous form of credit.

Congress is permitting the brokers to grant billions of credit with other people's money to millions of amateurs of whose financial standing they know nothing, to be based upon a predetermined amount of margin which will again foster a new era of stock-market gambling, and then when gambling reaches a stage where it cannot be stopped, Congress says we will put a limit on the amount of funds to be used for gambling purposes by placing a limit on brokers loans of 10 times the brokers net quick assets. There is no rime or reason in this. This shows that the control of speculation is in the wrong place. The reason is that the gamblers are the original borrowers of credit and the expansion of speculation depends entirely on the use of prodigious amounts of credit. Therefore, the use of speculative credit should be controlled and based upon the financial standing, character and ability to repay, etc of the original borrowers, like every bank loan is predicated.

The proper solution is to prohibit the brokers from lending credit to every Tom, Dick, and Harry of whom they know nothing, and prohibit the banks from making brokers loans thru the brokers to unknown gamblers. This would force the gamblers to go direct to the banks for their speculative accommodations where they would have to disclose their financial statements that would reveal the damaging fact that 80 percent were not entitled to credit. As far as the margin or equity, is concerned the banks determine this by the character of the individuals, the amount of the loans, the class of the securities and the status of the money market. Also, the price of the stocks or grains, plus many other variable factors. It is foolhardy to predetermine the amount of margin, as Congress is attempting to do, when every determining factor is extremely variable. No standard has or will ever exist in granting credit.

Furthermore, if you prevent brokers from granting credit and banks from accepting brokers loans, it would confine speculation to those who are financially responsible. It places in the hands of the banks the ability to advise and caution against the hazards of speculation, whereas today the brokers encourage the worst types. In addition, the banks could stop a diversion of capital from legitimate business into speculation when it is hurtful to business. There would be no hard and fast rule on the amount of credit to be used. But most important it would place the limit of borrowing other people's money for



speculative purposes in the right place, which specifically is whether the original borrower is entitled to credit and whether the money market will stand this extension. The millions of gamblers situated throughout the United States would have to go to their local banks for their speculative credit, whereas today the brokers grant credit with a lavish hand to millions of persons situated throughout the country and then the brokers must cover their extension of credit by borrowing from the New York City banks on brokers loans.

Brokers loans are most dangerous because they have no element of self-liquidation. The only way they can be paid off is thru the sale of the collateral, which is collectively liquidated either by the banks, brokers or gamblers, causes or accentuates a stock market panic wherein the gamblers lose their life savings. This reason is also present in every panic whether it is small or large. There is no category of credit that is as dangerous as these non-self-liquidating brokers loans. Brokers loans are the only vehicle by which brokers can expand their business with other people's money at the final expense of the whole country. Brokers loans make stock speculation an unbeatable game. The psychological difference between a gambling den and the New York Exchange marginal game, in the first instance "the sucker is never given a chance" while in the second instance "the sucker never has a chance," because of brokers loans.

The stock exchange is now geared up to handle 5 to 10 million shares a day with thousands of customers' men, clerks, auditors, etc with thousands of offices all over the country and with thousands of miles of leased wire and they are fighting for their lives to keep their crap game opened. They are using every argument and are getting individuals and associations to help them out. They say that if speculation is curtailed it will hurt business and that it will deflate values and slow down the financing of corporation. This is a lot of tommy-rot, because if the exchange was closed except for legitimate buying and selling (no marginal gambling) business and industry would never feel it. In fact, it would be good for business because stock market gambling with borrowed money eventually leads to disaster. If it were not otherwise all of us would be millionaires. We are suffering from too much of the crap game that the Stock Exchange stands for and loudly advances and practices.

Very sincerely yours,

JRE/R

J. R. EDWARDS.

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NATIONAL ASSOCIATION OF BUILDING OWNERS AND MANAGERS,

*Washington, D.C., March 8, 1934.*

HON. DUNCAN U. FLETCHER,

*Chairman Senate Committee on Banking and Currency,*

*United States Senate, Washington, D.C.*

MY DEAR SENATOR: The National Association of Building Owners and Managers, representing an industry with \$6,000,000,000 of invested capital, has a direct and vital interest in the National Securities Exchange Act of 1934, now under consideration by your committee. Our membership consists of federated associations in 41 cities and of associate members in 90 other cities of the country.

We call your attention to the fact that the issues involved in this proposed legislation affect much more than the operation of security exchanges, and will have far-reaching influence upon the industry this association represents.

We would point out that regulations so drastic as to restrict greatly the security business and endanger the transaction of many legitimate enterprises related thereto would have a ruinous effect upon property accommodating financial institutions in all of the principal cities of the country.

Specifically, such curtailment of the security operations would result in our industry in loss of tenants, contraction of space occupied by such tenants, and obsolescence of special equipment and facilities provided for their use, which with the difficulty of adapting much of this space to other purposes could not fail to produce further impairment of real-estate values. The investment in properties devoted to these uses in many communities is sufficiently great to make this a matter of far-reaching consequence.

Furthermore, the industry, as you must know, has suffered, and is still suffering, severe distress. Our recent survey of rental conditions, covering 1,900 office buildings, in 35 cities, shows a total vacancy of 48,447,161 square feet, and an

average vacancy for these buildings of 27 57 percent In addition to this, our inquiries have shown a delinquency in the payment of rent to the extent of 15 percent of a year's rental. This 15 percent delinquency has the same effect upon current income as if vacancies were increased by this same percentage, so that practically all office buildings of the country have a combined actual and potential vacancy of 40 percent From 1929 to 1933, the income for the industry decreased \$217,000,000, while operating expenses, not including taxes, decreased \$53,500,000, or only about one quarter as much as the decline in income. As a result of the drastic shrinkage in operating net income, hundreds of buildings have been forced to default on their bonds, have been unable to pay their ground rent, and in many cases have insufficient funds to meet tax bills A survey of 929 buildings in 16 cities shows that 24 3 percent of these buildings are in financial default

It may commonly be assumed that the effects of legislation regulating stock exchange operations would concern only those cities in which important exchanges are located. The point we desire to emphasize is that in our industry alone, they will affect all of the larger and many of the smaller cities of the country In the limited time at our disposal, we have canvassed the opinion of member-organizations, and a substantial majority of the cities affected have thus far registered disapproval of those features of the act which would tend to restrict seriously the volume of security business

You have already been informed by the representatives of the Real Estate Board of New York, Inc., that the building occupancy of stock exchange tenants in that city represents at least 5,000,000 square feet of space, with a rental value of \$15,000,000 annually

A survey of similar conditions in Chicago, Detroit, Indianapolis, Los Angeles, Denver, Spokane, Louisville, Baltimore, and Pittsburgh reveals that in these 9 cities 105 office buildings would be affected, with 2,987,270 square feet of space occupied by tenants engaged in the security business, the invested capital represented by such occupancy being estimated at \$69,700,680

We are opposed to those features of the proposed legislation which, by reason of drastic requirements, would bring about a serious curtailment in the operations of this business, and strongly recommend that material modifications be made in the act with respect to restrictions so imposed

We ask—as I am sure you are disposed to do—that in the consideration of this legislation you weigh fully the contingent effects upon this, as upon other avenues of business throughout the nation

Very sincerely yours,

NATIONAL ASSOCIATION OF BUILDING OWNERS AND MANAGERS,  
By R W BEACH, *Executive Secretary*

THE SHELTON LOOMS,  
SIDNEY BLUMENTHAL & Co, INC,  
*New York, March 1, 1934*

Hon DUNCAN U. FLETCHER,  
*Chairman Committee on Banking and Currency,  
United States Senate, Washington, D C*

Subject National Securities Exchange Act of 1934

DEAR SENATOR FLETCHER: All fair-minded business men must be in sympathy with the purposes of this act The provisions are so far-reaching, however, that it seems proper for those imbued with the greatest spirit of cooperation and sympathetic interest to point out unintended hardships which may have escaped the framers of this act

The writer cannot withhold his alarm at the possibility of error in many of these provisions, and, rather in the spirit of analysis than in the spirit of criticism, wishes to put before you his impression of various sections in the act The writer trusts, therefore, that you will accept the enclosed statement as contributing to clarifying the bill and towards eliminating harmful features

In endorsing the suggestion for a special reviewing group (see page 6 of enclosed statement) aiding the legislature or the Federal Trade Commission in shaping this act, it is not intended to cast any doubt on the judgment or wisdom of those who framed the Fletcher-Rayburn bill The additional outlook arising from such review bids fair to give a safer interpretation of the difficulties involved Possibly such a reviewing committee may be of continued service in conjunction with the Federal Trade Commission, and should

be made a standing committee, reviewing the experience had after the passage of the act, and making suggestions for amendment from time to time to be acted upon by Congress

I therefore respectfully urge that before taking action on the bill, such a reviewing committee be immediately formed and that a report, taking into account its recommendations, be obtained at the earliest possible moment.

Yours very truly,

SIDNEY BLUMENTHAL, *President*

[Statement accompanying letter from Sidney Blumenthal, Chairman, Sidney Blumenthal & Co., Inc.]

FEBRUARY 28, 1934

NATIONAL SECURITIES ACT OF 1934

Sec 11, page 14. There is no objection to the control proposed to be exercised by the Federal Trade Commission in fixing a uniform policy for the revelation and publicity of adequate and desirable information. There seems, however, to be a decided need to clarify the nature of publicity thus invoked for action by the F.T.C. and to limit it as far as possible so as to satisfy reasonable requirements. To accomplish this a draft should be made by the F.T.C. of what is considered desirable and necessary, and a full and frank debate on the subject should be openly had in order to avoid disquietude, uncertainty, and, if possible, unintentional harm to corporations, investors, and incidental delay in business recovery.

Sec. 12 and 13, page 16. It seems wholly unwise to place upon any corporation asking for proxies the obligation to send to every stockholder the entire list of names and addresses of stockholders. This results in the revelation of names, permitting of abuse by those who have a mischievous purpose. The objective might be propaganda based on irresponsible statements, innuendoes and a spreading of questionable information which it would be hard to combat without previous knowledge of such a performance. The suspicion aroused, and the inability of stockholders to follow the details of manoeuvres of this kind, are likely to do incalculable harm. Surely other ways must be found of making available to those stockholders who have an honest claim to it all the information to which the F.T.C. might think them entitled, say on condition that they file a bond or some other obligation setting forth the entire and exclusive use which they intend to make of the information and assuring the necessarily confidential use of it.

Monthly statements of gross sales and gross income likewise are a revelation of confidential information not reasonably necessary to the full enlightenment of the stockholder, who in many cases does not gain an advantage in having this information in sufficient degree to offset the great disadvantage of revealing it to competitors in the same line or in other lines of business paralleling that of the reporting corporation, notably is they are not listed or incorporated. No information should be demanded of listed corporations, which is not equally demanded from other business organizations, whether or not incorporated or listed, if indeed the publicity thus desired is necessary and valuable for the enlightenment of every stockholder. It is believed that the object of the National Recovery Act, in causing Code Authorities in each line of business to gather under the seal of confidence information desired, is much better calculated to enlighten the investing stockholder of any particular company by means of figures, when published, giving a well-rounded picture of the entire industry and the sum total of its achievement. Within this framework it will be easy for the investor to locate the effectiveness and responsibility of individual corporations by reason of their quarterly income statements. Even then, the subdivision of many lines of business into groups of activities differing from each other and having a seasonable character and variation are very apt to mislead, if analyzed too frequently and without comparison. There will be shortly available, publication through all Code Authorities of employment statistics as well as the results of the compilation of the values of raw materials used, power consumed, hours worked, combined inventories and shipments, and other items indicating the production of units of output, which are much more enlightening than the mere issuance of statements regarding the individual money value of output. (The enclosed statement issued to the Cotton Textile Industry by The Cotton-Textile Institute, Inc., giving a report of the Chairman of the Cotton Textile Code Authority, showing beneficial results to the Industry

under its N R A. Code, is an example ) A monthly statement, composed purely of the money value of output, leaves out of consideration the fluctuations arising from changes in commodity prices, seasonal demands, fashion influences and speculative movements

A quarterly statement is much more apt to give a correct picture, and is less likely to confuse those who desire to check up on their investments and interests in various corporations I can see no advantages accorded to any director or officer, who is also an owner of securities, which would be denied to any other stockholder who would be deprived of monthly information It will probably take anywhere from three to six weeks after the termination of each month before such information is available for analysis, and any advantage that a director or officer of a company might have for the purpose of exploitation would not be thus removed. It would not even be so removed if the report were made on the basis of weekly experience, because of the length of time which would intervene before such reports could be compiled and made public, notably if they had to be certified by public accountants Moreover, the cost of publishing such certified information, and releasing it to a large number of stockholders, many of whom have a very small interest, is a burden which will discourage the further organization of corporations and will probably lead to the abandonment of the corporate structure by many enterprises who would feel themselves at a disadvantage with their non-incorporated and non-listed competitors Most of the guiding information necessary is now possible by the corraling of figures through Code Authorities, and this, if assembled, might well be issued by the F.T.C as a pamphlet or loose-leaf distribution, for the guidance of and made available to investors in all lines of business asking or subscribing for it

Sec 15, b-1, page 18 The acquisition and resale of securities within a shorter time than the six months given by this section may arise from circumstances over which the officer or director has no control There may be death or the winding up of an estate, the struggle for existence which may require the sale and disposal of securities acquired with the intent of holding, but made necessary by pressure of unfortunate circumstances, the "acts of God", business reverses, or the evidence of what may be considered wholly undesirable new tendencies arising shortly after the acquisition of stock interests This may arise from new inventions or discoveries which may come to the notice of those acquiring securities; a sudden discovery of flaws or incapacity of management or a sharp difference of opinion may cause a desire for liquidating interests, the acquisition of which had no venal objective In all these the issuing house may thus be considered as involving its representative on the board of directors In dealing with the possible abuses arising from acquisition and disposal of stocks within a short space of time through drastic penalties, the bill as now drawn is calculated to "spill the child with the bath" Surely there must be a better way of controlling the possible abuse of power As indicated above, on most boards of directors, I would point to the presence of bankers who have come upon the board immediately after undertaking to distribute securities for a new and not widely known corporation which is about to be listed or has been listed on a stock exchange. It must be the obligation of the bankers for many months, and perhaps for a term of a year or two, to stand ready to buy and to sell securities from and to investors who may have had a change of mind shortly after the sale or acquisition of stock from these very bankers In many instances investors, acting under the advice of investment counsel, are apt to buy securities and to sell them back to the same bankers for the purpose of buying other securities which at the time may seem more favorable, thus improving their investment position, without having any intention of speculating Changes in the international relationships, such as the imposition of tariffs, embargoes and other laws, to say nothing of wars and internal government complications, may demand a sudden change of mind on the part of the investor Is anyone to be penalized for dealing according to his best judgments without regard to his honesty of intention?

It seems to me this section must be safeguarded by an obligation on the part of the F T C to permit the exposure of the entire transaction at the time it is made to the Commission for the purpose of exculpating and keeping free from any charge of venality any director or officer who might otherwise expose himself to criticism and penalty under this section, if indeed the section must be retained in the bill

Sec. 15, b-3, page 19: There are so many ways by which this section might cause damage to all business in general because of the impossibility of con-

tiolling honest observation by those who are genuinely square in interpreting it and because of the further possibility of circumvention of its purposes by those who are less scrupulous, that it seems a wholly undesirable section. The word "confidential" as applied to information requires extensive definition. Every operative in the employ of the company and every manager of a department, whether in the factory or in the distribution end of the business, has information which may at times be of extreme importance; and while discipline and loyalty may prevent the misuse of such facts as are available in this manner, it seems impossible to eliminate out of daily conversation with customers or suppliers, consulting engineers, other advisors, and accountants, certain current information which at times may be of highest importance and at other times the same information may be most trivial and insignificant in value. All of this information may be considered to be under the control of the management officers and the board of directors.

Sec 17, page 20. This section is fraught with much risk. First, many small corporations will be tempted at the earliest possible opportunity to withdraw from offering their securities to the public and from the listing of such securities on the exchange, acquiring as rapidly as possible all outstanding stock interests not agreeable to withdrawing from such listing, second, the responsibilities of officers and directors which they attempt to safeguard by having certified public accountants verify all public statements, appear nevertheless to expose them to challenge and doubt. I think it is unfair and unreasonable to expose officers and directors, trying honestly to comply with the law, to the risk of a suit which in light of the circumstances can only be described as a "hold-up" and to be compelled to add to the burden of their activities the mental strain, the money outlay and the tax upon their time resulting from the obligatory defense of such suits as might be brought under this section, either by those who have malicious intentions or by those who are honest but misguided. Moreover, there is no method by which a rapid determination of the facts is possible, excepting by the already certified statement of public accountants, and these suits may overhang like a cloud the contestants or litigants themselves for a period of one or more years, impairing both the credit and freedom of action of wholly innocent persons and injuring all others interested in the company, as well as impairing the functioning of the officers of the company in behalf of its own best interests.

Sec 19, page 24. This section seems to be particularly dangerous to trustees handling investments assigned to them by persons who are at the same time officers or directors and who still have a right of joining with the trustee in an advisory capacity, possibly influencing their decision. Thus, the director or officer of a company owning securities may have deposited some of the securities in behalf of certain beneficiaries under trust agreements, and may exercise his knowledge and judgment in behalf of such trust beneficiaries quite differently from that with which he would view his own interests. It would seem that this section would make it inadvisable for any beneficiary of such trust to own any securities in the company in which one of the trustees may be interested, even though the trustee is fully familiar with, and knows all about this business, and knows very little about other businesses in which the beneficiary would otherwise have to be interested, if such a course were made necessary by the sale of securities in the company of which the cotrustee is an officer, and the reinvestment of funds in other companies.

Secs 21 and 22, page 26. These sections giving blanket publicity may be very harmful, unless it is mandatory upon the FTC to use all information required by it in such manner as not to injure the corporation furnishing such information by undue publicity thus making available such information to persons intending to do and capable of doing mischief.

I have no knowledge of the conditions under which stock exchanges can operate for the best interests of investors in securities, corporations, bankers and distributors of securities, but it seems to me that no action should be taken which will nullify a highly-organized and sensitive mechanism because it has been misused by the accumulated tendencies and habits which have been unchallenged, rather than because of real depravity and sinister motives. Regulations there should and must be because of the recent revelation of misdoings in financial circles. Control must be exercised and the Red and Green lights of traffic on the highways of financial transactions are indispensable in these days of complicated relationships, but it is impossible to make even minor progress with brakes so continuously set as to quench all initiative and to eliminate a structure of promotional and sales activity in securities without

providing another one which will meet all the requirements of business without the abuses heretofore existing. Whether or not that object is accomplished by this bill it is difficult for the layman to say. I think, however, the suggestion which I have seen made by some of those who claim judgment is not without merit. The suggestion is to have the entire problem reviewed by a committee composed of the following, who may add their advice and counsel to that of the committees of the Upper and Lower Houses of our Congress and amplify the already existing information and the conclusions arrived at: an industrialist, an investment banker, a corporation lawyer, a member of the F T C, an economist, a professor of law, a legislative drafting expert, an accountant, one of the draftsmen of the present act.

There is a provision stating that remuneration to others than officers and directors in excess of \$20,000 per annum is prohibited. Does this include all salesmen who may make more than \$20,000 in commissions or local branch managers or heads of departments, or those having profit-sharing arrangements in special divisions of the company's activities, such as sharing amounts earned in excess of minimum limit, or factory managers having bonuses for achievements in excess of minimum, etc? Does the word "director" imply anyone who has a direction of a part of the organization or does it mean only a member of the board of directors? Is an "officer" only one who has a title, such as President, Vice-President, Secretary or Treasurer, or is he any executive acting under the general management, in charge of given responsibilities?

The difficulty of estimating the far-reaching influences of the proposed legislation and the disconcerting feature connected therewith, is the impossibility of defining its intention. The "twilight zone" within which there must always be the decision as to what constitutes honest information and what might be construed as an intent to use for selfish interest the expression of a viewpoint or the answering of a question must be sharply defined by the Commission so as to avoid unintended hardship. Every salesman will emphasize excellences and advantages of his offering, without necessarily laying bare such risks as must be at all times apparent to one engaged in the transaction as a purchaser, either regularly or haphazardly. The presentation of any case is bound to be influenced by the bias of the person making such presentation because of personal preferences or for the purpose of creating an acceptance of a hitherto unrecognized merit or for the stimulation of a lagging interest for a particular feature. All of these efforts can be construed as containing a measure of exaggeration and the manifestation of a zeal, leaving out of the picture many facts that could possibly be conjured into the same as essential for a full determination of all the equities involved. To arrive at a correct estimate of all the items necessary to a complete understanding on the part of buyer and seller, there is required the establishment of an ethical concept so elaborate and difficult of enforcement that a penalty for the slightest infraction thereof seems difficult of imposition.

The F T C will have to become a most gigantic institution for the formulation of all trade practices now left with the Code Authorities for clarification, and the permission of any officer or director to give publicly an honest opinion as to outlook from his point of view will be hampered by the sense of risk involved in a manner far beyond that which will be beneficial to those who would be reasonably entitled to be fully informed in answer to a question. Frequently such questions demand an answer in terms, though somewhat vague, sufficiently informative to give the enquirer the frank viewpoint of the informant from a purely subjective point of view. The information may be given from the vantage point of a very wide outlook upon all business relations, or from the narrower one of a particular interest or field of action within which the informant has an opportunity to form a more exclusive judgment. The burden of responsibility seems to be much more on the questioner than it should be on the informant, and the right of questioning should be limited, under such circumstances, unless a complete denial of information is permitted to the informant when he is questioned vaguely and without knowing all of the purposes for which the question is asked.

The risk to which a director on the board of a corporation is exposed should not be made so great as to cause him to refuse to sit on the board unless he receives a very large compensation or has a tremendous interest

to tempt him to contribute his knowledge and experience and time. The fees paid to directors are generally speaking inadequate and the chief advantage directors might derive to compensate them is in the knowledge arising out of association with business in which they may have an active or collateral interest, or in representing financial interests for which automatically they have become the custodians, as is the case of bankers who have marketed securities for the corporation, and who feel responsibility for maintaining contact with the institution. If the legislature will recognize that from the honest director's point of view there is nothing to balance the risks to which this bill exposes him, then it will be realized how unfortunate it will be for industry to lose the advantage of the services of the most desirable counsel and advice of experienced business men, who because of their contact with other industries have a vision into the wider fields of activity which might be denied to those giving attention solely to the interests of the corporation in question, either as officers or the representatives of special stockholders. Surely industry will have to pay dearly for the loss of many valuable directors because of the burden of this new risk which is thus imposed without reasonable or adequate compensation.

#### NATIONAL SECURITIES EXCHANGE ACT OF 1934

STATEMENT OF SAMUEL KNIGHTON, PRESIDENT OF THE NEW YORK PRODUCE EXCHANGE, IN RESPECT TO EXCHANGES WHICH MAINTAIN A MARKET FOR TRADING IN UNLISTED SECURITIES AS AFFECTED BY S 269; AND H R 7852

MR CHAIRMAN AND GENTLEMEN OF THE COMMITTEE. The New York Produce Exchange has a vital interest in the proposed National Securities Exchange Act because it maintains a securities market which though recent in origin has come to be the fourth largest in volume of shares in the United States.

The Securities Market of the Exchange was organized in 1923, following the recognition by the Board of Managers of this Exchange that there was a need for a third Security Market in New York City.

This opinion of the need of such a market was concurred in by the office of the Attorney General of the State of New York and the following is an excerpt of a letter received from Mr Timothy J Shea, Assistant Attorney General

STATE OF NEW YORK,  
Department of Law,

74 Trinity Place, New York City, N Y, December 7, 1928

MR WILLIAM BEATTY,  
New York Produce Exchange,  
2 Broadway, New York City

DEAR SIR. This office desires to again state its published opinion that an open public market where buyers and sellers of securities can be represented is so far preferable to a private market in its abilities to reflect values, to secure honesty of execution, and to abolish as far as possible, unfair practices, as to be incomparable in its results. This office feels that any market which affords facilities for openly bringing buyer and seller together benefits the public permitting as it does an open reflection of values. And for these and other reasons heretofore stated, we feel securities not now openly dealt in should be so dealt.

Yours very truly,

TIMOTHY J SHEA,  
Assistant Attorney General

The function of every properly conducted exchange is to afford a market in which buyers and sellers will obtain as nearly the true monetary value of a security as is practical. There is a vast difference between public or regulated markets and private markets.

An exchange market in which representatives of buyers and sellers meet on a single floor, more closely reflects the public demand for securities and their true value than any system of private buying and selling such as commonly exists in outside trading. In an outside market, the buyer and seller have no means of knowing whether the price paid and obtained reflects actual conditions, as regards supply and demand for any particular security, or for securities in general, whereas a properly conducted market, in which a number of buyers and sellers meet, and in which every actual or even potential buyer

or seller is afforded public quotations of what other actual or potential buyers and sellers pay or are willing to pay or accept gives assurance that values are more truly reflected

In order to afford such a market for securities which were not afforded a similar market place the Securities Market of the New York Produce Exchange was established

The Exchange itself, has a long and honorable history. It was formally organized in 1861 as a commercial exchange and has provided rules governing its members in more than eighteen trades in which they were interested. On its floor has been handled a substantial portion of all of the export grain trade of the country. It maintains at the present time an inspection department for grain which functions throughout the East, and a Bureau of Chemistry for chemical analyses.

Its securities market organized in 1928 has come to be an important element in its organization. It has seventy-eight members who are qualified under its Rules to deal in securities and execute orders, as well as some 220 members who are in the securities business. It maintains facilities for publicly disseminating its securities quotations and transactions, and it has a substantial organization to investigate and pass upon applications for the admission of securities to trading privileges.

The New York Produce Exchange subscribes to and urges the various considerations advanced by the New York Stock Exchange and New York Curb Exchange in objection to the National Securities Exchange Act of 1934. These have been ably presented and fully discussed and it is unnecessary to repeat them. The nature and functions of the securities market of the New York Produce Exchange, however, are different in many fundamental respects from the type of stock exchange that appears to be the object of regulation under the proposed law. The New York Produce Exchange feels it necessary therefore to bring to the attention of the committee certain aspects of its market for stocks and bonds.

The New York Stock Exchange and some exchanges in other cities throughout the country provide facilities for trading principally in what are known as listed securities. Such securities are admitted to trading upon application of the corporation which issues them. The requirements of the various markets in respect to listing vary considerably; but in every case there is one common factor, namely, the voluntary application of the corporation for the admission of its securities to trading privileges.

So-called "Listed Securities" form a relatively small proportion of the total volume of corporate securities issued in this country. The New York Produce Exchange maintains a market principally for securities which are admitted to trading privileges upon application of someone other than the issuing corporation. The holders of such securities are accordingly afforded an organized market which has the advantage of full publicity and supervision of trading.

The securities market of the New York Produce Exchange is truly a market place. The securities dealt in have been admitted to trading upon the application in most instances of a member of the Exchange who is an owner of such security. Members make such application when there has been evident a sufficient interest in the respective securities by persons wishing to buy and those wishing to sell to warrant admission to the Exchange's facilities and the securities have met the standards for admission to trading. Of 796 issues admitted to trading only 39 have been admitted upon the application of the issuing corporation. The others have no corporate application behind them.

In other words, it is an exchange which is, and professes to be, nothing else but an organized market place with adequate facilities and conveniences in which orders to buy and sell securities may be executed. The conduct and practices of its members are subject to rules and regulations of the same scope and nature as those of members of exchanges trading in securities listed on corporate application. The exchange does not exercise supervisory powers over issuing corporations and does not hold itself out to do so; but it does enquire into and ascertain that the corporation is a bona fide enterprise and meets various requirements of its listing department.

Securities markets of the type of the New York Produce Exchange must have been outside the contemplation of the draftsmen of the bill but they will nevertheless come within its application if it becomes law. The prohibition



against trading in securities on a national securities exchange other than on corporate application applies directly to such markets as that maintained by the New York Produce Exchange

A great many of the corporations whose securities are admitted to trading in this market are those representing industries and enterprises, which are slowly growing and are not yet in a position, either as to record of performance or distribution of ownership, to meet the requirements of other exchanges in New York. The securities market of the New York Produce Exchange is partly a market of primary distribution of securities. Through such primary distribution long term capital is obtained which cannot be had through ordinary banking channels. The true functions of the primary market is to carry new securities through a sort of seasoning process by which they are both actually carried and subjected to a process of appraisal of value. Such a process is economically useful and essential and its speculative functions legitimate. Somebody must take the risk of new capital ventures. Mature and successful enterprises do not spring into existence.

The committee should have in mind that dealing in unlisted securities, traded in on exchanges and elsewhere, represents the trading in over two thirds of all security issues. The proposed law would deprive this enormous volume of unlisted securities of an organized market place. Over ten million shares were traded on the New York Produce Exchange alone last year, which gives it fourth rank in the volume of stock sales on exchanges in the United States.

Another factor of importance, which is frequently misunderstood, is that the trading in securities on markets such as the New York Produce Exchange is almost entirely done on a cash basis. Many of the issues range in price from Two Dollars (\$2.00) to Ten Dollars (\$10.00) per share. Purchasers of such stocks pay for them in cash. The credit dangers which have played such an important part in the consideration of securities market regulation are completely absent in this particular market.

Practically all of the securities traded in have been admitted to trading without application by the issuing corporation. Many of such corporations, unlisted until now, will certainly not be in a position to meet the requirements of the proposed law to obtain a listing even should they desire to do so. Many others will fail or refuse to do so for the same reasons that have prompted them to fail to apply for listing up to the present time. If the refusal of corporate directors to make application for listing under the requirements of the proposed Bill is to result in the deprivation to the owners of such securities of the benefits of a public market, then the owners are to be penalized for conditions over which they have practically no control. And all trading in such securities will have to cease on national exchanges. This means that the New York Produce Exchange Securities Market will cease to exist.

Where will the trading in these securities on the New York Produce Exchange and on many other exchanges go? Those who hold these securities and those who wish to acquire them will have to take their chances as sellers and buyers in wholly unregulated markets. The speculation of the uninformed will not be stopped but only rendered more uninformed and exposed to the dangers and price irregularities of unorganized markets.

Such trading will be driven to outside or office or telephone markets. These will be, more than ever, in the hands of persons over whom there is no exchange control or supervisory power. The greater part of this business is now conducted by men who are subject to no exchange supervision or regulation. Section 6-A of the proposed bill prohibits members of national exchanges from extending credit on securities not registered on a national securities exchange. As the securities business follows available credit such business will pass entirely out of the hands of members of exchanges and those who do business through members of exchanges. And should the Federal Trade Commission attempt to control such outside markets pursuant to the general and vague provisions of Section 14 of the bill the business will undoubtedly seek secret and underground markets where manipulative practices will be as far out of control as was bootlegging under the Eighteenth Amendment. It will be driven to unregistered, unreported and unregulated channels of the sort that can be carried on without the benefit of the United States mails or the instrumentalities of interstate commerce.

It is taken for granted that the committee does not wish to destroy the many industries and enterprises of the nation whose securities have never been "listed" on any Exchange. But such result will follow a successful destruction of their capital markets as represented by organized market places. It will deny to young and local businesses, existing and future, access to buyers and sellers of securities and give to the large corporations a monopoly of the country's capital funds. It will throttle creative and promotional efforts from which have developed most of our industrial accomplishment. It will dictate to buyers and sellers of securities in such unlisted companies that they cannot buy or sell the securities they are interested in except in an unorganized and unregulated market and from and through persons under no supervision of an exchange.

The ideal situation visualizes all securities transactions taking place on an organized exchange and subject to regulations thereof. Until such a situation becomes possible, the public is by far better served in permitting so called unlisted securities to be traded on an organized exchange.

The New York Produce Exchange has no quarrel with any measures the Government wishes to take to control corporate conduct or exact corporate information. But it feels that such control should be exercised directly upon the corporations and not through and by the market places as policing agencies of the Government. And the New York Produce Exchange has no quarrel with any measures the United States Government may wish to take to improve the internal practices of the securities markets. It pledges itself to cooperate with and support any efforts reasonably and directly aimed at that purpose.

Respectfully submitted

SAMUEL KNIGHTON,  
*President of New York Produce Exchange*

MARCH 8, 1934

BANKER'S BUILDING  
*Chicago, Ill., February 24, 1934*

Senator DUNCAN U. FLETCHER,  
*Chairman Banking and Currency Committee, Washington, D. C.*

DEAR SENATOR FLETCHER: In answer to your letter I submit the following brief statement:

1. If there is to be any authority placed over brokers and bankers in financing the purchases and sales of securities on margin, that authority should be one in direct contact with the various elements of the money market and responsible for the guidance and control of the credit policies of the entire banking system.

To begin with the loaning of money on securities is obviously a credit function. The lender in performing this function is guided largely by the marketability of the security offered as collateral, and by its investment merit. That such loans are highly desirable from a banking standpoint, and furnish a safe avenue for the profitable use of surplus liquid funds is a fact well known to anyone with a practical knowledge of the money market.

Following September 1929 wave after wave of liquidation swept the security markets and the giant total of \$3,500,000,000 loans to brokers were liquidated down to less than \$400,000,000 with comparatively negligible loss to the banks, a feat without comparison in the history of modern finance. No other test need be necessary to establish the safety and desirability of broker's loans from a banking standpoint.

2. Experience has shown, however, that additional control by Federal Reserve banks over the volume of money used to finance speculative transactions may prove advisable particularly in times of prosperity when such loans tend to become excessively large. This additional control may be had in the form of authority to raise margin requirements on security loans, or, stating it another way, reduce the loan value of posted collateral. This device would prove far more effective in checking the volume of funds seeking employment in the security markets than raising the rediscount rate, and would also prove an effective brake on speculation itself.

Also, this authority to raise margins, if made available to the central banking authorities, could be used and would prove very effective at a time when it might be desirable or even necessary to reduce the volume of money employed in the securities markets without affecting the money markets.

Experience gives us a situation illustrating this point when in the latter part of 1928 and first few months of 1929 it was obvious to the Reserve banks that the securities markets were absorbing far too much of the available liquid bank credit, but could do nothing about it except raise the rediscount rate. Raising the rediscount rate meant raising the rates on all loans as well as security loans. With authority to raise margins on security loans of all types with banks and brokers, no disturbance to the money market would have been necessary.

The Open Market Investment Committee of the Federal Reserve Banks enlarged to include one representative of the security exchanges other than the New York Stock Exchange, and one representative of the New York Stock Exchange would seem the most practical group in whom to vest authority over margin requirements on security transactions. Securities on all exchanges and also unlisted securities suitable for collateral loans could be graded according to marketability and investment worth and loan values established accordingly.

3 Lastly, it must be realized that the authority to change margin requirements carries with it the power to affect markets. Herein lies one more great reason for constituting the authority over margin requirements in a committee as above indicated. Such authority must obviously be placed in hands where it will be most effectively handled but as free as possible from political influences and political pressure. This is said with all due reverence and courtesy to you gentlemen now in office, to those in office before you, and to those who may follow you.

It is clearly obvious that if this authority is subject to frequent change by political appointments, that political changes, or even threatened political changes would prove seriously disturbing to the markets regardless of the trend of business conditions.

The free flow of investment capital is greatest when as many uncertainties as possible are eliminated. The Federal Reserve Banks were created as a nonpolitical organization to supervise and control the banking and credit policies of the country. The only serious errors in policy in their 19 years of existence were (or seemed) the result of political pressure, one Democrat (1919-1920) and the other Republican (1927-1928). These errors only emphasize the necessity of keeping the control of market machinery as free as possible from political factors. In regard to the Stock Exchange bill as a whole and in particular to the section pertaining to loans on securities, it is genuinely hoped this will be done.

Yours very truly,

RUSSELL G LONGMIRE

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NATIONAL ASSOCIATION OF MUTUAL SAVINGS BANKS,  
New York, N Y, March 10, 1934

HON DUNCAN U FLETCHER,  
Chairman Committee on Banking & Currency,  
Senate Office Building, Washington, D C

MY DEAR SENATOR I am sending you herewith a copy of a memorandum by the Mutual Savings Bank Association on S 2693. This Association represents the mutual savings banks of the United States. They respectfully request that this memorandum be made a part of the record in the present hearing before your Committee on that bill.

Sincerely yours,

FRED N OLIVER, Counsel.

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NATIONAL ASSOCIATION OF MUTUAL SAVINGS BANKS,  
New York, N Y, March 9, 1934

HON DUNCAN U FLETCHER,  
Chairman Committee on Banking & Currency,  
Senate Office Building, Washington, D C

DEAR SIR The National Association of Mutual Savings Banks has directed the undersigned to communicate to your committee the views of the Association on S 2693, the proposed "National Securities Exchange Act of 1934"

The association represents 567 mutual savings banks doing business in eight-een states of the Union. Their combined resources are \$10,856,000,000, their total deposits \$9,594,000,000, something like one-fourth of the total bank deposits of the United States, and the total number of their depositors is around 13,400,000. These banks are not stock institutions but are organized and operated solely for the benefit of the depositors, and the officials of the banks, as well as the banks themselves, are acting in what is essentially a fiduciary capacity.

The only object of mutual savings banks is the safekeeping and provident investment of the funds of depositors who are generally the small savers of the country, accumulating funds for old age or special purposes. These total savings represent an average deposit of \$715.32 for approximately one out of every nine people in the country.

By limitation of statute as well as by force of the very nature of the business in which they are engaged and of their relations to their depositors, the security holdings of these banks are confined almost exclusively to those of the soundest and most conservative investment type, as contrasted with speculative issues. Typically and generally, their investments in securities of the character dealt in over the exchanges are bonds, and not stocks. Their test of desirability is stability and dependability, to the subordination of measures of return or of capital profit.

The organized savings banks have no comment to submit regarding what they conceive to be the primary purposes of the proposed measure. They leave that discussion to those who are engaged in the activities which the bill, as we understand its general tenor, purports to regulate. This communication is confined to what we deem to be departures from the policy which the bill, as we read it, is intended to embody, and to particular provisions which appear especially to threaten the proper and just interests of investors such as savings banks.

Our criticisms of the bill may be summarized as follows:

- 1 It fails to differentiate between stocks and bonds.
- 2 It forbids the combined service of dealer and broker in bonds, frequently valuable to the holders of conservative investment securities.
3. Even outstanding bonds of municipalities, states and their political subdivisions, and railroad bonds, would be excluded from the exchanges except under burdensome conditions with inevitable impairment of values.
- 4 In the matter of loans on bonds, the bill unjustly discriminates against mutual savings banks in favor of member banks in the Federal Reserve System.
- 5 Frequently, the registration requirements for bonds already issued would not affect the interest of the issuer of the security, but would penalize the holders thereof.

It is in the above order that we shall discuss our objections to the bill.

1 We take it that in large part the bill is the outgrowth of disclosures during the recent and continuing stock-exchange investigation. So far as we have observed, that investigation accorded little or no attention to the characteristics of transactions in bonds of the type required by savings banks and trustee institutions, or to the practices of those who specialize in transactions in high grade investment bonds. It seems plain that the principal evils to which the bill is directed have to do with corporation control, or are associated with the practice of conducting transactions in stocks on margin.

Throughout the bill there are provisions which in terms include bonds and bond dealers and brokers but which the policy of the bill makes applicable only to stock and stock-handling houses. Consider Section 15 (a). It is difficult to perceive the justification for requiring tedious reports, with monthly supplements to reflect changes, from owners of five percent or more of a company's bonds. Bondholders as such exercise no control over the management of the issuer and its policies. In fact, that it was the holders of the stock and not of the bonds who are in contemplation is suggested by the fact that the title of the section reads "Transactions by Directors, Officers and Principal Stockholders."

That proper differentiation be made in this respect between bonds and stock is a matter of material importance to the savings banks. It is by no means unusual for a savings bank to hold in excess of five percent of a particular class of securities of a particular issuer.

The burdensome provisions in other sections of the bill looking to the furnishing by issuers of voluminous data as a condition to listing securities for trading on exchanges in most instances plainly reflect the desire that complete information regarding corporation control be disclosed to the public. Bond ownership does not ordinarily mean an opportunity to participate in management.

Section 6 (b), dealing with margin requirements, is also plainly aimed at stocks, as there can be no sound reason to require margins such as are there specified to carry high-grade bonds.

2 As stated above, purchases of securities by members of this Association are almost wholly limited to those of the soundest and most conservative investment type. The same thing is true of all institutions of a like fiduciary type. Chiefly because of the low yield which goes hand in hand with their high degree of stability, such securities are often, perhaps usually, held in comparatively large blocks by investment institutions, and change hands so seldom that there is no active market for them. Consequently when an institution, such as a savings bank, desires to sell or buy a large block of such securities, there may not be bids to buy, or offers to sell, in quantities sufficient to complete the transaction without undue delay.

Investment houses handling high-grade bonds have therefore developed and have acquainted themselves with the selling and the buying needs of institutional investors of the kind mentioned. They must be prepared to purchase large blocks of these securities with the view of disposing of them to other investors, perhaps a number. Taking the other side of a transaction, it is often necessary for an institutional investor desiring to purchase a block of seasoned securities to depend upon a security house which had acquired the securities previously, perhaps by gradual accumulation.

A dealer in bonds cannot carry in his inventory all issues of the kind of bonds in which he deals, and cannot carry issues which he possesses in quantities sufficient to satisfy every demand of his customers. Consequently, it is desirable for the customer that the dealer be permitted to handle some transactions in part or in whole on a brokerage basis, going in behalf of his customer to the exchanges, or, as it usually is done, to over-the-counter markets to complete or to effect the transaction. The alternative is either to force the customer to resort to other sources of supply, or to compel the dealer to endeavor to sell the customer "something just as good." A situation similar in principle is presented where the customer desires to sell an issue which a security house is not in a position to acquire on its own account, or to acquire in the quantity in which offered.

In short, the savings banks have found that they require the services of dealers in high-grade securities who are also empowered to act as brokers. This combination service will be denied to them if the provisions of Section 10 of this bill become law. The restrictions there proposed should be removed as to security houses dealing in bonds of the type held by savings banks. It may well be that such dealer-brokers should be subjected to some regulation by the Federal Trade Commission, including perhaps a requirement that they make known to their customers instances in which they are exercising a combination function. But it seems plain that to forbid such houses to provide the valuable services which have heretofore been availed of by institutional investors, such as savings banks, would be highly unsatisfactory, and might have the effect of preventing the savings banks from realizing quickly on their assets in times of emergency.

Many savings banks, as well as other institutions of somewhat like fiduciary character, have rules which in practice postpone, sometimes for considerable periods, the final consummation of transactions in bonds, pending formal approval or ratification.

During the intervening time, it is necessary that the bonds which have been contracted for be carried by the investment house. The investment house, in turn, must arrange for credit in order to carry the securities. The provisions regarding extent of margin contained in Section 7 (b) would severely limit the continuance of this service which the investment houses have furnished the savings banks, and other like investors. It is plain that such requirements are not apt when the security is a high-class bond.

Investment houses handling high-grade bonds are usually found among the subscribers to issues of state and municipal bonds, and bonds of like character,

all involving purchases in large amounts. It is plain that if it is necessary for the investment house to possess such bonds in its own name for a period of more than thirty days before a loan can be had thereon, as contemplated in Section 6 (c), the ability of investment houses to finance such issues, and to provide them for savings banks and the like, will be drastically curtailed.

3 The bill proposes what in effect approaches the retroactive application of the Securities Act of 1933 in that it applies the substance of certain provisions of the earlier act referring to registration and its consequences to seasoned investment securities tested by the experience of years. It is with surprise, therefore, that we find that it fails to exempt from its requirements as to registration municipal bonds, bonds of states and political subdivisions, and railroad bonds, all exempted in the Securities Act.

The ground for exemption in the Securities Act is plainly because obligations of the classes specified possess guaranties not found in securities generally. As to governmental issues of the several orders, there is a presumption in favor of soundness and against deception in the nature of their issuers. Railroad bonds must pass the scrutiny and obtain the approval of the Interstate Commerce Commission.

It is difficult to conceive of justification for a refusal to accept like guaranties in connection with the acceptance of these already outstanding bonds for trading on the exchanges.

4 At the time of the adoption of the Banking Act of 1933, and throughout the administration of the provisions of that and associated laws, constant reassurances have been made that there is no intention to discriminate against or in any way injure banks which are not members of the Federal Reserve System. Subsection (y) of section 8 of the Banking Act of 1933 expressly incorporates that policy.

Adherence to that policy would be abandoned at least in some measure if the provisions of Section 7 (a) become law. To forbid a bank which is not a member bank of the Federal Reserve System to lend on any registered security would be to deprive such a non-member bank of a very important and legitimate part of the business in which it is in justice entitled to participate.

It is the practice of mutual savings banks in certain localities, particularly Massachusetts and Connecticut, to make loans to brokers secured by high-grade securities as collateral. We can hardly believe that it was the intention of the framers of the bill to prohibit mutual savings banks from participating in such legitimate financing of securities as the banking laws of the several states provide. It has been demonstrated that they prove to be a strong secondary reserve and with proper arrangement of maturities provide an un-failing source of available money received regularly. Mutual savings banks should not be prevented, where other conditions are proper, from making such loans secured by safe and sound securities.

It would also seem unwise to fix by legislation rigid margin requirements with no differentiation whatever as to the classes of securities on which loans may be made under the banking legislation of the several states. These severe restrictive provisions would limit unduly the amount which savings banks might loan on high-grade securities. These provisions would also apparently limit the borrowing capacity of mutual banks on securities which they own in the case of a sudden temporary emergency where money might be needed to pay their depositors.

5 Plainly the marketability, and hence the market value, of any bond will be greatly influenced by the circumstances whether or not the bond is eligible for purchase and sale on the exchanges. Section 11 makes it unlawful for any person to effect any transaction in an unregistered security on a registered securities exchange.

The registration requirements entail expenditure of time and trouble. By statutory provision the issuer must furnish information as to the issuer and its affiliates in respect of numerous specified matters concerning organization, financial structure, security provisions and miscellaneous information regarding directors, officers and principal security holders and underwriters, and their remuneration and relationship with the issuer and its affiliates; bonus and profit-sharing arrangements must be described; managements and service contracts and options on securities set out; contracts not made in the ordinary course of business must be described; and other information must be listed.

The commission may make additional rules and regulations as to the information to be furnished in connection with the registration of securities, and as to the undertakings to be entered into by the issuer, but such rules and regulations shall require, among other things, an undertaking by the issuer to comply with the provisions of the bill and with the Commission's rules and regulations

In many cases the issuer of a bond may have little or nothing to gain from registration of the security. The securities are already in the hands of the public, and whether or not they are readily realized upon may be a matter of little or no concern to the issuer. On the other hand, registration subjects the issuer to trouble and expense, to an extent undetermined and subject to further enlargement by the Commission. Registration subjects the officers of the issuer, and other agents, to dangers of personal financial liability, or at least to annoying attempts to fasten such liability upon them.

We may confidently anticipate, therefore, that many outstanding issues will not be registered. It will be the holders of the securities, and not the issuers, who will pay the penalty of impaired marketability.

The mutual savings banks own municipal bonds to the value of several hundred millions of dollars. It is doubtful if many municipal bonds now outstanding will be registered. The same thing is true of the bond issues of states, counties, school districts, improvement districts, and other obligations of like nature. To a somewhat less extent, it is true of equipment trust obligations.

The savings banks urge that consideration be given to this effect of the bill of visiting the penalty of nonregistration upon those who are unable to control the issuer in this respect. Here we have an additional illustration of the inapplicability of the principles of the bill to bonds. The holders of the outstanding stock of an issuer cannot be said to be without an opportunity of influencing the course of the issuing corporation with regard to registration. The holders of outstanding bonds certainly are afforded no such opportunity to influence the action of the issuing corporation.

It is conceivable that the requirements concerning registration before bonds are eligible for sale on the exchanges might afford openings for abuses by issuers with nothing to gain from enhanced marketability. For example, an issuer might decline to make the registration statement and to enter into requisite undertakings for the very purpose of depreciating the market value and enabling the issuer to buy in its outstanding bonds at a substantial discount from par. This would penalize the owners of the bonds, and not the issuer.

#### CONCLUSION

We ask the Committee not to construe this expression as voicing disapproval of the general policy of the bill. We have purposely and carefully confined ourselves to an attempt to point out particulars in which the bill appears to threaten the direct and proper interests of savings banks, chiefly by impairing the marketability of the bonds which they hold.

Respectfully submitted

PHILIP A. BENSON,  
*President*

O. O. RENNET,  
*Chairman Committee on Federal Legislation*

SOUTHERN BUILDING,  
*Washington, D C, March 14, 1934*

HOU DUNCAN U FLETCHER

*Chairman Committee on Banking and Currency,  
United States Senate, Washington, D C*

MY DEAR SENATOR FLETCHER: In compliance with your request to comment on Senate Bill 2693, 73d Congress, 2d Session, relating to the regulation of Security Exchanges, I submit a few observations on the more vital aspects of this bill.

First, the regulation of the stock exchanges was an issue in the campaign of 1932, and its necessity has been fully demonstrated by our experience.

When President Roosevelt assumed office, he immediately had a committee organized under the Department of Commerce to study this question. It consisted of the following members: John Dickinson, Chairman; A. A. Berle, Jr.; Arthur H. Dean, J. M. Landis, and Henry J. Richardson.

This committee gave the subject matter very thorough study and their report to the Secretary of Commerce, the Honorable Daniel C. Roper, was submitted by the Secretary of Commerce to the President of the United States and, by him, submitted to you as Chairman of the Banking and Currency Committee on January 25, 1934.

The President offered his own good offices and that of the committee who had studied this question but, for some reason, apparently the report of the committee appeared to have been overlooked in drafting the present bill which departs widely from their recommendations.

It seemed to me that the report of the Dickinson committee was sound and did not go beyond what was necessary to be done in order to regulate the stock exchanges and safeguard the rights of the public.

It proposed to put the exchanges under a Federal charter with authority in the Government through an administrative agency to impose on the stock exchanges a charter requiring minimum standards which would protect the public and the buyers of securities. It did not attempt to go beyond this but authorized sufficient penalties to compel the exchanges to administer their affairs in such a manner as to safeguard the public interest.

I do not believe it is a wise or sound practice to go beyond this. I do not think the Government of the United States should be charged with the responsibility of administering the stock exchanges or to deal with them further than to require them to observe the high standards which the Government would impose.

In the pending bill the draftsmen apparently thought it advisable not only to give to the Federal Trade Commission the power in effect to control the operation of the stock exchanges but to direct in detail such exchanges and the members thereof, and went very much further than this in giving the Federal Trade Commission power over all corporations whose stocks and bonds were listed upon such exchanges.

An example of what was thought advisable appears in the matter of proxies. Senate Bill 2693 requires a company sending out proxies to send a list of all stock holders to each stock holder. I am advised that the American Tel and Tel has over seven hundred thousand stock holders and that it is roughly estimated it would cost them nearly a million dollars to circularize the stock holders for proxies. Obviously, those drafting these provisions must have had no conception of this cost, and it demonstrates the un wisdom of giving such power as the bill proposes to any commission.

The powers given to the Commission in this bill, in my judgment, could easily result in a very great and unnecessary cost to the corporations involved and thereby cut down the income taxes which they could otherwise pay. Why should the American Tel and Tel have its income cut down by nine hundred thousand dollars for such a purpose as obtaining proxies?

Another very grave error, it seems to me, is the attempt by a legislative mandate to forbid a free flow of credit into brokers' loans by arbitrarily imposing a heavy restriction on margins.

The flexibility of margin accounts is a most important means of controlling credit and this control should be left free to some governmental agency that would expand the margins when inflation threatens and leave the margins uncontrolled except by the credit markets when there is no inflation or when, as at present, the flow of credit is paralyzed.

The control of margins and of the interest rate on brokers' loans is of supreme importance in preventing inflation of credit for stock market speculation.

One of the most important means by which these brokers' loans are expanded almost without limit is the fact that the interest rate on call loans is uncontrolled and may go anywhere from five per cent up to twenty-five per cent. Your examination has shown that these high rates have attracted and caused to flow into this speculative market untold billions of dollars in the aggregate.



of such call loans. The interest rate on such call loans, under no circumstances, should be permitted to go beyond a very low rate which would prevent any undue competition of such loans with loans by commercial banks for the accommodation of manufacturers and distributors.

The call loan is safe because it is well margined and convertible into cash in twenty-four hours. The banks now pay no percent, as a rule, on demand deposits and the demand deposits in brokers' loans are even better than demand deposits with commercial banks because the brokers' loans are margined heavily and capable of conversion always into cash on demand while a deposit in the bank is not margined and we have witnessed in America billions of such deposits that were not paid on demand and, in many cases, were lost to the depositors because they were not secured.

It is of supreme importance to control the flow of credit for speculative purposes in the stock exchanges because it was the collapse of such credits which resulted in the present great industrial depression, as I ventured to set forth in great detail, with many tables and charts, in my comments on the Goldsborough Bill for the stabilization of money in March, 1932, page 123.

"BROKERS' LOANS AND INDUSTRIAL DEPRESSION"

For the purpose of making it perfectly clear that the present industrial depression was due to the inflation of credit on brokers' loans, as obtained from the Bureau of Research of the Federal Reserve Board, the figures show that the inflation of credit for speculative purposes on stock exchanges were responsible directly for a rise in the average of quotations of the stocks from sixty in 1922 to 225 in 1929 to 35 in 1932 and that the change in the value of such stocks listed on the New York Stock Exchange went through the same identical changes in almost identical percentages

For your information, I submit these tables :

No. 1—The fluctuation of common-stock prices according to the index numbers of the Standard Statistics Co. 1926=100

1921.....	55 2	1925.....	89. 7
1922.....	67. 7	1926.....	100 0
1923.....	69. 0	1927.....	118. 8
1924.....	72. 8	1928.....	149. 9

	1929	1930	1931	1932	1933	1934
January.....	185 2	156 8	112 8	58 0	49 1	75 6
February.....	186 5	165 5	119 8	56 5	44 9	.....

	1929	1930	1931	1932	1933
March.....	189 1	172 4	121 6	56 8	43. 2
April.....	186 6	181 0	109 2	43 9	47 5
May.....	187 8	170 5	98 0	39 8	62 9
June.....	190 7	152 8	95 1	34 0	74 9
July.....	207 3	149 3	98 2	35 9	80 4
August.....	218 1	147 6	95 5	53 3	75 1
September.....	225 2	148 8	81 7	58 2	74 8
October.....	201 7	127 6	69 7	49 9	69 5
November.....	151 1	116 7	71 7	47 5	69 1
December.....	153 8	109 4	57 7	47 4	70 4

No. II—The total market values of all stocks (in billions) listed on the New York Stock Exchange, showing the changes which took place from January 1925 to February 1934

January:

1925.....	27.1
1926.....	34.5
1927.....	38.4
1928.....	49.7

	1929	1930	1931	1932	1933	1934
January.....	67 5	64 7	49 0	28 7	22 8	33 1
February.....	71 1	69 0	52 1	26 4	23 1	37.4
March.....	71 9	70 8	57 1	27 6	19 7	-----
April.....	69 8	76 1	63 3	24 5	19 9	-----
May.....	73 7	75 3	48 6	20 3	26 8	-----
June.....	70 9	75 0	42 5	16 1	32 5	-----
July.....	77 3	63 9	47 4	15 6	36 3	-----
August.....	81 6	67 2	44 4	20 5	32 3	-----
September.....	89 7	67 7	44 6	27 8	36 7	-----
October.....	87 1	60 1	32 3	26 7	32 7	-----
November.....	71 8	55 0	34 2	23 4	30 1	-----
December.....	63 6	53 3	31 1	22 3	32 5	-----

Exhibit III is a rough draft of brokers' loans on the New York Stock Exchange

January		September 1929.....	\$8,549,000,000
1921.....	\$1,790,000,000	January.....	
1922.....	1,192,000,000	1930.....	3,990,000,000
February 1926.....	3,513,000,000	1931.....	1,894,000,000
January		1932.....	587,000,000
1927.....	3,293,000,000	July 30, 1932.....	242,000,000
1928.....	4,433,000,000	1933.....	347,000,000
1929.....	6,440,000,000	1934.....	845,000,000

You will observe that the common stock prices quoted in 1921 at 55 rose to 100 in 1926 and to 225 in September, 1929, and fell again to 35 in July, 1932, and that the values of the stocks listed on the New York Stock Exchange increased from January 1925 from twenty seven billions to forty nine billions in 1923 up to eighty-nine and seven-tenths billions in September, 1929, and fell to fifteen and six-tenths billions in July 1932

Observing that the brokers' loans on January, 1921, were \$1,790,000,000 and that these loans increased in 1926 to \$3,513,000,000 and to September, 1929, to \$8,549,000,000, and fell to a low point on July 30, 1932 to \$242,000,000, it will be obvious that the increase in stock market quotations and the stock market values went up with brokers' loans and went down with brokers' loans.

There is nothing surprising about this because it is merely an example of the law of supply and demand. In other words, when these brokers' loans were at the peak, it means that there was a super abundance of money available for speculation and stocks and bonds. As a consequence, the purchasing power of such money and the exchange value of such stocks went up. When this was reversed and the brokers' loans in 1932 fell to one-half billions, there was a great scarcity of money for speculation on the stock exchange and an over supply of stock certificates seeking a market. As a consequence, the value of such money went up and the value of the stock went down.

It is therefore of supreme importance that the Country should realize that the Constitutional requirement imposed on the Congress of "coining money and regulating the value thereof" makes it necessary to regulate the flow of credit for speculative purposes on the stock exchanges.

It should be clearly perceived and understood at all times that the destruction of the value of the securities of the Country meant almost universal bankruptcy; that it resulted in enormous increases in the purchasing power of money so that even on the necessities of life such as commodities in the wholesale markets, the purchasing power of money ran an index of sixty in May, 1920 to 166 in

February, 1933, an increase of 278 per cent. This increase in the purchasing power of money in relation to commodities is the least of the evils for the purchasing power of money in terms of investments such as stocks increased on an average of over three hundred per cent and in many cases to over a thousand per cent, and in terms of real estate, the increased purchasing power of money was quite as great in many cases

When it comes to preventing the inflation of credit and the control of the margins on the stock exchanges and the control of the interest rate, it seems to me that it could be safely left with the United States Treasury, the Federal Reserve Board and Federal Reserve banks, under a legislative instruction, or could be put in the hands of an independent monetary board but the power must belong in the hands of the Government somewhere where it can be used in a disinterested manner for stabilizing the purchasing power of money and preventing the repetition of the unspeakable tragedy which has afflicted this Country during the last four years and a half

This Administration is pledged to restore the general commodity index to normal and to restore to the Country a dollar of the same purchasing power as when the debts were created.

It has yet to be properly accomplished, and is the most important duty now resting upon the Government. When the commodity index is restored to normal and the purchasing power of money is reduced to normal, the Country will find relief

By reducing the purchasing power to normal, I do not mean to normal in terms of commodity values only but to normal in terms of securities and properties of all kinds, and stocks and bonds. This can only be done by the exercise of the power of the Government of the United States, and against this remedial process which is so vitally important to the great body of the Country, there are those who are vigorously resisting it and using arguments which may mislead the Administration into a dangerous postponement of the relief which has been so generously promised.

Relief from this condition was the issue of 1932. The relief was promised to the Country by the Democratic leaders. The Country has trusted to such leadership and the responsibility rests upon the Party in power. The Country is looking with eager eyes and hopeful hearts for a speedy restoration to a normal condition. The Congress has granted the power and is now engaged in other processes which should be helpful.

Yours most respectfully.

ROBERT L. OWEN.

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COMMITTEE EXHIBIT No. 110, FEBRUARY 26, 1934

NEW YORK STOCK EXCHANGE,  
OFFICE OF THE PRESIDENT,  
New York, February 14, 1934.

*To All Members:*

You have already received or you will find enclosed herewith a copy of a Bill introduced in Congress on February 9th entitled "National Securities Exchange Act of 1934"

This Bill is the most important legislation affecting the Stock Exchange and its listed Corporations which has ever been introduced in Congress. It contains sweeping and drastic provisions which affect seriously the business of all members and which may have very disastrous consequences to the stock market resulting in great prejudice to the interests of investors throughout the country.

I call your particular attention to subdivision (a) Section 6 which prohibits members extending credit upon securities unless they are registered upon a national securities exchange. This will make all unlisted securities worthless for margin purposes and consequently will discriminate against small or local enterprises which are not listed on any exchange. Subdivision (b) of this section fixes minimum margins which, depending upon conditions, can vary between 25 per cent and 150 per cent. At the present time the latter provision will be applicable in the case of practically all stocks, on account of the low prices reached by securities within the last three years, but not now prevailing.

These two provisions, operating together, will undoubtedly require the liquidation of a substantial number of customers' accounts.

Subdivision (c) of Section 6 makes these margin requirements applicable to all banks lending money against securities registered on a national exchange which were purchased within thirty days thereby controlling the use of credit now exercised under the law by the Federal Reserve System.

Section 7 places an arbitrary limit upon the amount which members may borrow and vests in the Federal Trade Commission unlimited power to further reduce the amount prescribed by the Bill

Section 8 dealing with the manipulation of security prices, contains many vague and general prohibitions which may eliminate honest and legitimate as well as illegitimate practices. It further imposes drastic civil penalties which, while purporting to allow people who have been injured to recover damages, will actually permit persons who may claim that they have been injured by manipulation when in fact they have not suffered any loss, to recover vast sums which will be in the nature of penalties.

Section 9 prohibits all short selling unless the Federal Trade Commission shall permit this practice by specific rules and regulations. It likewise prohibits stop-loss orders

Section 10 prohibits a member from acting as a dealer in or underwriter of any securities whether they be registered on a national exchange or not. This section will prevent all "over-the-counter" dealer activities by members even in local or unlisted securities, and will also completely destroy the odd-lot business.

Sections 11, 12, 13, 15, 17 and 18 (a) and (b) require all corporations whose securities are listed on a national exchange to file registration statements with the Federal Trade Commission and to supply it with an unlimited amount of financial and other information. They likewise impose severe civil penalties upon the directors, officers and principal stockholders of any corporation whose securities are listed on a national exchange, and Section 24 adds criminal penalties which may amount to fines of \$25,000 and ten years imprisonment. In this connection I direct your particular attention to Section 17. These powers are so extensive that they might be used to control the management of all listed companies and, inasmuch as information secured by the Federal Trade Commission must be made public, vital statistics in regard to American industry may be made available to foreign competitors, which, naturally, would be highly detrimental to the best interests of the country.

Section 14 purports to control "over-the-counter" market activities in unlisted as well as listed securities. The constitutionality of this section is very doubtful because the Federal government has no power to control the intrastate activities of persons dealing in unlisted securities who do not use the United States mails. The obvious purpose of this section is to give the Federal Trade Commission power to control all dealings in unlisted securities and thereby to impose upon small local enterprises, which are not of the character to warrant listing upon an exchange, the same obligations to furnish information and to submit to regulation by the Federal Trade Commission as the bill specifically imposes upon listed corporations. If this section should be upheld by the courts, and Section 10, which prohibits a member of any national exchange acting as a dealer in securities, is not amended, the market for unlisted securities will be completely destroyed.

Section 16 gives the Federal Trade Commission power to examine all records of every exchange and of every member thereof, and to send its representatives to make such examinations as the Commission may determine. All expenses of such examinations, including the compensation of the employees of the Commission must be paid by the exchange or member whose records are under review. This gives the Commission, irrespective of whether such examinations are reasonable or necessary, arbitrary power to dictate the extent of such examinations and the expense of them.

Section 18 (c) gives the Federal Trade Commission power to control the management and operation of stock exchanges. In effect, it vests in the Federal Trade Commission all the powers normally exercised by the Governing Committee of the Exchange and, in addition, would allow it to amend the constitution of the Exchange at will. The full effect of this section is not apparent,

unless it is read in connection with Section 20 (b) (II) (III) which allows the Federal Trade Commission to suspend for twelve months or entirely withdraw the registration of an exchange which does not comply with all of the rules and regulations adopted by the Federal Trade Commission, and further allows the Federal Trade Commission to suspend for twelve months or to expel any member or officer of an exchange who the Federal Trade Commission believes has violated any of the rules or regulations which it may adopt. This arbitrary power to suspend or expel a member or officer of an exchange gives the Federal Trade Commission power to dominate and actually run all stock exchanges.

Sections 21 and 22 provide for hearings and require all information received by the Commission to be public records.

Section 23 provides for court review of orders entered by the Federal Trade Commission, but the value of this section is destroyed by the provision that "the findings of the Commission as to the facts, if supported by evidence, shall be conclusive" Practically every question involving the validity of any rule or regulation adopted by the Federal Trade Commission would depend upon findings of fact and not upon questions of law

Section 24 contains criminal penalties which may amount to fines of \$25,000 or imprisonment for ten years, or both.

Sections 25, 26 and 27 deal with jurisdiction of offenses and suits and the effect of the provisions of the bill on existing law and on contracts whether now existing or not.

Section 28 purports to prohibit dealings on foreign exchanges, but the effectiveness of this provision is extremely doubtful

Section 29 requires each exchange to pay to the Federal Trade Commission a registration fee equal to 1/500ths of 1 per cent of the aggregate dollar amount of all business transacted on it during each calendar year This, in effect, represents a tax upon the security business which will apparently be in addition to the existing transfer tax on stocks and bonds and, therefore, represents another heavy burden on stock exchange business.

Section 30 authorizes the Federal Trade Commission to employ and fix the compensation of an unlimited number of employees, attorneys and agents and exempts such employees from the requirements of the existing Civil Service Law.

Sections 31 and 32 deal with the separability of provisions and the effective date of the Act

If you desire more copies of this communication or of the printed copies of the Bill, they will be furnished to you upon application.

Faithfully yours,

RICHARD WHITNEY, *President.*

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COMMITTEE EXHIBIT No. 111, FEBRUARY 26, 1934

NEW YORK STOCK EXCHANGE,  
OFFICE OF THE PRESIDENT,  
New York, February 14, 1934.

*To the Presidents of All Listed Corporations:*

I enclose herewith a copy of the bill introduced into the Congress on February 9, 1934, which proposes the enactment of the "National Securities Exchange Act of 1934."

This bill, while purporting to regulate stock exchanges, in fact contains so many provisions which would seriously affect listed corporations and their officers, directors, and principal stockholders that I have taken the liberty of sending you a copy and invite your attention to the following sections of the bill

Sec. 11 (page 14) requires corporations which are listed upon an exchange to file with the Federal Trade Commission a registration statement Inasmuch as the bill becomes effective on October 1st and this section provides that the registration statement must be filed with the Federal Trade Commission thirty

days before it becomes effective, the last day on which listed corporations could comply with this provision would be September 1, 1934.

The registration statement must include an undertaking by the corporation to abide by all future rules and regulations made by the Federal Trade Commission and an agreement not to lend any funds in the money market or to any person who transacts a business in securities except in accordance with the regulations of the Federal Trade Commission.

Furthermore, elaborate financial and other statements, not only for current years but also for preceding years, must be filed, many of which must be certified by independent public accountants. Finally, the Federal Trade Commission is authorized to demand such other information as the Commission may require as necessary and appropriate in the public interest or for the protection of investors.

This same section apparently would allow a corporation which was once registered with the Federal Trade Commission to withdraw from registration only "upon such terms as the Commission may fix".

Sec. 12 (page 16) deals with annual and other reports and requires every listed corporation to file with the Exchange and the Commission in such form as the Commission may prescribe:

- (1) Such information and documents as the Commission may require to keep reasonably current the information previously filed;
- (2) Annual and quarterly reports, including both a balance sheet and profit and loss statement certified by independent public accountants;
- (3) Monthly reports including among other things, a statement of gross sales or gross income; and
- (4) Such other reports and at such times as the Federal Trade Commission may require.

The unlimited character of the reports which may be required under this section is not apparent unless subdivisions (a) and (b) of Sec. 13 (page 21) are read in connection with Secs. 12 and 13.

Sec. 13 (a) gives the Commission power to prescribe the form and contents of the statements and reports which must be filed by corporations and allows it to define the accounting, technical and trade terms used in the Act.

Subdivision (b) permits the Federal Trade Commission to prescribe the forms which must be used; the items and details to be shown in the balance sheet and earning statement, and also the methods to be followed in the preparation of accounts, in the appraisal and valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and non-recurring income, and in the differentiation of investment and operating income. The Commission may also require consolidated statements of accounts with any person directly or indirectly controlling or controlled by the listed corporation or with any person under direct or indirect common control.

Sec. 13 (page 17) deals with proxies and prohibits any person (and this term by definition includes any corporation) soliciting any proxy or consent or authorization in respect of any listed security unless prior thereto a statement shall have been filed with the Commission. This statement must be included as a part of every such solicitation and must set forth the purposes of the proxy, the persons to exercise it, their relation to and interest in the listed security and also the names and addresses of the persons from whom similar proxies are being solicited. It shall contain such further information as the Commission may require. Literally construed, this would require every corporation sending proxies to its own stockholders to send each of them a copy of its list of stockholders.

Sec. 15 (page 18) requires every director, officer or owner of more than 5% of any class of a listed security to file with the Exchange and with the Federal Trade Commission at the time of listing or when he becomes a director, officer or such owner of securities and also within ten days after the close of each calendar month in which there has been any change in the amount of such securities owned by him, a statement indicating the extent of his ownership of such securities and of all changes therein which may have occurred during the calendar month.

It further prohibits any director, officer or such owner of securities:

(1) From purchasing such listed security with the intention or expectation of selling the same within six months and in the event that any transaction is made within six months any profit realized on it may be recovered by the corporation of which he is an officer, director or stockholder. The profit so recoverable is not the actual profit realized but the difference between the highest price or prices at which the security has been sold and the lowest price or prices at which it has been purchased by said director, officer or stockholder within the six months' period.

(2) From selling such listed security which he does not own or selling the same even when owned if actual delivery is not made within five days.

(3) From disclosing any confidential information to any person and if any profit is made by any person who shall have received confidential information it can be recovered by the corporation. The method of calculating the profit so recoverable is similar to the method employed in determining the profits realized by officers, directors or principal stockholders buying and selling within six months

Sec. 17 (page 20) provides that any person who shall make, or any person, including any director, officer, accountant or agent of a corporation, who shall be responsible for making any statement in any report or document filed with the Federal Trade Commission which statement "is, in the light of the circumstances under which it was made, false or misleading in respect of any matter sufficiently important to influence the judgment of an average investor" liable to any person who, while ignorant of the falsity of such statement, shall purchase or sell any security the price of which may have been affected by such statement. The person sued will not be liable if he can sustain the burden of proof that he acted in good faith and in the exercise of reasonable care had no ground to believe that such statement was false or misleading. Otherwise, he will be liable in an amount equal to the difference between the price paid and the lowest price at which the security shall have sold for ninety days before and ninety days after any purchase or, in the case of a sale, the difference between the price realized and the highest price at which the security shall have sold for ninety days before and ninety days following the sale. Such amounts can apparently be recovered irrespective of the actual damages suffered by the person bringing suit, and he can sue each director, officer and stockholder if more than one was responsible for making the statement. The right of a person to sue does not depend upon whether he may have seen or relied upon the false statement and, therefore, all stockholders who bought or sold would presumably have a right of action against all officers, directors and principal stockholders who made or were responsible for making such statement.

Sec 18 (page 21) which confers special powers on the Federal Trade Commission, has been referred to in connection with Secs 11 and 12. These powers are so extensive that the Federal Trade Commission might dominate and actually control the management of each listed corporation

Sec 19 (page 24) makes every person who controls another, through stock ownership, agency or otherwise or through any agreement or understanding, liable for the acts of the controlled person to the same extent as if such acts were his own. In like manner, the acts of any spouse or of a child or parent residing with a person may be imputed to such person for the purpose of determining liability under the Act

Sec 20 (page 25) provides means by which the Federal Trade Commission may enforce its rules and regulations and while Sec 23 purports to give any aggrieved person the right of reviewing decisions of the Commission by appeal to the courts, the value of this remedy is limited by the provision that the findings of the Commission as to the facts, if supported by evidence, shall be conclusive.

Secs. 21 and 22 (page 26) provide that all hearings by the Commission shall be public and that all reports or documents filed with the Commission shall be public records. In effect, therefore, all statistical data and all information in regard to trade practices of the affairs of listed corporations which the Federal Trade Commission has the right to require must be made available to the

public, irrespective of whether such information may adversely affect the interests of a listed corporation by furnishing valuable information to competitors.

Sec. 24 (page 27) provides criminal penalties which may amount to a fine of \$25,000 or imprisonment for ten years or both for any violation of any provision of the Act or for any violation of any rule or regulation that may at any time be adopted by the Federal Trade Commission.

The other provisions of the Act deal primarily with security markets and will affect listed corporations only indirectly by destroying the market for their securities.

I have taken the liberty of addressing you because the prevalent belief that the bill applies only to stock exchanges and dealers in securities has led many people to overlook the provisions which it contains directly affecting corporations and subjecting them to the control of the Federal Trade Commission.

Faithfully yours,

RICHARD WHITNEY, *President.*

COMMITTEE EXHIBIT No. 11., FEBRUARY 26, 1934

MEMORANDUM IN REGARD TO EFFECT OF NATIONAL SECURITIES EXCHANGE ACT ON PERSONS OR FIRMS NOT MEMBERS OF AN EXCHANGE AND ON CORPORATIONS WHOSE SECURITIES ARE NOT LISTED ON ANY EXCHANGE

The National Securities Exchange Act of 1934, if enacted into law, will directly regulate stock exchanges, their members and all corporations whose securities are listed on any national securities exchange. However, it is perhaps not yet generally recognized that the bill will have serious effects on persons or firms who are not members of an exchange and on corporations whose securities are not listed.

Sec. 14 of the bill gives the Federal Trade Commission power to regulate the making or creating of an over-the-counter market in any security whether or not listed on a national securities exchange. The section provides that it shall be unlawful for "any person singly or in concert with others to make use of the mails or of any means or instrumentality of communication or transportation in interstate commerce for the purpose of making or creating, or enabling another to make or create, a market for any security, whether or not registered on a national securities exchange, without complying with such rules and regulations as the Commission may prescribe as appropriate in the public interest or for the protection of investors."

The term "person" as defined in subdivision 9 of Sec 3, includes an individual, corporation, partnership, association and unincorporated organization.

Sec. 6 (a) makes it unlawful for any person who transacts a business in securities through any member of a national securities exchange to extend or maintain credit to or for any customer on any security not listed upon a national securities exchange.

Subdivision (b) of Sec. 6 provides that a person who transacts a business in securities through a member of a national securities exchange may not extend or maintain credit on a security listed on such an exchange exceeding 80 per centum of the lowest price at which such security has sold during the preceding three years, or 40 per centum of the current market price, whichever is higher. The Commission may prescribe lower loan values during any stated period of time or in respect of any specified class of securities.

Subdivision (c) of Sec 6 forbids any person to extend or maintain credit to any person (other than to a dealer to aid in the financing of the distribution of securities to customers not through the medium of an exchange) upon any security listed on a national securities exchange in an amount exceeding the amount which a member of a national securities exchange may lend on such security, unless the application for the loan is accompanied by a statement by the borrower that such security has been acquired by the borrower and paid for in full more than thirty days prior to the making of the loan.

Sec. 6 of the bill, therefore, prohibits any person who transacts a business in securities through any member of a national securities exchange from extending



credit on unlisted securities, and it limits the credit which can be extended on listed securities. Finally, it prohibits any person, whether or not such person transacts a business in securities through a member of a national securities exchange, from lending on listed securities an amount exceeding the amount which a member of a national securities exchange could lend, unless the borrower states that he has owned such securities outright for more than thirty days.

Sec. 7 provides, among other things, that it shall be unlawful for any person who transacts a business in securities through a member of a national securities exchange—

(a) To borrow on any security listed on a national securities exchange from any person other than a member bank of the Federal Reserve System;

(b) To permit the aggregate indebtedness of such person, including customers' deposits, to exceed such percentage of the net current assets owned by the borrower and employed in the business not exceeding 1,000 per centum as the Commission may by rules and regulations prescribe;

(c) To use, if a broker, the capital employed in the business to carry or finance the carrying of securities for himself or for others than bona fide customers excluding any partner or employee of such broker.

The term "broker" is defined in subdivision 4 of Sec. 3 as meaning any person engaged in a business of effecting transactions in securities for the account of others.

Subdivision (7) of Sec. 8 (a) makes it unlawful for any person, by the use of the mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange to engage in any series of transactions or in any operation for the purchase and sale of any security listed on a national securities exchange which has the purpose or effect of pegging, fixing, or stabilizing the price of such security without having prior thereto reported to the exchange authorities and to the Commission such information regarding the purpose and nature of such transactions or operations, the details thereof and the person or persons interested therein as the Commission may prescribe.

Subdivision (9) of Sec. 8 (a) also forbids any person to effect by use of the facility of any national securities exchange any transaction whereby a put, call, straddle or other option or privilege is acquired.

Sec. 9 prohibits any person, by use of any means or instrumentality of interstate commerce or of the mails or of any facility of any national securities exchange from effecting a short sale of any listed security or giving a stop-loss order with respect to such security except in accordance with rules prescribed by the Commission. It also forbids the use in connection with the purchase or sale of any listed security of any device or contrivance which the Commission may find detrimental to the public interest or to the proper protection of investors.

Sec. 10 forbids any member of a national securities exchange or any person who engages in the business of effecting transactions in securities for the account of others through a member of a national securities exchange to act as a dealer in or underwriter of securities whether or not registered on any national securities exchange.

Sec. 15 requires every director or officer of, and every person owning as of record or beneficially more than 5 per centum of any class of securities of, any corporation which has any security listed on a national securities exchange:

(1) To file with the exchange and with the Commission at the time of the listing of the security or at the time he becomes a director, officer or owner of over 5 per centum of any class of the securities of such corporation, the amount of all securities of the corporation which he owns, and

(2) Within ten days after the close of each calendar month, to file a notice of any change in such ownership occurring during the month.

Sec. 15 also prohibits any such director, officer or owner from purchasing any listed security of such corporation with the intention or expectation of selling the same within six months, and any profit made by such person on any transaction in such listed security extending over a period of less than

six months shall inure to and be recoverable by the issuer, irrespective of any intention or expectation on his part in entering into such transaction of holding the security purchased for a period exceeding six months. The profit so recoverable shall be calculated on the sale or sales by such person of such security made at the highest price or prices and on the purchase or purchases made by such person of such security at the lowest price or prices during the six months' period, irrespective of the certificates for such security received or delivered by such person during such period.

Sec. 18 (c) gives the Federal Trade Commission authority to prescribe such rules and regulations for persons transacting a business in securities through members of a national securities exchange as it may deem necessary.

Sec. 28 forbids any broker or dealer, directly or indirectly, to make use of the mails or of any means or instrumentality of transportation or communication in interstate commerce for the purpose effecting on a foreign exchange any transaction in any security the issuer of which is a resident of, or is organized under the laws of, or has its principal place of business in, a place subject to the jurisdiction of the United States except in accordance with such rules and regulations as the Commission may prescribe.

Only the most important provisions of the bill which affect non-members of an exchange and unlisted corporations have been summarized above. The bill contains many other provisions which may affect persons who are not members of any national securities exchange and corporations whose stock is not listed on any such exchange.

COMMITTEE EXHIBIT NO. 113, FEBRUARY 26, 1934

Answers submitted by New York Stock Exchange to the questions asked of it by counsel for the United States Senate Committee on Banking and Currency (such questions being in the form agreed to in conferences with members of the staff of the counsel to the Committee and the representatives of the Exchange in conferences held in New York City on October 10th and 11th).

A. Give the following data for a current date.

1. Number of members of the New York Stock Exchange

*Answer.*—As of October 17, 1923, the authorized membership of the Exchange was 1,375, classified as follows:

Memberships of deceased members.....	10
Suspended for insolvency.....	1
Suspended for cause.....	1
Expelled member.....	1
Members in good standing.....	1362
<b>Total.....</b>	<b>1375</b>

Prior to February 7, 1929, the authorized membership of the Exchange was 1,100. As of that date the membership was increased to 1,375, each existing member being given a right to one-quarter of one of the new memberships. Two hundred and thirty of such new memberships were transferred during the year 1929; nineteen in 1930; eight in 1931; and eighteen in 1932.

2a. Estimate the number of members considered as acting primarily as traders for their own account.

*Answer.*—Based on a census taken on August 25, 1933, the estimated number is 86.

2b. Estimate the number of members considered as acting primarily as floor brokers.

*Answer.*—Based on a census taken on August 25, 1933, the estimated number is 289.

2c. Estimate the number of members present on the floor

*Answer.*—In periods of activity, such as in June 1933, the number would approximate 1,100; in less active times between 900 and 1,000; and in dull times, particularly at vacation seasons, the number might be reduced to about 800.

2d. The number of members who do not maintain regular representation on the floor of the Exchange, giving the names and addresses.

*Answer.*—Based on the census taken on August 25, 1933, the estimated number is 186, composed of 10 deceased members, one member suspended for insolvency, one member suspended for cause and 174 inactive members in good

standing. The names and addresses of such members is annexed hereto as "Schedule A".

2e Number of registered firms carrying margin accounts for customers and number of memberships held by such firms.

*Answer*—On September 30, 1933, there were 447 firms carrying margin accounts for customers, such firms had 602 members of the Exchange as general partners and 13 members of the Exchange as special partners

2g Names of all member houses engaged exclusively in handling odd lot transactions.

*Answer*.—

Carlisle, Mellick & Co.  
DeCoppet & Doremus  
Jacquelin & DeCoppet

C. Obtain from all odd lot houses the number of shares bought and the number of shares sold by them during the period April 1, 1933 to July 31, 1933, inclusive

*Answer*.—I understand that this information will be sought directly from the odd lot houses.

K 1. Give the names of all members who acted as specialists on October 1, 1929 and July 1, 1933 Give the names of the securities assigned to each.

*Answer*—As explained to Messrs Schenker and Flynn, the Exchange has no records for the dates in question Attached hereto is the nearest information which the Exchange possesses, i.e., a list of the specialists and the stocks in which they specialized which was published on October 14, 1930 and a proof copy of a revision of this list which gives the data as of October 1933 See Schedule A-1 hereto annexed.

K 2 Furnish copies of all provisions in the constitution and by-laws of the New York Stock Exchange relating to specialists in effect on December 31, 1929, and copies of all amendments subsequent thereto up to August 31, 1933.

*Answer*.—A copy of the constitution and rules showing all amendments was furnished to Messrs. Schenker and Flynn on October 11, 1933

K 3 Give names of all specialists who have been subjected to formal warning, trial, or disciplinary action of any nature or character whatsoever by any committee or governing body of the Exchange for the period from January 1, 1928 to September 1, 1933. In each case state the date, the nature of the alleged violation and the disposition thereof.

*Answer*—See "Schedule B" hereto annexed.

L Give the following data for each of the years from 1929 to 1933, inclusive:

1. Number of persons employed by Committee on Publicity of the New York Stock Exchange.

*Answer*—

1929.....	12
1930.....	15
1931.....	15
1932.....	15
1933.....	14

This includes all persons employed, although some were part-time employees

L 3. Number of persons employed by the department of the economist of the New York Stock Exchange

*Answer*.—

1929.....	12
1930.....	15
1931.....	9
1932.....	9
1933.....	12

This includes all persons employed, although some of them were only part-time employees

L 4. Total yearly expenditures by the New York Stock Exchange for all of the above enumerated purposes.

*Answer*—See "Schedule C" hereto annexed.

L 5 Total number of Presidents' addresses or statements, year-books, annual reports of the President, and similar publications circulated or distributed by the Exchange or any of its subsidiaries.

Answer—

Year	Number of pamphlets	Approximate number of copies	Year	Number of pamphlets	Approximate number of copies
1929	11	466,000	1932	6	260,000
1930	13	790,000	1933 (to Oct 1)	8	55,000
1931	12	2,280,000			

NOTE—In addition, the Exchange publishes a weekly bulletin in regard to changes in the membership of the Exchange and firms registered thereon, information in regard to listed securities and the payment of dividends, etc. This bulletin is distributed to members, firms, branch offices, transfer agents and others. The average number distributed weekly is 3,590.

The Exchange also publishes monthly a bulletin of statistical information in regard to security prices, etc. The average number distributed monthly is 14,000. In addition, the Exchange distributes copies of listing applications, notices and circulars to members, firms, branch offices, etc., and gives to visitors to the gallery copies of a pamphlet describing the work on the floor of the Exchange.

L 6 The titles and dates of all such publications

Answer—The following is a list of the titles of the foregoing addresses, statements, etc., together with a statement of the number of copies of each purchased by the Exchange. The estimate of the amount distributed contained in the foregoing answer has been based upon these figures, but, naturally there remains in stock a considerable number of each pamphlet.

	1929	Number purchased
Financing Industrial Development		22,000
(Address by E H H Simmons, President, before The Atlanta Chamber of Commerce, Atlanta, Georgia, January 18, 1929)		
Real Estate and the Capital Market		5,150
(Address by E H H Simmons, President, at the Annual Banquet of the Real Estate Board of New York, at New York City, February 2, 1929)		
An Indissoluble Friendship		47,100
(Address by E H H Simmons, President, at the Washington's Birthday Dinner of The American Club of Paris, Paris, France, February 22, 1929)		
Old and New Amsterdam		6,050
(Address by E H H Simmons, President, at a Dinner of the Amsterdam Stock Exchange Committee, Amsterdam, Holland, February 26, 1929)		
Stock Market Loans		143,500
(Address by E H H Simmons, President, at the Annual Dinner of the Chicago Stock Exchange, May 9, 1929)		
Report of the President		62,500
(By E H H Simmons, May, 1929)		
Speculation in Securities		62,000
(Address by E H H Simmons, President, before the New Hampshire Bankers Association, at Manchester, N H, May 24, 1929)		
Stabilizing American Business		57,000
(Address by E H H Simmons, President, at the Thirty-sixth Annual Convention of the Virginia Bankers Association, Old Point Comfort, Virginia, June 20, 1929)		
New Aspects of American Corporate Finance		50,100
(Address by E H H Simmons, President, at the Thirty-third Annual Convention of The Indiana Bankers Association, at Evansville, Indiana, September 11, 1929)		
Statement and Report of the Special Committee on Stock Dividends		1,700
(E H H Simmons, President; September 11, 1929)		
New York Stock Exchange Yearbook		10,500
(December, 1929)		
	1930	
The Principal Causes of the Stock Market Crisis of Nineteen Twenty-Nine		207,500
(Address by E H H Simmons, President, before The Transportation Club of The Pennsylvania Railroad, Philadelphia, Pennsylvania, January 25, 1930)		

	<i>Number purchased</i>
The Evolution of Stock Exchanges..... (Address by E H H Simmons, President, at a Dinner of the Hartford Stock Exchange, and the Connecticut Investment Bankers' Association, Hartford, Connecticut, February 28, 1930 )	3, 600
Distribution of Securities Through the Stock Market..... (By J E Meeker, Economist, Reprinted from New York Evening Post of December, 1928, in March, 1930 )	1, 000
Italy and America..... (Address by E H H Simmons, President, before the General Bankers Confederation of Italy, Milan, Italy, April 9, 1930 )	52, 400
Some Aspects of Modern American Finance..... (Address by E H H Simmons, President, before the Zurich Stock Exchange Association, at Zurich, Switzerland, April 11, 1930 )	9, 630
Financing American Industry and Other Addresses..... (Collection of addresses of E H H Simmons, President, April, 1930 )	10, 250
Education and American Business..... (Address by E H H Simmons, President, at the Annual Dinner of the Columbia University School of Business Alumni Association, at the Columbia University Club, New York, N.Y., April 28, 1930 )	4, 300
Report of the President..... (By E H. H. Simmons; May, 1930 )	62, 700
The work of the New York Stock Exchange in the panic of 1929..... (Address by Richard Whitney, President, before the Boston Association of Stock Exchange Firms, at the Algonquon Club, Boston, Massachusetts, June 10, 1930 )	110, 600
Trade depressions and stock panics..... (Address by Richard Whitney, President, before the Merchants' Association of New York, at the Hotel Astor, New York, N Y, September 9, 1930 )	180, 000
Accounting for investors..... (Address by J M B Hoxsey, Executive Assistant to the Committee On Stock List to The American Institute of Accountants, Colorado Springs, Colorado, September, 1930 )	6, 900
Speculation..... (Address by Richard Whitney, President, before the Illinois Chamber of Commerce, at the Hotel Stevens, Chicago, Illinois, October 10, 1930 )	132, 000
New York Stock Exchange Yearbook..... (December, 1930 )	10, 300
1931	
The place of the Stock Exchange in American business..... (Address by Richard Whitney, President, before the New York State Bankers Association, at the Hotel Roosevelt, New York City, January 22, 1931.)	15, 400
Measuring the Stock Market..... (Address by J. Edward Meeker, Economist, before the American Statistical Association, Cleveland, Ohio, December 30, 1930.)	20, 500
Public opinion and the Stock Market..... (Address by Richard Whitney, President, before the Boston Chamber of Commerce, Boston, Massachusetts, January 29, 1931 )	145, 000
Business honesty..... (Address by Richard Whitney, President, before the Philadelphia Chamber of Commerce, at the Bellevue-Stratford Hotel, Philadelphia, Pa, April 24, 1931 )	336, 000
Statement on Investment Trusts (Management Type) Special Requirements for Listing Investment Trust Securities..... (April, 1931 )	12, 000
Report of the President..... (By Richard Whitney June, 1931 )	63, 500
Economic law in business..... (Address by Richard Whitney, President, before the Merchants' Association of New York, at the Hotel Astor, New York, September 17, 1931.)	365, 500

	<i>Number purchased</i>
The Stock Exchange and the Investment Trusts-----	1, 050
(Address by George L. Tirrell, Chief Examiner of the Committee on Stock List, before The National Association of Securities Commissioners, Oklahoma City, September 25, 1931 )	
Short Selling-----	743, 500
(Address by Richard Whitney, President, before the Hartford Chamber of Commerce, Hartford, Connecticut, October 16, 1931.)	
Short Selling and Liquidation-----	527, 500
(Address by Richard Whitney, President, before the Syracuse Chamber of Commerce, Syracuse, New York, December 15, 1931.)	
Statistics in Regard to Short Selling-----	25, 000
(May 25-November 30, 1931.)	
New York Stock Exchange Yearbook-----	9, 800
(December, 1931.)	

## 1932

Statement of Richard Whitney, President (Judiciary Committee)-----	1, 600
(February, 1932 )	
Statement of Richard Whitney, President-----	84, 000
(Before the Committee on Finance of the United States Senate in regard to the Revenue Act of 1932, H R 10236, entitled "An Act to Provide Revenue, Equalize Taxation and for Other Purposes," April 15, 1932 )	
Statement of Richard Whitney, President-----	41, 000
(Made to the Governing Committee and the Membership in regard to the investigation of stock exchange practices by the Committee on Banking and Currency of the United States Senate, August 24, 1932 )	
'The New York Stock Exchange-----	74, 000
(Address by Richard Whitney, President, before the Industrial Club of St. Louis, and the Chamber of Commerce of St. Louis, at St. Louis, Missouri, September 27, 1932.)	
Report of the President-----	64, 500
(By Richard Whitney: November, 1932.)	
New York Stock Exchange Yearbook-----	9, 000
(November, 1932.)	

## 1933

Writing down assets and writing off losses-----	9, 500
(Address by J M B. Hoxsey Executive Assistant to the Committee on Stock List, to the Massachusetts Society of Certified Public Accountants, Boston, Mass., February 23, 1933 )	
Security investors and the future-----	45, 000
(Address by Richard Whitney, President, before The Cleveland Chamber of Commerce, at the Hotel Statler, Cleveland, Ohio, February 28, 1933 )	
Statement of Richard Whitney, president-----	5, 400
(To the Board of Estimate and Apportionment of the City of New York, in regard to the proposed New York City tax on stock transfers; September 11, 1933 )	

L7 The number of copies of the two books—"The Work of the Stock Exchange" and "Short Selling", written by the Economist of the New York Stock Exchange, which were purchased by the Exchange or any of its subsidiaries and were distributed gratis and the general nature of such distribution

*Answer*—The first edition of "The Work of the Stock Exchange" was published some years ago and no records exist in regard to the distribution by the Exchange. A revised edition was issued in 1930. In the aggregate, 7,650 were purchased by the Exchange and its subsidiaries, all such purchases being made through the Committee on Publicity.

The book "Short Selling" was published in 1932 and 1,500 copies were purchased by the Exchange and its subsidiaries, all through the Committee on Publicity.

The distribution of the books so purchased was as follows:

	Revised edition of "The Work of the Stock Exchange"	"Short Selling"
<b>COPIES SOLD</b>		
To members or to employees of the Exchange and students of New York Stock Exchange Institute.....	2,357	0
<b>COPIES GIVEN AWAY</b>		
To officers and employees of the Exchange.....	166	103
To students of Stock Exchange Institute.....	115	---
To the Economics faculties of colleges.....	514	144
To foreign economists.....	225	63
To public libraries.....	1,724	---
To colleges and other libraries.....	1,140	155
To newspapers, magazines, etc.....	417	321
To public officials.....	397	583
To other exchanges.....	129	---
To Security Commissioners and anti-fraud agencies.....	159	---
Miscellaneous, on hand, etc.....	301	131

L9 Furnish copies of all the articles, speeches, pamphlets, brochures or writings of Richard Whitney, President of the New York Stock Exchange, published since 1923.

*Answer*—Copies of all speeches, pamphlets, annual reports, etc., published by the Exchange are forwarded herewith We are informed that remarks made by Mr. Whitney on a few occasions were printed and distributed by the organizations addressed They were not, however, published by the Exchange and no supply of such pamphlets is in the possession of the Exchange.

M. Give the following data for each of the years from 1923 to September 1, 1933

1. Names of bond issues listed on the New York Stock Exchange which have been in default in the payment of principal and interest during such period

*Answer*—Such a list is in the course of preparation and will be forwarded as soon as completed.

M 2. List of members or member houses of the New York Stock Exchange who were suspended for insolvency.

*Answer*.—Such list is as follows:

	Name	Firm
1923 Aug. 9	Spencer W. Aldrich.....	W. D Moore & Co.
1929 Nov 13	Charles C. Chaffee, Jr.....	Mandeville, Brooks & Chaffee
Dec 13	Walker P. Hall.....	Roberts & Hall
1930 June 19	Charles L. Woody, Jr (Reinstated).....	Woody & Co
Sept 30	Norris B Henrotin (Reinstated).....	J A Sisto & Co
Oct 9	G Lisle Forman, Morrison B Orr.....	Prince & Whitely
27	John Bell Huhn.....	C Clothier Jones & Co (The customers' accounts of this firm were taken over by another firm and paid in full )
Nov 19	D. Harry Lake.....	Bauer, Pogue, Pond & Vivian.
1931 Jan 22	Arthur C Hilmer.....	Lorenzo E Anderson & Co
Apr. 24	Wilbur F McWhimney.....	Pyncheon & Co
27	Thomas G Stockhausen.....	West & Co
Sept 21	Charles E Knoblauch.....	Schuyler, Chadwick & Burnham
Oct. 1	Duncan F Thayer.....	Curtis & Sanger.
13	Herman D Kountze.....	Kountze Brothers
23	J A W Iglehart.....	J A W Iglehart & Co
Dec. 8	Thomas P Fowier.....	Palmer & Co.
1932 Jan. 5	Henry R Coons.....	Gurnett & Co
Mar 21	Ferry B Strassburger.....	Mr Strassburger was a floor broker with no public customers
Apr 29	Charles H Patton.....	Mark C. Steinberg & Co.

M 3 List of members suspended or expelled by the New York Stock Exchange, giving the dates of such suspension or expulsion, the reasons therefor, and where such members were in partnership, the names of such firms.

*Answer.*—See "Schedule D" hereto annexed

N. Give the following information for each of the years from 1928 to 1933, inclusive:

1. All committees of the New York Stock Exchange and the names of the members of each committee

*Answer.*—See "Schedule E" hereto annexed.

#### SCHEDULE A-1

#### SPECIALISTS AND STOCKS—NEW YORK STOCK EXCHANGE—COMMITTEE OF ARRANGEMENTS

(Corrected to October 14, 1930)

#### CONTENTS

Stocks and Specialists, by Stocks.....	3-57
Specialists and Stocks, by Specialists.....	58-77

#### STOCKS

	A	
Abbrn	Post	Specialists
A	(2)	J D Frankel & Co , W. J Ehrich, M. E Monahan
A Pr	(2)	J D Frankel & Co , W. J. Ehrich, M E Monahan
AAC	(17)	N G Hart & Co , Ferdinand Mayer
AB	(7)	C H Patton
ABI	(5)	D T Moore & Co , Palmer & Co., E. C. Rollins & Co.
ABI Pr	(5)	D T Moore & Co , Palmer & Co., E. C. Rollins & Co.
ABK	(10)	Leeds Johnson
ABK Pr	(30)	Miller & Dodge
ABN	(4)	Williams, Nicholas & Moran
ABN Pr	(30)	Miller & Dodge
ABP	(7)	Brinton & Co
ABS	(10)	Hume & Thompson, Berg, Eyre & Kerr
ABS Pr	(30)	Miller & Dodge
ABY	(14)	Stern & Lowitz
ABY Pr	(30)	Miller & Dodge
AC	(6)	Brown & Gruner, V. C. Brown & Co., J. T. Berdan
AC Pr	(6)	V C Brown & Co , J. T. Berdan
ACC	(16)	H Spear
ACC Pr	(16)	H Spear
ACD	(7)	F H Douglas & Co
ACD Pr	(7)	F H. Douglas & Co.
ACE	(30)	Miller & Dodge
ACF	(3)	C F Young, J E. Sheridan
ACJ	(6)	E R Whitehead
ACL	(30)	Miller & Dodge
ACN	(16)	Foster & Friede
ACN Pr	(16)	Foster & Friede
ACR	(13)	Adler, Coleman & Co.
ACS	(17)	Corlies & Booker
ACT	(17)	F L Salomon & Co., Harold M Cone
ADD	(16)	Bond, McEnany & Co , H. G Campbell & Co , Fellowes Davis & Co
ADD Pr	(30)	Miller & Dodge
ADE	(9)	Kerr & Armstrong
ADN	(7)	Albert Fried & Co
ADO	(30)	Miller & Dodge
ADT	(10)	Travers & Clark
ADT Pr	(30)	Miller & Dodge
AE	(9)	Homans & Co
AE Pr	(30)	Miller & Dodge



## STOCKS—Continued

Abbrn.	Post	Specialists
AEN	(17)	J E Greenia, L G Salomon
AF	(10)	Leeds Johnson
AF Pr	(10)	Leeds Johnson
AFG	(15)	LaBranche & Co
AFG Pr	(30)	Miller & Dodge
AFI	(15)	LaBranche & Co
AFW	(8)	Richards & Co , Tefft & Co.
AFW Pr	(8)	Tefft & Co , Nash, Cloud & Isaacs
AFW VI Pr	(30)	Miller & Dodge
AFW II Pr	(8)	Tefft & Co , Nash, Cloud & Isaacs
AFX	(11)	Morgan, Howland & Co , Eric H Marks, Mortimer W Loewi & Co , W H Goadby & Co.
AG	(6)	Barrett & Co
AG Pr	(6)	Barrett & Co
AGL	(1)	Cohen & Streusand
AGM	(4)	Cowen & Co
AGN Pr	(30)	Miller & Dodge
AGR	(13)	Adler, Coleman & Co
AGR Pr	(13)	Adler, Coleman & Co.
AGS	(2)	B H Roth, J D Frankel & Co
AGS Pr	(30)	Miller & Dodge
AH	(7)	Brinton & Co
AHP	(9)	McWilham, Wanwright & Luce, Perry B. Strassburger
AHS	(16)	Barbee & Co , J C. Bradford & Co.
AIN	(13)	Hedge & Ellis
AJ	(8)	Blumenthal Bros , J Rutherford, Delafield & Frothingham
AKL	(11)	Morgan, Howland & Co , Eric H. Marks, Mortimer W Loewi & Co , W H Goadby & Co.
AKL Pr	(30)	Miller & Dodge
AKO	(14)	S Rheinstein, H H Weekes, T S. Young, G. J. Dolan
AL	(5)	G H Wilder, H S Sternberger
ALL	(7)	Spero & Co.
ALM	(30)	Miller & Dodge
ALO	(14)	Smith & Gallatin
ALO Pr	(14)	Smith & Gallatin
ALR	(11)	Cyril de Cordova & Bro , E de Cordova
ALR Pr	(11)	Cyril de Cordova & Bro , E de Cordova
ALT	(9)	Drake Brothers
ALT Pr	(9)	Drake Brothers
AM A	(13)	Adler, Coleman & Co
AM B	(13)	Adler, Coleman & Co.
AM Pr	(13)	Adler, Coleman & Co
AMD Pr	(13)	Adler, Coleman & Co
AME	(11)	Howard Boulton & Co
AMM	(14)	Sidney Rheinstein, T S Young, H. H. Weekes, G J. Dolan
AMM Pr	(14)	Sidney Rheinstein, T. S. Young, H. H. Weekes, G. J. Dolan
AMS	(16)	H. G Campbell & Co , Fellowes Davis & Co., Bond, McEnany & Company
AMU	(8)	Tefft & Co , Nash, Cloud & Isaacs
AMX	(30)	Miller & Dodge
AMZ	(17)	Harold M Cone, F L. Salomon & Co
AN	(30)	Miller & Dodge
AN Pr	(30)	Miller & Dodge
ANC	(30)	Miller & Dodge
ANO	(4)	Williams, Nicholas & Moran
ANO A	(30)	Miller & Dodge
ANR	(30)	Miller & Dodge
AOW	(3)	Stewart & Co , A G Somers, W E O. Bebee
AOW V Pr	(3)	Stewart & Co , A G Somers, W. E. O. Bebee
AOW V Pr	(3)	Stewart & Co , A G Somers, W E O. Bebee
STMPD		
AOW VI Pr	(3)	Stewart & Co , A. G. Somers, W. E. O. Bebee

## STOCKS—Continued

Abbrn.	Post	Specialists
AOY	(1)	Cohen & Streusand
APP	(17)	Louis S. Gumbel, Jr.
APW	(10)	H. W. Goldsmith
APW Pr	(30)	Miller & Dodge
AQS	(30)	Miller & Dodge
AR	(11)	Alfred Eckstein, E. S. Hatch, John M. Hynes
AR Pr	(11)	Alfred Eckstein, E. S. Hatch, John M. Hynes
AR VI Pr	(11)	Alfred Eckstein, E. S. Hatch, J. M. Hynes
ARC	(12)	M. J. Meehan & Co.
ARR	(6)	Richards & Heffernan, Hume & Benedict
ARR Pr	(30)	Miller & Dodge
ARS	(7)	Albert Fried & Co.
ART	(2)	Barbour & Co., R. Melson, C. E. Danforth
ARU	(6)	Barrett & Co.
ARZ	(10)	H. W. Goldsmith
AS	(3)	J. E. Sheridan
ASC	(13)	C. Hyland Jones
ASR	(14)	Finch, Wilson & Co., A. R. Bishop, Henry D. Talbot
ASR Pr	(14)	Finch, Wilson & Co., A. R. Bishop, Henry D. Talbot]
AST	(6)	E. R. Whitehead
AST Pr	(30)	Miller & Dodge
ASU	(30)	Miller & Dodge
ASV	(1)	Filer & Co.
ASV Pr	(1)	Filer & Co.
AT	(13)	Adler, Coleman & Co.
AT B	(13)	Adler, Coleman & Co.
AT Pr	(13)	Adler, Coleman & Co.
AU	(11)	Morgan, Howland & Co., E. H. Marks, M. W. Loewi & Co., W. H. Goadby & Co.
AU Pr	(11)	Morgan, Howland & Co., M. W. Loewi & Co., E. H. Marks, W. H. Goadby & Co.
AUA	(13)	Hedge & Ellis
AUZ	(9)	Perry B. Strassburger, McWilliam, Wainwright & Luce
AVC	(14)	E. B. Condon, E. R. Tweedy
AW CT	(7)	C. H. Patton
AW VI Pr	(7)	C. H. Patton
AWC	(3)	R. T. Stone & Co.
AWW	(1)	Frank A. Shea, McClave & Co.
AWW I Pr	(1)	Frank A. Shea, McClave & Co.
AWY	(17)	Luber & Shaskan
AX	(1)	E. M. Anderson
AY	(30)	Miller & Dodge
AYY	(3)	A. G. Somers, A. Gwynne, W. L. Gwynne, Schafer Bros.
AYY Pr WW XXX	(3)	Schafer Bros., A. G. Somers
AYY Pr XW	(3)	Schafer Bros., A. G. Somers
AYY Pr WW XL	(3)	Schafer Bros., A. G. Somers

## B

B	(10)	Bramley & Smith
B Pr	(30)	Miller & Dodge
BB A	(2)	C. E. Danforth, Ralph Melson, Barbour & Co.
BB B	(2)	C. E. Danforth, Ralph Melson, Barbour & Co.
BB Pr	(30)	Miller & Dodge
BBL	(30)	Miller & Dodge
BBL Pr	(30)	Miller & Dodge
BC	(11)	Alfred Eckstein, E. S. Hatch
BCC	(13)	Adler, Coleman & Co.
BCH	(30)	Miller & Dodge
BCK	(17)	Luber & Shaskan
BDL	(9)	Nash & Company
BDM	(14)	E. B. Condon, E. R. Tweedy
BDM Pr	(30)	Miller & Dodge
BDO	(1)	Frank A. Shea, McClave & Co.
BE	(30)	Miller & Dodge

## STOCKS—Continued

Abbrn.	Post	Specialists
BEX	(15)	C. F. Henderson & Sons
BEY	(6)	Barrett & Co.
BEY CV Pr	(6)	Barrett & Co.
BEY Pr	(30)	Miller & Dodge
BF	(6)	Barrett & Co.
BF Pr	(6)	Barrett & Co.
BFQ	(30)	Miller & Dodge
BFQ Pr	(30)	Miller & Dodge
BG Pr	(30)	Miller & Dodge
BGG	(9)	R. Conried, Leopold Spingarn & Co.
BGH	(9)	Kerr & Armstrong
BGI	(5)	E. Weisl & Co.
BGW	(9)	E. C. Anness, Seymour Johnson
BH	(15)	Wilcox & Co.
BH D	(30)	Miller & Dodge
BHB Pr	(30)	Miller & Dodge
BHL	(17)	F. L. Salomon & Co., H. M. Cone
BI	(10)	Bramley & Smith
BI Pr	(10)	Bramley & Smith
BK	(11)	C. B. Spears
BKM	(2)	Q. F. Feitner & Co.
BKM Pr	(30)	Miller & Dodge
BKR	(30)	Miller & Dodge
BKR Pr	(30)	Miller & Dodge
BKU	(30)	Miller & Dodge
BKU Pr	(30)	Miller & Dodge
BKX	(14)	A. L. Fuller, B. H. & F. W. Pelzer
BLR	(3)	Schafer Bros., Arthur G. Somers
BLR Pr	(30)	Miller & Dodge
BLW Pr	(12)	Siegel & Co., H. I. Clark & Co.
BM	(5)	Tappin, Rose & Cammann
BMR	(3)	O. S. Campbell, Leo Kaufmann
BMT	(11)	J. V. Bouvier, 3rd., C. O. Mayer, Jr., S. B. Blumenthal
BMT Pr	(11)	J. V. Bouvier, 3rd., C. O. Mayer, Jr., S. B. Blumenthal
BNK	(10)	Sartorius & Smith, Sumner & Hewitt
BNK Pr	(30)	Miller & Dodge
BNU	(13)	Adler, Coleman & Co.
BO	(9)	Homans & Company
BO Pr	(9)	Homans & Company
BOS	(12)	H. I. Clark & Co., Siegel & Co.
BOV	(15)	Cecil Lyon, Carreau & Snedeker, Sneekner & Heath
BOV Pr	(30)	Miller & Dodge
BP	(4)	Williams, Nicholas & Moran
BQT	(14)	Stern & Lowitz
BQT Pr	(14)	Stern & Lowitz
BR	(30)	Miller & Dodge
BR Pr	(30)	Miller & Dodge
BRY	(14)	Fransoli & Wilson
BRY Pr	(14)	Fransoli & Wilson
BS	(10)	Travers & Clark, D. W. Armstrong
BS Pr	(10)	Travers & Clark, H. W. Goldsmith
BST	(7)	Spero & Company
BT	(3)	C. Griffen
BTY	(16)	Foster & Friede
BU	(5)	Chauncey & Company
BUD	(1)	Gaines & Company
BUZ	(13)	Hedge & Ellis
BUZ Pr	(13)	Hedge & Ellis
BVA	(15)	Stevens & Legg
BVA	(7)	Sydemann Bros.
BW	(8)	Morris Joseph & Co.
BW Pr	(30)	Miller & Dodge
BWC	(1)	Filer & Co.
BY	(30)	Miller & Dodge
BY Pr	(30)	Miller & Dodge

## STOCKS—Continued

## C

Abbrn.	Post	Specialists
C	(4)	Hyde & Miller, Williams, Nicholas & Moran .
CAD	(4)	P. P. McDermott & Co.
CAD Pr	(4)	P. P. McDermott & Co.
CAH	(15)	Stevens & Legg
CAM	(13)	C. Hyland Jones
CBD	(8)	Blumenthal Brothers, Delafield & Frothingham, John Rutherford
CBN	(8)	Blumenthal Bros , Delafield & Frothingham, John Rutherford
CBR Pr	(30)	Miller & Dodge
CC	(7)	Brinton & Co.
CC Pr	(30)	Miller & Dodge
CCK	(7)	Spero & Co.
CCK Pr	(7)	Spero & Co.
CCL	(30)	Miller & Dodge
CCL STMPD	(30)	Miller & Dodge
CCU Pr	(12)	M. J. Meehan & Co.
CDD	(15)	Wilcox & Company
CDH	(4)	P. P. McDermott & Company
CDI	(17)	Lieberman & Stone
CDP	(7)	Brinton & Co.
CE	(8)	Carl Levis
CE Pr	(8)	Carl Levis
CEG	(13)	C Hyland Jones
CEH	(17)	F. L. Salomon & Co , H. M. Cone
CEZ	(6)	J G. Cahn
CF	(10)	Bramley & Smith
CF Pr	(30)	Miller & Dodge
CFF	(1)	Alfred L Norris
CFG	(6)	V. C. Brown & Co , G B. Buchanan, J. T. Berdan.
CFG Pr	(30)	Miller & Dodge
CFM	(8)	Moss, Ferguson & Kerngood, Engel & Co.
CFM Pr	(8)	Moss, Ferguson & Kerngood, Engel & Co.
CFY	(13)	C. Hyland Jones
CFY Pr	(30)	Miller & Dodge
CG	(3)	R. T. Stone & Co.
CG Pr	(3)	R. T. Stone & Co.
CG V Pr	(3)	R. T. Stone & Co.
CGG	(10)	H. W. Goldsmith
CGG Pr	(10)	H. W. Goldsmith
CGH	(13)	Adler, Coleman & Co.
CGR	(16)	H. G. Campbell & Co , Fellowes Davis & Co., Bond McEnany & Co.
CGR P Pr WW	(30)	Miller & Dodge.
CGR P Pr XW	(30)	Miller & Dodge
CGR VII Pr	(30)	Miller & Dodge
CH	(17)	Joseph M. Adrian & Co., Hoge, Underhill & Co.
CHA	(30)	Miller & Dodge
CHC	(9)	Richard Conried, L. Spingarn & Co.
CHK	(17)	Hoge, Underhill & Co.
CHL	(30)	Miller & Dodge
CHS VII Pr	(30)	Miller & Dodge
CHS VIII Pr	(30)	Miller & Dodge
CHT	(30)	Miller & Dodge
CI A	(4)	Hyman & Co
CI B	(4)	M Schafer, Hyman & Co.
CI Pr	(4)	Hyman & Co
CIK	(3)	C Griffen
CIL Pr	(30)	Miller & Dodge
CIM	(5)	Vaughan & Company
CIS	(5)	E. Weisl & Company
CIT	(14)	Fransioli & Wilson

## STOCKS—Continued

Abbrn	Post	Specialists
CIT WAR	(14)	Fransioh & Wilson
CIT WARSTMPD	(14)	Fransioh & Wilson
CIT CV Pr	(14)	Fransioh & Wilson
CIT 6½ Pr	(14)	Fransioh & Wilson
CIT VII Pr	(30)	Miller & Dodge
CJ	(4)	Williams, Nicholas & Moran
CJ Pr	(4)	Williams, Nicholas & Moran
CK	(16)	Morris & Co
CK Pr	(16)	Morris & Co
CKO	(30)	Miller & Dodge
CKO Pr	(30)	Miller & Dodge
CLL	(8)	Blumenthal Bros , John Rutherford, Delafield & Frothingham
CLO	(14)	Henry Goldman, Jr.
CLO Ct	(14)	Henry Goldman, Jr.
CLO Pr	(30)	Miller & Dodge
CLQ	(2)	Barbour & Co , R Melson, C. E. Danforth
CLU	(7)	Brinton & Co.
CLU Pr	(30)	Miller & Dodge
CLZ	(6)	Samuels & Kornblum
CMM	(7)	Spero & Company
CMO	(13)	E L Norton
CMO A	(13)	E L Norton
CMO Pr	(30)	Miller & Dodge
CMO Pr B	(30)	Miller & Dodge
CMO I Pr, WW	(30)	Miller & Dodge
CMO I Pr, XW	(30)	Miller & Dodge
CMR	(7)	Brinton & Co
CN	(14)	Smith & Gallatin
CNG	(15)	A A Zucker
CNR A	(17)	Luber & Shaskan
CNR B	(17)	Luber & Shaskan
CNV	(30)	Miller & Dodge
CO	(17)	Hoge, Underhill & Co
CO Pr	(30)	Miller & Dodge
COG	(10)	Sumner & Hewitt, Sartorius & Smith
COS	(4)	P P McDermott & Co
COT	(17)	Luber & Shaskan
CP	(8)	A J Elias & Co
CP N	(8)	A J Elias & Co
CPC	(7)	Stackpole & Buchanan
CPC Pr	(7)	Stackpole & Buchanan
CPL	(17)	Hoge, Underhill & Co , J Dempsey
CPL Pr	(17)	Hoge, Underhill & Co , J Dempsey
CPU	(30)	Miller & Dodge
CR	(13)	Adler, Coleman & Co
CRM	(4)	Williams, Nicholas & Moran
CRT	(12)	H I Clark & Co , Siegel & Company
CRT Pr	(12)	H I Clark & Co , Siegel & Company
CRW	(30)	Miller & Dodge
CRW Pr	(30)	Miller & Dodge
CRX	(11)	Cyril de Cordova & Bro , E de Cordova
CSA	(30)	Miller & Dodge
CSC Pr	(30)	Miller & Dodge
CSS	(9)	Kerr & Armstrong
CSS A	(30)	Miller & Dodge
CSU	(14)	Finch, Wilson & Co , A R Bishop, Henry D Talbot
CSU P1	(30)	Miller & Dodge
CTM	(10)	Bramley & Smith
CTM Pr	(30)	Miller & Dodge
CTX	(3)	C Griffen
CTY	(17)	F L Salomon & Co , H H Cone
CTY Pr	(30)	Miller & Dodge
CUB	(12)	M. J Meehan & Co.
CUC	(8)	Morris Joseph & Co.

## STOCKS—Continued

Abbrn.	Post	Specialists
CUX	(17)	Hoge, Underhill & Co
CUZ	(30)	Miller & Dodge
CV	(5)	E. Weisl & Co
CVD	(14)	B. H. & F. W. Pelzer, A. L. Fuller & Co.
CVD Pr	(30)	Miller & Dodge
CW	(9)	Nash & Co., Roberts & McAleenan
CW Pr	(9)	Nash & Co., Kerr & Armstrong, Roberts & McAleenan.
CWH	(2)	H. M. Dreyfus, H. I. Nicholas
CWT	(15)	LaBranche & Co
CWW Pr	(30)	Miller & Dodge
CWZ	(13)	Adler, Coleman & Co.
CWZ A	(13)	Adler, Coleman & Co.
CX	(12)	M. J. Meehan & Co.
CX I Pr	(30)	Miller & Dodge
CX II Pr	(30)	Miller & Dodge
Corn Ex.	(30)	Miller & Dodge
Bank		

## D

D	(17)	F. L. Salomon & Co., Harold M. Cone
DB	(30)	Miller & Dodge
DD	(1)	Frank A. Shea, McClave & Co.
DD D	(1)	Frank A. Shea, McClave & Co.
DEM	(2)	J. D. Frankel & Co., W. J. Ehrlich, M. E. Monahan
DER Pr	(1)	A. L. Norris, Cohen & Streusand
DET	(30)	Miller & Dodge
DET Pr	(30)	Miller & Dodge
DG	(11)	Cyril de Cordova & Bro., E. de Cordova
DG I Pr	(11)	Cyril de Cordova & Bro., E. de Cordova
DG II Pr	(11)	Cyril de Cordova & Bro., E. de Cordova
DGL	(3)	Stewart & Company
DGR Pr	(7)	C. H. Patton
DH	(10)	Ely & Son
DHI	(10)	Hume & Thompson, Berg, Eyre & Kerr
DHO Pr	(30)	Miller & Dodge
DHS	(30)	Miller & Dodge
DK	(15)	Stevens & Legg
DK Pr	(15)	Stevens & Legg
DL	(7)	Brinton & Co.
DMS	(16)	Foster & Friede
DN	(16)	J. Robinson-Duff & Co.
DO	(6)	J. V. Onativia, Jr.
DOS	(1)	Gaines & Company
DPS	(10)	Hume & Thompson, Berg, Eyre & Kerr
DPS Pr	(30)	Miller & Dodge
DQU I Pr	(5)	Chauncey & Co.
DRS	(16)	Bond, McEnany & Co., H. G. Campbell & Co., Fellowes Davis & Co.
DRS Pr	(30)	Miller & Dodge
DRU	(6)	Stokes, Hodges & Co., Peter J. Maloney & Co., E. C. Coultry, M. H. Russell
DS	(11)	Cyril de Cordova & Bro., E. de Cordova
DS Pr	(11)	Cyril de Cordova & Bro., E. de Cordova
DTE	(10)	Sumner & Hewitt, Sartorius & Smith

## E

E	(3)	Schafer Bros, Arthur G. Somers, W. E. O. Bebee
E I Pr	(3)	Schafer Bros, Arthur G. Somers, W. E. O. Bebee
E II Pr	(3)	Schafer Bros, Arthur G. Somers, W. E. O. Bebee
EG	(6)	Barrett & Co.
EGK	(11)	Cyril de Cordova & Bro., E. de Cordova
EGM A	(9)	Perry B. Strassburger, McWilliam, Wainwright & Luce
EGM B	(9)	Perry B. Strassburger, McWilliam, Wainwright & Luce
EGS	(14)	S. Rheinstein, T. S. Young, H. H. Weekes, G. J. Dolan
EGS I Pr	(14)	S. Rheinstein, T. S. Young, H. H. Weekes, G. J. Dolan
EH	(7)	Spero & Company

## STOCKS—Continued

Abbrn.	Post	Specialists
EH Pr	(30)	Miller & Dodge
EJ	(12)	H. I. Clark & Co., Siegel & Co.
EJ Pr	(12)	H. I. Clark & Co., Siegel & Co.
EK	(15)	Stevens & Legg
EK Pr	(30)	Miller & Dodge
EL	(1)	M. F. Untermeyer
EL F PD	(30)	Miller & Dodge
EL LXX PD	(30)	Miller & Dodge
EL Pr	(1)	Clinton Gilbert & Co., Scholle Bros.
EL VI Pr	(1)	Clinton Gilbert & Co., Scholle Bros.
ELB	(2)	J. D. Frankel & Co., W. J. Ehrich, M. E. Monahan
ELO	(15)	Wilcox & Co
ELO Pr	(30)	Miller & Dodge
EMP	(30)	Miller & Dodge
ENX	(6)	Wright & Sexton
EP	(30)	Miller & Dodge
EPU	(8)	Moss, Ferguson & Kerngood, Engel & Co.
EPU Pr	(8)	Moss, Ferguson & Kerngood, Engel & Co.
EPU Pr WW	(8)	Moss, Ferguson & Kerngood, Engel & Co.
EQ	(13)	Adler, Coleman & Co.
ER	(6)	Joel G. Cahn
EU	(5)	E. Weisl & Co.
EVY	(8)	Tefft & Co., Nash, Cloud & Isaacs
EXY	(30)	Miller & Dodge

## F

F	(15)	Stevens & Legg
FDS	(6)	E. R. Whitehead
FFL	(30)	Miller & Dodge
FFL Pr	(30)	Miller & Dodge
FHK	(13)	Adler, Coleman & Co.
FHP	(1)	Lowell & Son
FHP Pr	(30)	Miller & Dodge
FI	(2)	J. D. Frankel & Co., W. J. Ehrich, M. E. Monahan
FI Pr	(30)	Miller & Dodge
FIR	(13)	Hedge & Ellis
FIR Pr	(13)	Hedge & Ellis
FIS Pr	(30)	Miller & Dodge
FJ	(12)	M. J. Meehan & Co.
FJ Pr	(30)	Miller & Dodge
FK	(10)	Leeds Johnson
FK I Pr	(30)	Miller & Dodge
FK CV I Pr	(30)	Miller & Dodge
FK II Pr	(30)	Miller & Dodge
FKM	(13)	Adler, Coleman & Co.
FKM Pr	(30)	Miller & Dodge
FL II Pr	(30)	Miller & Dodge
FL P Pr	(30)	Miller & Dodge
FLO	(4)	Hyman & Co
FLO Pr	(4)	Hyman & Co
FLT	(9)	Kerr & Armstrong
FLT Pr	(30)	Miller & Dodge
FLZ	(7)	Spero & Co
FMT	(16)	Morris & Co
FN	(8)	W. Thiele
FN Pr	(8)	W. Thiele
FO	(6)	Wright & Sexton
FPX	(10)	Sumner & Hewitt, Sartorius & Smith
FRW	(1)	Andrews, Posner & Rothschild
FS	(9)	Drake Brothers
FS Pr	(9)	Drake Brothers
FST	(17)	Ferdinand Mayer, N. G. Hart & Co.
FT	(7)	F. H. Douglas & Co.
FTH	(17)	Lieberman & Stone

## STOCKS—Continued

Abbrn	Post	Specialists
FV	(30)	Miller & Dodge
FW	(30)	Miller & Dodge
FW Pr	(30)	Miller & Dodge
FWC	(5)	John M Lummis
FWC Pr	(5)	John M. Lummis
FWS	(1)	Gaines & Co
Fifth Ave. Bank	(30)	Miller & Dodge
First Nat. Bank	(30)	Miller & Dodge
G		
G	(5)	Chauncey & Company
G Pr	(5)	Chauncey & Company
GAC	(17)	Miller & Dodge
GB	(14)	Finch, Wilson & Co , A R Bishop, Henry D. Talbot
GBG Pr	(30)	Miller & Dodge
GF	(14)	H H. Weekes, T S Young, G J Dolan
GG	(6)	E R Whitehead
GG Pr	(6)	Wright & Sexton, A J Vogel
GGN	(15)	Wilcox & Co
GGN A	(15)	Wilcox & Co
GGN Pr	(30)	Miller & Dodge
GGO	(3)	R T. Stone & Co
GGS A	(13)	Adler, Coleman & Co
GGS B	(13)	Adler, Coleman & Co
GGS CV Pr	(13)	Adler, Coleman & Co
GGS VII Pr	(30)	Miller & Dodge
GGS VIII Pr	(30)	Miller & Dodge
GGZ	(2)	Q F Feitner & Co , Auerbach, Pollak & Richardson
GH	(15)	Carreau & Snedeker, Cecil Lyon, Sneekner & Heath
GH Pr	(30)	Miller & Dodge
GHM	(13)	Adler, Coleman & Co
GHM Pr WW	(30)	Miller & Dodge
GHM Pr XW	(30)	Miller & Dodge
GHR	(16)	Foster & Friede
GHR CT	(16)	Foster & Friede
GI	(6)	Richards & Heffernan, Hume & Benedict
GI Pr	(6)	Richards & Heffernan, Hume & Benedict
GIL	(10)	Bramley & Smith
GIS	(14)	H D Talbot, A R. Bishop, Finch, Wilson & Co.
GIS Pr	(14)	H D Talbot, A R Bishop, Finch, Wilson & Co
GIV	(9)	Drake Bros
GIV Pr WW	(9)	Drake Bros.
GJ	(12)	H I Clark & Co , Siegel & Co
GJ Pr	(30)	Miller & Dodge
GK	(8)	Morris Joseph & Co
GK Pr	(8)	Morris Joseph & Co
GL	(6)	Stokes, Hodges & Co , Peter J Maloney & Co , Edmund C. Coultry, Marshall H Russell
GL Spl	(6)	Stokes, Hodges & Co , Peter J. Maloney & Co , Edmund C. Coultry, Marshall H Russell
GLN	(11)	Alfred Eckstein, E S Hatch, John M Hynes
GLN P Pr	(30)	Miller & Dodge
GLZ	(17)	Lieberman & Stone
GM	(4)	Wilhams, Nicholas & Moran, Hyde & Miller
GM Pr	(4)	Wilhams, Nicholas & Moran
GN	(30)	Miller & Dodge
GNL	(2)	H I Nicholas, H M Dreyfus
GNP	(30)	Miller & Dodge
GNW N	(17)	N G Hart & Co , Ferdinand Mayer
GNW Pr	(17)	N G Hart & Co , Ferdinand Mayer
GOR	(15)	Stevens & Legg
Pr	(15)	Stevens & Legg
GPI	(30)	Miller & Dodge
GPI Pr	(30)	Miller & Dodge



## STOCKS—Continued

Abbrn.	Post	Specialists
GPV	(1)	Gaines & Co.
GQX	(5)	Chauncey & Co.
GRC	(5)	G. H. Wilder, H. S. Sternberger
GRD	(16)	Morris & Co.
GRL Pr	(7)	Sydeman Bros.
GRR	(10)	Ely & Son
GRS	(17)	N. G. Hart & Co., Ferdinand Mayer
GRS Pr	(30)	Miller & Dodge
GRX	(10)	Ned D. Biddison
GRY	(16)	Alan M. Limburg
GRY Pr WW	(16)	Alan M. Limburg
GS	(10)	Ned D. Biddison
GS Pr	(30)	Miller & Dodge
GSW	(16)	Foster & Friede
GSW Pr	(30)	Miller & Dodge
GSX	(30)	Miller & Dodge
GT	(11)	A. Barnwell & Co
GTE	(2)	H M Dreyfus, H I Nicholas
GTY	(5)	E C Rollins & Co, Palmer & Co, D T. Moore & Co.
GU	(9)	Kerr & Armstrong
GU Pr	(9)	Kerr & Armstrong
GUC	(9)	E. C. Anness, Seymour Johnson
GUX	(6)	V. C. Brown & Co, J. T. Berdan
GUX Pr	(6)	V. C. Brown & Co, J. T. Berdan
GVZ	(14)	Stern & Lowitz
GVZ A	(14)	Stern & Lowitz
GW	(11)	Morgan, Howland & Co, Eric H Marks, Mortimer W. Loewi & Co, W H. Goadby & Co.
GW Pr	(11)	Morgan, Howland & Co, Eric H Marks, Mortimer W. Loewi & Co, W. H. Goadby & Co.
GY	(9)	Seymour Johnson, E C Anness
GY Pr	(30)	Miller & Dodge

## H

H	(5)	Chauncey & Co
HAR	(30)	Miller & Dodge
HAR Pr	(30)	Miller & Dodge
HH	(8)	Tefft & Co, Nash, Cloud & Isaacs
HHN	(4)	Peter P. McDermott & Co
HHN Pr	(4)	Peter P. McDermott & Co
HI	(11)	Cyril deCordova & Bro, E. deCordova
HI Pr	(11)	Cyril deCordova & Bro, E deCordova
HIP	(30)	Miller & Dodge
HK	(10)	Leeds Johnson
HK Pr	(30)	Miller & Dodge
HKM	(17)	Joseph M. Adrian & Co.
HKM Pr	(30)	Miller & Dodge
HLL	(7)	Albert Fried & Co
HLN	(11)	J V Bouvier, 3rd, S B. Blumenthal, C O. Mayer
HM	(17)	Hoge, Underhill & Co
HMO	(1)	Filer & Company
HMT	(2)	Auerbach, Pollak & Richardson, Q F Feitner & Co.
HMW	(1)	Lowell & Son
HMW Pr	(30)	Miller & Dodge
HMY	(6)	Barrett & Co, J V Onativia, Jr
HN	(8)	Blumenthal Bros, J Rutherford, Delafield & Frothingham
HN Pr	(30)	Miller & Dodge
HN War	(8)	J. Rutherford, Delafield & Frothingham
HNA Pr	(30)	Miller & Dodge
HO	(15)	Stevens & Legg
HOF Pr	(13)	Hedge & Ellis
HOO	(3)	Leo Kaufmann, O. S. Campbell
HPC	(3)	C. F. Young

## STOCKS—Continued

Abbn.	Post	Specialists
HPC Pr	(30)	Miller & Dodge
HPG	(16)	Barbee & Co., J. C. Bradford & Co.
HPT	(14)	Stern & Lowitz
HR	(12)	H. I. Clark & Co., Siegel & Co.
HR Pr	(12)	H. I. Clark & Co, Siegel & Co.
HRT A	(6)	Barrett & Co.
HRT B	(6)	Barrett & Co.
HSY	(15)	Wilcox & Co.
HSY Pr	(15)	Wilcox & Co.
HSY P Pr	(15)	Wilcox & Co
HW	(8)	Morris Joseph & Co
HWA	(39)	Miller & Dodge
HWA Pr A	(30)	Miller & Dodge
HX	(6)	John Muir & Co.
HX Pr	(6)	John Muir & Co.
HYB	(16)	Laurence C Leeds
I		
IA	(30)	Muller & Dodge
ICL	(7)	Brinton & Co.
ICM	(13)	Adler, Coleman & Co
ICR	(4)	Williams, Nicholas & Moran
ICR Pr	(30)	Miller & Dodge
IGL	(13)	Adler, Coleman & Co.
IGL P Pr	(13)	Adler, Coleman & Co
IKL	(13)	Adler, Coleman & Co.
IKN	(9)	Seymour Johnson, E C Anness
IKN Pr	(30)	Muller & Dodge
IL	(9)	Drake Brothers
IL Pr	(9)	Drake Brothers
IL LL	(30)	Muller & Dodge
ILM	(12)	M J Meehan & Co
ILN	(1)	E M Anderson
ILR	(9)	R G Conried, Leopold Spingarn & Co.
ILS	(12)	Siegel & Co
IMN	(11)	C de Cordova & Bro , E de Cordova
IMY	(13)	Adler, Coleman & Co
IMY Pr	(30)	Muller & Dodge
IN	(1)	Harris & Fuller
IN Pr	(1)	Harris & Fuller
INQ	(12)	M J Meehan & Co
INR	(17)	Ferdinand Mayer
INR Pr	(30)	Muller & Dodge
INS	(11)	Morgan, Howland & Co , Eric H. Marks, Mortimer W. Loewi & Co , W H. Goadby & Co.
INU	(7)	Brinton & Co
IP Pr	(30)	Miller & Dodge
IP A	(5)	Edwin Weisl & Co
IP B	(5)	Edwin Weisl & Co
IP C	(5)	Edwin Weisl & Co
IP Pr N	(5)	Edwin Weisl & Co
IPH	(5)	Edwin Weisl & Co
IPX	(11)	J V Bouvier, 3rd, S B Blumenthal, C. O. Mayer
IR	(5)	D T Moore & Co , Palmer & Co , E C. Rollins & Co.
IR Pr	(30)	Muller & Dodge
IRC	(30)	Muller & Dodge
IRC Ct	(30)	Muller & Dodge
IRC Pr	(30)	Muller & Dodge
IRR	(6)	Wright & Sexton
IRT	(5)	E C Rollins & Co , D T Moore & Co., Palmer & Co.
IRT CD	(5)	E C. Rollins & Co , D. T Moore & Co., Palmer & Co.
IRU	(9)	Kerr & Armstrong
IRY	(16)	Morris & Co
IS	(7)	Brinton & Co

## STOCKS—Continued

Abbrn.	Post	Specialists
IS Pr	(7)	Brinton & Co.
ISD	(9)	Richard Conried, Leopold Spingarn & Co.
ISD Pr WW	(30)	Miller & Dodge
ISD Pr XW	(30)	Miller & Dodge
ISH	(17)	Corlies & Booker
ISS	(16)	Foster & Freide
IT	(17)	Corlies & Booker
J		
J	(9)	Homans & Co., J. H. Holmes & Co.
JC	(12)	M. J. Meehan & Co.
JJ	(9)	E C Anness, Seymour Johnson
JKS	(6)	E. R. Whitehead
JL Pr	(30)	Miller & Dodge
JLO	(30)	Miller & Dodge
JMP	(10)	Hume & Thompson, Berg, Eyre & Kerr
JMP Pr	(30)	Miller & Dodge
JO	(4)	Williams, Nicholas & Moran
JU	(9)	Callaway, Fish & Co
JW	(5)	E Weisl & Co
K		
K	(2)	Henry Zuckerman & Co , C F. Watson, Jr.
KDS	(7)	Stackpole & Buchanan
KDS Pr	(30)	Miller & Dodge
KG	(7)	Stackpole & Buchanan
KG Pr	(30)	Miller & Dodge
KK	(16)	Reynolds & Co
KK VI Pr	(30)	Miller & Dodge
KK VIII Pr	(30)	Miller & Dodge
KKN	(6)	A. J. Vogel
KLL Pr	(30)	Miller & Dodge
KLO	(12)	M J Meehan & Co.
KLO Pr	(12)	M J Meehan & Co
KL Pr	(30)	Miller & Dodge
KL V	(10)	Ely & Son
KMB	(1)	Gaunes & Company
KN	(11)	J V. Bouvier, 3rd, S B Blumenthal, C. O. Mayer
KNX	(17)	Corlies & Booker
KNX Pr	(30)	Miller & Dodge
KO	(11)	A. Barnwell & Co
KO A	(11)	A. Barnwell & Co
KOC	(30)	Miller & Dodge
KOR	(15)	C F. Henderson & Sons
KOR Ct	(15)	C F Henderson & Sons
KR	(8)	J. S. Bach
KRS	(7)	Sydean Bros
KRT	(5)	D. T. Moore & Co , Palmer & Co., E. C. Rollins & Co.
KS	(11)	J. V. Bouvier, 3rd, S. B. Blumenthal, C. O. Mayer
KSU	(6)	Richards & Heffernan, Hume & Benedict
KSU Pr	(6)	Richards & Heffernan, Hume & Benedict
KT	(15)	Cecil Lyon, Carreau & Snedeker, Sneckner & Heath
KT Pr	(15)	Cecil Lyon, Carreau & Snedeker, Sneckner & Heath
KW	(13)	Adler, Coleman & Co.
L		
LAM	(14)	S Rheinstein, H H Weekes, T S. Young, G J. Dolan
LB	(14)	A L Fuller & Co., B. H. & F. W. Pelzer
LBO	(10)	Sumner & Hewitt, Sartorius & Smith
LEH	(11)	Cyril de Cordova & Bro , E. de Cordova
LEH Pr	(11)	Cyril de Cordova & Bro., E. de Cordova
LEM	(14)	S Rheinstein, H. H. Weekes, T. S. Young, G. J. Dolan

## STOCKS.—Continued

Abbrn.	Post	Specialists
LF	(2)	J. D. Frankel & Co., Wm J. Ehrich, M. E. Monahan
LG	(5)	E. Weisl & Co.
LG Pr	(30)	Miller & Dodge
LL	(13)	E. L. Norton
LL Pr	(30)	Miller & Dodge
LM	(13)	Adler, Coleman & Co
LM B	(13)	Adler, Coleman & Co
LM Pr	(13)	Adler, Coleman & Co
LMS	(17)	Corlies & Booker
LMS Pr	(17)	Corlies & Booker
LMW	(10)	H. W. Goldsmith
LN	(1)	E. M. Anderson
LNP	(12)	M. J. Meehan & Co
LNy	(7)	C S Weil
LO	(11)	Mortimer W. Loewi & Co, Morgan, Howland & Co., Eric H. Marks, W H. Goadby & Co.
LO Pr	(30)	Miller & Dodge
LOR	(11)	Cyrl de Cordova & Bro., E de Cordova
LOR Pr	(14)	A. L. Fuller & Co, B H & F W. Pelzer
LOU	(13)	C. H. Jones
LPT	(3)	O S. Campbell, Leo Kaufmann
LPT Pr	(30)	Miller & Dodge
LQ	(17)	F L Salomon & Co., H. M. Cone
LQT	(17)	F. Mayer, N G. Hart & Co
LR	(5)	E Weisl & Co
LT	(15)	Wilcox & Company
LT Pr A	(30)	Miller & Dodge
LT Pr B	(30)	Miller & Dodge
LV	(11)	Cyrl de Cordova & Bro., E de Cordova
LW	(2)	R Melson, C E Danforth, Barbour & Co.
LW Pr WW	(2)	R Melson, C. E. Danforth, Barbour & Co
LW Pr XW	(2)	R Melson, C. E. Danforth, Barbour & Co.

## M

M	(3)	Tefft & Company
MA	(9)	McWilliam, Wanwright & Luce, Perry B. Strassburger
MAB	(17)	Luber & Shaskan
MAF	(17)	H M Cone, F L Salomon & Co.
MAF Pr	(30)	Miller & Dodge
MAH	(30)	Miller & Dodge
MAN MG	(7)	C. H. Patton
MAN GTD	(30)	Miller & Dodge
MAQ	(10)	H. W. Goldsmith
MAR	(3)	C. Griffen
MB	(8)	Moss, Ferguson & Kerngood, Engel & Co.
MC	(30)	Miller & Dodge
MCG	(14)	A. L. Fuller & Co, B H. & F. W. Pelzer
MCH	(15)	Wilcox & Company
MCK	(16)	Laurence C Leeds
MCK Pr	(16)	Laurence C. Leeds
ME	(30)	Miller & Dodge
MES	(17)	F. L. Salomon & Co, H. M. Cone
MFI	(14)	E. B. Condon, E. R. Tweedy
MGL Pr	(5)	A. L. Scheuer & Co
MGX	(14)	Finch, Wilson & Co, A R. Bishop, Henry D. Talbot
MGX Pr	(30)	Miller & Dodge
MHW	(15)	A A Zucker
MK	(30)	Miller & Dodge
MK Pr	(30)	Miller & Dodge
MLL	(1)	Gaines & Co.
MLL Pr	(1)	Gaines & Co.
MM	(7)	E. H. H. Simmons & Co, Brinton & Co.
MMC	(14)	Fransoli & Wilson
MMP	(12)	M J Meehan & Co.
MMW	(7)	Albert Fried & Co

## STOCKS—Continued

Abbrn	Post	Specialists
MMW Pr	(7)	Albert Fried & Co
MMX	(1)	Scholle Brothers, Clinton Gilbert & Co
MN	(30)	Miller & Dodge
MN Pr	(30)	Miller & Dodge
MNO	(30)	Miller & Dodge
MNS	(17)	Corhes & Booker
MNS Pr	(30)	Miller & Dodge
MNU	(30)	Miller & Dodge
MNU Pr	(30)	Miller & Dodge
MOK	(13)	E L Norton
MOL	(17)	Miller & Dodge
MOO	(14)	Smith & Gallatin
MOP	(2)	Barbour & Co , R Melson, C E Danforth
MOP Pr	(2)	Barbour & Co , R Melson, C. E. Danforth
MOR	(5)	H. S Sternberger, G. H Wilder
MOS	(15)	Stevens & Legg
MPO	(16)	H G. Campbell & Co , Fellowes Davis & Co , McEnany & Co
MPO I Pr	(16)	H. G Campbell & Co., Fellowes Davis & Co , McEnany & Co.
MPS	(13)	E L Norton
MPZ	(3)	J E Sheridan
MQ	(15)	LaBranche & Company
MQU	(15)	Wilcox & Company
MR	(12)	H I Clark & Co , Siegel & Co.
MRR	(13)	E. L Norton
MRR Pr	(13)	E. L. Norton
MRR II Pr	(13)	E. L. Norton
MRR P Pr	(13)	E. L. Norton
MRT	(3)	C. Griffen
MRW	(13)	Hedge & Ellis
MRY	(30)	Miller & Dodge
MRY B	(30)	Miller & Dodge
MRY Pr	(30)	Miller & Dodge
MS	(17)	Hoge, Underhill & Co!
MS OLD	(17)	Hoge, Underhill & Co.
MSM	(8)	Carl Levis
MSM LL	(30)	Miller & Dodge
MSM Pr	(8)	Carl Levis
MSX	(16)	Morris & Co.
MT	(13)	Adler, Coleman & Co.
MT Pr	(30)	Miller & Dodge
MTC	(14)	Stern & Lowitz
MTY	(2)	Auerbach, Pollak & Richardson
MUN	(16)	H G Campbell & Co , Fellowes Davis & Co., Bond Me- Enany & Co
MUY	(15)	Wilcox & Company
MV	(10)	Bramley & Smith
MW	(9)	E C. Anness, Seymour Johnson
MX I Pr	(8)	W Thiele
MX II Pr	(8)	W Thiele
MY Pr	(30)	Miller & Dodge
MYG	(3)	J E Sheridan
MYG Pr WW	(3)	J E Sheridan
MYG I Pr	(3)	J E Sheridan
MYR	(6)	Samuels & Kornblum
MZ	(3)	Schafer Bros , A. G Somers, W E O. Bebee
M&B Pr	(30)	Miller & Dodge

## N

N	(7)	Neilson & O'Sullivan
N Pr	(7)	Neilson & O'Sullivan
NA	(6)	Richards & Heffernan, Hume & Benedict
NA Pr	(6)	Richards & Heffernan, Hume & Benedict

## STOCKS—Continued

Abbr.	Post	Specialists
NAD	(6)	V. C. Brown & Co , J. T. Berdan
NAE Pr	(6)	Richards & Heffernan, Hume & Benedict
NAS	(16)	Foster & Freide
NAV	(16)	J Robinson-Duff & Co.
NAX	(16)	Wagner, Stott & Co.
NBH	(2)	Barbour & Co , C. E. Danforth, R Melson
NBH Pr	(2)	Barbour & Co., C. E Danforth, R Melson
NCM	(6)	Barrett & Co.
NCR	(12)	M. J Meehan & Co.
NEB	(8)	Morris Joseph & Co.
NEO A	(4)	Cowen & Co.
NFK	(10)	Sartorius & Smith, Sumner & Hewitt
NFK Pr	(30)	Miller & Dodge
NGL	(2)	W. J Ehrich, J D. Frankel & Co , M E. Monahan
NKP	(5)	W. S Turner, A. L. Scheuer & Co.
NKP Pr	(5)	W. S Turner, A. L Scheuer & Co.
NL	(30)	Miller & Dodge
NNX	(30)	Miller & Dodge
NNY	(6)	Richards & Heffernan, Hume & Benedict
NOX	(30)	Miller & Dodge
NPL	(15)	Stevens & Legg
NPT	(8)	Herbert H Sonn, W. Thiele
NPX	(7)	Albert Fried & Co.
NRC	(9)	E C Anness, Seymour Johnson
NRC Pr	(9)	E. C Anness, Seymour Johnson
NRT	(5)	E C Rollins & Co., D. T. Moore & Co., Palmer & Co.
NRT Pr	(30)	Miller & Dodge
NRV Pr	(13)	Hedge & Ellis
NS	(10)	Bramley & Smith
NSC	(16)	Morris & Co ,
NSC Pr	(30)	Miller & Dodge
NSM VI Pr	(30)	Miller & Dodge
NSM VII Pr	(30)	Miller & Dodge
NSS	(9)	Nash & Company
NST	(30)	Miller & Dodge
NST Pr	(30)	Miller & Dodge
NSU	(8)	Carl Lewis
NSX	(10)	Sumner & Hewitt, Sartorius & Smith
NTY	(16)	Foster & Friede
NV	(13)	Adler, Coleman & Co
NW	(14)	Smith & Gallatin
NW Pr	(14)	Smith & Gallatin
NWT	(30)	Miller & Dodge
NX	(6)	Stokes, Hodges & Co., Peter J. Maloney & Co., E. C. Coultry, M. H. Russell
NX Pr	(30)	Miller & Dodge
NY	(10)	Bramley & Smith
NYK	(2)	B H Roth & Co., J. D. Frankel & Co.
Bank of N.Y. & Trust Co.	(30)	Miller & Dodge

## O

OB	(13)	Adler, Coleman & Co
OF	(14)	Stern & Lowitz
OF CV Pr	(14)	Stern & Lowitz
OF P Pr WW	(14)	Stern & Lowitz
OHO	(14)	H Goldman, Jr.
OM	(30)	Miller & Dodge
OM Pr	(30)	Miller & Dodge
OPS	(3)	Schafer Bros , Arthur G. Somers
OPX	(30)	Miller & Dodge
OPX Pr	(30)	Miller & Dodge
OR	(5)	Vaughan & Co.
OST	(3)	J E. Sheridan

## STOCKS—Continued

Abbrn.	Post	Specialists
OST P Pr	(3)	J. E. Sheridan
OT	(3)	Schafer Bros , W. E. O. Bebee, A. G. Somers
OT Pr	(30)	Miller & Dodge
OTU	(30)	Miller & Dodge
OTU Pr	(30)	Miller & Dodge
OV	(7)	Spero & Co
OV Pr	(7)	Spero & Co
OW	(2)	Perkins & Righi
P	(14)	H. H. Weekes, T. S. Young, S. Rheinstein, G. J. Dolan
PA	(5)	Vaughan & Company
PAC	(30)	Miller & Dodge
PAC Pr	(30)	Miller & Dodge
PAE	(6)	Richards & Heffernan, Hume & Benedict
PAK	(7)	F H. Douglas & Co.
PB	(1)	Cohen & Streusand, Filer & Co
PC	(14)	Finch, Wilson & Co., A. R. Bishop, H. D. Talbot
PC Pr	(14)	Finch, Wilson & Co., A. R. Bishop, H. D. Talbot
PCG	(8)	Blumenthal Brothers, John Rutherford, Delafield & Frothingham
PCO	(3)	W. E. O Bebee, Schafer Bros , A. G. Somers
PCX	(5)	Chauncey & Company
PCX I Pr	(30)	Miller & Dodge
PCX II Pr	(30)	Miller & Dodge
PDF	(6)	Wright & Sexton
PDF Pr	(6)	A J Vogel
PDG	(5)	G H. Wilder, H. S. Sternberger
PDG Pr	(5)	G H. Wilder, H. S. Sternberger
PDO	(6)	Richards & Heffernan, Hume & Benedict
PE	(5)	Chauncey & Company
PEG Pr	(4)	Van Wyck & Sterling
PEJ	(13)	Adler, Coleman & Co.
PEJ Pr	(13)	Adler, Coleman & Co.
PEO	(11)	Morgan, Howland & Co., E. H. Marks, W. H. Goadby & Co , Mortimer W. Loewi & Co.
PET	(6)	A. J. Vogel
PF	(14)	Finch, Wilson & Co., H. D. Talbot, A. R. Bishop
PFK	(11)	Howard Boulton & Co.
PFK Pr	(30)	Miller & Dodge
PFN	(9)	Nash & Co
PFN Pr	(30)	Miller & Dodge
PFS	(30)	Miller & Dodge
PG Pr	(30)	Miller & Dodge
PGM	(2)	C F Watson, Jr., Henry Zuckerman & Co.
PGM Pr	(2)	C F Watson, Jr., Henry Zuckerman & Co.
PH	(5)	Chauncey & Company
PH V Pr	(30)	Miller & Dodge
PH VI Pr N	(5)	Chauncey & Company
PIT	(17)	Luber & Shaskan
PJ	(17)	F. L. Salomon & Co , H. M. Cone
PJ Pr	(30)	Miller & Dodge
PKT	(17)	Lieberman & Stone
PLT	(9)	Seymour Johnson, E C. Anness
PMY	(30)	Miller & Dodge
PO	(5)	H. S. Sternberger, G. H. Wilder, Tappin, Rose & Cammann
POL	(10)	Hume & Thompson, Berg, Eyre & Kerr
POL Pr	(10)	Hume & Thompson, Berg, Eyre & Kerr
POR	(7)	Albert Fried & Company
PP	(1)	A J. Feuchtwanger, Louis Livingston
PP B	(1)	A J. Feuchtwanger, Louis Livingston
PPI	(9)	Perry B. Strassburger, McWilliam, Wainwright & Luce
PPT	(14)	Smith & Gallatin
PPT Pr	(30)	Miller & Dodge
PPX	(6)	Samuels & Kornblum
PQ	(10)	Bramley & Smith

## STOCKS—Continued

Abbrn	Post	Specialists
PQ Pr	(30)	Miller & Dodge
PQR	(30)	Miller & Dodge
PQS	(11)	Morgan, Howland & Co., Eric H. Marks, W. H. Goadby & Co., Mortimer W. Loewi & Co.
PQS Ct	(11)	Morgan, Howland & Co., Eric H. Marks, Mortimer W. Loewi & Co., W. H. Goadby & Co.
PRC	(10)	Hume & Thompson, Berg, Eyre & Kerr
PRL	(2)	J. D. Frankel & Co., W. J. Ehrlich, M. E. Monahan
PRT A	(13)	Adler, Coleman & Co.
PRT B	(13)	Adler, Coleman & Co.
PSL	(12)	H. I. Clark & Co., Siegel & Co.
PSL Pr	(12)	H. I. Clark & Co., Siegel & Co.
PSS	(8)	Brown & Gruner
PST Pr	(9)	Drake Brothers
PSU	(15)	C. F. Henderson & Sons
PSU Pr	(30)	Miller & Dodge
PSY	(16)	Morris & Co.
PT	(30)	Miller & Dodge
PTE	(9)	McWilliam, Wainwright & Luce, Perry B. Strassburger
PTH	(17)	Ferdinand Mayer, N. G. Hart & Co.
PTH A	(17)	Ferdinand Mayer, N. G. Hart & Co.
PTT	(30)	Miller & Dodge
PTT SPL	(30)	Miller & Dodge
PTY	(14)	Fransoli & Wilson
PU	(9)	Homans & Company
PUB	(4)	Van Wyck & Sterling
PUB V Pr	(4)	Van Wyck & Sterling
PUB VI Pr	(4)	Van Wyck & Sterling
PUB VII Pr	(4)	Van Wyck & Sterling
PUB VIII Pr	(4)	Van Wyck & Sterling
PUC	(14)	Stern & Lowitz
PUN	(3)	C. F. Young
PUN Pr	(30)	Miller & Dodge
PUY	(5)	Chauncey & Company
PUY Pr	(30)	Miller & Dodge
PV	(30)	Miller & Dodge
PV Pr	(30)	Miller & Dodge
PVX	(16)	Morris & Company
PW	(2)	J. D. Frankel & Co., W. J. Ehrlich, M. E. Monahan
PX	(14)	S. Rheinstein, H. H. Weekes, T. S. Young, G. J. Dolan
PXC	(8)	Moss, Ferguson & Kerngood, Engel & Co.
PXC Pr	(8)	Moss, Ferguson & Kerngood, Engel & Co.
PXY	(15)	Stevens & Legg
PXY Pr	(30)	Miller & Dodge
PYA Pr	(30)	Miller & Dodge
PZ	(8)	Morris Joseph & Co.
PZ Pr	(8)	Morris Joseph & Co.

## Q

QW	(13)	Adler, Coleman & Co.
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## R

R	(12)	M. J. Meehan & Co.
R Pr	(12)	M. J. Meehan & Co.
R Pr B	(12)	M. J. Meehan & Co.
RAY	(14)	Finch, Wilson & Co., A. R. Bishop, H. D. Talbot
RBC	(16)	Foster & Friede
RBC Pr	(16)	Foster & Friede
RBP	(12)	M. J. Meehan & Co.
RBP Pr	(12)	M. J. Meehan & Co.
RD	(5)	Palmer & Co., D. T. Moore & Co., E. C. Rollins & Co.
RDG	(15)	A. A. Zucker
RDG I Pr	(15)	A. A. Zucker
RDG II Pr	(15)	A. A. Zucker



## STOCKS—Continued

Abbrn	Post	Specialists
RDL	(10)	N D Biddison
RDM	(30)	Miller & Dodge
RGO	(1)	Gaines & Co.
RI	(5)	W S Turner, A. L. Scheuer & Co.
RI VI Pr	(5)	W. S. Turner, A. L. Scheuer & Co.
RI VII Pr	(5)	W S. Turner, A. L. Scheuer & Co.
RIL	(17)	Corlies & Booker
RIS	(5)	E C Rollins & Co., Palmer & Co, D. T. Moore & Co.
RIS I Pr	(30)	Miller & Dodge
RJR	(30)	Miller & Dodge
RJR B	(11)	Howard Boulton & Co, A. Barnwell & Co.
RKO	(12)	M. J Meehan & Co.
RLM	(16)	Reynolds & Co.
RNS	(30)	Miller & Dodge
ROS	(16)	Bond, McEnany & Co, H. G Campbell & Co., Fellowes Davis & Co.
RR	(10)	Sumner & Hewitt, Sartorius & Smith
RR I Pr	(10)	Sumner & Hewitt, Sartorius & Smith
RR II Pr	(30)	Miller & Dodge
RSA	(10)	Sumner & Hewitt, Sartorius & Smith
RSH	(14)	Stern & Lowitz
RSH Pr	(30)	Miller & Dodge
RSY	(9)	Drake Brothers
RU	(10)	Ely & Son
RU I Pr	(10)	Ely & Son
RV Pr	(14)	Smith & Gallatin
RVB	(6)	V. C Brown & Co, J T. Berdan, N. S. Seeley, E. D Smith
RVBA	(6)	V C Brown & Co, J T. Berdan, N. S Seeley, E. D Smith
RVB Pr	(30)	Miller & Dodge
RWE	(15)	LaBranche & Co
RX	(5)	Vaughan & Co
RX Pr	(5)	Vaughan & Co
RY	(17)	John E Greenia, L. G Salomon
RY CT	(17)	John E Greenia, L. G. Salomon

## S

S	(9)	Drake Brothers
SA	(11)	Alfred Eckstein, E S Hatch, John M Hynes
SAF	(16)	H Spear
SAF VI Pr	(30)	Miller & Dodge
SAF VII Pr	(30)	Miller & Dodge
SB	(8)	Blumenthal Bros ) Delafield & Frothingham, John Rutherford
SB Pr	(8)	Blumenthal Bros.
SBD	(8)	Carl Levis
SBD Pr	(8)	Carl Levis
SBM Pr	(30)	Miller & Dodge
SC	(7)	E M Anderson, R. P. Worrall
SC Pr	(1)	E M Anderson
SCD	(15)	Wilcox & Co
SCE	(9)	Perry B Strassburger, McWilliam, Wainwright & Luce
SCH	(9)	Drake Brothers
SCH Pr	(30)	Miller & Dodge
SCX	(6)	Samuels & Kornblum
SD A	(14)	Smith & Gallatin
SD B	(14)	Smith & Gallatin
SDH	(10)	Ely & Son
SDH Pr	(10)	Ely & Son
SDT	(5)	Tappin, Rose & Cammann
SEN	(10)	N. D Biddison
SEO Pr	(11)	H. Boulton & Co.
SG	(10)	N D Biddison

## STOCKS—Continued

Abbrn	Post	Specialists
SG Pr	(10)	N D Biddison
SG VI Pr	(10)	N D Biddison
SG VII Pr	(10)	N D. Biddison
SH	(30)	Miller & Dodge
SHO	(17)	Lieberman & Stone
SHO Pr	(30)	Miller & Dodge
SHU	(17)	Stackpole & Buchanan
SI	(7)	Brinton & Co
SIM	(16)	Morris & Co
SK	(13)	C. Hyland Jones
SKL	(1)	A J Feuchtwanger, L Livingston
SKW	(4)	Cowen & Co
SLG	(7)	Albert Fried & Co
SLG Pr	(7)	Albert Fried & Co
SLG CV Pr	(7)	Albert Fried & Co
SLS	(14)	Smith & Gallatin
SLS Pr	(30)	Miller & Dodge
SMS	(7)	Spero & Company
SNI	(3)	R T. Stone & Co
SNI Pr	(3)	R. T Stone & Co
SNR	(16)	H. G Campbell & Co, Fellowes Davis & Co., Bond, McEnany & Co.
SNR Pr	(16)	H G Campbell & Co, Fellowes, Davis & Co, Bond, McEnany & Co
SNU	(13)	Adler, Coleman & Co
SNU Pr	(30)	Miller & Dodge
SO Pr WW	(7)	F H Douglas & Co
SPP	(30)	Miller & Dodge
SRM	(13)	E L Norton
SS	(11)	Morgan, Howland & Co, Eric H. Marks, Mortimer W. Loewi & Co, W. H Goadby & Co
SS Pr	(11)	Morgan, Howland & Co, Eric H. Marks, Mortimer W. Loewi & Co, W. H Goadby & Co
SSH	(13)	Hedge & Ellis
SST	(30)	Miller & Dodge
SST Pr	(30)	Miller & Dodge
SSU	(12)	Siegel & Co, H I Clark & Co
SSY	(10)	H W Goldsmith
SSY Pr	(10)	H W Goldsmith
ST	(1)	Alfred L Norris
ST Pr	(1)	Filer & Co, Cohen & Streusand
STA	(30)	Miller & Dodge
STU	(2)	H I Nicholas, H M Dreyfus
STU Pr	(30)	Miller & Dodge
STX	(1)	Lowell & Son
SUB	(2)	J D Frankel & Co, W J Ehrich, M E Monahan
SUH	(16)	J C Bradford & Co, Barbee & Co
SUN	(8)	Moss, Ferguson & Kerngood, Engel & Co
SUN Pr	(30)	Miller & Dodge
SUX	(15)	A A Zucker
SUX Pr	(15)	A A Zucker
SV	(15)	Stevens & Legg
SVE	(6)	A J Vogel, Wright & Sexton
SVG	(16)	Barbec & Co, J C Bradford & Co
SVL	(14)	Smith & Gallatin
SW	(3)	T F Scholl & Co
SWA	(12)	H I Clark & Co, Siegel & Co
SX	(4)	Myron Schafer, Van Wyck & Sterling
SYE	(16)	Bond, McEnany & Co, H G Campbell & Co, Fellowes Davis & Co
SYE Pr WW	(16)	Bond, McEnany & Co, H G Campbell & Co, Fellowes Davis & Co
SYZ	(3)	L Kaufmann, O S Campbell
SYZ A	(3)	L Kaufmann, O S Campbell
SZ	(3)	R T Stone & Co
SZ Pr	(3)	R T Stone & Co

## T

## STOCKS—Continued

Abbrn	Post	Specialists
T	(15)	LaBranche & Co
TA	(3)	T F Scholl & Co.
TAV	(5)	E Weisl & Co
TB	(14)	B H & F W Pelzer, A L Fuller & Co
TB A	(14)	B H & F W Pelzer, A L Fuller & Co
TBS A	(14)	B H & F W Pelzer, A L Fuller & Co
TBS B	(14)	B H & F W Pelzer, A L Fuller & Co
TBS C	(14)	B H & F W Pelzer, A L Fuller & Co
TCC	(13)	Adler, Coleman & Co
TCL	(9)	R G Conried, L Spingarn & Co
TCL Pr	(9)	R G Conried, L Spingarn & Co
TCO	(16)	H. G. Campbell & Co, Bond, McEnany & Co, Fellowes Davis & Co
TCR	(9)	R G Conried, L Spingarn & Co
TCR CV Pr	(9)	R G Conried, L Spingarn & Co
TDX	(3)	C F Young, J E Sheridan
TES	(13)	Hedge & Ellis
TF	(17)	H M Cone, F L Salomon & Co
TF Pr	(30)	Miller & Dodge
TG	(11)	J V Bouvier, 3rd, S B Blumenthal, C O Mayer
THM	(8)	Moss, Ferguson & Kerngood, Engel & Co
THO	(6)	J G Cahn
THR	(16)	Reynolds & Co
TKR	(15)	C F Henderson & Sons
TNI	(17)	F Mayer, N G Hart & Co
TP	(15)	LaBranche & Co
TST	(16)	Reynolds & Co.
TST Pr	(16)	Reynolds & Co
TTC	(6)	Samuels & Koinblum
TU	(10)	Leeds Johnson
TUX	(2)	Perkins & Righi
TV	(11)	A Eckstein, E S Hatch, John M Hynes
TV Pr	(11)	A Eckstein, E S Hatch, John M Hynes
TV N	(11)	A Eckstein, E S Hatch, John M Hynes
TV Pr N	(11)	A Eckstein, E S Hatch, John M Hynes
TWC	(11)	C B Spears
TWC Pr	(30)	Miller & Dodge
TX	(3)	L Kaufmann, O S Campbell
TXL	(6)	J V Onativia, Jr, Barrett & Co
TXL OLD	(6)	J V Onativia, Jr
TXY	(30)	Miller & Dodge
TY	(7)	C H Patton
TY Pr	(30)	Miller & Dodge
TZ	(13)	Adler, Coleman & Co

## U

U	(2)	Perkins & Righi, Richard Whitney & Co
U Pr	(2)	Perkins & Righi, Richard Whitney & Co
UAF	(1)	Harris & Fuller
UAF Pr	(1)	Harris & Fuller
UBO	(15)	Cecil Lyon, Carreau & Snedeker, Sneckner & Heath
UBO Pr	(30)	Miller & Dodge
UBP	(30)	Miller & Dodge
UBS	(3)	A G Somers, Schafer Bros
UBS Pr	(3)	A G Somers, Schafer Bros
UC	(14)	B H & F W Pelzer, A L Fuller & Co
UC Pr	(14)	B H & F W Pelzer, A L Fuller & Co
UCB	(7)	Albert Fried & Co
UCL	(6)	Wright & Sexton, A J Vogel
UD	(6)	N S Seeley, Brown & Gruner, V C Brown & Co., E D. Smith, J T Berdan
UDS A	(14)	B H & F W Pelzer, A L Fuller & Co

## STOCKS—Continued

Abbrn	Post	Specialists
UDS Pr	(14)	B H & F W. Pelzer, A L Fuller & Co.
UDY	(30)	Miller & Dodge
UDY Pr	(30)	Miller & Dodge
UE	(30)	Miller & Dodge
UEL	(17)	Luber & Shaskan
UF	(6)	Stokes, Hodges & Co , Peter J Maloney & Co., E C. Coultry, M H Russell
UFG	(13)	Hedge & Ellis
UFO	(5)	D. T Moore & Co , Palmer & Co , E C Rollins & Co
UFO Pr	(5)	D T Moore & Co , Palmer & Co , E C Rollins & Co
UGI	(7)	Spero & Co , Stackpole & Buchanan
UGI Pr	(7)	Stackpole & Buchanan
ULA	(12)	M J Meehan & Co
ULE	(8)	Moss, Ferguson & Kerngood, Engel & Co
UM	(16)	H G Campbell & Co , Bond, McEnany & Co., Fellowes, Davis & Co
UM Pr	(16)	H G Campbell & Co , Bond, McEnany & Co , Fellowes, Davis & Co
UN	(8)	J Bliss, Tefft & Co.
UNX	(4)	Myron Schafer
UNX Pr	(30)	Miller & Dodge
UP	(9)	E C Anness, S Johnson
UP Pr	(2)	R. Melson, C. E Danforth, Barbour & Co
USX	(9)	Homans & Co
UTX	(15)	La Branche & Co
UV	(10)	Hume & Thompson, Berg, Eyre & Kerr
UV Pr	(10)	Hume & Thompson, Berg, Eyre & Kerr
UVP Pr	(30)	Miller & Dodge
UVV	(1)	Scholle Bros , Clinton Gilbert & Co
UVV Pr	(30)	Miller & Dodge
UVX	(17)	Corhes & Booker
UVX Pr	(30)	Miller & Dodge
UW	(14)	H. Goldman, Jr.
UW Pr	(30)	Miller & Dodge
UX	(11)	J V. Bouvier, 3rd, C. O. Mayer, S. B. Blumenthal
UXA	(11)	C. B Spears
UX P Pr	(11)	C. B Spears
UZ	(11)	Alfred Eckstem, E S Hatch, John M. Hynes
U.S. Trust Co.	(30)	Miller & Dodge

## V

V	(9)	Drake Brothers
V Pr	(9)	Drake Brothers
VA	(15)	Wilcox & Company
VAD	(16)	Morris & Co.
VAD Pr	(16)	Morris & Co.
VC	(13)	Adler, Coleman & Co
VC VI Pr	(13)	Adler, Coleman & Co.
VC VII Pr	(13)	Adler, Coleman & Co.
VE VI Pr	(30)	Miller & Dodge
VK	(30)	Miller & Dodge
VK Pr	(30)	Miller & Dodge
VKS	(30)	Miller & Dodge
VKS Pr	(30)	Miller & Dodge
VRT	(30)	Miller & Dodge
VRT Pr	(30)	Miller & Dodge
VX	(30)	Miller & Dodge
VX Pr	(30)	Miller & Dodge

## W

W	(8)	Morris Joseph & Co.
WA	(3)	L. Kaufmann, O. S. Campbell

## STOCKS—Continued

Abbrn.	Post	Specialist:
WA Pr A	(3)	L. Kaufmann, O S. Campbell
WA Pr B	(3)	L Kaufmann, O S. Campbell
WAC	(1)	A J Feuchtwanger, Louis Livingston
WAG Pr	(10)	H. W Goldsmith
WAL	(6)	Barrett & Co
WAR	(3)	C Griffen
WAR I Pr	(30)	Miller & Dodge
WAR CV Pr	(30)	Miller & Dodge
WB	(16)	Foster & Friede
WB Pr	(16)	Foster & Friede
WBS	(12)	Siegel & Co
WBS Pr	(30)	Miller & Dodge
WC	(30)	Miller & Dodge
WC CT	(30)	Miller & Dodge
WCO	(3)	Stewart & Company
WD A	(30)	Miller & Dodge
WD B	(9)	Nash & Co
WD Pr	(9)	Nash & Co
WEP A	(30)	Miller & Dodge
WEP VI Pr	(30)	Miller & Dodge
WEP VII Pr	(30)	Miller & Dodge
WF	(9)	Homans & Co
WFP	(10)	N D Biddison
WHI	(7)	Brinton & Co
WHR	(11)	H Boulton & Co
WIL	(13)	Adler, Coleman & Co
WIL A	(13)	Adler, Coleman & Co
WIL Pr	(13)	Adler, Coleman & Co.
WKM	(7)	C H Patton
WL	(5)	H. S Sternberger, G H Wilder, Tappin, Rose & Cammann
WL Pr	(5)	H S Sternberger, G H Wilder, Tappin, Rose & Cammann
WLX A	(16)	H G Campbell & Co , Bond, McEnany & Co , Fellowes Davis Co
WLX B	(16)	H G Campbell & Co , Bond, McEnany & Co., Fellowes Davis & Co
WM	(6)	V C Brown & Co , N S Seeley, E. D. Smith, J T Berdan
WM II Pr	(6)	V. C Brown & Co , N. S Seeley, E. D. Smith, J. T Berdan
WNO	(6)	Richards & Heffernan, Hume & Benedict
WNO Pr	(6)	Richards & Heffernan, Hume & Benedict
WPP VI Pr	(30)	Miller & Dodge
WPP VII Pr	(30)	Miller & Dodge
WPU	(10)	Sumner & Hewitt, Sartorius & Smith
WPU Pr A	(10)	Sumner & Hewitt, Sartorius & Smith
WPU Pr B	(10)	Sumner & Hewitt, Sartorius & Smith
WR	(2)	J D. Frankel, W J Ehrich, M E Monahan
WR Pr	(2)	J D Frankel, W J Ehrich, M E Monahan
WSW	(17)	Corhes & Booker
WSW Pr	(17)	Corhes & Booker
WWY	(17)	F. Mayer, N G Hart & Co
WX	(15)	Cecil Lyon, Carreau & Snedeker, Sneekner & Heath
WX I Pr	(30)	Miller & Dodge
WXC	(15)	Stevens & Legg
WXX	(16)	Reynolds & Co
WXY	(8)	Tefft & Co , Nash, Cloud & Isaacs
WY	(6)	V C Brown & Co , J T Berdan
WY Pr	(6)	V. C. Brown & Co , J T Berdan
WYY A	(2)	R. Melson, C E Danforth, Barbour & Co.
WYY B	(2)	R Melson, C E Danforth, Barbour & Co.
WZ	(11)	H. Boulton & Co
WZ A	(11)	H Boulton & Co

## X

## STOCKS—Continued

Abbrn	Post	Specialists
X	(2)	Auerbach, Pollak & Richson, Bridgman, Bates & Co., Worden & Low
X Pr	(1)	Lowell & Son
XA	(5)	D. T. Moore & Co, Palmer & Co., E. C. Rollins & Co.
XA Pr	(30)	Miller & Dodge

## Y

YA	(3)	Schafer Bros, A G Somers
YB	(15)	Stevens & Legg
YB CT RED	(15)	Stevens & Legg
YB CT BLUE	(15)	Stevens & Legg
YC	(5)	D. T. Moore & Co., Palmer & Co., E. C. Rollins & Co
YC Pr	(30)	Miller & Dodge
YG	(3)	Stewart & Company

## Z

Z	(11)	C. de Cordova & Bro., E. de Cordova
ZA	(7)	Albert Fried & Company
ZA Pr	(7)	Albert Fried & Company
ZE	(1)	Filer & Company

## SPECIALISTS

Adler, Coleman & Co. (13) ACR, AGR, AGR-Pr, AM-A, AM-B, AM-Pr, AMD-Pr, AT, AT-Pr, AT-B, BCC, BNU, CGH, CR, CWZ, CWZ-A, EQ, FHK, FKM, GGS-A, GGS-B, GGS-cv-Pr, GHM, ICM, IGL, IGL-P-Pr, IKL, IMY, KW, LM, LM-B, LM-Pr, MT, NV, OB, PEJ, PEJ-Pr, PRT-A, PRT-B, QW, SNU, TCC, TZ, VC-vi-Pr, VC-vii-Pr, WIL, WIL-A, WIL-Pr.

Adrian (Joseph M.) & Co (17) CH, HKM

Anderson, Elliott M. (1) AX, ILN, LN, SC, SC-Pr.

Andrews, Posner & Rothschild (1) FRW.

Anness, E. C. (9) BGW, GUC, GY, IKN, JJ, MW, NRC, NRC-Pr, PLT, UP.

Armstrong, D. W. (10) BS.

Auerbach, Pollak & Richardson (2) GGZ, HMT, MTY, X.

Bach, Julian S. (8) KR

Barbee & Co. (16) AHS, HPG, SUH, SVG.

Barbour & Co. (2) ART, BB-A, BB-B, CLQ, LW, LW-Pr-w w, LW-Pr-x w., MOP, MOP-Pr, NBH, NBH-Pr, UP-Pr, WYY-A, WYY-B

Barnwell (Arthur) & Co (11) GT, KO, KO-A, RJR-B

Barrett & Co. (6) AG, AG-Pr, ARU, BEY, BEY-Cv-Pr, BF, BF-Pr, EG, HMY, HRT-A, HRT-B, NCM, TXL, WAL

Bebee, W. E. O. (3) AOW, AOW-V-Pr, AOW-v-Pr-Stmpd, AOW-vi-Pr, E, E-i-Pr, E-ii-Pr, MZ, OT, PCO

Berdan, J. T. (6) AC, AC-Pr, CFG, GUX, GUX-Pr, NAD, RVB, RVB-A, UD, WM, WM-i-Pr, WY, WY-Pr.

Berg, Eyre & Kerr (10) ABS, DHI, DPS, JMP, POL-Pr, PRC, UV, UV-Pr.

Biddison, Ned D (10) GRX, GS, RDL, SEN, SG, SG-Pr, SG-vi-Pr, SG-vii-Pr, WFP.

Bishop, A. R (14) ASR, ASR-Pr, CSU, GB, GIS, GIS-Pr, MGX, PC, PC-Pr, PF, RAY.

Bliss, Julius (8) UN.

Blumenthal Bros. (8) AJ, CBD, CBN, CLL, HN, PCG, SB, SB-Pr

Blumenthal, S. B (11) BMT, BMT-Pr, HLN, IPX, KN, KS, TG, UX.

Bond, McEnany & Co. (16) ADD, AMS, CGR, DRS, MPO, MPO-i-Pr, MUN, ROS, SNR, SNR-Pr, SYE, SYE-Pi-w w, TCO, UM, UM-Pr, WLX-A, WLX-B,

Boulton (Howard) & Co (11) AME, PF—, RJR-B, SEO-Pr, WHR, WZ, WZ-A

Bouvier, John V., 3d (11) BMT, BMT-Pr, HLN, IPX, KN, KS, TG, UX.

Numbers in Parentheses refer to Post Numbers.

Bradford (J. C.) & Co. (16) AHS, HPG, SUH, SVG.  
 Bramley & Smith (10) B, BI, BI-Pr, CF, CTM, GIL, MV, NS, NY, PQ.  
 Bridgman, Bates & Co. (2) X.  
 Brinton & Co. (7) ABP, AH, CO, CDP, CLU, CMR, DL, ICL, INU, IS, IS-Pr, MM, SI, WHI.  
 Brown & Gruner (6) A, PSS, UD.  
 Brown (V. C.) & Co. (6) AC, AC-Pr, CFG, GUX, GUX-Pr, NAD, RVB, RVB-A, UD, WM, WM-II-Pr, WY, WY-Pr  
 Buchanan, G. B. (6) CFG.  
 Cahn, J. G. (6) CEZ, ER, THO.  
 Callaway, Fish & Co. (9) JU.  
 Campbell (H. G.) & Co. (16) ADD, AMS, CGR, DRS, MPO, MPO-I-Pr, MUN, ROS, SNR, SNR-Pr, SYE, SYE-Pr-w.w., TCO, UM, UM-Pr, WLX-A, WLX-B.  
 Campbell, O S (3) BMR, HOO, LPT, SYZ, SYZ-A, TX, WA, WA-Pr-A, WA-Pr-B.  
 —rreau & Snedeker (15) BOV, GH, KT, KT-Pr, UBO, WX.  
 Chauncey & Co. (5) BU, DQU-I-Pr, G, G-Pr, GQX, H, POX, PE, PH, PH-VI-Pr.n, PUY.  
 Clark (H. I.) & Co. (12) BLW-Pr, BOS, CRT, CRT-Pr, EJ, EJ-Pr, GJ, HR, HR-Pr, MR, PSL, PSL-Pr, SSU, SWA  
 Cohen & Streusand (1) AGL, AOY, DER-Pr, PB, ST-Pr.  
 Condon, E. B. (14) AVC, BDM, MFI  
 Cone, Harold M. (17) ACT, AMZ, BHL, CEH, CTY, D, LQ, MAF, MES, PJ TF.  
 Corried, Richard G. (9) BGG, CHC, ILR, ISD, TCL, TCL-Pr, TCR, TOR-cv-Pr.  
 Corliss & Booker (17) ACS, ISH, IT, KNX, LMS, LMS-Pr, MNS, RIL, UVX, WSW, WSW-Pr.  
 Coultry, Edmund C. (6) DRU, GL, GL Spl, NX, UF  
 Cowen & Co. (4) AGM, NEO-A, SKW.  
 Danforth, C. E. (2) ART, BB-A, BB-B, CLQ, LW, LW-Pr-ww, LW-Pr-xw, MOP, MOP-Pr, NBH, NBH-Pr, UP-Pr, YWW-A, YWW-B.  
 Davis (Fellows) & Co. (16) ADD, A—, OGR, DRS, MPO, MPO-I-Pr, MUN, ROS, SNR, SNR-Pr, SYE, SYE-Pr-ww TCO, UM, UM-Pr, WLX-A, WLX-B.  
 de Cordova (Cyril) & Bro (11) ALR, ALR-Pr, CBX, DG, DG-I-Pr, DG-II-Pr, DS, DS-Pr, EGK, HI, HI-Pr, IMN, LEH, LEH-Pr, LOR, LV, Z.  
 de Cordova, E. (11) ALR, ALR-Pr, CRX, DG, DG-I-Pr, DG-II-Pr, DS, DS-Pr, EGK, HI, HI-Pr, IMN, LEH, LEH-Pr, LOR, LV, Z.  
 Delafield & Frothingham (8) AJ, CBD, CBN, CLL, HN, HN-war, PCG, SB.  
 Dempsey, J. (17) CPL, CPL-Pr  
 Dolan, G. J. (14) AKO, AMM, AMM-Pr, EGS, EGS-I-Pr, GF, LAM, LEM, P, PX  
 Douglas (F. H.) & Co. (7) ACD, ACD-Pr, FT, PAK, SO-Pr-ww.  
 Drake Bros. (9) ALT, ALT-Pr, FS, FS-Pr, GIV, GIV-Pr-ww, IL, IL-Pr, PST-Pr, RSY, S, SCH, V, V-Pr  
 Dreyfus, Herbert M. (2) CWH, GNL, GTE, STU  
 Duff (J. Robinson) & Co. (16) DN, NAV  
 Eckstein, Alfred (11) AR, AR-Pr, AR-VI-Pr, BC, GLN, SA, TV, TV-Pr, TV-N, TV-Pr-N, UZ  
 Emrich, Wm. J. (2) A, A-Pr, DEM, ELB, FI, LF, NGL, PRL, PW, SUB, WR, WR-Pr.  
 Ehas (Albert J.) & Co. (8) CP, CP-N  
 Ely & Son (10) DH, GRR, KLV, RU, RU-I-Pr, SDH, SDH-Pr  
 Engel & Co. (8) CFM, CMF-Pr, EPU, EPU-Pr, EPU-Pr-ww, MB, PXC, PXC-Pr, SUN, THM, ULE  
 Feitner (Q. F.) & Co. (2) BKM, GGZ, HMT  
 Feuchtwanger, Austin J. (1) PP, PP-B, SKL, WAC  
 Flier & Co. (1) ASV, ASV-Pr, BWC, HMO, PB, ST-Pr, ZE  
 Finch, Wilson & Co. (14) ASR, ASR-Pr, CSU, GB, GIS, GIS-Pr, MGX, PC, PC-Pr, PF, RAY  
 Foster & Friede (16) ACN, ACN-Pr, BTY, DMS, GHB, GHR-Ot, GSW, ISS, NAS, NTY, RBC, RBC-Pr, WB, WB-Pr  
 Frankel (J. D.) & Co. (2) A, A-Pr, AGS, DEM, ELB, FI, LF, NGL, NYK, PRL, PW, SUB, WR, WR-Pr

Numbers in Parentheses refer to Post Numbers

Fransoli, & Wilson (14) BRY, BRY-Pr, CIT, CIT-war, CIT-war-stmpd, CIT-Cv-Pr, CIT- $\frac{3}{2}$ -Pr, MMC, PTY.  
 Fried (Albert) & Co (7) ADN, AD—, HLL, MMW, MMW-Pr, NPX, POR, SLG, SLG-Pr, SLG-Cv-Pr, UCB, ZA, ZA-Pr  
 Fuller (A. L.) & Co (14) BKX, CVD, LB, LOR-Pr, MCG, TB, TB-A, TBS-A, TBS-B, TBS-C, UC, UC-Pr, UDS-A, UDS-Pr  
 Gaines & Co. (1) BUD, DOS, FWS, GPV, KMB, MLL, MLL-Pr, RGO  
 Gilbert (Clinton) & Co. (1) EL-Pr, EL-VI-Pr, MMX, UVV  
 Gimbel, Louis S., Jr. (17) APP  
 Goadby (W. H.) & Co (11) AFX, AKL, AU, AU-Pr, GW, GW-Pr, INS, LO, PEO, PQS, PQS-Ct, SS, SS-Pr.  
 Goldman, H., Jr. (14) CLO, CLO-Ct, OHO, UW  
 Goldsmith, H W. (10) APW, ARZ, BS-Pr, CGG, CGG-Pr, LMW, MAQ, SSY, SSY-Pr, WAG-Pr  
 Greenia, J. E. (17) AEN, RY, RY-Ct  
 Griffen, C. (3) BT, CIK, CTX, MAR, MRT, WAR  
 Gwynne, Arthur (3) AYY  
 Gwynne, W. Lee (3) AYY  
 Harris & Fuller (1) IN, IN-Pr, UAF, UAF-Pr  
 —rt (Neville Gordon) & Co (17) AAC, FST, GNW-N, GNW-Pr, GRS, LQT, PTH, PTH-A, TNI, WWY  
 Hatch, E. S (11) AR, AR-Pr, AR-vi-Pr, BC, GLN, SA, TV, TV-Pr, TV-N, TV-Pr-N, UZ  
 Hedge & Ellis (13) AIN, AUA, BUZ, BUZ-Pr, FIR, FIR-Pr, HOF-Pr, MRW, NRY-Pr, SSH, TES, UFG  
 Henderson (Charles F.) & Sons (15) BEX, KOR, KOR-Ct, PSU, TKR  
 Hoge, Underhill & Co. (17) CH, CHK, CO, CPL, CPL-Pr, CUX, HM, MS, MS-Old  
 Holmes (J. H.) & Co (9) J  
 Homans & Company (9) AE, BO, BO-Pr, J, PU, USX, WF.  
 Hume & Benedict (6) ARR, GI, GI-Pr, KSU, KSU-Pr, NA, NA-Pr, NAE-Pr, NNY, PAE, PDO, WNO, WNO-Pr  
 Hume & Thompson (10) ABS, DHI, DPS, JMP, POL, POL-Pr, PRC, UV, UV-Pr.  
 Hyde & Miller (4), C, GM.  
 Hyman & Company (4) CI-A, CI-B, CI-Pr, FLO, FLO-Pr  
 Hynes, John M (11) AR, AR-Pr, AR-vi-Pr, GLN, SA, TV, TV-Pr, TV-N, TV-Pr-N, UZ  
 Johnson, Leeds (10) ABK, AF, AF—, FK, HK, TU  
 Johnson, Seymour (9) BGW, GUC, GY, IKN, JJ, MW, NRC, NRC-Pr, PLT, UP  
 Jones, C Hyland (13) ASC, CAM, CEG, CFY, LOU, SK.  
 Joseph (Morris) & Co (8) BW, CUC, GK, GK-Pr, HW, NEB, PZ, PZ-Pr, W. Kaufmann, L (3) BMR, HOO, LPT, SYZ, SYZ-A, TX, WA, WA-Pr-A, WA-Pr-B  
 Kerr & Armstrong (9) ADE, BGH, CSS, CW-Pr, FLT, GU, GU-Pr, IRU.  
 La Branche Co. (15) AFI, AFG, CWT, MQ, RWE, T, TP, UTX.  
 Leeds, Laurence C (16) HYB, MCK, MCK-Pr  
 Lewis, C. (8) CE, CE-Pr, MSM, MSM-Pr, NSU, SBD, SBD-Pr.  
 Liberman & Stone (17) CDI, FTH, GLZ, PKT, SHO  
 Limburg, A. M. (16) GRY, GRY-Pr-w w  
 Livingston, Louis (1) PP, PP-B, SKL, WAC  
 Loewi (Mortimer W.) & Co. (11) AFX, AKL, AU, AU-Pr, GW, GW-Pr, INS, LO, PEO, PQS, PQS-Ct, SS, SS-Pr.  
 —well & Son (1) FHP, STX, HMW, X-Pr  
 Luber & Shaskan (17) AWY, BCK, CNR-A, CNR-B, COT, MAB, PIT, UEL  
 Lummis, John M. (5) FWC, FWC-Pr  
 Lyon, Cecil (15) BOV, GH, KT, KT-Pr, UBO, WX  
 McClave & Co. (1) AWW, AWW-i-Pr, BDO, DD, DD-D  
 McDermott (Peter P.) & Co (4) CAD, CAD-Pr, CDH, COS, HHN, HHN-Pr.  
 McWilliam, Wainwright & Luce (9) AHP, AUZ, EGM-A, EGM-B, MA, PPI, PTE, SCE.

Numbers in Parentheses refer to Post Numbers.



Maloney (Peter J) & Co (6) DRU, GL, GL-Spl, NX, UF  
 Marks, Eric H. (11) AFX, AKL, AU, AU-Pr, GW, GW-Pr, INS, LO, PEO, PQS,  
 PQS-Of, SS, SS-Pr.  
 Mayer, C. O., Jr. (11) BMT, BMT-Pr, HLN, IPX, KN, KS, TG, UX  
 Mayer, Ferdinand (17) AAC, FST, GNW-N, GNW-Pr, GRS, INB, LQT, PTH,  
 PTH-A, TNI, WWY.  
 Meehan (M. J.) & Co (12) ARC, CCU-Pr, CUB, CX, FJ, ILM, INQ, JC, KLO,  
 KLO-Pr, LNP, MMP, NCR, R, R-Pr-B, RBP, RPB-Pr, RKO, ULA.  
 Melson, Ralph (2) ART, BB-A, B—, CLQ, LW, LW-Pr-w.w., LW-Pr-x.w, MOP,  
 MOP-Pr, NBH, NBH-Pr, UP-Pr, WYY-A, WYY-B  
 Miller & Dodge (17) GAC, MOL  
 Miller & Dodge (30) ABK-Pr, ABN-Pr, ABS-Pr, ABY-Pr, ACE, ACL, ADD-Pr,  
 ADO, ADT-Pr, E-Pr, AFG-Pr, AFW-vi-Pr, AGN-Pr, AGS-Pr, AKL-Pr, ALM,  
 AMX, AN, AN-Pr, ANC, ANO-A, ANR, APW-Pr, AQS, ARR-Pr, AST-Pr,  
 ASU, AY.  
 B-Pr, BB-Pr, BBL, BBL-Pr, BCH, BDM-Pr, BE, BEY-Pr, BFQ-Pr, BG-Pr,  
 BHB-Pr, BH-D, BKM-Pr, BKR, BKR-Pr, BKU, BKU-Pr, BLR-Pr, BNK-Pr,  
 BOV-Pr, BR, BR-Pr, BW-Pr, BY, BY-Pr.  
 OBR-Pr, CC-Pr, CCL, CCL-Stmpd, CF-Pr, CFG-Pr, CFY-Pr, CGR-P-Pr-w.w.,  
 CGR-P-Pr-x w, CGR-vii-Pr, CHA, CHL, CHS-vii-Pr, CHS-vii-Pr, CHT, OIL-Pr,  
 GIT-vii-Pr, CKO, CKO-Pr, CLO-Pr, CLU-Pr, CMO-Pr, CMO-i-Pr-x w, CMO-i-  
 Pr.w w., CMO-Pr-B, ONV, CO-Pr, CPU, CRW, CRW-Pr, CSA, CSC-Pr, CSS-A,  
 CSU-Pr, CTM-Pr, CTY-Pr, CUZ, CWW-Pr, CVD-Pr, CX-i-Pr, CX-ii-Pr, CORN  
 EXCHANGE BANK.  
 DB, DET, DET-Pr, DHO-Pr, DHS, DPS-Pr, DRP-Pr  
 EH-Pr, EK-Pr, EL-LXX-Pd, EL-F-Pd, ELO-Pr, EMP, EP, EXY  
 FFL, FFL-Pr, FHP-Pr, FI-Pr FIS-Pi, FJ-Pr, FK-i-Pr, FK-cv-i-Pr, FK-ii-Pr,  
 FKM-Pr, FL-P-Pr, FL-ii-Pr, FLT-Pr, FV, FW, FW-Pr, FIFTH AVE. BANK,  
 FIRST NAT'L BANK  
 GBG-Pr, GGN-Pr, GGS-vii-Pr, GGS-viii-Pr, GH-Pr, GHM-Pr-w w, GHM-  
 Pr-x w GJ-Pr, GLN-P-Pr, GN, GNP, GPI, GPI-Pr, GRS-Pr, GS-Pr, GSW-Pr,  
 GSX, GY-Pr  
 HAR, HAR-Pr, HIP, HK-Pr, HKM-Pr, HMW-Pr, HN-Pr, HNA-Pr, HPC-Pr,  
 HWA, HWA-Pr-A  
 IA, ICR-Pr, IKN-Pr, IL-LL, IMY-Pr, INB-Pr, IP-Pr, IR-Pr, IRC, IRC-ct,  
 IRC-Pr, ISD-Pr-x w., ISD-Pr-ww  
 JL-Pr, JLO, JMP-Pr.  
 KDS-Pr, KG-Pr, KK-vi-Pr, KK-viii-Pr, KLL-Pr, KLT-Pr, KNX-Pr, KOC.  
 LG-Pr, LL-Pr, LO-Pr, LPT-Pr, LT-Pr-A, LT-Pr-B  
 MAF-Pr, MAH, MAN-gtd, M & B-Pr, MC, ME, MGX-Pr, MK-Pr, MN,  
 MN-Pr, MNO, MNS-Pr, MNU, MNU-Pi, MRY, MRY-B, MRY-Pr, MSM-LL,  
 MT-Pr, MY-Pr  
 NFK-Pr, NL, NNX, NOX, NRT-Pr, NSC-Pr, NSM-vi-Pr, NSM-vii-Pr, NST,  
 NST-Pr, NWT, NX-Pr, N Y. & TRUST CO (BANK OF).  
 OM, OM-Pr., OPX, OPX-Pr, OT-Pr, OTU, OTU-Pr  
 PAC, PAC-Pr, PCX-i-Pr, PCX-ii-Pr, PFK-Pr, PFN-Pr, PFS, PG-Pr, PH-v-Pr,  
 PJ-Pr, PMY, PPT-Pr PQ-Pr, PQR, PSU-Pr, PT, PTT. PTT-Spl, PUN-Pr,  
 PUY-Pr, PV, PV-Pr, PXY-Pr, PYA-Pr  
 RDM, RIS-i-Pr, RJR, RNS, RR-ii-Pr, RSH-Pr, RVB-Pr  
 SAF-vi-Pr, SAF-vii-Pr, SBM-Pr, SCH-Pr, SH, SHO-Pr, SLS-Pr, SNU-Pr,  
 SPP, SST, SST-Pr, STA STU-Pr, SUN-Pr  
 TF-Pr, TWC-Pr, TXY, TY-Pr  
 UBO-Pr, UBP, UDY, UDY-Pr, UE, UNX-Pr, UVP-Pr, UVV-Pr, UVX-Pr,  
 UW-Pr, U S TRUST  
 VE-vi-Pr, VK VK-Pr, VKS, VKS-Pr, VRT, VRT-Pr, VX, VX-Pr  
 WAR-i-Pr, WAR-cv-Pr, WBS-Pr, WC, WC-ct, WDA, WEP-A, WEP-vi-Pr,  
 WEP-vii-Pr, WEP-vi-Pr, WPP-vii-Pr, WX-i-Pr.  
 XA-Pr.  
 YC-Pr  
 —nahan, M E (2) A, A-Pr, DEM, ELB, FI, LF, NGL, PRL, PW, SUB, WR,  
 WR-Pr.  
 Moore (D. T.) & Co. (5) ABI, ABI-Pr, GTY, IR, IRT, IRT-ed, KBT, NRT,  
 RD, RIS, UFO, UFO-Pr, XA, YC

Numbers in Parentheses refer to Post Numbers

Morgan, Howland & Co. (11) AFX, AKL, AU, AU-Pr, GW, GW-Pr, INS, LO, PEO, PQS, PQS-ct, SS, SS-Pr.  
 Morris & Company (16) CK, CK-Pr, FMT, GRD, IRY, MSX, NSC, PSY, PVX, SIM, VAD, VAD-Pr  
 Moss, Ferguson & Kerngood (8) CFM, CFM-Pr, EPU, EPU-Pr-ww, EPU-Pr, MB, PXC, PXC-Pr, SUN, THM, ULE  
 Muir (John) & Co (6) HX, HX-Pr  
 Nash & Company (9) BDL, CW, CW-Pr, NSS, PFN, WD-B, WD-Pr.  
 Nash, Cloud & Isaacs (8) AMU, EVY, HH, WXY, AFW-Pr, AFW-II-Pr  
 Neilson & O'Sullivan (7) N, N-Pr  
 Nicholas, H. I. (2) CWH, GNL, GTE, STU  
 Norris, Alfred L. (1) CFF, DER-Pr, ST.  
 Norton, E. L. (13) CMO, CMO-A, LL, MOK, MPS, MBR, MRR-Pr, MRR-II-Pr, MRR-P-Pr, SRM  
 Onativia, J. V., Jr (6) DO, HMY, TX—TXL-Old  
 Palmer & Co (5) ABI, ABI-Pr, GTY, IR, IRT, IRT-ct, KRT, NRT, RD, RIS, UFO, UFO-Pr, XA, YC  
 Patton, C. H. (7) AB, AW-ct, AW-vi-Pr, DGR-Pr, MAN-MG, TY, WKM.  
 Pelzer, B. H. & F. W. (14) BKX, CVD, LB, LOR-Pr, MCG, TB, TB-A, TBS-A, TBS-B, TBS-C, UC, UC-Pr, UDS-A, UDS-Pr.  
 Perkins & Right (2) OW, TUX, U, U-Pr  
 Reynolds & Company (16) KK, RLM, THR, TST, TST-Pr, WXK  
 Rheinstein, S. (14) AKO, AMM, AMM-Pr, EGS, EGS-I-Pr, LAM, LEM, P, PX.  
 Richards & Co (8) AFW  
 Richards & Heffernan (6), ARR, GI, GI-Pr, KSU, KSU-Pr, NA, NA-Pr, NAE-Pr, NNY, PAE, PDO, WNO, WNO-Pr  
 Roberts & McAleenan (9) CW, CW-Pr.  
 Rollins (E. C.) & Co. (5) ABI, ABI-Pr, GTY, IR, IRT, IRT-ct, KRT, NRT, RD, RIS, UFO, UFO-Pr, XA, YC  
 Roth (B. H.) & Co. (2) AGS, NYK.  
 Russell, Marshall H. (6) DRU, GL, GL-Spl, NX, UF.  
 Rutherford, John (8) AJ, CBD, CBN, CLL, HN, HN-war, PGC, SB.  
 Salomon (F. L.) & Co (17) ACT, AMZ, BHL, CEH, CTY, D, LQ, MAF, MES, PJ, TF.  
 Salomon, L. G. (17) AEN, RY, RY-ct.  
 Samuels & Kornblum (6) CLZ, MYR, PPX, SCX, TTC.  
 Sartorius & Smith (10) BNK, COG, DTE, FPX, LBO, NFK, NSX, RR, RR-I-Pr, RSA, WPU, WPU-Pr-A, WPU-Pr-B.  
 Schafer Brothers (3) AYY, AYY-Pr-w.w-xxx, AYY-Pr-xw, AYY-Pr-w.w-x1, BLR, E, E-I-Pr, E-II-Pr, MZ, OPS, OT, PCO, UBS, UBS-Pr, YA  
 Schafer, Myron (4) CI-B, SX, UNX.  
 Scheuer (A. L.) & Co (5) MGL-Pr, NKP, NKP-Pr, RI, RI-vi-Pr, RI-vii-Pr  
 Scholl (T. F.) & Co. (3) SW, TA.  
 Scholle Brothers (1) EL-Pr, EL-vi-Pr, MMX, UVV.  
 Seeley, N. S. (6) RVB, RVB-A, UD, WM, WM-II-Pr  
 Shea, Frank A. (1) AWW, AWW-I-Pr, BDO, DD, DD-D  
 Sheridan, J. E. (3) ACF, AS, M—, MYG, MYG-Pr-w.w, MYG-I-Pr, OST, OST-P-Pr, TDX.  
 Siegel & Co. (12) BLW-Pr, BOS, CRT, CRT-Pr, EJ, EJ-Pr, GJ, HR, HR-Pr, ILS, MR, PSL, PSL-Pr, SSU, SWA, WBS.  
 Simmons (E. H. H.) & Co. (7) MM  
 Smith & Gallatin (14) ALO, ALO-Pr, CN, MOO, NW, NW-Pr, PPT, RV-Pr, SD-A, SD-B, SLS, SVL.  
 Smith, E. D. (6) RVB, RVB-A, UD, WM, WM-II-Pr.  
 Sneckner & Heath (15) BOV, GH, KT, KT-Pr, UBO, WX.  
 Somers, Arthur G. (3) AOW, AOW-v-Pr, AOW-v-Pr-Stmpd, AOW-vi-Pr, AYY-AYY-Pr-w.w-xxx, AYY-Pr-xw, AYY-Pr-w.w-x1, BLR, E, E-I-Pr, E-II-Pr, MZ, OPS, OT, PCO, UBS, UBS-Pr, YA  
 Sonn, Herbert H. (8) NPT.  
 Spear, Harold (16) ACC, ACC-Pr, SAF.  
 Spears, C. B. (11) BK, TWC, UX-A, UX-P-Pr

Numbers in Parentheses refer to Post Numbers

- Spero & Co (7) ALL, BST, CCK, CCK-Pr, CMM, EH, FLZ, OV, OV-Pr, SMS, UGI.
- garn (Leopold) & Co (9) BGG, CHC, ILR, ISD, TCL, TCL-Pr, TOR, TOR-cv-Pr
- Stackpole & Buchanan (7) CPC, CPC-Pr, KDS, KG, SHU, UGI, UGI-Pr.
- Stern & Lowitz (14) ABY, BQT, BQT-Pr, GVZ, GVZ-A, HPT, MTC, OF, OF-cv-Pr, OF-P-Pr-ww, PUC, RSH
- Sternberger, H S (5) AL, GRC, MOR, PDG, PDG-Pr, PO, WL, WL-Pr.
- Stevens & Legg (15) BV, CAH, DK, DK-Pr, EK, F, GOR, GOR-i-Pr, HO, MOS, NPL, PXY, SV, WXC, YB, YB-Ct-Red, YB-Ct-Blue
- Stewart & Company (3) AOW, AOW-v-Pr, AOW-v-Pr-Stmpd, AOW-vi-Pr, DGL, WCO, YG
- Stokes, Hodges & Co (6) DRU, GL, GL-Spl, NX, UF
- Stone (R. T.) & Co (3) AWC, CG, CG-Pr, CG-v-Pr, GGO, SNI, SNI-Pr, SZ, SZ-Pr.
- Strassburger, Perry B (9) AHP, AUE, EGM-A, EGM-B, MA, PPI, PTE, SCE
- Sumner & Hewitt (10) BNK, COG, DTE, FPX, LBO, NFK, NSX, RR, RR-i-Pr, RSA, WPU, WPU-Pr-A, WPU-Pr-B
- Sydean Bros. (7) BVA, GRL-Pr, K—
- Talbot, Henry D. (14) ASR, ASR-Pr, CSU, GB, GIS, GIS-Pr, MGX, PC, PC-Pr, PF, RAY.
- Tappan, Rose & Cammann (5) BM, PO, SDT, WL, WL-Pr.
- Teft & Company (8) AFW, AFW-Pr, AFW-II-Pr, AMU, EVY, HH, M, UN, WXY
- Thiele, W. (8) FN, FN-Pr, MX-i-Pr, MX-ii-Pr, NPT
- Travers & Clark (10) ADT, BS, BS-Pr.
- Turner, Wallis S. (5) NKP, NKP-Pr, RI, RI-vi-Pr, RI-vii-Pr
- Tweedy, E. R. (14) AVC, BDM, MFI
- Untermeyer, M F. (1) EL
- Van Wyck & Sterling (4) PEG-Pr, PUB, PUB-v-Pr, PUB-vi-Pr, PUB-vii-Pr, PUB-viii-Pr, SX.
- Vaughan & Co. (5) CIM, OR, PA, RX, RX-Pr
- Vogel, Arthur J. (6) GG-Pr, KKN, PDF-Pr, PET, SVE, UCL
- Wagner, Stott & Co (16) NAX.
- Watson, C. F., Jr. (2) K, PGM, PGM-Pr
- Weekes, H. H (14) AKO, AMM, AMM-Pr, EGS, EGS-i-Pr, GF, LAM, LEM, P, PX.
- , C. S. (7) LNY
- Weisl (Edwin) & Co (5) BGI, CIS, CV, EU, IP-A, IP-B, IP-C, IP-Pr-N, IPH, JW, LG, LR, TAV.
- Whitehead, E R (6) ACJ, AST, FDS, GG, JKS
- Whitney (Richard) & Co (2) U, U-Pr
- Wilcox & Co. (15) RH, CDD, ELO, GGN, GGN-A, HSY, HSY-Pr, HSY-P-Pr, LT, MCH, MQU, MUY, SCD, VA
- Wilder, G. H (5) AL, GRC, MOR, PDG, PDG-Pr, PO, WL, WL-Pr.
- Williams, Nicholas & Moran (4) ABN, ANO, BP, C, CJ, CJ-Pr, CRM, GM, GM-Pr, ICR, JO
- Worden & Low (2) X
- Worrall, R P. (1) SC
- Wright & Sexton (6) ENX, FO, GG-Pr, IRR, PDF, SVE, UCL
- Young, Charles F (3) ACF, HPC, PUN, TDX
- Young, T. S (14) AKO, AMM, AMM-Pr, EGS, EGS-i-Pr, GF, LAM, LEM, P, PX.
- Zucker, Arthur A. (15) CNG, MHW, RDG, RDG-i-Pr, RDG-ii-Pr, SUX, SUX-Pr.
- Zuckerman (Henry) & Co (2) K, PGM, PGM-Pr

Numbers in Parentheses refer to Post Numbers

## A

## STOCKS

Abbrn	Post	Specialists
A	(2)	R W O'Brien, E F O'Brien, J G Hall, Harde & Ellis, B H Roth & Co, W I Spiegelberg
A Pr	(2)	R W O'Brien, E F O'Brien, J G Hall, Harde & Ellis, B H Roth & Co, W I Spiegelberg
AAC	(17)	F Mayer, Neville G Hart & Co
AB	(7)	F H Douglas & Co
ABK	(10)	Leeds Johnson
ABK Pr	(30)	Miller & Dodge
ABN	(4)	Rhoades, Williams & Co.
ABN Pr	(30)	Miller & Dodge
ABP	(7)	B H Brinton, W C Morck, E H H Simmons & Co, V C Brown & Co, Alexander B Johnson
ABS	(10)	Hume & Thompson, Berg, Eyre & Kerr
ABS Pr	(30)	Miller & Dodge
ABY	(14)	Allison Stern & Co
ABY Pr	(30)	Miller & Dodge
AC	(6)	Brown & Gruner, V. C Brown & Co, Alexander B Johnson
AC Pr	(6)	V C Brown & Co
ACD	(7)	F H Douglas & Co
ACD Pr	(7)	F H Douglas & Co
ACF	(12)	Wright & Sexton, A J Vogel
ACJ	(4)	E R Whitehead
ACL	(30)	Miller & Dodge
ACN	(16)	F V Foster & Co, Leo Friede, Harry Anderson
ACN Pr	(16)	F V Foster & Co, Leo Friede, Harry Anderson
ACS	(17)	Corlies & Booker
ACT	(17)	Granberry & Co, Sydeman Bros
ADD	(16)	Fellowes Davis & Co, H G Campbell & Co.
ADD Pr	(30)	Miller & Dodge
ADE	(9)	Kerr & Armstrong, J T Donohue
ADN	(7)	Albert Fried & Co, Charles E Clapp, Jr., Howard F Hickie Andrews, Posner & Rothschild
ADO	(30)	Miller & Dodge
ADT	(10)	Travers & Clark, W R K Taylor & Co.
ADT Pr	(30)	Miller & Dodge
AE	(9)	Homaus & Co
AE Pr	(30)	Miller & Dodge
AEN	(17)	Granberry & Co, Sydeman Bros
AF	(10)	Leeds Johnson
AF Pr	(10)	Leeds Johnson
AFG	(15)	La Branche & Co, J V Dunne & Co, F. X. Deery, E M Bloch
AFG Pr	(30)	Miller & Dodge
AFI	(15)	La Branche & Co, J V Dunne & Co, F. X. Deery, E M Bloch
AFP	(8)	Louis Gumbel & Co
AFW	(8)	Tefft & Co
AFW Pr	(8)	J K Cloud, Tefft & Co
AFW VI Pr	(8)	J K Cloud, Tefft & Co
AFW II Pr	(8)	J K Cloud, Tefft & Co
AFX	(10)	Morgan, Howland & Co, Eric H Marks, W. H. Goadby & Co
AG	(6)	Barrett & Co
AG Pr	(6)	Barrett & Co
AGL	(30)	Miller & Dodge
AGM	(14)	Cowen & Co
AGS	(2)	B H Roth & Co, W I Spiegelberg
AGS Pr	(30)	Miller & Dodge
AH	(7)	B H Brinton, W C Morck, E. H H. Simmons & Co.
AHC	(13)	Adler, Coleman & Co
AHC Pr	(13)	Adler, Coleman & Co.
AHD	(13)	Adler, Coleman & Co.

## STOCKS—Continued

Abbrn	Post	Specialists
AHP	(9)	McWilliam, Wainwright & Luce, E R Tweedy
AHS	(15)	Barbee & Co
AIN	(15)	Hedge & Price
AJ	(9)	J T Donohue, Kerr & Armstrong, Callaway, Fish & Co
AKL	(10)	Morgan, Howland & Co, Eric H Marks, W. H. Goadby & Co
AKL Pr	(30)	Miller & Dodge
AKO	(14)	S Rheinsteim, H H Weekes, T. S Young, N. Gunn
AL	(5)	G H Wilder, H S Sternberger, Toolin & Co
ALL	(7)	Spero & Co
ALM	(30)	Miller & Dodge
ALO	(14)	Smith & Gallatin
ALO Pr	(14)	Smith & Gallatin
ALR	(11)	Cyril de Cordova & Bro, C H Murphey & Co, C H. Theriot
ALR Pr	(11)	Cyril de Cordova & Bro, C H Murphey & Co, C H. Theriot
AM A	(13)	Adler, Coleman & Co
AM B	(13)	Adler, Coleman & CoM
AM Pr	(13)	Adler, Coleman & Co.
AMD Pr	(13)	Adler, Coleman & Co
AME	(11)	H Boulton, D S Jackson
AME CT	(11)	H Boulton, D S Jackson
AMM	(14)	S Rehnstein, H H Weekes, T. S Young, N. Gunn
AMM Pr	(14)	S Rheinsteim, H H Weekes, T S Young, N Gunn
AMS	(16)	Fellowes Davis & Co, H G Campbell & Co
AMU	(8)	J K Cloud, Tefft & Co
AMX	(30)	Miller & Dodge
AMZ	(17)	Granberry & Co, Sydeman Bros
ANC	(30)	Miller & Dodge
ANO	(4)	Rhoades, Williams & Co
ANO A	(30)	Miller & Dodge
AOW	(3)	F J Connelly & Co, Stewart & Co.
AOW V Pr	(3)	F J Connelly & Co, Stewart & Co.
AOW VI Pr	(3)	F J Connelly & Co Stewart & Co
AOY	(1)	Gaines & Company
APP	(8)	Lous Gumbel & Co
APW	(10)	H W Goldsmith & Co
APW Pr	(30)	Miller & Dodge
AQS	(30)	Miller & Dodge
AR	(11)	E S Hatch, J M, Hynes, A Eckstein
AR Pr	(11)	A Eckstein, E S Hatch
AR VI Pr	(11)	A Eckstein, E S Hatch
ARC	(12)	M J Meehan & Co
ARH	(14)	Spear & Leeds
ARH Pr	(30)	Miller & Dodge
ARR	(30)	Miller & Dodge
ARR Pr	(30)	Miller & Dodge
ART	(30)	Miller & Dodge
ARZ	(10)	H W Goldsmith & Co
AS	(3)	James Sheridan
ASC	(16)	C H Jones
ASR	(14)	Finch, Wilson & Co, A R Bishop
ASR Pr	(14)	Finch, Wilson & Co, A R Bishop
AST	(4)	E R Whitehead
AST Pr	(30)	Miller & Dodge
ASU	(30)	Miller & Dodge
AT	(13)	Adler, Coleman & Co
AT B	(13)	Adler, Coleman & Co
AT Pr	(13)	Adler, Coleman & Co
AVC	(9)	McWilliam, Wainwright & Luce, E. R. Tweedy, R. V. Hiscoe
AW CT	(7)	P B Leavitt, Benjamin, Hill & Co.
AW VI Pr	(30)	Miller & Dodge

## STOCKS—Continued

Abbrn	Post	Specialists
AWC	(3)	Howard R Stone, Bond, McEnany & Co, David V. Morris
AWW	(1)	Shea & McMannus
AWW I Pr	(1)	Shea & McMannus
AWY	(17)	H I Luber
AX	(1)	Brumley & Anderson
AY	(30)	Miller & Dodge
AYY	(3)	W Lee Gwynne
AYY Pr WW	(3)	A G Somers, Leonard Schafer
XXX		
AYY Pr XW	(3)	A G Somers, Leonard Schafer
AYY Pr WWXL	(3)	A G Somers, Leonard Schafer
B		
B	(11)	C O Mayer, Jr., S B Blumenthal, J V Bouvier, 3d, F Dietrich & Co
B Pr	(11)	C O Mayer, Jr, S B Blumenthal, J. V. Bouvier, 3d., F Dietrich & Co
BB A	(2)	H Hirschberg, H Schwartz, Jackson & Curtis
BB A CT	(2)	H Hirschberg, H. Schwartz, Jackson & Curtis
BB B	(2)	H Hirschbert, H. Schwartz, Jackson & Curtis
BB B CT	(2)	H Hirschberg, H Schwartz, Jackson & Curtis
BB Pr	(30)	Miller & Dodge
BBL	(30)	Miller & Dodge
BBL Pr	(30)	Miller & Dodge
BC	(11)	A Eckstein, E S Hatch, J. M Hynes
BCC	(13)	Adler, Coleman & Co
BCH	(30)	Miller & Dodge
BCK	(17)	H I Luber
BDL	(9)	Nash & Co
BDM	(9)	McWilliam, Wainwright & Luce, E R Tweedy, R V. Hiscoc
BDM Pr	(30)	Miller & Dodge
BDO	(1)	Shea & McMannus
BEX	(15)	C F Henderson & Sons
BEY	(6)	Barrett & Co
BEY CV Pr	(6)	Barrett & Co
BEY Pr	(30)	Miller & Dodge
BG Pr	(30)	Miller & Dodge
BGG	(9)	R G Conried, Leopold Spingarn & Co
BGH	(9)	Keir & Armstrong, J T Donohue
BGI	(5)	Shuman & Co, Edwin Weisl & Co
BGS	(30)	Miller & Dodge
BH	(15)	Wilcox & Co
BH D	(15)	Wilcox & Co
BHB Pr	(30)	Miller & Dodge
BHL	(17)	Granberry & Co, Sydean Bros
BI	(11)	Bramley & Smith, Benjamin & Ferguson, A Gwynne, V H Brown
BI Pr	(11)	Bramley & Smith, Benjamin & Ferguson, A Gwynne, V H Brown
BK	(11)	C B Spears
BKR	(30)	Miller & Dodge
BKR Pr	(30)	Miller & Dodge
BKX	(14)	B H & F W Pelzer
BLW Pr	(12)	Siegel & Co
BM	(5)	G. H Wilder, H S Sternberger, Toolin & Co.
BMR	(3)	O S Campbell, Leo Kaufmann, Schafer Bros.
BMT	(11)	C O Mayer, Jr, S B Blumenthal, J. V Bouvier, 3d, F Dietrich & Co
BMT Pr	(11)	C O Mayer, Jr, S B Blumenthal, J. V Bouvier, 3d, F Dietrich & Co
BMY	(10)	Hume & Thompson, Berg, Eyie, Kerr
BNK	(10)	Hewitt, Lauderdale & Co

## STOCKS—Continued

Abbrn	Post	Specialists
BNK Pr	(30)	Miller & Dodge
BNL	(5)	Brandenburg & Co
BNU	(13)	Adler, Coleman & Co
BO	(9)	Homans & Co.
BO Pr	(9)	Homans & Co
BOR	(9)	E C Anness, W Hirshon, S. Johnson, W H. Goadby & Co
BOS	(12)	Siegel & Co.
BP	(4)	Rhoades, Williams & Co
BQT	(14)	Allson Stern & Co
BQT Pr	(14)	Allson Stern & Co
BRY	(14)	Fransioh & Wilson
BRY Pr	(14)	Fransioh & Wilson
BS	(10)	Travers & Clark, W R K Taylor & Co
BS Pr	(10)	H W Goldsmith & Co
BST	(7)	Spero & Co
BT	(3)	C Griffen
BTY A	(16)	F V Foster & Co , Leo Friede, Harry Anderson
BU	(5)	Chauncey & Co
BUD	(1)	Gaines & Company
BUZ	(14)	Fransioh & Wilson
BUZ Pr	(14)	Fransioh & Wilson
BV	(13)	Stevens & Legg, B L Mensch, Filer & Co
BVA	(17)	Granberry & Co , Sydeman Bros
BW	(8)	Morris Joseph & Co , W. P Blagden
BW Pr	(30)	Miller & Dodge
BWC	(1)	Lowell & Son
BY	(7)	F H Douglas & Co
BY Pr	(30)	Miller & Dodge

## C

C	(4)	Rhoades, Williams & Co , Hyde & Bach, Miller & McVickar
CA	(4)	Rhoades, Williams & Co
CAD	(4)	Peter P. McDermott & Co
CAD Pr	(30)	Miller & Dodge
CAH	(13)	Stevens & Legg, B L Mensch, Filer & Co.
CAM	(16)	C. H Jones
CBD	(8)	J Rutherford, Blumenthal Bros , M. Smith Davis
CBN	(8)	J Rutherford, Blumenthal Bros , M Smith Davis
CBR Pr	(30)	Miller & Dodge
CC	(30)	Miller & Dodge
CC Pr	(30)	Miller & Dodge
CCK	(7)	Spero & Co
CCK Pr	(7)	Spero & Co
CCL	(30)	Miller & Dodge
CCL STMPD	(30)	Miller & Dodge
CCU Pr	(1)	D L Norris
CDD	(15)	Wilcox & Co
CDH	(4)	Peter P. McDermott & Co
CDI	(17)	H Liberman, S Stone
CDP	(7)	B H Brinton, W C. Morek, E H. H Simmons & Co.
CE	(8)	C Levis
CE Pr	(8)	C Levis
CEG	(16)	C H Jones
CEH	(17)	Granberry & Co , Sydeman Bros
CEZ	(6)	Joel G Cahn
CF	(11)	C O Mayer, Jr, S B Blumenthal, J. V Bouvier, 3d., F Dietrich & Co
CF Pr	(30)	Miller & Dodge
CFF	(1)	D L Norris
CFG	(6)	V. C Brown & Co
CFG Pr	(30)	Miller & Dodge
CFM	(16)	Moss, Ferguson & Kerngood

## STOCKS—Continued

Abbrn	Post	Specialists
CFM Pr	(16)	Moss, Ferguson & Kerngood
CFY	(16)	C H Jones
CFY Pr	(30)	Miller & Dodge
CG	(3)	Howard R Stone, Bond McEnany & Co, David V. Morris
CG Pr	(3)	Howard R Stone, Bond McEnany & Co, David V Morris
CG V Pr	(30)	Miller & Dodge
CGG	(10)	H W Goldsmith & Co
CGG Pr	(10)	H W. Goldsmith & Co.
CGR	(16)	Fellowes Davis & Co, H G Campbell & Co.
CGR P Pr WW	(30)	Miller & Dodge
CGR P Pr XW	(30)	Miller & Dodge
CGR VII Pr	(30)	Miller & Dodge
CH	(17)	Byck & Lowenfels, M S Friedlander, J. M. Adrian, J Dempsey, Hoge, Underhill & Co.
CHA	(30)	Miller & Dodge
CHC	(9)	R G Conried, Leopold Spingarn & Co.
CHK	(17)	Byck & Lowenfels, M S Friedlander, J M Adrian, J Dempsey, Hoge, Underhill & Co.
CHL	(30)	Miller & Dodge
CHS VII Pr	(30)	Miller & Dodge
CHS VIII Pr	(30)	Miller & Dodge
CI A	(4)	Van Wyck & Sterling, Elder & Co, Hyman & Co, J F Nick & Co
CI B	(4)	Van Wyck & Sterling, Elder & Co, Hyman & Co, J. F. Nick & Co, Myron Schafer
CI Pr	(4)	Van Wyck & Sterling, Elder & Co, Hyman & Co, J. F. Nick & Co
CIK	(3)	C Griffen
CIL Pr	(30)	Miller & Dodge
CIM	(5)	Vaughan & Co
CIS	(5)	Shuman & Co, Edwin Weisl & Co
CIT	(14)	Fransioh & Wilson
CIT CV Pr	(14)	Fransioh & Wilson
CJ	(4)	Rhoades, Williams & Co
CJ Pr	(4)	Rhoades, Williams & Co.
CK	(16)	Morris & Co, C M. Fair, A P. Vesce
CK Pr	(30)	Miller & Dodge
CLL	(8)	J Rutherford, Blumenthal Bros, M Smith Davis
CLO	(14)	Henry Goldman, Jr.
CLO CT	(14)	Henry Goldman, Jr
CLO Pr	(30)	Miller & Dodge
CLQ	(30)	Miller & Dodge
CLU	(7)	B H. Brinton, W. C Morek, E. H H. Simmons & Co.
CLU Pr	(30)	Miller & Dodge
CLZ	(2)	H Hirschberg, H Schwartz, Jackson & Curtis, T H. Benton
CMO	(16)	E L Norton
CMO A	(16)	E L Norton
CMO Pr	(30)	Miller & Dodge
CMO Pr B	(30)	Miller & Dodge
CMO I Pr	(30)	Miller & Dodge
CMR	(7)	B H Brinton, R W P. Barnes, W. C. Morek, E H H. Simmons & Co
CN	(14)	Carreau & Snedeker, Lew Wallace & Co, Smith & Gallatin
CNG	(15)	A Zucker
CNI	(1)	Brumley & Anderson, M H. Vernon, Sartorius & Smith
CNI Pr	(1)	Brumley & Anderson, M H Vernon, Sartorius & Smith
CNR A	(17)	H I Luber
CNR B	(17)	H I Luber
CNV	(30)	Miller & Dodge
CO	(17)	Byck & Lowenfels, M. S Friedlander, J. M Adrian, J Dempsey, Hoge, Underhill & Co.



## STOCKS—Continued

Abbrn.	Post	Specialists
COG	(10)	Hewitt, Lauderdale & Co.
COT	(17)	H I Luber
CP	(8)	A. J. Elias & Co.
CPC	(7)	Stackpole & Buchanan
CPC Pr	(7)	Stackpole & Buchanan
CPL	(17)	Byck & Lowenfels, M S Friedlander, J M. Adrian, J. Dempsey, Hoge, Underhill & Co.
CPL Pr	(17)	Byck & Lowenfels, M S. Friedlander, J M. Adrian, J. Dempsey, Hoge, Underhill & Co
CPS CT	(16)	Engel & Co.
CR	(13)	Adler, Coleman & Co
CRT	(12)	Siegel & Co
CRT Pr	(12)	Siegel & Co
CRW	(30)	Miller & Dodge
CRW Pr	(30)	Miller & Dodge
CRX	(11)	C. H. Theriot, Cyril de Cordova & Bros.
CSA	(30)	Miller & Dodge
CSC Pr	(30)	Miller & Dodge
CSS	(9)	Kerr & Armstrong, J T Donohue
CSS CT	(9)	Kerr & Armstrong, J T Donohue
CSS A	(30)	Miller & Dodge
CSS A CT	(30)	Miller & Dodge
CSU	(14)	Finch, Wilson & Co., A R Bishop
CSU Pr	(30)	Miller & Dodge
CTM	(11)	Bramley & Smith, Benjamin & Ferguson, A. Gwynne, V. H. Brown
CTM Pr	(30)	Miller & Dodge
CTX	(5)	D. T. Moore & Co, E C. Rollins
CTY	(17)	Granberry & Co, Sydeman Bros.
CTY Pr	(30)	Miller & Dodge
CUB	(1)	D. L. Norris
CUX	(17)	Byck & Lowenfels, M S Friedlander, J M. Adrian, J. Dempsey, Hoge, Underhill & Co.
CV	(12)	M. J Meehan & Co.
CW	(9)	Nash & Co, H T. Bushnell
CW Pr	(9)	Nash & Co
CWH	(2)	H. I Nicholas, H. M Dreyfus
CWT	(15)	La Branche & Co, J. V. Dunne & Co., E. M. Bloch, F X Deery
CWW Pr	(30)	Miller & Dodge
CWZ	(13)	Adler, Coleman & Co
CWZ A	(13)	Adler, Coleman & Co.
CX	(30)	Miller & Dodge
CX I Pr	(30)	Miller & Dodge
CX II Pr	(30)	Miller & Dodge

## D

D	(6)	Barrett & Co
DD	(1)	Shea & McMannus
DD D	(1)	Shea & McMannus
DEM	(30)	Miller & Dodge
DER	(12)	M J Meehan & Co
DER Pr	(12)	M J Meehan & Co
DET	(30)	Miller & Dodge
DET Pr	(30)	Miller & Dodge
DG	(11)	Cyrl de Cordova & Bro, C H. Murphey & Co, C. H. Theriot
DG I Pr	(11)	Cyrl de Cordova & Bro, C H Murphey & Co, C. H. Theriot
DG II Pr	(11)	Cyrl de Cordova & Bro, C H Murphey & Co, C. H. Theriot
DGL	(3)	F J Connelly & Co, Stewart & Co
DGR Pr	(7)	P. B Leavitt, Benjamin, Hill & Co, F. H. Douglas & Co.
DH	(10)	Ely & Son

## STOCKS—Continued

Abbrn.	Post	Specialists
DHI	(10)	Hume & Thompson
DHO Pr	(30)	Miller & Dodge
DHS	(30)	Miller & Dodge
DK	(30)	Miller & Dodge
DK Pr	(30)	Miller & Dodge
DL	(7)	B. H. Brinton, W. C. Morek, E. H. H. Simmons & Co.
DMY A	(1)	Gaines & Company
DMY B	(1)	Gaines & Company
DN	(16)	J. Robinson-Duff & Co., Wagner, Stott & Co.
DN Pr	(16)	J. Robinson-Duff & Co., Wagner, Stott & Co.
DOS	(1)	Gaines & Company
DOU	(5)	Brandenburg & Co.
DPS	(10)	Hume & Thompson, Berg, Eyre & Kerr
DPS Pr	(30)	Miller & Dodge
DQU I Pr	(30)	Miller & Dodge
DRS	(16)	Fellowes Davis & Co., H. G. Campbell & Co.
DRS Pr	(30)	Miller & Dodge
DS	(11)	Cyril de Cordova & Bro, C H Murphey & Co., C. H. Thieriot
DS Pr	(11)	Cyril de Cordova & Bro, C H Murphey & Co., C. H. Thieriot
DTE	(10)	Hewitt, Lauderdale & Co.
DVG	(7)	Albert Fried & Co., Charles E. Clapp, Jr, Howard F. Hickie, Andrews, Posner & Rothschild

## E

E	(3)	A G Somers, Leonard Schafer, W. E. O. Bebee
E I Pr	(3)	A G Somers, Leonard Schafer, W. E. O. Bebee
E II Pr	(3)	A G. Somers, Leonard Schafer, W. E. O. Bebee
EG	(6)	Barrett & Co
EGK	(11)	Cyril de Cordova & Bro, C H Murphey & Co., C. H. Thieriot
EGS	(14)	S Rheinstein, H H Weekes, T S Young, N. Gunn
EGS I Pr	(14)	S Rheinstein, H H Weekes, T S Young, N. Gunn
EH	(7)	Spero & Co
EH Pr	(7)	Spero & Co
EJ	(12)	Siegel & Co
EJ Pr	(30)	Miller & Dodge
EK	(13)	Stevens & Legg, B L. Mensch, Filer & Co.
EK Pr	(30)	Miller & Dodge
EL	(1)	M. F. Untermeyer, Scholle Bros.
EL Pr	(1)	Scholle Bros
EL VI Pr	(1)	Scholle Bros
ELB	(2)	J. G. Hall, Harde & Ellis, R. W. O'Brien, E. F. O'Brien, B. H. Roth & Co., W. I. Spiegelberg
ELO	(15)	Wilcox & Co
ELO Pr	(30)	Miller & Dodge
EMI	(13)	Adler, Coleman & Co
ENX	(12)	Wright & Sexton, A. J. Vogel
EP	(30)	Miller & Dodge
EPU	(16)	Moss, Ferguson & Kerngood
EPU Pr	(16)	Moss, Ferguson & Kerngood
EPU Pr WW	(16)	Moss, Ferguson & Kerngood
EPU VI Pr	(16)	Moss, Ferguson & Kerngood
EQ	(13)	Adler, Coleman & Co
ER	(6)	Joel G. Cahn
EU	(5)	Shuman & Co., Edwin Weisl & Co
EVY	(8)	J. K. Cloud, Tefft & Co
EXY	(30)	Miller & Dodge

## F

F	(13)	Stevens & Legg, B L. Mensch, Filer & Co.
FDM	(15)	Barbee & Co
FDS	(4)	E. R. Whitehead

## STOCKS—Continued

Abbrn	Post	Specialists
FFL	(30)	Miller & Dodge
FFL Pr	(30)	Miller & Dodge
FHK	(13)	Adler, Coleman & Co
FI	(2)	J G Hall, Harde & Ellis, R. W. O'Brien, E. F. O'Brien, B H Roth & Co, W. I. Spiegelberg
FI CT	(2)	J G Hall, Harde & Ellis, R. W. O'Brien, E. F. O'Brien, B. H. Roth & Co, W I Spiegelberg
FI Pr	(30)	Miller & Dodge
FI Pr CT	(30)	Miller & Dodge
FIR	(15)	Hedge & Price
FIR Pr	(15)	Hedge & Price
FIS Pr	(30)	Miller & Dodge
FJ	(12)	M J Meehan & Co
FJ Pr	(30)	Miller & Dodge
FKM	(13)	Adler, Coleman & Co
FKM Pr	(30)	Miller & Dodge
FL II Pr	(30)	Miller & Dodge
FL P Pr	(30)	Miller & Dodge
FLO	(4)	Van Wyck & Sterling, Elder & Co., Hyman & Co., J. F. Nick & Co
FLO Pr	(30)	Miller & Dodge
FLT	(9)	Kerr & Armstrong, J T. Donohue
FLT Pr	(30)	Miller & Dodge
FLZ	(7)	Spero & Co.
FMT	(16)	Morris & Co., C M Fair, A. P. Veace
FN	(8)	W. Thiele
FN Pr	(8)	W Thiele
FO	(12)	Wright & Sexton, A J. Vogel
FPX	(10)	Hewitt, Lauderdale & Co
FRW	(13)	Adler, Coleman & Co
FS	(9)	Raymond Sprague
FS Pr	(9)	Raymond Sprague
FST	(17)	F Mayer, Neville G Hart & Co
FT	(7)	F. H. Douglas & Co
FT Pr	(7)	F H. Douglas & Co.
FTH	(17)	H Liberman, S Stone
FV	(30)	Miller & Dodge
FW	(30)	Miller & Dodge
FW Pr	(30)	Miller & Dodge
FWC	(5)	J M Lumms
FWC Pr	(30)	Miller & Dodge
FWS	(1)	Games & Company

## G

G	(5)	Chauncey & Co
G Pr	(5)	Chauncey & Co.
GAC	(30)	Miller & Dodge
GAM	(9)	Raymond Sprague
GAM Pr WW	(9)	Raymond Sprague
GB	(14)	Finch, Wilson & Co., A R. Bishop
GBG	(15)	C. F. Henderson & Sons
GBG Pr	(30)	Miller & Dodge
GF	(14)	S. Rheinsteen, H. H. Weekes, T S Young, N. Gunn
GG	(4)	E R. Whitehead
GG Pr	(12)	Wright & Sexton, A J Vogel
GGN	(15)	Wilcox & Co
GGN A	(15)	Wilcox & Co
GGN Pr	(15)	Wilcox & Co.
GGO	(1)	Shea & McMannus
GGs A	(13)	Adler, Coleman & Co
GGs CV Pr	(13)	Adler, Coleman & Co.
GGs VII Pr	(30)	Miller & Dodge
GGs VIII Pr	(30)	Miller & Dodge
GGZ	(2)	Hedberg & Koppisch, O. V. Hedberg
GH	(15)	Carreau & Snedeker, Cecil Lyon, Sneekner & Heath

## STOCKS—Continued

Abbrn.	Post	Specialists
GH Pr	(30)	Miller & Dodge
GHM	(13)	Adler, Coleman & Co
GHM Pr	(30)	Miller & Dodge
GHR	(16)	F V Foster & Co , Leo Friede, Harry Anderson
GI	(6)	Burnside & Co , Richards, Hume & Heffernan, Baar, Cohen & Co
GI Pr	(6)	Burnside & Co , Richards, Hume & Heffernan, Baar, Cohen & Co
GIL	(11)	Bramley & Smith, Benjamin & Ferguson, A. Gwynne, V H Brown
GIL Pr	(9)	McWilliam, Wainwright & Luce, E R. Tweedy
GIS	(14)	Finch, Wilson & Co , A R Bishop
GIS Pr	(14)	Finch, Wilson & Co , A R. Bishop
GJ	(12)	Siegel & Co
GJ Pr	(30)	Miller & Dodge
GK	(8)	Morris Joseph & Co , W P Blagden
GK Pr	(8)	Morris Joseph & Co , W P Blagden
GL	(6)	Peter J. Maloney & Co , Stokes, Hoyt & Co., M. H. Russell, E C Coultry
GL SPL	(6)	Peter J Maloney & Co , Stokes, Hoyt & Co., M H. Russell, E C Coultry
GLN	(11)	E S Hatch, J. M. Hynes, A. Eckstein
GLN P Pr	(30)	Miller & Dodge
GLZ	(17)	H. Liberman, S Stone
GM	(4)	Rhoades, Wilhams & Co , Hyde & Bach, Miller & McVickar
GM Pr	(4)	Rhoades, Wilhams & Co
GMT	(11)	Arthur Barnwell & Co , D. S. Jackson
GN	(30)	Miller & Dodge
GNL	(2)	H I Nicholas, H M Dreyfus
GNP	(30)	Miller & Dodge
GOR	(13)	Stevens & Legg, B. L. Mensch, Filer & Co.
GOR I Pr	(13)	Stevens & Legg, B. L Mensch, Filer & Co.
GPI	(30)	Miller & Dodge
GPI Pr	(30)	Miller & Dodge
GPV	(1)	Gaimes & Company
GQ	(5)	Chauncey & Co
GRC	(5)	G H Wilder, H S. Sternberger, Toolin & Co
GRL Pr	(30)	Miller & Dodge
GRR	(10)	Ely & Son
GRS	(17)	F. Mayer, Neville G. Hart & Co
GRS Pr	(30)	Miller & Dodge
GRX	(10)	N. D. Biddison
GRX CT	(10)	N. D Biddison
GRY	(10)	Hewitt, Lauderdale & Co
GRY Pr WW	(10)	Hewitt, Lauderdale & Co
GS	(10)	N D. Biddison
GS Pr	(30)	Miller & Dodge
GSW	(16)	F V Foster & Co , Leo Friede, Harry Anderson
GSW Pr	(30)	Miller & Dodge
GSX	(30)	Miller & Dodge
GTY	(5)	D T Moore & Co , E. C Rollins
GU	(9)	Kerr & Armstrong, J T. Donohue
GU Pr	(9)	Kerr & Armstrong, J T Donohue
GUX	(6)	V. C. Brown & Co
GUX Pr	(6)	V C Brown & Co.
GVZ	(14)	Allison Stern & Co.
GVZ A	(14)	Allison Stern & Co.
GW	(10)	Morgan, Howland & Co , Eric H Marks, W H. Goadby & Co
GW Pr	(10)	Morgan, Howland & Co , Eric H Marks, W. H Goadby & Co
GY	(9)	E. C Anness, W. Hirshon, S Johnson, W. H. Goadby & Co
GY Pr	(30)	Miller & Dodge

## STOCKS—Continued

## H

Abbrn.	Post	Specialists
H	(5)	Chauncey & Co
HAR	(30)	Miller & Dodge
HAR Pr	(30)	Miller & Dodge
HAT	(30)	Miller & Dodge
HAT Pr WW	(30)	Miller & Dodge
HH A	(8)	J K Cloud, Tefft & Co
HH	(8)	J K Cloud, Tefft & Co
HHN	(4)	Peter P McDermott & Co.
HHN Pr	(4)	Peter P McDermott & Co
HI	(11)	Cyrl de Cordova & Bro , C H. Murphey & Co., C H. Theriot
HI Pr	(11)	Cyrl de Cordova & Bro , C H Murphey & Co , C H. Theriot
HK	(10)	Leeds Johnson
HK Pr	(30)	Miller & Dodge
HKM	(17)	Byck & Lowenfels, M S Friedlander, J. M. Adrian, J Dempsey, Hoge, Underhill & Co
HKM Pr	(30)	Miller & Dodge
HLL	(7)	Albert Fried & Co , Charles E Clapp, Jr., Howard F. Hickie, Andrews, Posner & Rothschild
HLN	(11)	C O Mayer, Jr, S B Blumenthal, J. V. Bouvier, 3d , F Dietrich & Co
HM	(17)	Byck & Lowenfels, M S Friedlander, J. M Adrian, J Dempsey, Hoge, Underhill & Co
HMO	(1)	Lowell & Son
HMT	(2)	O V Hedberg, Auerbach, Pollack & Richardson
HMW	(1)	Lowell & Son
HMW Pr	(30)	Miller & Dodge
HMY	(6)	Barrett & Co
HN	(8)	J Rutherford, Blumenthal Bros , M Smith Davis
HN Pr	(30)	Miller & Dodge
HN WARR	(8)	J Rutherford, Blumenthal Bros , M Smith Davis
HNA Pr	(30)	Miller & Dodge
HO	(13)	Stevens & Legg, B L Mensch, Filer & Co.
HO N	(13)	Stevens & Legg, B L Mensch, Filer & Co
HOF Pr	(15)	Hedge & Price
HPC	(12)	Wright & Sexton, A J Vogel
HPC Pr	(30)	Miller & Dodge
HPG	(15)	Barbee & Co
HPT	(14)	Allson Stern & Co
HP	(12)	Segel & Co
HR Pr	(12)	Segel & Co
HSY	(15)	Wilcox & Co
HSY Pr	(15)	Wilcox & Co
HW	(8)	Morris Joseph & Co , W P Blagden
HWA	(12)	Segel & Co
HWA Pr A	(30)	Miller & Dodge
HX	(6)	John Murr & Co
HX Pr	(6)	John Murr & Co
HYB	(14)	Spear & Leeds
HZT	(16)	Wagner, Stott & Co , J Robinson-Duff & Co.

## I

ICL	(7)	B H. Brinton, W C Morck, E H. H. Simmons & Co
ICM	(13)	Adler, Coleman & Co
ICR	(4)	Rhoades, Williams & Co
ICR Pr	(30)	Miller & Dodge
IGL	(13)	Adler, Coleman & Co
IGL P Pr	(13)	Adler, Coleman & Co
IKL	(13)	Adler, Coleman & Co.
IKN	(9)	E C Anness, W. Hirshon, S Johnson, W. H. Goadby & Co.

## STOCKS—Continued

Abbrn	Post	Specialists
IKN Pr	(30)	Miller & Dodge
IL	(9)	Raymond Sprague
IL Pr	(9)	Raymond Sprague
IL LL	(30)	Miller & Dodge
ILN	(1)	Brumley & Anderson
ILR	(9)	R G Conried, Leopold Spingarn & Co.
ILS	(12)	Siegel & Co
IMN	(11)	Cyrl de Cordova & Bro , C H Murphey & Co., C. H. Thieriot
INR	(17)	F. Mayer, Neville G Hart & Co
INR Pr	(30)	Miller & Dodge
INS	(10)	Morgan, Howland & Co , Eric H Marks, W. H. Goadby & Co
INU	(7)	B H Brinton, W C Moreck, E H H. Simmons & Co
IP Pr	(30)	Miller & Dodge
IP A	(5)	Shuman & Co , Edwin Weisl & Co
IP B	(5)	Shuman & Co , Edwin Weisl & Co.
IP C	(5)	Shuman & Co , Edwin Weisl & Co
IP Pr N	(5)	Shuman & Co , Edwin Weisl & Co
IPH	(5)	Shuman & Co , Edwin Weisl & Co
IR	(5)	D T Moore & Co , E C Rollins
IR Pr	(30)	Miller & Dodge
IRC	(30)	Miller & Dodge
IRC CT	(30)	Miller & Dodge
IRC Pr	(30)	Miller & Dodge
IRR	(12)	Wright & Sexton, A J Vogel
IRT	(5)	Brandenburg & Co
IRT CD	(5)	Brandenburg & Co
IRU	(9)	Kerr & Armstrong, J T. Donohue
IRY	(16)	Morris & Co , C M Fair, A. P. Vesce
IS	(7)	B H Brinton, W C Moreck, E. H. H. Simmons & Co.
IS Pr	(7)	B. H Brinton, W C Moreck, E H. H. Simmons & Co.
ISD	(9)	R. G Conried, Leopold Spingarn & Co.
ISD Pr	(30)	Miller & Dodge
ISH	(17)	Corhes & Booker
ISS	(16)	F V Foster & Co , Leo Friede, Harry Anderson
IT	(17)	Myles & Keating, F L. Salomon & Co.

## J

J	(9)	Homans & Co , Ware & Keelips
JC	(12)	M J Meehan & Co
JKS	(4)	E R Whitehead
JL Pr	(30)	Miller & Dodge
JLO	(30)	Miller & Dodge
JMP	(10)	Hume & Thompson, Berg, Eyre & Kerr
JMP Pr	(30)	Miller & Dodge
JO	(4)	Rhoades, Williams & Co
JW	(5)	Shuman & Co , Edwin Weisl & Co

## K

K	(2)	H. Zuckerman & Co , Hedberg & Koppisch C. F. Watson Jr, W Wallace Lyon & Co
KDS	(30)	Miller & Dodge
KDS Pr	(30)	Miller & Dodge
KG	(7)	Stackpole & Buchanan
KG Pr	(30)	Miller & Dodge
KK	(8)	Reynolds & Co
KK Pr	(8)	Reynolds & Co
KKN	(12)	Wright & Sexton, A J Vogel
KLL Pr	(30)	Miller & Dodge
KLO Pr	(12)	M. J. Meehan & Co
KLT Pr	(30)	Miller & Dodge
KLV	(10)	Ely & Son
KMB	(1)	Games & Company

## STOCKS—Continued

Abbrn.	Post	Specialists
KN	(11)	C O Mayer, Jr, S B Blumenthal, J. V. Bouvier, 3d, F Dietrich & Co.
KNX	(17)	Corlies & Booker
KNX Pr	(17)	Corlies & Booker
KO	(11)	Arthur Barnwell & Co, D S Jackson
KO A	(11)	Arthur Barnwell & Co, D S Jackson
KOC	(30)	Miller & Dodge
KR	(8)	J S Bach
KS	(11)	C O Mayer, Jr, S B Blumenthal, J. V. Bouvier, ed, F Dietrich & Co
KSU	(6)	Burnside & Co, Richards, Hume & Heffernan, Baar, Cohen & Co
KSU Pr	(6)	Burnside & Co, Richards, Hume & Heffernan, Baar, Cohen & Co
KT	(15)	Carreau & Snedeker, J J Ahern, Cecil Lyon Sneekner & Heath, McGough & Schuman
KT Pr	(15)	Carreau & Snedeker, J J Ahern, Cecil Lyon, Sneekner & Heath, McGough & Schuman
KW A	(13)	Adler, Coleman & Co
KW B	(13)	Adler, Coleman & Co

## L

LAM	(14)	S Rheinsteam, H H Weekes, T S Young, N. Gunn
LAU	(15)	A. Zucker
LB	(14)	B. H. & F. W. Pelzer
LEH	(11)	Cyrl de Cordova & Bro, C. H. Murphey & Co., C. H. Thierot
LEH Pr	(11)	Cyrl de Cordova & Bro., C. H. Murphey & Co., C. H. Thierot
LEM	(14)	S Rheinsteam, H. H Weekes, T. S. Young, N. Gunn
LF	(2)	J G Hall, Harde & Ellis, R. W. O'Brien, E. F. O'Brien, B. H. Roth & Co, W. I Spiegelberg
LG	(30)	Miller & Dodge
LG Pr	(30)	Miller & Dodge
LIL	(10)	W. R. K. Taylor & Co.
LL	(16)	E L Norton
LL Pr	(30)	Miller & Dodge
LM	(13)	Adler, Coleman & Co.
LM B	(13)	Adler, Coleman & Co
LM Pr	(13)	Adler, Coleman & Co.
LMS	(17)	Corlies & Booker
LMS Pr	(17)	Corlies & Booker
LMW	(10)	H W Goldsmith & Co
LN	(1)	Brumley & Anderson
LNP	(12)	M J Meehan & Co
LNy	(30)	Miller & Dodge
LO	(10)	Morgan, Howland & Co, Eric H. Marks, W. H. Goadby & Co.
LO Pr	(30)	Miller & Dodge
LOF	(10)	Hewitt, Lauderdale & Co
LOR	(11)	Cyrl de Cordova & Bro, C H Murphey & Co., C. H. Thierot
LOR Pr	(14)	B. H. & F. W. Pelzer
LOU	(16)	C. H. Jones
LPT	(3)	O S. Campbell, Leo Kaufmann, Schafer Bros.
LPT Pr	(30)	Miller & Dodge
LQ	(17)	Sydemann Bros, Granberry & Co
LQT	(17)	F. Mayer, Neville G. Hart & Co.
LR	(5)	Shuman & Co, Edwin Weisl & Co.
LSV	(2)	H. M Dreyfus, H I. Nicholas
LT	(15)	Wilcox & Co
LT Pr A	(15)	Wilcox & Co
LT Pr B	(15)	Wilcox & Co.
LV	(11)	Cyrl de Cordova & Bro, C. H. Murphey & Co., C. H. Thierot

## STOCKS—Continued

Abbrn	Post	Specialists
LW	(2)	H. Hirschberg, H Schwartz, Jackson & Curtis, T. H. Benton
LW Pr	(2)	H Hirschberg, H. Schwartz, Jackson & Curtis, T. H. Benton
LX	(11)	C B. Spears
LX A	(11)	C. B Spears
LX P Pr	(11)	C B Spears
M		
M	(8)	Tefft & Co
MA	(9)	McWilliam, Wainwright & Luce, E R. Tweedy
MAB	(17)	H. I. Luber
MAF	(17)	Granberry & Co , Sydeman Bros
MAF Pr	(30)	Miller & Dodge
MAH	(30)	Miller & Dodge
MAN	(7)	P B Leavitt, Benjamin, Hill & Co , F. H. Douglas & Co.
MAN GTD	(30)	Miller & Dodge
MAQ	(10)	H W Goldsmith & Co
MAR	(3)	C Griffen
MB	(30)	Miller & Dodge
MBC	(13)	Adler, Coleman & Co
MC	(30)	Miller & Dodge
MCC	(17)	Byk & Lowenfels, M S Friedlander, J. M. Adrian, J Dempsey, Hoge, Underhill & Co
MCG	(14)	B H. & F W Pelzer
MCK	(14)	Spear & Leeds
MCK Pr	(14)	Spear & Leeds
ME	(30)	Miller & Dodge
MES	(17)	Granberry & Co , Sydeman Bros
MFI	(9)	McWilliam, Wainwright & Luce, E R. Tweedy, R V Huscoe
MGL Pr	(5)	Wallis S Turner
MGX	(14)	Finch, Wilson & Co , A R Bishop
MGX Pr	(30)	Miller & Dodge
MHW	(15)	A Zucker
MK Pr	(30)	Miller & Dodge
MLL	(1)	Games & Company
MLL Pr	(30)	Miller & Dodge
MM	(7)	B H Brinton, W C Morek, E H H Simmons & Co
MMP	(1)	D L Norris
MMW	(7)	Albert Fried & Co , Charles E Clapp, Jr., Howard F. Hickie, Andrews, Posner & Rothschild
MMW Pr	(7)	Albert Fried & Co , Charles E Clapp, Jr , Howard F. Hickie, Andrews, Posner & Rothschild
MMX	(1)	Scholle Brothers
MN	(30)	Miller & Dodge
MNO	(30)	Miller & Dodge
MNS	(17)	Corhes & Booker
MNS Pr	(30)	Miller & Dodge
MNU	(14)	Finch, Wilson & Co , A R Bishop
MNU Pr	(30)	Miller & Dodge
MOK	(16)	E L. Norton
MOL	(17)	M. Mensch
MOP	(2)	H. Hirschberg, H. Schwartz
MOP Pr	(2)	H Hirschberg, H Schwartz
MOR	(5)	G H Wilder, H S Sternberger, Toolhn & Co
MOS	(13)	Stevens & Legg, B L. Mensch, Flier & Co.
MPO	(16)	Fellowes Davis & Co , H. G. Campbell & Co.
MPO I Pr	(16)	Fellowes Davis & Co., H G Campbell & Co.
MPS	(16)	E. L. Norton
MPZ	(3)	James Sheridan
MQ	(15)	LaBranche & Co., J V. Dunne & Co., E. M. Bloch, F. X Deery



## STOCKS—Continued

Abbrn.	Post	Specialists
MQU	(15)	Wilcox & Co.
MR	(12)	Siegel & Co.
MRR	(30)	Miller & Dodge
MRR Pr	(30)	Miller & Dodge
MRR II Pr	(30)	Miller & Dodge
MRR P Pr	(16)	E L Norton
MRT	(3)	C Griffen
MRW	(15)	Hedge & Price
MRY	(10)	Hume & Thompson, Berg, Eyre & Kerr
MRY B	(10)	Hume & Thompson, Berg, Eyre & Kerr
MRY Pr	(10)	Hume & Thompson, Berg, Eyre & Kerr
MS	(17)	Byck & Lowenfels, M. S. Friedlander, J. M. Adrian, J. Dempsey, Hoge, Underhill & Co.
MSM	(8)	C Levis
MSM LL	(30)	Miller & Dodge
MSM Pr	(8)	C Levis
MSX	(16)	Morris & Co, C M. Fair, A. P. Vesce
MT	(13)	Adler, Coleman & Co
MTC	(14)	Allison Stern & Co
MTY	(2)	Auerbach, Pollak & Richardson
MUN	(16)	Fellowes Davis & Co, H. G. Campbell & Co.
MUY	(15)	Wilcox & Co
MV	(11)	Bramley & Smith, Benjamin & Ferguson, A Gwynne, A H Brown
MW	(9)	E C Anness, W Hirshon, S Johnson, W. H. Goadby & Co.
MX I Pr	(30)	Miller & Dodge
MX II Pr	(8)	W. Thiele
MY Pr	(30)	Miller & Dodge
MGY	(3)	James Sheridan
MYG Pr WW	(3)	James Sheridan
MYG Pr XW	(3)	James Sheridan
MYG I Pr	(30)	Miller & Dodge
MZ	(3)	A G Somers, Leonard Schafer, W. E. O. Bebee
M&B Pr	(30)	Miller & Dodge
N		
N	(7)	Stackpole & Buchanan, Neilson & O'Sullivan
N Pr	(7)	Neilson & O'Sullivan
NA	(6)	Burnside & Co, Richards, Hume & Heffernan, Baar, Cohen & Co
NA Pr	(6)	Burnside & Co, Richards, Hume & Heffernan, Baar, Cohen & Co.
NAD	(6)	V. C. Brown & Co
NAE Pr	(6)	Burnside & Co, Richards, Hume & Heffernan, Baar, Cohen & Co.
NAV	(5)	Shuman & Co., Edwin Weisl & Co.
NAX	(16)	Wagner, Stott & Co., J. Robinson-Duff & Co.
NBH Pr	(2)	H Hirschberg, H Schwartz, Jackson & Curtis, T. H. Benton
NCM	(6)	Barrett & Co.
NCR	(12)	M J. Meehan & Co.
NEB	(8)	Morris Joseph & Co, W P. Blagden
NEP	(14)	Cowen & Co
NFK	(10)	Hewitt, Lauderdale & Co.
NFK Pr	(30)	Miller & Dodge
NGL	(2)	B H. Roth & Co, J. G. Hall, W. I Spiegelberg, Harde & Ellis, R. W. O'Brien, E F O'Brien
NKP	(5)	Wallis S. Turner
NKP Pr	(5)	Wallis S Turner
NL	(30)	Miller & Dodge
NML	(4)	Moore & Schley
NNX	(30)	Miller & Dodge
NOX	(30)	Miller & Dodge

## STOCKS—Continued

Abbrn	Post	Specialists
NP	(7)	Albert Fried & Co, Charles E Clapp, Jr., Howard F. Hickie, Andrews, Posner & Rothschild
NPL	(13)	Stevens & Legg, B L Mensch, Filer & Co.
NPT	(8)	H. H. Sonn
NRT	(5)	D T. Moore & Co, E C Rollins
NRT Pr	(30)	Miller & Dodge
NRV Pr	(15)	Hedge & Price
NS	(11)	C. O. Mayer, Jr, S. B Blumenthal, J. V. Bouvier, 3d, F Dietrich & Co
NSB	(15)	Carreau & Snedeker, J J Ahern, McGough & Schuman, Cecil Lyon, Sneekner & Heath
NSB Pr	(30)	Miller & Dodge
NSC	(16)	Morris & Co, C M Fair, A P. Vesce
NSC Pr	(30)	Miller & Dodge
NSM VI Pr	(30)	Miller & Dodge
NSM VII Pr	(30)	Miller & Dodge
NSS	(9)	Nash & Co.
NSU	(3)	O. S. Campbell, Leo Kaufmann, Schafer Bros.
NTY	(16)	F V Foster & Co, Leo Friede, Harry Anderson
NW	(14)	Carreau & Snedeker, Lew Wallace & Co., Smith & Gallatin
NW Pr	(14)	Carreau & Snedeker, Lew Wallace & Co., Smith & Gallatin
NWT	(30)	Miller & Dodge
NX	(6)	Peter J. Maloney & Co, Stokes, Hoyt & Co, M. H. Russell, E C Coultrey
NX Pr	(30)	Miller & Dodge
NYK	(2)	B H Roth & Co, W I Spiegelberg

## O

OB	(13)	Adler, Coleman & Co
OF	(14)	Alhson Stern & Co
OF P Pr	(14)	Allison Stern & Co
OHO	(14)	Henry Goldman, Jr
OM	(30)	Miller & Dodge
OM Pr	(30)	Miller & Dodge
OPS	(3)	A G Somers, Leonard Schafer, W E. O. Bebee
OR	(5)	Vaughan & Co
OST	(3)	James Sheridan
OST P Pr	(3)	James Sheridan
OT	(3)	A. G Somers, Leonard Schafer, W E. O. Bebee
OT Pr	(30)	Miller & Dodge
OTU	(30)	Miller & Dodge
OTU Pr	(30)	Miller & Dodge
OW	(2)	T H Benton, Jackson & Curtis

## P

P	(14)	S Rheinheim, H H Weekes, T S Young, N. Gunn
PA	(5)	Vaughan & Co
PAC	(30)	Miller & Dodge
PAC Pr	(30)	Miller & Dodge
PAE	(6)	Burnside & Co, Richards, Hume & Heffernan, Baar, Cohen & Co
PAK	(7)	F. H. Douglas & Co
PB	(1)	Gaines & Company
PC	(14)	Finch, Wilson & Co, A R Bishop
PC Pr	(14)	Finch, Wilson & Co, A R. Bishop
PCG	(8)	J Rutherford, Blumenthal Bros, M. Smith Davis
PCO	(3)	A G Somers, Leonard Schafer, W E. O. Bebee
PCX	(30)	Miller & Dodge
PCX I Pr	(30)	Miller & Dodge
PCX II Pr	(30)	Miller & Dodge
PDF	(12)	Wright & Sexton, A. J. Vogel

## STOCKS—Continued

Abbrn	Post	Specialists
PDF Pr	(30)	Miller & Dodge
PDG	(5)	G. H. Wilder, H. S. Sternberger, Toolin & Co.
PDG Pr	(30)	Miller & Dodge
PDO	(6)	Burnside & Co., Richards, Hume & Heffernan, Baar, Cohen & Co
PE	(5)	Chauncey & Co
PEG V Pr	(4)	Van Wyck & Sterling, Elder & Co., Hyman & Co., J. F. Nick & Co.
PEJ	(13)	Adler, Coleman & Co
PEJ Pr	(13)	Adler, Coleman & Co
PEO	(10)	Morgan, Howland & Co., Eric H. Marks, W. H. Goadby & Co.
PET	(12)	Wright & Sexton, A. J. Vogel
PF	(14)	Finch, Wilson & Co., A. R. Bishop
PFK	(11)	H Boulton, D S Jackson
PFN	(9)	Nash & Co
PFN Pr	(30)	Miller & Dodge
PFS	(15)	C F Henderson & Sons
PG Pr	(30)	Miller & Dodge
PGM	(2)	H. Zuckerman & Co., Hedberg & Koppisch, C. F. Watson, Jr., W. Wallace Lyon & Co.
PGM Pr	(30)	Miller & Dodge
PH VI Pr	(5)	Chauncey & Co.
PH VI Pr N	(5)	Chauncey & Co
PIT	(17)	H. I. Luber
PJ	(17)	Granberry & Co., Sydeman Bros
PJ Pr	(30)	Miller & Dodge
PKT	(17)	H. Liberman, S Stone
PLT	(9)	E C Anness, W Hirshon, S. Johnson, W. H. Goadby & Co
PMY	(30)	Miller & Dodge
PO	(5)	G. H Wilder, H. S Sternberger, Toolin & Co.
POL	(10)	Hume & Thompson, Berg, Eyre & Kerr
POL Pr	(10)	Hume & Thompson, Berg, Eyre & Kerr
POR	(7)	Albert Fried & Co., Charles E Clapp, Jr., Andrews Posner & Rothschild, Howard F Hickie
PP	(1)	B R Ruggles
PPI	(9)	McWilliam, Wainwright & Luce
PPT	(14)	Smith & Gallatin
PPT Pr	(30)	Miller & Dodge
PPX	(13)	Adler, Coleman & Co
PQ	(11)	Bramley & Smith, Benjamin & Ferguson, A Gwynne, V H Brown
PQ Pr	(11)	Bramley & Smith, Benjamin & Ferguson, A Gwynne, V H Brown
PQR	(11)	Bramley & Smith, Benjamin & Ferguson, A. Gwynne, V H Brown
PRC	(10)	Hume & Thompson, Berg, Eyre & Kerr
PRL	(2)	Harde & Ellis, J G Hall, B H. Roth & Co., W I Spiegelberg, R W O'Brien, E F O'Brien
PRT A	(13)	Adler, Coleman & Co
PRT B	(13)	Adler, Coleman & Co
PSL	(12)	Siegel & Co
PSL Pr	(12)	Siegel & Co
PSS	(6)	Brown & Gruner
PST Pr	(9)	Raymond Sprague
PSU	(15)	C F Henderson & Sons
PSU Pr	(30)	Miller & Dodge
PSY	(16)	Morris & Co., C M Fair, A P Vesce
PT	(30)	Miller & Dodge
PTE	(9)	McWilliam, Wainwright & Luce, E R Tweedy, R. G Conried, Leopold Spingarn & Co.
PTH	(17)	M Mensch

## STOCKS—Continued

Abbrn	Post	Specialists
PTH A	(17)	Neville G Hart & Co , F Mayer
PTT	(30)	Miller & Dodge
PTT SPL	(30)	Miller & Dodge
PTY	(14)	Fransoli & Wilson
PU	(9)	Homans & Co
PUB	(4)	Van Wyck & Sterling, Elder & Co , Hyman & Co , J F Nick & Co
PUB V Pr	(4)	Van Wyck & Sterling, Elder & Co , Hyman & Co , J F Nick & Co
PUB VI Pr	(4)	Van Wyck & Sterling, Elder & Co , Hyman & Co., J F. Nick & Co
PUB VII Pr	(4)	Van Wyck & Sterling, Elder & Co., Hyman & Co . J F. Nick & Co
PUB VIII Pr	(4)	Van Wyck & Sterling, Elder & Co , Hyman & Co , J F. Nick & Co
PUC	(14)	Allison Stern & Co
PUN	(12)	Wright & Sexton, A J Vogel.
PUN Pr	(30)	Miller & Dodge
PUY	(5)	Chauncey & Co
PUY Pr	(30)	Miller & Dodge
PV	(30)	Miller & Dodge
PV Pr	(30)	Miller & Dodge
PVX	(16)	Morris & Co , C M Fair, A P Vasce
PW	(2)	Harde & Ellis, J G Hall, B H Roth & Co , W. I. Spiegelberg, Jr , R W O'Brien, E F O'Brien
PWO	(1)	B R Ruggles
PX	(14)	S Rheinstein, H H Weekes, T S Young, N. Gunn
PXC	(16)	Moss, Ferguson & Kerngood,
PXC Pr	(16)	Moss, Ferguson & Kerngood
PXY	(30)	Miller & Dodge
PXY Pr	(30)	Miller & Dodge
PYA Pr	(30)	Miller & Dodge
PYO	(3)	F J Connelly & Co , Stewart & Co.
PZ	(8)	Morris Joseph & Co , W P. Blagden
PZ Pr	(8)	Morris Joseph & Co , W P. Blagden

## Q

QW	(13)	Adler, Coleman & Co
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## R

R	(12)	M J Meehan & Co
R Pr	(12)	M J Meehan & Co
R Pr B	(12)	M. J Meehan & Co
RAY	(14)	Finch, Wilson & Co , A R Bishop
RBC	(16)	F V Foster & Co , Leo Freide, Harry Anderson
RBC Pr	(16)	F V Foster & Co , Leo Freide, Harry Anderson
RD	(5)	D T Moore & Co , E C. Rollins
RDG	(15)	A Zucker
RDG I Pr	(15)	A Zucker
RDG II Pr	(15)	A Zucker
RDL	(10)	N D Biddison
REY	(30)	Miller & Dodge
REY B	(11)	Arthur Barnwell & Co , D. S Jackson, H. Boulton
RI	(5)	Wallis S Turner
RI VI Pr	(5)	Wallis S Turner
RI VII Pr	(5)	Wallis S Turner
RIS	(5)	D T Moore & Co , E C Rollins
RIS I Pr	(30)	Miller & Dodge
RKO	(12)	M. J Meehan & Co
RLM	(8)	Reynolds & Co
RNO	(1)	Scholle Bros , W H. Bade
RNS	(30)	Miller & Dodge
ROS	(16)	Fellowes Davis & Co., H. G. Campbell & Co
RR	(10)	Hewitt, Lauderdale & Co.

## STOCKS—Continued

Abbrn.	Post	Specialists
RR I Pr	(10)	Hewitt, Lauderdale & Co
RR II Pr	(30)	Miller & Dodge
RSA	(10)	Hewitt, Lauderdale & Co
RSH	(14)	Allson Stern & Co.
RSH Pr	(30)	Miller & Dodge
RSY	(9)	Raymond Sprague
RU	(10)	Ely & Son
RU I Pr	(10)	Ely & Son
RV Pr	(14)	Smith & Gallatin
RVB	(6)	V. C. Brown & Co
RVB A	(6)	V. C. Brown & Co
RVB Pr	(30)	Miller & Dodge
RWE	(15)	La Branche & Co., J. V. Dunne & Co., E. M. Bloch, F. X. Deery
RX	(5)	Vaughan & Co
RY	(17)	Granberry & Co., Sydeman Bros
S		
S	(9)	Raymond Sprague
SA	(11)	A. Eckstein, E. S. Hatch, J. M. Hynes
SAF	(14)	Spear & Leeds
SAF VI Pr	(30)	Miller & Dodge
SAF VII Pr	(30)	Miller & Dodge
SB	(8)	Blumenthal Bros., M. Smith Davis, J. Rutherford
SB Pr	(8)	Blumenthal Bros., M. Smith Davis, J. Rutherford
SBD	(8)	C. Levis
SBD Pr	(8)	C. Levis
SBM Pr	(30)	Miller & Dodge
SCD	(15)	Wilcox & Co
SCE	(9)	McWilliam, Wainwright & Luce, E. R. Tweedy
SCH	(30)	Miller & Dodge
SCH Pr	(30)	Miller & Dodge
SCX	(13)	Adler, Coleman & Co
SD A	(14)	Smith & Gallatin
SD B	(14)	Smith & Gallatin
SDH	(10)	Ely & Son
SDH Pr	(10)	Ely & Son
SDT	(5)	G. H. Wilder, H. S. Sternberger, Toolin & Co.
SEN	(10)	N. D. Biddison
SEO Pr	(11)	H. Boulton, D. S. Jackson
SG	(10)	N. D. Biddison
SG Pr	(10)	N. D. Biddison
SG VI Pr	(10)	N. D. Biddison
SG VII Pr	(10)	N. D. Biddison
SH	(30)	Miller & Dodge
SHN	(16)	Wagner, Stott & Co., J. Robinson-Duff Co.
SHO	(17)	H. Liberman, S. Stone
SHO Pr	(30)	Miller & Dodge
SI	(7)	B. H. Brinton, R. W. P. Barnes, W. C. Morck, E. H. H. Simmons & Co
SIM	(16)	Morris & Co., C. M. Fair, A. P. Vesce
SK	(16)	C. H. Jones
SKL	(1)	B. R. Ruggles
SKW	(14)	Cowen & Co.
SLG	(7)	Albert Fried & Co., Charles E. Clapp, Jr., Howard F. Hickie, Andrews, Posner & Rothschild
SLG Pr	(7)	Albert Fried & Co., Charles E. Clapp, Jr., Howard F. Hickie, Andrews, Posner & Rothschild
SLG CV Pr	(7)	Albert Fried & Co., Charles E. Clapp, Jr., Howard F. Hickie, Andrews, Posner & Rothschild
SLS	(14)	Smith & Gallatin
SLS Pr	(30)	Miller & Dodge
SMS	(7)	Spero & Co.
SNI	(3)	Howard R. Stone, Bond McEnany & Co., David V. Morris

## STOCKS—Continued

Abbrn.	Post	Specialists
SNI Pr	(3)	Howard R Stone, Bond McEnany & Co., David V. Morris
SNR	(16)	Fellowes Davis & Co , H G Campbell & Co.
SNU	(13)	Adler, Coleman & Co
SNU Pr	(30)	Miller & Dodge
SO Pr WW	(7)	F. H Douglas & Co
SOV	(11)	Bramley & Smith, Benjamin & Ferguson, A. Gwynne, V. H Brown
SPC	(16)	J Robinson-Duff & Co , Wagner, Stott & Co.
SPP	(30)	Miller & Dodge
SRM	(16)	E L Norton
SS	(10)	Morgan, Howland & Co , Eric H. Marks, W. H. Goaby & Co
SS Pr	(30)	Miller & Dodge
SSH	(14)	Fransoli & Wilson
SST	(30)	Miller & Dodge
SST Pr	(30)	Miller & Dodge
SSU	(12)	Siegel & Co
SSY	(10)	H W. Goldsmith & Co
SSY Pr	(30)	Miller & Dodge
ST	(1)	D L Norris
ST Pr	(1)	Gaines & Company
STU	(2)	H I Nicholas, H. M Dreyfus
STU Pr	(30)	Miller & Dodge
STX	(1)	Lowell & Son
STY	(2)	Taylor & Delany, Auerbach, Pollak & Richardson, J. L. Worden
SUH	(15)	Barbee & Co
SUN	(16)	Moss, Ferguson & Kerngood
SUN Pr	(30)	Miller & Dodge
SUX	(15)	A Zucker
SUX Pr	(15)	A Zucker
SV	(13)	Stevens & Legg, B L Mensch, Filer & Co.
SVE	(12)	Wright & Sexton, A J Vogel
SVG	(15)	Barbee & Co
SVL	(14)	Carreau & Snedeker, Lew Wallace & Co., Smith & Gallatin
SW	(3)	Stewart & Co , T F Scholl, Jr.
SWA	(12)	Siegel & Co
SX	(4)	Van Wyck & Sterling, Elder & Co., Hyman & Co., J F. Nick & Co , Myron Schafer
SYE	(16)	Fellowes Davis & Co , H G. Campbell & Co
SYE Pr	(16)	Fellowes Davis & Co , H G Campbell & Co.
SYZ	(3)	O S Campbell, Leo Kaufmann, Schafer Bros
SYZ A	(3)	O S Campbell, Leo Kaufmann, Schafer Bros.
SZ	(3)	Howard R Stone, Bond, McEnany & Co., David V. Morris, H J Lamm
SZ Pr	(3)	Howard Stone, Bond, McEnany & Co., David V Morris

## T

T	(15)	LaBranche & Co , J V Dunne & Co , E M Bloch, F X Deery
TA	(3)	F J Connelly & Co , Stewart & Co.
TAV	(5)	Shuman & Co , Edwin Weisl & Co
TCC	(13)	Adler, Coleman & Co
TCL	(9)	R G Conried, Leopold Spingarn & Co.
TCL Pr	(9)	R G Conried, Leopold Spingarn & Co
TCO	(16)	Fellowes Davis & Co , H G Campbell & Co
TCR	(9)	R G Conried, Leopold Spingarn & Co
TCR CV Pr	(9)	R G Conried, Leopold Spingarn & Co
TDX	(12)	Wright & Sexton, A J Vogel
TES	(15)	Hedge & Price
TF	(17)	Granberry & Co , Sydeman Bros
TF Pr	(30)	Miller & Dodge

## STOCKS—Continued

Abbrn	Post	Specialists
TG	(11)	C O Mayer, Jr, S B Blumenthal, J V. Bouvier, 3d, F Dietrich & Co
THM	(16)	Moss, Ferguson & Kerngood
THO	(6)	Joel G Cahn
THR	(8)	Reynolds & Co
TKR	(15)	C F Henderson & Sons
TNI	(17)	Neville G Hart & Co, F. Mayer
TP	(15)	LaBranche & Co, J V Dunne & Co, E M Bloch, F X Deery
TRC	(13)	Adler, Coleman & Co
TST	(8)	Reynolds & Co
TST Pr	(8)	Reynolds & Co
TU	(10)	Leeds Johnson
TUX	(2)	T H Benton, Jackson & Curtis
TV	(11)	E S Hatch, J M Hynes, A Eckstein
TV Pr	(11)	E S Hatch, J M Hynes, A Eckstein
TV N	(11)	A Eckstein
TV Pr N	(11)	E S Hatch, J M Hynes
TWC	(11)	C B Spears
TWC Pr	(30)	Miller & Dodge
TX	(3)	O S Campbell, Leo Kaufmann, Schafer Bros
TXL	(6)	Barrett & Co
TXL OLD	(6)	Barrett & Co
TXY	(5)	D T Moore & Co, E C Rollins
TY	(7)	P B Leavitt, Benjamin, Hill & Co, F H Douglas & Co
TY Pr	(30)	Miller & Dodge
TZ	(13)	Adler, Coleman & Co
U		
U	(2)	T H Benton, H M Dreyfus, H I. Nicholas, Jackson & Curtis
U Pr	(2)	H M Dreyfus, H I Nicholas
UAF	(1)	L Livingston, Benj Jacobson & Co.
UAF Pr	(1)	Benj Jacobson & Co
UBO	(15)	Carreau & Snedeker, Cecil Lyon, Sneckner & Heath
UBO Pr	(30)	Miller & Dodge
UBS	(3)	A G Somers, Leonard Schafer, W E O Bebee
UBS Pr	(30)	Miller & Dodge
UCB	(7)	Albert Fried & Co, Charles E Clapp, Jr, Howard F. Hickie, Andrew, Posner & Rothschild
UCL	(12)	Wright & Sexton, A J Vogel
UD	(6)	Brown & Gruner, V C Brown & Co, J T Berdan
UDS A	(14)	B H & F W Pelzer
UDS Pr	(14)	B H & F W Pelzer
UDY	(30)	Miller & Dodge
UDY Pr	(30)	Miller & Dodge
UE	(30)	Miller & Dodge
UEL	(17)	H I Luber
UF	(6)	Peter J Maloney & Co, Stokes, Hoyt & Co, M H. Russell, E C Coultry
UFG	(14)	Fransoli & Wilson
UFO	(5)	D T Moore & Co, E C Rollins
UFO Pr	(5)	D T Moore & Co, E C Rollins
UGI	(7)	Spero & Co, Stackpole & Buchanan
UGI Pr	(7)	Stackpole & Buchanan
ULA	(12)	M J Meehan & Co
ULE	(16)	Engel & Co
UM	(16)	Fellowes Davis & Co, H G Campbell & Co
UM Pr	(16)	Fellowes Davis & Co, H G Campbell & Co
UN	(8)	J Bliss
UND	(6)	Stokes, Hoyt & Co, Peter J Maloney & Co, M H. Russell, E C Coultry
UNX	(4)	Myron Schafei

## STOCKS—Continued

Abbrn	Post	Specialists
UNX Pr	(30)	Miller & Dodge
UP	(9)	E C Anness, W Hirshon, S Johnson, W. H Goadby & Co
UP Pr	(2)	Harold Hirschberg, Herman Schwartz
USG	(1)	B R Ruggles
USG Pr	(30)	Miller & Dodge
USX	(9)	Homans & Co
UTX	(15)	La Branche & Co, J V Dunne & Co, E M Bloch, F X Deery
UV	(10)	Hume & Thompson, Berg, Eyre & Kerr
UV Pr	(10)	Hume & Thompson, Berg, Eyre & Kerr
UVP Pr	(30)	Miller & Dodge
UVV	(1)	Scholle Brothers
UVV Pr	(30)	Miller & Dodge
UVX	(17)	Corhes & Booker
UVX Pr	(30)	Miller & Dodge
UW	(14)	Henry Goldman, Jr
UW Pr	(30)	Miller & Dodge
UZ	(11)	A Eckstein, E S Hatch, J M. Hynes

## V

V	(9)	Raymond Sprague
V Pr	(9)	Raymond Sprague
VA	(15)	Wilcox & Co
VAD	(16)	Morris & Co, C M Fair, A P Vesce
VAD Pr	(16)	Morris & Co, C M Fair, A P. Vesce
VC	(13)	adler, Coleman & Co
VC VI Pr	(13)	Adler, Coleman & Co
VC VII Pr	(13)	Adler, Coleman & Co
VE VI Pr	(30)	Miller & Dodge
VIK	(14)	Allson Stern & Co
VK	(30)	Miller & Dodge
VK Pr	(30)	Miller & Dodge
VKS	(30)	Miller & Dodge
VKS Pr	(30)	Miller & Dodge
VRT	(30)	Miller & Dodge
VRT Pr	(30)	Miller & Dodge
VX	(30)	Miller & Dodge
VX Pr	(30)	Miller & Dodge

## W

W	(8)	Morris Joseph & Co, W P. Blagden
WA	(3)	O. S Campbell, Leo Kaufmann, Schafer Bros.
WA Pr A	(3)	O S Campbell, Leo Kaufmann, Schafer Bros
WA Pr B	(3)	O S Campbell, Leo Kaufmann, Schafer Bros
WAC	(30)	Miller & Dodge
WAG Pr	(30)	Miller & Dodge
WAL	(6)	Barrett & Co
WAR	(3)	C Griffen
WAR I Pr	(30)	Miller & Dodge
WAR CV Pr	(30)	Miller & Dodge
WB	(16)	F. V Foster & Co, Leo Friede, Harry Anderson
WB Pr	(16)	F V Foster & Co, Leo Friede, Harry Anderson
WBS	(12)	Siegel & Co.
WBS Pr	(30)	Miller & Dodge
WCO	(3)	F J Connelly & Co, Stewart & Co
WD A	(9)	Nash & Co
WD B	(9)	Nash & Co
WD Pr	(9)	Nash & Co
WEP A	(30)	Miller & Dodge
WEP VI Pr	(30)	Miller & Dodge
WEP VII Pr	(30)	Miller & Dodge
WF	(30)	Miller & Dodge
WFP	(10)	N. D. Biddison
WHI	(30)	Miller & Dodge



## STOCKS—Continued

Abbrn	Post	Specialists
WHR	(11)	H Boulton, D S Jackson
WHX	(17)	Granberry & Co, Sydeman Bros
WHX Pr	(17)	Granberry & Co, Sydeman Bros
WIL	(13)	Adler, Coleman & Co
WIL A	(13)	Adler, Coleman & Co
WIL Pr	(13)	Adler, Coleman & Co.
WKM	(7)	P B Leavitt, Benjamin, Hill & Co, H. F Douglas & Co
WL	(30)	Miller & Dodge
WL Pr	(30)	Miller & Dodge
WLX A	(16)	Fellowes Davis & Co, H G Campbell & Co
WM	(6)	V C Brown & Co
Wm II Pr	(6)	V C Brown & Co
WNO	(6)	Burnside & Co, Richards, Hume & Heffernan, Baar, Cohen & Co
WNO Pr	(6)	Burnside & Co, Richards, Hume & Heffernan, Baar, Cohen & Co
WPP VI Pr	(30)	Miller & Dodge
WPP VII Pr	(30)	Miller & Dodge
WPU	(10)	Hewitt, Lauderdale & Co
WPU Pr A	(10)	Hewitt, Lauderdale & Co
WPU Pr B	(10)	Hewitt, Lauderdale & Co
WR	(2)	Harde & Ellis, J G Hall, B H Roth & Co, W I. Spiegelberg, R W O'Brien E F O'Brien
WR Pr	(2)	Harde & Ellis, B H Roth & Co, J. G Hall, W I. Spiegelberg, R W O'Brien, E F O'Brien
WSW	(17)	Corlies & Booker
WSW Pr	(17)	Corlies & Booker
WWY	(17)	Neville G Hart & Co, F Mayer
WX	(15)	Carreau & Snedeker, J J Ahern, McGough & Schuman, Cecil Lyon, Sneekner & Heath
WX I Pr	(30)	Miller & Dodge
WXC	(13)	Stevens & Legg, B L Mensch, Filer & Co.
WXY	(8)	J K Cloud, Tefft & Co
WY	(6)	V C Brown & Co
WY Pr	(6)	V C Brown & Co.
WYY A	(2)	H. Hirschberg, H Schwartz, Jackson & Curtis, T. H. Benton
WYY B	(2)	H Hirschberg, T H Benton, H. Schwartz, Jackson & Curtis
WZ	(11)	H Boulton, D S Jackson
WZ A	(11)	H Boulton, D S Jackson
X		
X	(2)	J L Worden, E L Cohen, Auerbach, Pollak & Richardson, Taylor & Delany
X Pr	(1)	Lowell & Son
XA	(5)	D T Moore & Co, E C Rollins
XA Pr	(5)	D T Moore & Co, E C Rollins
Y		
YA	(3)	A G Somers, Leonard Schafer, W E O Bebee
YB	(13)	Stevens & Legg, B L Mensch, Filer & Co
YC	(5)	Brandenburg & Co
YC Pr	(30)	Miller & Dodge
YG	(3)	F J Connelly & Co, Stewart & Co
Z		
Z	(11)	Cyril de Cordova & Bro, C H Murphey & Co, C H Theriot
ZA	(7)	Albert Fried & Co, Charles E Clapp, Jr, Howard F Hickie, Andrews, Posner & Rothschild
ZA Pr	(7)	Albert Fried & Co, Charles E Clapp, Jr, Howard F Hickie, Andrews, Posner & Rothschild
ZE	(1)	Lowell & Son
ZP	(4)	Peter P McDermott & Co

## SCHEDULE A

## DECEASED MEMBERS

John Kerr Branch, Oliver B. Bridgman, Walter Content, Arthur C. Crunden, John F. L. Curtis, Percy R. Goepel, Charles W. MacQuoid, Hugh A. Murray, Claude C. Pinney, Adams C. Sumner.

## SUSPENDED FOR INSOLVENCY

Walker P. Hall

## SUSPENDED FOR CAUSE

Alexander J. Robertson.

## INACTIVE MEMBERS

Abraham, Otto, 120 Broadway, Acosta, Julian A., 60 Beaver St.; Adams, Kenneth S., Hartford, Conn.; Altschul, Frank, 19 Nassau St., Auchincloss, Charles C., 39 Broadway; Auchincloss, Hugh D., Washington, D. C.

Baker, William G., Jr., Baltimore, Md.; Ballard, Eugene, Hartford, Conn.; Bamberger, Harry, 39 Broadway; Bamberger, L. Richard, 25 Broadway; Bamberger, Max, 15 Broad Street, Baruch, Bernard M., Jr., 60 Beaver St.; Baruch Sailing W., 60 Beaver St.; Bean, Chas. H., Philadelphia, Pa.; Beaver, William H., Philadelphia, Pa.; Bennett, Edward S., Detroit, Michigan, Bennett, James E., 25 Beaver St.; Bernheimer, Edwin E., 1 Wall St.; Bissell, George P., 120 Broadway; Bissinger, McKinley, San Francisco, Cal.; Bodell, Frederick, Providence, R. I.; Bowen, James W., Boston, Mass.; Brewster, Walter S., Chicago, Ill.; Bright, Elmer H., Boston, Mass.; Bright, Wm. Ellery, Boston, Mass.; Brody, L. J., Stephen, Buffalo, N. Y.; Butcher, Howard, Jr., Philadelphia, Pa.

Cabell, Henry L., Richmond, Va.; Carstairs, James, Philadelphia, Pa.; Chambers, Henning, Louisville, Ky.; Chapman, John D., 52 Broadway; Clark, E. W., Philadelphia, Pa.; Clark, Russell, 40 Wall St.; Colgate, James C., 44 Wall St.; Collin, Harry E., Toledo, Ohio; Cooley, Francis B., Hartford, Conn.; Courts, R. W., Jr., Atlanta, Ga.; Cox, Charles W., 48 Wall St.

Davis, Foster B., Providence, R. I.; Dick, Fairman R., 30 Pine St.; Diffenderfer, Charles H., Philadelphia, Pa.; Dixon, George Dallas, Jr., Philadelphia, Pa.; Dulles, Heatly C., Philadelphia, Pa.; Du Pont, Francis I., 1 Wall St.; Durand, Celestin A., 30 Broad St.

Edwards, Ogden M., Jr., Pittsburgh, Pa.; Elkins, William M., Philadelphia, Pa.; Epstein, Gustav, San Francisco, Cal.

Fahnestock, William, 1 Wall St.; Farrell, Maurice L., 15 Broad St.; Fehlemer, Marcus, Cincinnati, Ohio; Ferguson, William, Boston, Mass.; Fitzsimons, William J., Chicago, Ill.; Ford, Donald, 115 Broadway; Forrest, Maulsby, 38 Wall St.; Foster, H. Elbert, Jr., 2 Wall St.; Francis, J. D. Perry, St. Louis, Mo.; Freed, Theodore M., Philadelphia, Pa.

Gardner, W. Allan, Buffalo, N. Y.; Glazier, Henry S., 24 Broad St.; Glendinning, R., Philadelphia, Pa.; Goodhart, A. E., 24 Broad St.; Gould, Frank Jay, 165 Broadway; Gould, Howard, 160 Broadway; Gradison, Willis D., Cincinnati, Ohio; Griswold, Alexander Brown, Baltimore, Md.

Hayden, Charles, 25 Broad St.; Haynes, Raymond B., 120 Broadway; Hazlett, Harry C., Wheeling, W. Va.; Hernon, William S., 76 William St.; Hibbs, Wm. B., Washington, D. C.; Hill, Charles Willard, 1 Wall St.; Hilliard, Isaac, Louisville, Ky.; Hogle, James A., Salt Lake City, Utah; Hopwood, Robert G., Minneapolis, Minn.; Hough, Harry P., 1 Wall St.; Hovey, Chandler, 17 Wall St.; Howell, Thomas M., Chicago, Ill.

Ickelheimer, Henry R., 49 Wall St.; Iselm, Ernest, 40 Wall St.

Johnson, Walter L., 14 Wall St.; Jones, Elliott L., Washington, D. C.

Kemp, George S., Richmond, Va.; Kenly, Perry H., Chicago, Ill.; Kepplet, Emil A. C., 277 Park Ave.; King, Gilbert L., 25 Broadway; King, Herbert George, 32 Broadway; King, Nathaniel, Newark, N. J.; Kohler, Clarence E., 48 Wall St.; Kollstede, Chas. A., 115 Broadway.

Ladd, Wm. F., 502 Park Ave.; Lamson, Warren A., Chicago, Ill.; Lanahan, Wm. Wallace, Baltimore, Md.; Lauer, Wm. E., 50 Broadway; Lee, George C., 37 Broad St.; Legg, John C. Jr., Baltimore, Md.; Lehman, Robert, 1 William St.; Lewisohn, Frederick, 11 Broadway; Lewisohn, Sam A., 61 Broadway; Loew, W. G., 2 Wall Street; Lyons, Samuel Clay, Louisville, Ky.

MacCrone, Edward E., Detroit, Mich.; MacDonald, Robert Jr., Philadelphia, Pa.; MacMeekin, James A. S., Philadelphia, Pa.; Malo, Oscar L., Denver, Colo.; Marks, Laurence M., 49 Wall St.; Marshall, James A. K., 20 Pine St.;

Masten, Fred C, Pittsburg, Pa.; Mayer, Joseph G, 74 Trinity Place; McConnell, Howard F., 60 Wall Tower, McKeon, John J New Haven, Conn; Miller, E. Clarence, Philadelphia, Pa, Mitchel, O MacKnight, Jr, 65 Broadway; Mixer, Samuel, Boston, Mass; Mohrman, P. Christopher, 1 Wall Street; Moore, J. Clark, Jr, Philadelphia, Pa; Morgan, J P, 23 Wall Street; Morgan, Junius S, 23 Wall Street

Noyes, David A, Chicago, Ill, Nuttall, Richard V, Pittsburgh, Pa.

O'Neill, Grover, 20 Exchange Place

Parker, Dale M, 25 Broad St, Peckham, Henry A, 40 Wall St.; Perkins. Erickson, Rochester, NY; Perkins, Thomas L, 37 Wall St, Pigeon, Richard 40 Wall St; Post, Geo B, Jr, 49 Broad St; Potter, Clarkson, 25 Broad St.; Pressprich, Reginald W, 68 Wilham St, Prince, Fred'k H, Boston, Mass; Putnam, Wilham Hutchinson, Hartford, Conn.

Raiss, Carl, San Francisco, Cal, Reeves, Edward J, 61 Broadway; Richards, Ralph S, Pittsburgh, Pa, Robertson, Charles E, 120 Broadway; Rockefeller, J. D 30 Rockefeller Plaza, NYC, Rockefeller, Percy A, 25 Broadway; Rollins, G Edward, 52 Broadway, Roosevelt, Nicholas G, Philadelphia, Pa. Rosenthal, Paul, M, 25 Broad St

Schuff, John M, 52 William St; Schmidt, Oscar C, Philadelphia, Pa; Scott, Frederic W, Richmond, Va, Seligman, Jefferson 54 Wall St; Sellers, Russell J, Philadelphia, Pa; Simpson, George S, 1 Wall St; Sincere, Charles Chicago, Ill, Sisto, Joseph A, 68 Wall St; Stebbins, Ernest Vail, 42 Broadway; Stetson, John B, Jr, Philadelphia, Pa; Stoddard, Henry D, Bridgeport, Conn, Streeter, Robert L, 2 Wall St

Tenney, Rockwell C, Boston, Mass; Thaw, Lawrence Copley, 20 Pine St.; Thorne, Francis B, 120 Broadway; Trimble, James K, Philadelphia, Pa; Turnbull, Arthur, 49 Broad St.; Turner, C J, 150 Broadway; Turnure, George E., 64 Wall St.

Wadsworth, W. B., 1 Wall St; Westheimer, Irvin F., Cincinnati, Ohio; Weymouth, George T, Wilmington, Del; Wheeler, Arthur E, 48 Wall St; Whitney, C. Handasyde, Boston, Mass; Wilson, Herbert R, Toledo, Ohio; Winsor, James D, Jr., Philadelphia, Pa; Winthrop, Robert, 48 Wall St; Wollman, William J., 120 Broadway; Wood, Alexander C, Jr., Philadelphia, Pa; Wood, Langdon B., Buffalo, N Y; Wood, Wilus D, 63 Wall St.; Wortham, Coleman, Richmond, Va; Wright, Albert J., Buffalo, N Y

Yarnall, Alexander C., Philadelphia, Pa.

SCHEDULE B

K 3 Give names of all Specialists who have been subjected to formal warning, trial, or disciplinary action of any nature or character whatsoever by any committee or governing body of the Exchange for the period from January 1, 1928 to September 1, 1933. In each case state the date, the nature of the alleged violation and the disposition thereof.

Answer.—

GOVERNING COMMITTEE

Date	Name	Nature of alleged violation	Disposition
1/11/28	Raymond J Schweizer	See answer to M-3	See M-3
6/25/28	E H Stern	See answer to M-3	See M-3
11/14/28	A J Feuchtwangner	Alleged undesirable partnership	At hearing, 11/30/28, partnership was announced dissolved and Mr Feuchtwangner censured
9/10/30	Howard Boulton	Boulton was a specialist in Manhattan Electrical Supply and the Committee felt that he was negligent in not making sure that he was not being "used" in connection with alleged unethical practices There was no evidence, however, that Boulton was actually aware of the nature of the transactions or that he participated in any way therein	Appeared before Governing Committee on 9/17/30 and was censured
1/28/31	Philip L Smith	See answer to M-3	See M-3
1/28/31	Philip W Smith	See answer to M-3	See M-3
1/28/31	Henry M Wreszin	See answer to M-3	See M-3
2/4/28	Charles E Danforth	See answer to M-3	See M-3
2/4/28	Ralph Melson	See answer to M-3	See M-3
5/13/31	Mortimer W Loewi	Failed to use due diligence by making hasty execution of an order	Censured by Governing Committee
1/23/32	Franklin V Brodil	See answer to M-3	See M-3

## GOVERNING COMMITTEE—Continued

Date	Name	Nature of alleged violation	Disposition
6/22/32	A J Feuchtwanger ...	Feuchtwanger agreed to let another member know if 500 or more shares of Pan American B stock came in to sell below 34, and subsequently bought for his account 1,300 shares at 33, later selling 1,500 shares to the other member at 34 without telling him that he had purchased 1,300 shares at 33	There being a dispute as to the facts and as to whether, under the circumstances, he was responsible and as he made full restitution, the Committee did not object to his request that he be allowed to sell his membership
5/24/33	Joseph D Frankel.....	See answer to M-3.....	See M-3

## COMMITTEE OF ARRANGEMENTS

3/27/28	Charles E Titus.....	On floor in an unfit condition to transact business	Warned
4/3/28	Milton F Untermeyer..	Leaving his post without turning his books over to another member authorized to handle them	Written to
7/17/28	Cornelius Hearn, Jr....	Unjustified remarks regarding another member's trading	Ordered to apologize
2/5/29	Malcolm D B Hunter	Leaving his post without turning his books over to another member authorized to handle them	Written to
2/13/29	Ralph Ranlet.....	Other members unable to obtain splits	Ordered to keep sufficient personnel in office to handle business
3/19/29	Leon W Strauss.....	Obtaining preference in purchasing stock by stating that he had a buying order when, in fact, he was buying for his own account	Warned, Informed future infringement would be summarily dealt with
9/10/29	Chauncey & Co.....	Misuse of post telephone wire.....	Written to
11/1/29	Ralph Ranlet.....	Inadequacy of his facilities for handling book in American Telephone & Telegraph stock	Stock transferred to another post
11/1/29	Seymour Johnson, E C Anness	Inadequacy of their facilities for handling book in Royal Dutch Co stock	Stock transferred to another post
11/4/29	Chauncey & Co.....	Inadequacy of their telephone facilities..	Ordered to increase telephone facilities
11/4/29	Arthur Barnwell.....	Refusal to accept orders from Harris & Vose because a customer of theirs had used abusive language to him	Ordered to accept their orders
1/21/30	Morris Joseph.....	Request of Pierce Arrow Motor Car Co that its stock be assigned to a specialist other than Mr Joseph	Meeting arranged between Company officials and Mr Joseph, complaint dropped by Company.
6/24/30	Henry Steele Roberts..	Leaving post without turning over book to a member authorized to handle it, and allowing his clerk to confirm trades	Warned
9/2/30	R C Myles, Jr.....	Manner of execution of certain orders in International Telephone & Telegraph stock	Referred to Committee on Odd Lots and Specialists
10/21/30	E L Norton.....	Profane language used to an Exchange employee	Reprimanded and ordered to apologize
1/27/31	Carl Lewis.....	Complaint of National Surety Co regarding the manner in which its stock was handled by Mr Lewis	Stock transferred to another post
3/31/31	Alan Harcourt Black..	Improper language to an Exchange employee	Reprimanded
9/22/31	Harris & Fuller.....	Using post telephone wire for receiving orders	Wire disconnected for one month and firm fined \$250
2/23/32	Seymour Johnson.....	Printing sales on tape without proper authorization	Warned
3/15/32	Robert J Goldman.....	Throwing water on an Exchange employee	Fined \$100 and ordered to apologize
6/14/32	Lew Wallace & Co....	No one in office authorized to do business for firm	Warned
6/28/32	Muller & Dodge.....	Making a ten share transaction at a wide variation from preceding price	Warned to consult a member of the Committee in future cases
7/12/32	Robert L Cahill.....	Throwing torpedoes on Exchange floor..	Fined \$100 and reprimanded
10/25/32	O V Hedberg.....	Accepting an order not addressed to him	Warned
11/3/32	Muller & Dodge.....	Permitting Exchange employees at their post to deal in stocks located thereat	Censured
11/7/32	J D Frankel.....	Complaint of Loft, Inc, regarding certain transactions of Mr Frankel in its stock	Referred to Committee on Business Conduct
5/2/33	W W Vaughan.....	Objectionable language to another member	Reprimanded and ordered to apologize

COMMITTEE OF ARRANGEMENTS—Continued

Date	Name	Nature of alleged violation	Disposition
5/23/33	Joel G Cahn.....	Inadequate arrangements for handling his stocks	Warned
7/22/33	Schuyler Orvis.....	Neither he nor his authorized representative present on floor	Written to
8/8/33	Richard Conried.....	Bringing liquids on to Exchange floor.	Fined \$50
9/20/33	Leo Friede.....	Repeated lateness of his telephone clerk	Fined \$50

COMMITTEE ON BUSINESS CONDUCT

4/25/29	Richard P Worrall	Mr Richard P Worrall appeared and the committee, in discussing with him the complaint of Mr W B Fagan, considered at the previous meeting, advised him that when claim was made on him on April 1, 1929, for the delivery of 500 shares of Sinclair Consolidated Oil Corporation stock at 41½, delivery of it should have been for the account of the houses whose orders to sell at that price were next upon his book and that he should render a report on these 500 shares to such houses at this time. Mr Worrall stated that he would act accordingly and retired.	In which matter, the Secretary was directed to write Mr Fagan that his order to sell 500 shares of this stock at 41½ was not reached after effect was given to all of the stock sold at this price on the day stated by Mr Worrall, as specialist in the stock.
11/14/29	H Randolph Knowlton, J D Frankel, Myron Schafer	The following memoranda from the Committee on Odd Lots and Specialists, bearing in part upon the communication which the Committee directed be addressed to them at its meeting of October 31, 1929, were presented and acted upon as indicated (2, 3, and 4) Copies were submitted of letters addressed by that committee to Mr H Randolph Knowlton, Mr J D Frankel, and Mr Myron Schafer, with reference to the opening in National Biscuit Company stock on October 29, 1929, in Western Pacific stock on October 31, 1929, and in Underwood Elliott-Fisher Company stock on October 31, 1929 respectively, stating that a member of this Committee should be sent for before a stock is opened at a price which shows a marked advance or decline from the previous close, especially in cases where the Specialists contemplate taking or supplying stock at such opening.	The Committee determined to discuss with Mr Redmond the matter of issuing a circular on this subject.
11/25/29	Arthur Corlies.. . . .	Mr Arthur Corlies, of Messrs Corlies & Booker, appeared and was reproved for having effected an opening price of 2 in White Sewing Machine Corporation stock on October 29, 1929, representing a decline of 9½ points from the previous night's closing price.	Mr Corlies pleaded as his only explanation the stress of time and stated that he will always be so governed in the future, after which he retired.
12/5/30	Joseph D Frankel. . . .	Mr Joseph D Frankel, of Messrs J D Frankel & Company, specialists in Western Pacific common stock, appeared and outlined the condition which existed in this security on the morning of October 31, 1929, when an opening price of 33 was effected by him.	He was severely reproved for having made an opening at so wide a spread from the close on the previous night of 16¼, without having sent for a member of this Committee, cautioned to follow such a course in the future and warned that if he did not do so or participated in any other act warranting criticism, the conduct complained of would be reported to the Governing Committee. Mr Frankel retired.

## COMMITTEE ON ODD LOTS AND SPECIALISTS

Date	Name	Nature of alleged violation	Disposition
2/9/28	Allison L S Stern.....	Execution of order on February 7, 1928, in A M Byers Co stock for Hartshorne, Faies & Co	Allison L S Stern to pay \$50 to complainant
2/29/28	A V Filer.....	Filer offered stock in competition with Louchheim, knowing Louchheim had additional stock for sale	Filer to pay Louchheim \$112 50
5/9/28	William Stackpole, Cornelius A Simonson	Referred to Committee on Odd Lots and Specialists by Committee on Business Conduct for examination Sale of 100 shares of International Nickel stock on April 2, 1928, to Campbell, Starring & Co	Committee unable to fix time of arrival of buy order and so informed Committee on Business Conduct
6/11/28	Edwin H Stern.....	Transactions in Manhattan Shirt Co stock	Reported to Governing Committee
6/20/28	William T Starr.....	Erroneous report on sale of International Telephone & Telegraph stock on May 19, 1928	Mr Starr referred to Arbitration Committee
12/6/28 12/17/28	Seymour N Sears, Jr.	Ten shares of Hocking Valley on November 15, 1928	Informed of Rules Committee on Business Conduct informed of case
1/25/29	George A H Churchill	Execution on December 22, 1928, of order to sell 100 shares of Commercial Credit Co stock	Informed Committee on Business Conduct that Committee on Odd Lots and Specialists could not determine time of receipt of order, order not confirmed, and that Committee on Odd Lots and Specialists was in doubt as to rights of customer
3/22/29	Richard G Conried...	Transactions in Interstate Department Stores stock on February 20, 1929, with Harry Content	Committee on Odd Lots and Specialists informed Committee on Business Conduct that there was no evidence that the trades were pre-arranged
6/28/29 7/2/29 7/5/29 8/28/29	Harold Spear, Laurence C Leeds Arthur Barnwell, Jr....	Order given to them to sell 1,000 shares United Aircraft preferred stock on June 27, 1929, by Lindley & Co Refusal of Mr Barnwell to accept orders in General American Tank Car stock	Mr Spear censured by Committee on Odd Lots and Specialists Mr Barnwell agreed to accept orders
11/1/29 11/8/29	Ralph Ranlet..... Joseph D Frankel.....	T J Knapp complained of negligence... Opening in Western Pacific Railroad Corporation stock 12 $\frac{3}{4}$ points below previous close on October 31, 1929	Mr Ranlet warned Committee on Odd Lots and Specialists felt that Mr Frankel should not have opened stock without the approval of a member of the Committee on Business Conduct
11/8/29	Arthur Corlies.....	Opening in White Sewing Machine Corporation stock on October 29, 1929	Committee on Odd Lots and Specialists felt Mr Corlies should have obtained the approval of a member of the Committee on Business Conduct, and that he be censured by Business Conduct
11/8/29	Myron Schafer .....	Opening in Underwood Elliott Fisher on October 31, 1929, at 135	Committee on Odd Lots and Specialists wrote to Mr Schafer saying he should have sent for a member of the Committee on Business Conduct
11/8/29	H Randolph Knowlton	Opening in National Biscuit on October 29, 1929, at 165 $\frac{1}{2}$	Committee on Odd Lots and Specialists informed Mr Knowlton that he should have obtained the approval of a member of the Committee on Business Conduct, and should have delayed opening
2/27/30	R V Caulfield, J E McKenzie	Delay in reporting split-ups on 10,000 Packard to Thomson & McKinnon	No suggestion made
2/27/30	Horace W Goldsmith..	Order to sell 300 Lima Locomotive at 43 stop on February 25, 1930, and 100 (limit order) changed to market order at 2 53 P M Goldsmith took 400 at 42 $\frac{3}{4}$ , 1 $\frac{1}{4}$ points below last sale and 1 point below opening following day	He was told to endeavor to communicate with the firm having the stop order before taking stock for his own account
3/5/30	C S Weil.....	Purchase for his own account of 200 Engineers Public Service o/ds on March 4th at 52, which was exchangeable for stock which opened at 55 $\frac{3}{4}$	Sale cancelled by Committee on Business Conduct and corrected to 55 $\frac{3}{4}$

COMMITTEE ON ODD LOTS AND SPECIALISTS—Continued

Date	Name	Nature of alleged violation	Disposition
4/14/30	Stern & Lowitz-----	Transaction in A M Beyers Co on February 5, 1930, referred to Committee on Odd Lots and Specialists by Committee on Business Conduct	Committee on Business Conduct was informed that trade was satisfactory in view of fluctuations of this stock
4/28/30 5/22/30	Albert Fried-----	Changing an order to buy United Carbon from 200 to 1,200 shares and showing it to J D Frankel	Mr Fried censured by Committee on Odd Lots and Specialists
7/3/30	Harry E R Hall-----	Orders in Eastman Kodak from West-home Security Corporation alleged to be improperly handled	Committee on Odd Lots and Specialists informed West-home Security Corporation that orders were properly handled by specialist
7/16/30 9/3/30	Howard Boulton-----	Transactions in Manhattan Electrical Supply Co for Sutro & Co	Reported to Governing Committee and Committee on Odd Lots and Specialists recommended that Boulton be censured by President
9/3/30 9/5/30 9/22/30 10/22/30	R C Myles, Jr-----	Complaints of various firms regarding execution on August 28th of orders by Mr Myles in International Telephone & Telegraph referred to Committee on Odd Lots and Specialists by Committee on Business Conduct	Committee on Odd Lots and Specialists informed Committee on Business that all buy orders stand as reported, sell orders on stop from 39½ down made 39½ and stop orders at 39½, 39¼ and 39¼ reinstated, if customer desired Odd lot orders also to be adjusted Mr Myles censured by Committee on Odd Lots and Specialists
7/16/30 7/22/30 9/15/30 9/22/30 10/27/30 10/31/30 11/6/30 12/8/30 12/15/30 12/23/30 1/19/31 1/23/31 1/23/31 1/23/31	Philip L Smith, Philip W Smith, Henry M Wreszin, Charles E Danforth, Ralph Melson	Alleged improper transactions in Missouri Pacific common and preferred stocks by the specialists for the account of Paine, Webber & Co	Reported to Governing Committee
10/27/30 10/31/30 11/6/30 12/8/30 12/15/30 12/23/30 1/19/31 1/23/31 1/23/31 1/23/31	Juan M Ceballos, Samuel H Watts	Purchase by Ceballos of 100 Snider Packing preferred from Watts at 14, last sale 8 Referred to Committee on Odd Lots and Specialists by Committee on Business Conduct	Trade canceled by Committee on Business Conduct Both stated they would exercise more care in the future
1/23/31	Horace W Goldsmith.	Sale by him of 100 American Car & Foundry preferred at 65½, seller 4, on December 30, 1930, to Fallows Davis & Co on their order to buy 300 at 70	Sale apparently not justified Mr Goldsmith warned if there were any more complaints the Committee would take drastic action.
3/4/31 3/9/31 3/11/31 3/25/31	John V Bouvier-----	March 3, 1931—Brooklyn Manhattan Transit Corporation William J Berg alleged Bouvier asked him to make out reports on transactions which Berg had not made	C O Mayer, Jr, substantiated Bouvier's statement that Bouvier traded with Berg
2/4/31 3/4/31 3/9/31 3/11/31 3/25/31 3/27/31 3/28/31 4/2/31 4/17/31 4/28/31 6/28/31	Mortimer W Loewi, Henry Morgan	Loewi took 800 shares of Chicago Great Western Pfd stock, which he had to sell at the market, for his own account at 12, the last sale being 14¼	Loewi adjusted trades to 14 Committee on Odd Lots and Specialists reported matter to Governing Committee, recommending that Loewi be censured Morgan censured by Committee on Odd Lots and Specialists 5/13/31
6/28/31	Ferdinand Mayer-----	Execution of stop orders in Auburn on June 9th, error of judgment in handling book	Committee on Odd Lots and Specialists suggested reimbursement to customer of \$100
9/18/31	Benjamin Jacobson, John P Cronin	Commissions on trades made by Cronin, acting as Specialist, in United Aircraft, for Benjamin Jacobson	Referred to Committee on Quotations and Commissions
10/7/31	Henry Goldman, Jr-----	Had order to sell 100 United Piece Dye Works on September 23, 1931, at 12 stop He bought 100 at 11 for his own account and bought the 100 on the stop order at 10½ for his own account	Committee on Odd Lots and Specialists was of the opinion that he should adjust customers to 13 and reimburse customer who had stop order for the difference between 10½ and 13

## COMMITTEE ON ODD LOTS AND SPECIALISTS—Continued

Date	Name	Nature of alleged violation	Disposition
10/30/31	W W Vaughan.....	Execution of market order to buy 100 Pennsylvania R R on September 21, 1931, at 36, previous sale 33¼ and succeeding sale 33¼, referred to the Committee on Odd Lots and Specialists by the Committee on Business Conduct	Trade at 36 approved at the time by Mr Wagstaff, a Governor of the Exchange
11/12/31	J Robert Hewitt....	Large fluctuations in Worthington Pump & Machinery stock on September 29, 1931	Hewitt asked to prevent such fluctuations as far as possible
11/18/31 1/12/32	Franklin V Brodil ...	Took stock for his own account at prices at which other orders had been entrusted to him for execution	Referred to Governing Committee
1/23/32	Frank J Connelly....	Sales in Stone & Webster on December 2, 1931, at 13¼—14¼—13½	He was told to try to prevent wide fluctuations between sales
3/9/32 3/11/32	James F Nick.....	Clarence Southwood alleged that he had been prevented from executing an order in Public Service Corp of N J on March 8, 1932	Committee on Odd Lots and Specialists criticized Nick and informed him of the duties of a specialist
4/21/32	S B Blumenthal ...	Opening in Brooklyn-Manhattan Transit on April 20, 1932, off 2 points, to 63¼	Committee on Odd Lots and Specialists felt that though he might have asked odd lot dealers for bids, the trade was not open to criticism In the matter of adjustments he was told to get permission from the Committee on Business Conduct
6/6/32 6/10/32 6/13/32	Austin J Feuchtwan- ger	Transaction in Pan American Petroleum & Transport B stock on June 3rd	Feuchtwanger sold his seat
8/25/32 8/31/32 9/1/32	James Russell-Lowell..	Transactions in Stewart Warner on August 25th in which Lowell took 300 shares at 6 for his own account with out crossing the same in the open market	Lowell censured and warned that recurrence would be dealt with drastically Also, his profits on the trade were to be refunded to Mr Jacobson
1/28/33 1/31/33 2/3/33 2/6/33 2/8/33 3/22/33 4/20/33 4/27/33 5/3/33 5/10/33 4/6/33	Joseph D Frankel.....	Transactions in Loft, Inc.....	Referred to Governing Committee
7/10/33 7/11/33 7/12/33 8/2/33 10/2/33 10/4/33 10/5/33 10/9/33 10/10/33	Leonard Schafer.....	Opened stock up point from close and bought for his own account	Schafer told to consult a Governor in such cases
7/10/33 7/11/33 7/12/33 8/2/33 10/2/33 10/4/33 10/5/33 10/9/33 10/10/33	George M L La- Branche, Austin L Smithers	Transactions in American-La France & Foamite in which they bought stock below 2, having knowledge of an order to buy up to 3½, and subsequently sold it to the other member at 3	Referred to Governing Committee
7/10/33 7/11/33 7/12/33 7/19/33 8/2/33 10/2/33 10/4/33 10/5/33 10/9/33 10/10/33 8/30/33	George M L La- Branche	He bought 2,000 shares of Atlantic Refining at 31, of 3,500 shares on his book, while Edwin Ehlert had bid for 5,000 and received only 1,500 of the 3,500	Referred to Governing Committee
8/30/33	Edwin D Blumenthal..	Bought for his own account 100 Columbia Carbon Co on July 22nd at 49, then sold it at 50¼ to Boettcher, Newton & Co, and then bought more stock for his own account at 49	Committee on Odd Lots and Specialists told him to confirm such trades with a representative of the firm He agreed to adjust sales to mutual satisfaction

## COMMITTEE ON QUOTATIONS AND COMMISSIONS

March 1933	Joseph D Frankel.....	Commission law.....	Referred to Governing Committee
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NOTE—Cases where members have appeared before the Committee and no irregularities or improprieties have been found have not been included in the above list



SCHEDULE C.

	1929	1930	1931	1932	1933
Committee on publicity					
Salaries and wages.....	\$45,951 96	\$53,020 20	\$52,893 64	\$46,514 64	\$28,750 00
President's speeches.....	16,788 44	36,799 74	64,449 00	12,942 50	1,357 00
President's annual report.....	16,084 1 <sup>9</sup>	18,422 65	13,988 20	16,597 50	-----
Year-books, miscellaneous other publications, gallery pamphlets, motion-picture expenses, postage, etc.....	55,091 21	84,299 96	107,924 56	89,669 84	32,628 97
Office of the economist					
Salaries and wages.....	34,510 66	45,941 62	44,203 55	38,879 67	28,320 90
Stationery supplies, books, subscriptions, etc.....	6,419 66	5,480 74	1,404 99	1,835 10	1,913 64
Total.....	174,846 11	243,964 91	294,863 94	206,439 25	92,970 51

NOTE.—The expense of publication of statistical data prepared by the Department of the Economist is included in the expenses of the committee on publicity

SCHEDULE D

M Give the following data for each of the years from 1928 to September 1st, 1933

3 List of members suspended or expelled by the New York Stock Exchange, giving dates of such suspension or expulsion, reasons therefor, and where such members were in partnership, the names of such firms

Answer.—In addition to the members suspended for insolvency, as mentioned in answer to M-2 above, the following members were suspended under other provisions of the Constitution, or expelled

Date	Name	Firm name	Reason
1/11/28	Raymond J Schweizer.....	-----	Under Section 7 of Article XVII for conduct or proceeding inconsistent with just and equitable principles of trade Made an opening trade for his own account at a price which was not justified by the condition of the market, thus placing in effect a stop order, and then purchased part of the stop order for his own account Suspended for 6 months
1/26/28	Wilham Brandriss.....	-----	Under Section 7 of Article XVII for conduct or proceeding inconsistent with just and equitable principles of trade, and violation of Section 9 of Chapter XIV of the Rules Prior to the opening of the market, when he was long for his own account, he, acting as seller, stopped 1,500 shares at the opening with five different members, and immediately upon the opening bid and purchased for his own account 500 shares at a price higher than the closing of the night before, thereby putting into execution the shares of stock which he had stopped with the buyers as authorized Also, that on the same day and in the same transactions, instead of clearing the stock which he had purchased for his own account, he reopened such contracts by giving other names on said trades Expelled
6/25/28	Edwin H Stern.....	E H Stern & Co ...	Under Section 7 of Article XVII for conduct or proceeding inconsistent with just and equitable principles of trade While acting as a specialist, after having been tendered an order to buy 5,000 shares of stock at the market which he did not accept at the time, he sold to the member tendering him the order 400 shares of the stock which he had on his book at 40 and at the same time purchased for his own account the balance of the said stock which he had for sale on his book for 40, which amounted to 1,000 shares and without having disclosed that fact he thereafter sold for his own account 1,000 shares of said stock at 41 to the member who had tendered him the order originally Expelled

Date	Name	Firm name	Reason
10/24/28	Henry R Monroe.....	Monroe, Saffin & Davis	Under Section 2 of Article XVII, through arrangements made with his partners and one of the employees of his firm, and through the falsification of the books of his firm, he wilfully defrauded and planned to defraud the United States of America and the State of New York of income taxes properly due to them Expelled
4/10/29	Hubert M Schott.....	Schott & Galliver....	Under Section 1 of Article XX, for violation of Paragraph 4, Section 1, Article XX The firm of Schott & Galliver, with the knowledge and acquiescence of Hubert M Schott, during 1928 employed 11 persons who were paid, in addition to their salaries, sums constituting a proportion of the amount of the commissions received by the firm of business procured by said persons during the time of their employment, which payments were made without the written approval of the Committee on Quotations and Commissions Suspended for 1 year
6/11/30	Alexander B Johnson..	Throckmorton & Co	Under Section 7 of Article XVII for conduct or proceeding inconsistent with just and equitable principles of trade, and improper business methods used by his firm in handling the business of the American Trustee Shares Corporation and Diversified Trustee Shares Suspended for 1 year
7/9/30	James H McGean.....	Sutro & Company....	Under Section 7 of Article XVII for conduct or proceeding inconsistent with just and equitable principles of trade, and violation of Section 10 of Chapter XII of the Rules Through the manner in which a branch office of Sutro & Company was conducted, transactions to buy and to sell the same securities were executed at the same time and at the same price, and in the opinion of the Governing Committee did not involve a change of ownership Suspended for three years
10/29/30	G Lisle Forman, Morrison B Orr	Prince & Whitely.....	Under Section 7 of Article XVII for conduct or proceeding inconsistent with just and equitable principles of trade, and violation of Section 2 of the Chapter XII of the Rules Through the device of borrowing securities and placing them in accounts which were not sufficiently margined and through the device of putting in market orders to buy an unusual quantity, so as to raise the closing prices, of the securities in which the firm was interested, the answer to the questionnaire as of June 30, 1930, of said firm of Prince & Whitely did not reflect the true condition of said firm, and second, that the partners of said firm were the only directors of the Prince & Whitely Trading Corporation, a corporation whose securities said firm had offered to the public in 1929 and as such directors said partners caused the Prince & Whitely Trading Corporation to lend \$1,500,000, on the unsecured note of J M Hoyt & Company, a corporation owned or controlled by one of the partners of said firm and the proceeds of said note were deposited to the account of said subsidiary corporation and thereby improved the financial condition of said firm Also the Prince & Whitely Trading Corporation had a debit balance of approximately \$4,275,000, and was long securities of more than \$7,350,000, and that no reasonable proportion of these securities was segregated and set aside as the property of the Prince & Whitely Trading Corporation and that more than a reasonable proportion of these securities had been pledged as collateral for loans of the firm of Prince & Whitely G Lisle Forman and Morrison B Orr were each expelled

Date	Name	Firm name	Reason
1/28/31	Philip L Smith, Philip W Smith, Henry M Wreszin	Barbour & Co.-----	Under Section 7 of Article XVII for conduct or proceeding inconsistent with just and equitable principles of trade, and violation of Chapter XI, Section 1, of the Rules Supplied stock which they or their partners owned when executing orders entrusted to them by another member of the Exchange, and did not disclose the ownership of said stock, in addition they charged commission on such purchases Philip L Smith and Philip W Smith were each expelled, and Henry M. Wreszin was suspended for one year
2/4/31	Charles E Danforth, Ralph Melson	-----	Under Section 7 of Article XVII for conduct or proceeding inconsistent with just and equitable principles of trade, and violation of Chapter XI, Section 1 Supplied stock on orders entrusted to them without disclosing their interest in the ownership of said stock to their actual principal and concealed their operations by having other members of the Exchange who were jointly interested with them in the account which supplied the stock accept and report the transactions Charles E Danforth and Ralph Melson were each expelled
1/27/32	Franklin V Brodil	-----	Under Section 7 of Article XVII for conduct or proceeding inconsistent with just and equitable principles of trade While acting as a specialist, he had purchased stock for his own account at the same price at which he had unexecuted orders on his book which had previously been entrusted to him for execution Expelled
5/25/32	Daniel Manning McKeon	-----	Under Section 7 of Article XVII for conduct or proceeding inconsistent with just and equitable principles of trade, and for violation of Section 4 of Article XVII Made offers to sell stock for the purpose of upsetting the equilibrium of the market, whereby prices would not fairly reflect market values Suspended for one year
12/14/32	Charles H Patton	Mark C Steinberg & Company	Under Section 7 of Article XVII for conduct or proceeding inconsistent with just and equitable principles of trade By various devices the answers of the firm to the questionnaire did not reflect the true condition of the firm Various purchases of securities were made by the firm from the family of Mark C Steinberg and other transactions were made shortly before the application for receivership to the detriment of customers and creditors of the firm The membership of Charles H Patton in the Exchange was included as an asset, although the partnership papers did not so provide Although Charles H Patton had no personal knowledge of the falsity of the questionnaire answers or of the transactions between his firm and the family of Mark C Steinberg, nevertheless, as a member is responsible under the Constitution for the acts of his partner, Charles H Patton was expelled
1/25/33	Alexander J Robertson, Walter F Seeholzer, J R Schmeltzer, H H Wurzler, William S Sagar, E V Goerz	Ludwig, Robertson & Co Schmeltzer, Clifford & Co	Under Section 7 of Article XVII for conduct or proceeding inconsistent with just and equitable principles of trade, and for violation of Section 5 of Chapter XIV of the Rules, and, in the case of Alexander J Robertson, in addition for violation of Section 1 of Article XIX. Messrs Robertson, Seeholzer, Schmeltzer, Wurzler, Sagar and Goerz paid, or caused to be paid, without the approval of the Committee of Arrangements, sums of money to employees of the Exchange In addition, Mr Robertson, and other partners of his firm, paid or caused to be paid, without the approval of the Committee of Arrangements, a gratuity to an employee of another member of the Exchange, and had paid or caused to be paid money to an employee of a financial institution with which the said firm had wire connections and for which it did business in listed securities Messrs Seeholzer, Schmeltzer, Wurzler, Sagar, suspended 6 months, Goerz suspended for one month, and Mr Robertson was suspended for three years

Date	Name	Firm name	Reason
5/24/33	Joseph D Frankel ----	J D Frankel & Co..	Under Section 7 of Article XVII for conduct or proceeding inconsistent with just and equitable principles of trade, and for violation of Section 5 of Article XVII and Section 1 of Article XIX of the Constitution, and for violation of Section 4 of Chapter VII and Section 1 of Chapter XI of the Rules While acting as a specialist in Atchison, Topeka & Santa Fe Railway Company common stock, Joseph D Frankel purchased for his own account stock which he had on his book, without bidding for and offering same in the open market in accordance with the Rules adopted by the Governing Committee, also he made misstatements to the Committee on Odd Lots and Specialists in connection with its investigation into the foregoing matter, also, he failed to charge commissions on securities received on a privilege for an account in which a nonmember was interested, and had also rebated commissions to a non-member Mr Frankel was expelled

CARTER, LEDYARD & MILBURN,  
COUNSELLORS AT LAW,  
New York, December 5, 1933

FERDINAND PECORA, Esq.,  
285 Madison Avenue, New York City

DEAR SIR I enclose herewith the tabulation giving the answer to question M-1 of the Questionnaire submitted to the New York Stock Exchange, being the names of bond issues listed on the New York Stock Exchange which have been in default in the payment of principal or interest during the years 1928 to September 1, 1933 For the sake of convenience, we have divided this list into three heads as follows

- A Obligations of domestic corporations
- B Obligations of foreign corporations
- C Obligations of foreign governments and municipalities

Inasmuch as certain bonds were in default on January 1, 1928, we have added a column to the tabulation showing such issues and in each case have given the date of original default

We found some difficulty in determining what amount should be shown as the amount of bonds in default In some instances the listed amount of an issue has varied substantially in the course of the years The amount shown in this tabulation under each issue represents the listed amount on the date when the issue first made default in the payment of principal or interest In many instances this figure is substantially greater than the amount outstanding in the hands of the public on such date due to the fact that sinking funds had purchased bonds but had not yet retired them There was no practical way by which we could determine, as of each particular date of default, the amount of bonds outstanding in the hands of the public Furthermore, and particularly in regard to foreign issues, the amount listed on the Exchange represents the total amount available for this market It does not follow, however, that this amount was held in America Many foreign issues were originally offered not only in this country but also abroad and we have reason to know that foreign nationals have frequently purchased bonds which were originally offered in this country

We have included all issues which went into default at any time during the period covered by the questionnaire irrespective of whether these defaults were subsequently cured or whether by reason of reorganizations or otherwise these bonds were exchanged for other obligations which were not in default in the payment of principal or interest

We have also included all foreign issues where the interest was not paid in United States dollars In the case of Austrian, Hungarian and many German issues, which in the aggregate form a substantial part of the total, we are advised that payments in dollars were not made because of governmental restrictions upon foreign exchange operations The obligors, in most instances, however, have been paying the interest due in their own country in their local currencies This has led to the establishment of a market in this country for past due coupons of this type, and we are advised that most of the coupons from such issues have

been either collected abroad or been sold by bondholders to persons in need of such foreign exchange. Therefore, while such issues appear in this tabulation as being in entire default in the payment of interest, as a practical matter, a substantial part of this interest has been collected by bondholders.

We have not included in this tabulation as defaulted bonds issues of American municipalities or corporations which by the terms of the instrument were payable at the option of the bondholder in American dollars or in foreign currencies and which are now being paid only in dollars. If you should conclude that the failure of American obligors to pay coupons on such issues abroad in foreign currencies, in accordance with the precise terms of the obligations, such a default as to require inclusion in this list, we can, of course, secure further information and give you the names of the issues which should be added. We omitted such issues on the assumption that you would feel the Joint Resolution of Congress in regard to gold payments was a sufficient reason for the refusal of American obligors to pay in foreign currencies, and that it would be unfair to include such issues in this list of defaulted bonds. Logically, of course, there is no difference between such a default and the default by foreign obligors to pay coupons in American dollars due to governmental restrictions on foreign exchange.

We have not, of course, included as defaulted issues obligations which by their express terms were payable in gold coin and which are now being paid only in legal tender.

Yours very truly,

ROLAND L. REDMOND.

DOMESTIC CORPORATION BONDS

Name of Bond	Date Listed	Prior to 1928 <sup>1</sup>	1928	1929	1930	1931	1932	1933
Ajax Rubber Company, Inc 8% 15-Yr First Mtge S F G, due 1936—\$2,019,100	Feb 20, 1922	-----	-----	-----	Dec 1 int not paid	No int paid-----	No int paid Stricken from Last Nov 5	
Alaska Gold Mines Company 6% 10-Yr Conv Coupon Deb, Series A, due 1925—\$1,499 400.	Mar 25, 1915	March 1, 1918 int not paid. No subsequent int paid	-----	-----	-----	-----	Stricken from Last Aug 18	
6% 10-Yr Conv Coupon Deb, Series B, due 1926—\$1,498,700.	May 4, 1916	Same as above..	-----	-----	-----	-----	Stricken from Last Aug 18	
American Chain Company, Inc 6% 10-Yr S F Deb Bonds, due 1933—\$3,872,500	Mar 29, 1923	-----	-----	-----	-----	-----	-----	April 1, int paid but principal due April 1 not paid Apr 1 See terms Retirement Plan <sup>2</sup>
American Natural Gas Corporation 6½% S F G Deb, due 1942 (with Stock Pur Priv)—\$11,639,000	July 12, 1928	-----	-----	-----	-----	Oct 1 int not paid	Stricken from Last Sept 10	
Anglo-Chilean Consolidated Nitrate Corporation 7% 20-Yr S F Deb Bonds, due 1945—\$13,175,000	Oct 22, 1925	-----	-----	-----	-----	-----	May 1, int not paid	No int paid.
Ann Arbor Railroad Company 4% First Mortgage Gold Bonds, due 1935—\$7,000,000	Nov 27, 1895	-----	-----	-----	-----	-----	Jan 1, int not paid on Jan 1 Apr 1, int not paid on Apr 1 Jan & Apr int Pd approx May 12	Apr 1, int not paid on Apr 1 Apr 1, int pd approx Aug 30 July 1, int pd approx Oct 2
Baltimore and Ohio Railroad Company 4½% 20-Yr Conv Gold Bonds, due 1933—\$6,852,500	May 31, 1913	-----	-----	-----	-----	-----	Int payments resumed July 1	Principal not pd Mar 1 on \$6,852,500 of bonds not assenting to refunding plan offering 50% in cash, bal in Ref & Gen Mtge Bonds, Ser F to holders of issue of \$63,250,000

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STOCK EXCHANGE PRACTICES

Bing & Bing, Inc 6 1/2% 25-Yr S F Deb, due 1950—\$4,250,000	May 28, 1925							Mar 1 int not pd on Mar 1 Mar 1 int paid Mar 31 Interest payments resumed Sept 1
Bolivia Railway Company 5% First Mortgage 5% Bonds, due 1927—\$1,168,200	Sept 14, 1910	Jan 1, 1927 int not paid No subsequent int paid					Stricken from List Nov 2	
Booth Fisheries Company 6% S F Deb Gold Bonds, due April 1, 1926—\$3,517,000	June 24, 1915	Principal and interest due Apr 1, not pd Apr 1 int paid approx Apr 11	No payments...				Stricken from List April 1	
Botany Consolidated Mills, Inc 6 1/2% 10-Yr Sec S F G, due 1934—\$7,007,000	July 9, 1925						April 1 int not paid	
Bowman-Biltmore Hotels Corporation 7% First Mortgage Lease hld S F G, due 1934—\$2,187,600	Sept 29, 1927						Sept 1, int not paid \$435 partial redemption made approx Oct 27	No payment
Brooklyn Rapid Transit Co 7% 3-Yr Secured Notes 1921—\$57,735,000.	Aug 15, 1918	Jan 1, 1919, int not paid No subsequent interest paid					Stricken from List Nov 19	
5% 50 Year Mtge Bonds, due 1945—\$6,995,000	June 10, 1896	Apr 1, 1919 int not paid No Subsequent interest paid					Stricken from List Oct 23	
4% Ref Conv Bonds, due 2002—\$5,532,000	Mar 9, 1904	July 1, 1919 int not paid No subsequent interest paid					Stricken from List Oct 23	
Broadway & Seventh Avenue Railroad Company 5% 50-Yr First Consol -Mtge Gold, due 1943—\$5,053,000	Apr 25, 1894					June 1 int not paid	No payment...	No payment... No payment
Bush Terminal Company 4% 50-Yr First Mtge Gold, due 1952—\$2,512,000	Jan 13, 1909							Apr 1 int not paid
5% Cons Mtge Gold, due 1955—\$6,629,000	Jan 13, 1909							July 1 int not paid
Carolina Central Railroad Company 4% Gtd First Cons Mtg, due 1949—\$3,000,000	Feb 23, 1899						Jan 1 int not paid	No payment

<sup>1</sup> There is entered in this column such information as may be necessary to determine the status of a bond as of Jan 1, 1928  
<sup>2</sup> Retirement Plan Terms 4% 10-Yr Issue, due 1933, retired by means of offer to holders of 5-Yr 6% bonds, due 1938, on the basis of \$1,250 of 1938 bonds for \$1,000 of 1933 bonds.

DOMESTIC CORPORATION BONDS—Continued

Name of Bond	Date Listed	Prior to 1928	1928	1929	1930	1931	1932	1933
Central of Georgia Railway Company 5% First Mtge Gold, due 1945—\$7,000,000 5% Consol Mtge Gold, due 1945—\$18,500,000	Dec 23, 1896							Feb 1, int not paid Information received Mar 2, May 1 cpn would not be paid No payment made on May 1 or subsequent cpns
5% First Mtge, Mobile Division, Gold, due 1946—\$1,000,000	Mar 24, 1897							Jan 1, coupon not paid
5% First Mtge, Macon & Northern Division, G due 1946—\$340,000	Mar 1, 1897							Jan 1, coupon not paid
5% Purchase Money First Mtge, Middle Georgia & Atlantic Division, due 1947—\$413,000	Oct 27, 1897							Jan 1, int not paid
4% Purchase Money Mtge, Chattanooga Division, due 1951—\$2,057,000	Nov 13, 1901							June 1, int not paid
5% Ref & Gen Mtge, Series C, due 1959—\$13,000,000	May 12, 1927							Apr 1, int not paid
Central of Georgia Railway Company 5½% Series B, Refunding & Gen Mtge, due 1959—\$5,000,000	Apr 8, 1924							April 1, int not paid
Chicago & Alton Railway Company 3% Refunding Mtge Gold due 1949—\$45,350,000	Nov 14, 1900.	Oct 1, 1922, int deferred, Oct 1, 1922, int pd approx Mar 29, 1923, Apr 1, 1923, int pd approx Sept 29, 1923, Oct 1, 1923, int deferred, Oct 1, 1923, int pd approx Mar 24, 1924, Apr						



		1, 1924, int deferred, Apr 1, 1924, int pd approx Sept 24, 1924, Oct 1, 1924, int pd Approx Feb 13, 1925, Apr 1, 1925, int pd approx Oct 6, 1925, Oct 1, 1925, int pd approx Oct 29, 1925, Interest paid on dates due since April 1, 1926					
3½% First Lien, due 1950—\$22,000,000	Nov 14, 1900.	Jan 1, 1923, int not paid No subsequent int pd	-----				Stricken from List Dec 1
Chicago City & Connecting Railway Co. 5% Collateral Trust S F due 1927—\$22,000,000	Apr 15, 1912	Jan 1, 1927, int not paid No subsequent payments made	-----				Stricken from List November 18, 1932
Chicago and Eastern Illinois Railway Company 5% Gen Mtge Gold, due 1951—\$32,281,800	Dec 29, 1921		-----				May 1, int not paid
Chicago, Milwaukee & St Paul Railway Company 4½% Gen & Ref Mtge G, Series A, due 2014—\$8,697,000	Nov 17, 1914	Railway in hands of Receivers Court order provided payment of interest on certain issues No provision made to pay Apr 1, 1925, int on this issue No subsequent int paid	Stricken from List Nov 5	-----			
5% Gen & Ref Mtge Conv G, Series B, due 2014—\$7,422,200	July 29, 1915	No provision made to pay August 1925 int No subsequent int paid	Stricken from List July 24	-----			

DOMESTIC CORPORATION BONDS—Continued

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STOCK EXCHANGE PRACTICES

Name of Bond	Date Listed	Prior to 1928	1928	1929	1930	1931	1932	1933
Chicago, Milwaukee & St Paul Railway—Continued 4½% Conv Gold G Bonds, due 1932—\$50,000,000	Dec 3, 1912	No provision made to pay June 1925 int No subsequent int paid	Stricken from List Nov 5					
4% 25-Yr 4% G, due 1934—\$33,369,000	Nov 16, 1909	No provision made to pay July 1925 int No subsequent int paid	Stricken from List Nov 5					
4% Gold Bonds, due 1925—\$38,345,000	Apr 27, 1916	No provision made to pay June 1925 epn No subsequent payments made			Stricken from List Jan 29			
Chicago, Milwaukee & Puget Sound Railway Co 4% 40-Yr Gtd First Mtge G, due 1949—\$28,175,000	Aug 30, 1911	July 1, 1925 int not paid No subsequent payments made	Stricken from List July 24					
Chicago & Northwestern Railway Co 5% Sinking Fund Deb of 1933—\$601,000	June 13, 1883							May 1 int pd Principal not pd on May 1 on \$601,000 of bonds not assenting to refunding plan offering 50% in cash, bal in Gen Mtge 5% bonds, to which holders of \$6,355,000 had consented to Stricken July 11
Chicago Railways Company 5% Gold First Mtge, due 1927 (Feb 1)—\$55,655,000	June 11, 1913	Principal due Feb 1, 1927, not pd, int due Feb 1, 1927, pd, 2½% int pd on Aug 1, 1927	2½% pd Feb 1, 2½% pd Aug 1.	2½% pd Feb 1, 2½% pd Aug 1, also 10% of principal	2½% pd Feb 1, 2½% pd Aug 1, also 5% additional of prin	2½% pd Feb 1, 2½% pd Aug 1.	2½% pd Feb 1, 2½% pd Aug 1, also 5% additional of prin	2½% pd Feb 1, 2½% pd Aug 1, also 5% additional of prin

Chicago, Rock Island and Pacific Railway Co : 4½% Secured Gold, Series A, due 1952—\$40,000,000	Aug 26, 1927						Sept 1 int not paid
Chicago, Rock Island and Pacific Railway Company 4% General Mtg G, due 1988—\$61,581,000	Apr 13, 1898						July 1 into not paid.
Colorado Fuel & Iron Co 5% General Mtg S F G, due 1934—\$5,186,000	Before 1900.						Aug 1 int not paid
Colorado Industrial Company 5% First Mtg Gtd 30-Yr due 1934—\$35,374,000 Series A	Apr 12, 1905						Aug 1 int. not paid
Series B	Apr 19, 1905						
Columbus & Ninth Avenue Railroad Company 5% First Mtg Gtd G, due 1993—\$30,000,000	June 26, 1895	Mar 1, 1920 int not paid No subsequent payments made					Stricken from Last Nov 2
Consolidation Coal Company 5% First & Ref Mtg 40-Yr S F G, due 1950—\$19,590,000	May 24, 1911						June 1 int not paid No payment.
Continental Paper & Bag Mills Corporation 6¼% First & Ref Mtg 20-Yr S F G, Series A, due 1944—\$5,319,900	Sept 11, 1924		Feb 1, int not paid Feb 1 Feb 1, int pd approx Apr 4 Int pd regularly since August 1, 1928	Stricken from Last Mar 23			
Cuba Cane Sugar Corporation 7% 10-Yr Conv Deb, due Jan 1, 1930—\$276,000	Apr 14, 1920				Principal and int due Jan 1 not paid Jan 1 int pd approx Apr 9	Stricken from Last Sept 3	
8% 10-yr Conv Deb, due Jan 1, 1930—\$470,900	Dec 27, 1921				Principal and int due Jan 1, not paid Int due Jan 1 pd approx Apr 9	Stricken from Last Sept 3	
Cuban Dominican Sugar Company 7½% First Lien 20-Yr S F G, due 1944—\$1,323,500	Dec 4, 1924					May 1 int. not paid	Stricken from Last Nov 2
7½% First Lien 20-Yr S F G, due 1944, Stamped with warrants—\$12,199,500.	Mar 27, 1930					May 1 int not paid	Stricken from Last Nov 2

DOMESTIC CORPORATION BONDS—Continued

7362

STOCK EXCHANGE PRACTICES

Name of Bond	Date Listed	Prior to 1928	1928	1929	1930	1931	1932	1933
Des Moines & Fort Dodge Railroad Company 4% Gtd First Mtge 30-Yr G, due 1935—\$3,072,000	Mar 22, 1905	July 1, 1924, int not paid No subsequent payments made					Stricken from List Nov 5	
D G Dery Corporation 7% First Mtge 20-Yr S F G, due 1942—\$3,641,000 Stamped..... Second stamped.....	Sept 28, 1922 Dec 22, 1928				(Sept 1 int not paid	\$98 representing partial distribution of balance of proceeds of property securing mtge, approx May 14	Stricken from List May 18	
Dominion Iron & Steel Co, Ltd 5% S F Gtd Cons Mtge 30-Yr (Currency Series) due 1939—\$4,639,000	Dec 19, 1922	Sept 1, 1926, int not paid No subsequent payments made					Stricken from List March 2	
Elk Horn Coal Corporation 7% 6-Yr Deb Notes, due 1931—\$1,500,000	Apr 21, 1926					Principal and interest due Dec 1 not pd	Stricken from List Aug 16	
6½% 6-Yr First & Ref Mtge S F G, due 1931—\$3,131,000	Jan 28, 1926					Principal and interest due Dec 1, not pd	Stricken from List Aug 16	
Fisk Rubber Company 8% 20-Yr First Mtge S F G, due 1941—\$10,000,000	Aug 22, 1921					Mar 1, int not paid	No payments...	Stricken from List July 31
Florida Central & Peninsular Railroad Company 5% 50-Yr First Cons Mtge, due 1943—\$4,372,000	Before 1900						Jan 1, int not paid	No payments
Florida East Coast Railway Co 5% First & Ref Mtge G, Series A, due 1974—\$45,000,000	Sept 27, 1924					Sept 1, int not paid		
Fonda, Johnstown & Gloversville Railroad Co 4½% First Cons Gen Ref Mtge, due 1952—\$5,700,000	Nov 9, 1922					Nov 1 int not paid	Over 90% of holders of 4½% bonds consented to Readjustment Plan whereby they received	

(Amended) 2-4% First Consolidated Gen Ref Mtge G, due 1932—\$5,015,000	Mar 11, 1932				October 1 Fixed Interest paid	(Amended 2-4% Bonds with fixed interest of 2% and Cumulative interest beginning May 1, 1937 April 1, Fixed Interest paid	No payment.
Galveston, Houston and Henderson Railroad Co 5% First Mtge G, due 1933—\$2,122,000	May 25, 1916						April 1, int paid but principal not paid, Apr 1 Stricken from List 3/7 See terms Refunding Plan*
General Theatres Equipment, Inc 6% 10-Yr Conv G Deb, due 1940—\$29,554,000	May 6, 1930					April 1, int not paid	
Georgia & Alabama Railway 5% First Mtge Cons G, due 1945—\$6,085,000	Before 1900					Jan 1, int not paid	No payments
Georgia, Carolina & Northern Railway Co 6% Gtd First Mtge G Extended from July 1929 to July 1934—\$5,360,000	Before 1900					Jan 1, int not paid	No payments.
Gould Coupler Company 6% 15-Yr First Ln S F G due 1940—\$4,000,000	Aug 27, 1925					August 1, int not paid	No payments
Gulf & Ship Island Railroad Co 5% First Mtge Ref & Terminal due 1932—\$4,327,000	June 11, 1902					Jan 1, int not paid on Jan 1 Jan & July 1, int pd approx July 26	Jan 1, int pd Jan 1 Regular payments of interest resumed July 1
Havana Electric Railway Co 5½% 25-Yr G Deb, Series of 1926, due 1951—\$5,500,000	Dec 23, 1926				Sept 1, int not paid	No payments...	No payments
Hoe, R & Co, Inc 6½% First Mtge Series A, due 1934—\$4,057,000	Nov 26, 1924					April 1, int not paid	No payments
Indiana Limestone Company 6% 15-Yr First Mtge S F G, due 1941—\$14,777,500	June 23, 1927				Nov 1, int not paid	Stricken from List Nov 5	
Incorporated Metropolitan Company 4½% Col Trust Gold, due 1956—\$67,825,000	June 28, 1906	April 1, 1919, interest not paid No subsequent payments made				Stricken from List June 15	

\* Refunding Plan Terms for payment of 5% First Mtge, due 1933 \$500 in cash, \$500 in Co's First Lien & Refunding Mtge, Series A, bonds, due 1938

DOMESTIC CORPORATION BONDS—Continued

Name of Bond	Date Listed	Prior to 1928	1928	1929	1930	1931	1932	1933
Interborough Rapid Transit Company 6% 10-Yr Gold Notes, due 1932 and Certificates of Deposit—\$10,500,000	June 7, 1922						Principal and interest due October 1, not paid	
7% 10-Yr Conv Gold Notes due 1932—\$18,658,300	June 7, 1922						} Sept 1, int & principal not paid on Sept 1	\$41 40 pd on a/c of principal & int due, Sept 1, approx Jan 3, \$44 pd on a/c approx July 1
Certificates of Deposit for above—\$13,013,300	Aug 30, 1932							
International- Great Northern Railroad Company 6% 30-Yr First Mtge Series A, due 1952—\$17,250,000	June 2, 1922							July 1, int not pd July 1
5% Gold, Series B, First Mortgage, due 1956—\$6,000,000	Apr 14, 1927							July 1, int pd approx July 6
5% Gold, Series C, First Mortgage, due 1956—\$5,500,000	Feb 6, 1928							July 1, int not pd July 1
International Match Corporation 5% 10-Yr Conv G Deb, due 1941—\$48,979,000	Mar 12, 1931						July 15, int not paid Stricken from List Nov 2	July 1, int not pd approx July 6
5% 20-Yr S F G Deb, due 1947—\$47,430,500	Apr 26, 1928						May 1, int not paid Stricken from List Nov 2	July 1, int pd approx July 6
Iowa Central Railway Company 5% First Mtge G, due 1938—\$7,650,000	Before 1900	June 1, 1925, int not paid No subsequent payments made					Stricken from List November 18	
4% First & Ref Mtge G, due 1951—\$7,156,000.	Jan 23, 1908	Sept 1, 1923, int not paid No subsequent payments made						

Kansas City, Fort Scott and Memphis Railway Co 4% Gtd Ref Mtge G, due 1936, \$18,446,000	Nov 27, 1901						Int due April 1, on Bonds and Certificates of Deposit not pd	No payments
Certificates of Deposit for above—\$7,389,000	Aug 4, 1932							
Lehigh Valley Coal Company 4% Gtd First Mtge G, due Jan 1, 1933—\$44,000.	Dec 13, 1905							Jan 1, int pd Principal due Jan 1, not pd See terms Re-funding Plan <sup>4</sup> Stricken Jan 6
5% Gtd First Mtge G, due Jan 1, 1933—\$373,000	Before 1900...							Jan 1, int pd Principal due Jan 1, not pd See terms Re-funding Plan <sup>4</sup> Stricken Jan 6
Lexington Avenue & Pavonia Ferry Railroad Company Gtd First Mtge 5% G, due 1993—\$5,000,000	Before 1900...	March 1, 1920, int not paid No subsequent payments made					Stricken from List Nov 2	
Manati Sugar Company 7½% First Mtge 20-Yr S F G, due 1942—\$8,000,000	Mar 20, 1922				Oct 1, int not paid on Oct 1	Oct 1, 1930, int paid Jan 2 Apr 1, int pd April 9	No payments...	No payments
Manhattan Railway Company 4% Cons Mtge Gold, due 1990—\$33,644,000	Before 1900...						Oct 1, int not pd Oct 1 Oct 1 int pd approx Dec 1	April 1, int paid beginning May 19th
4% Second Mtge Gold, due 2013—\$4,523,000	Sept 28, 1916						Dec 1, int not paid, Dec 1 Dec 1, int pd approx Dec 22	June 1, int pd approx June 30
McCrorry Stores Corporation 5½% 15-Yr Gold Debentures, due 1941—\$4,800,000	May 12, 1927							June 15, int not paid
Metropolitan West Side Elevated Railway Company 4% 40-Yr First Mtge, due 1938—\$9,808,000	Mar 28, 1900						August 1, int not paid	No payments

<sup>4</sup> Refunding Plan Terms on 4% & 5% First Mtge Bonds \$500 in cash, \$500 in 5-Yr Secured 6% Gold Notes of Company, due 1938, paid approximately January 12, 1933

DOMESTIC CORPORATION BONDS—Continued

Name of Bond	Date Listed	Prior to 1928	1928	1929	1930	1931	1932	1933
Minneapolis & St Louis Railroad Company 5% First Cons Mtge G due 1934—\$5,000,000	Before 1900...	May 1, 1924, int not paid No subsequent payments made	-----	-----	-----	-----	Stricken from List Nov 5	
4% First & Ref Mtge G, due 1949—\$13,244,000	Before 1900...	Sept 1, 1923, int not paid No subsequent payments made	-----	-----	-----	-----		
5% Ref & Ext Mtge 50-Yr G, Series A, due 1962—\$3,690,000	Apr 23, 1914	Aug 1, 1923, int not paid No subsequent payments made	-----	-----	-----	-----		
Missouri-Illinois Railroad Company—5% First Mtge, Series A, due 1959—\$3,438,500	May 29, 1930		-----	-----	-----	-----		July 1, int not paid
Missouri Pacific Railway Company 4% Ext Thrd Mtge G, due 1938—\$3,819,000	Nov 3, 1906		-----	-----	-----	-----		May 1, int not pd May 1, int pd approx May 8
5½% 20-Yr Conv G, Series A, due 1949—\$46,392,000	May 7, 1929		-----	-----	-----	-----		May 1, int not paid
5% First & Ref Mtge G, Series A, due 1965—\$17,840,500	July 9, 1917		-----	-----	-----	-----		Aug 1, int not paid
4% Gen Mtge G, due 1975—\$51,350,500	Aug 15, 1916		-----	-----	-----	-----		Sept 1, int not paid
5% First & Ref Mtge G, Series F, due 1977—\$95,000,000	Mar 14, 1927		-----	-----	-----	-----		Sept 1, int not paid
5% First & Ref Mtge Gold, Series G, due 1978—\$25,000,000	Nov 22, 1928		-----	-----	-----	-----		May 1, int not paid
5% First & Ref Mtge g, Series H, due 1980—\$25,000,000	Sept 4, 1930		-----	-----	-----	-----		Apr 1, int not paid
5% First & Ref Mtge G, Series I, due 1981—\$61,200,000	Jan 27, 1931		-----	-----	-----	-----		Aug 1, int not paid

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STOCK EXCHANGE PRACTICES



Mobile and Ohio Railroad Company									
4% Gen Mtge Bonds, due 1938—\$1,213,000	Before 1900							Sept 1, int not paid	No payments
5% Secured Gold Notes due 1938—\$5,000,000	Nov 7, 1930							Sept 1, int not paid	No payments
5% Montgomery Division First Mtge G, due 1947—\$4,000,000	Before 1900							Aug 1, int not paid	No payments
4½% Ref & Improvement Mtge G, Series of 1977 due 1977—\$13,879,000	Sept 19, 1927							Sept 1, int not paid	No payments
Mortgage-Bond Company of New York 4% Gold, Series 2, due 1966—\$1,367,300	Sept 22, 1909								Apr 1 int not pd Apr 1, int pd approx July 31, if bonds were presented for registration as to principal and int at office of Company Bonds so registered not listed
National Radiator Corporation 6½% S F G Deb, due 1947—\$12,000,000	Nov 11, 1927						Feb 1, int not paid	Stricken from List Aug 16	
New Orleans, Texas & Mexico Railway Company									
5½% First Mtge G, Series A, due 1954—\$15,770,000	June 5, 1924								Apr 1, int not paid
5% First Mtge G, Series B, due 1954—\$14,295,500	July 28, 1924								Apr 1, int not paid
5% First Mtge G, Series C, due 1956—\$4,600,000	Apr 14, 1927								Aug 1, int not paid
4½% First Mtge G, Series D, due 1956—\$5,900,000	Feb 6, 1928								Aug 1, int not paid
New York, Chicago and St. Louis Railroad Company 6% 3-Yr G Notes, due 1932—\$20,000,000	Feb 14, 1930								Int and Prin due Oct 1, not paid, Oct 1 See terms Refunding Plan <sup>5</sup> Stricken from List Jan 23
New York State Railways									
4½% 50-Yr First Cons Mtge, Series A, due 1962—\$13,457,000	Feb 27, 1913		Nov 1, int not paid	No payments	No payments				Stricken from List Nov 5
6½% 50-Yr First Cons Mtge, Series B, due 1962—\$3,000,000	Oct 12, 1922		Nov 1, int not paid	No payments	No payments				Stricken from List Nov 5

<sup>5</sup> Refunding Plan Terms \$250 in cash (25% of principal amount), \$30 in cash (Oct 1, 1932 int), \$3 in cash (int on \$250 payment from Oct 1, 1932, to Dec 12 1933), \$750 of Co's 3-Yr 6% Notes, due 1935, paid approx Dec 12, 1933

DOMESTIC CORPORATION BONDS—Continued

7368

STOCK EXCHANGE PRACTICES

Name of Bond	Date Listed	Prior to 1928	1928	1929	1930	1931	1932	1933
New York Railways Company 4% 30 Yr First Real Estate & Ref Mtge, due 1942—\$4,590,000	May 15, 1919	July 1, 1919, int not paid No subsequent payments made	-----	-----	-----	-----	Stricken from List June 29	
Norfolk Southern Railroad Com- pany 5% 50-Yr First & Ref Mtge, Series A, Bonds, due 1961—\$14,751,000	Oct 23, 1913	-----	-----	-----	-----	August 1, int not paid	No payments...	No payments
Norfolk & Southern Railroad Co 5% 50-Yr First Mtge Gold, due 1941—\$1,590,000	Before 1900...	-----	-----	-----	-----	Nov 1, int not paid	No payments...	No payments
North American Cement Corpora- tion 6½% Series A, S F G, due 1940 (with warrants)—\$7,573,000	Nov 12, 1925	-----	-----	-----	-----	-----	-----	March 1, int not paid
Northern Ohio Railway Co 5% Gtd First Mtge G, due 1945— \$2,500,000	Before 1900...	-----	-----	-----	-----	-----	-----	Apr 1, int not paid
Old Ben Coal Corporation 6% 20-Yr First Mtge G due 1944— \$5,476,000	Oct 9, 1924	-----	-----	-----	-----	-----	-----	Aug 1, int not paid
Otis Steel Company 6% First Mtge 15-Yr S F G, Series A, due 1941—\$10,827,500	Nov 26, 1926	-----	-----	-----	-----	-----	-----	Mar 1, int not paid
Pacific Coast Company 5% First Mtge 50-Yr Gold, due 1946— \$4,000 000	Before 1900...	-----	-----	-----	-----	June 1, int not pd June 1 June 1, int pd approx Aug 28 Int paid regularly since Dec 1, 1931	-----	-----
Pan American Petroleum Com- pany 6% 15-Yr First Mtge S F G, due 1940—\$10,672,400	Feb 10, 1927	-----	-----	-----	-----	June 15, int not paid	No payments...	No payments
Paramount Broadway Corpora- tion 5½% 25-Yr First Mtge S F G Loan, due 1951—\$8, 875,000	Mar 25, 1926	-----	-----	-----	-----	-----	-----	July 1, int not paid
Paramount Famous Lasky Cor- poration 6% 20-Yr S F G, due due 1947—\$11,918,000	Mar 1, 1928	-----	-----	-----	-----	-----	-----	June 1, int not paid
Paramount Publix Corporation 5½% 20-Yr S F G, due 1950— \$13,250,000	Aug 5, 1930	-----	-----	-----	-----	-----	-----	Feb 1, int not paid

Park-Lexington Corporation 6½% First Mtge Leasehold S F G, due 1933—\$4,876,000	Oct 25, 1923					Jan 1, int not paid Struck en from Last Nov 5	
Pressed Steel Car Co 5% 10-Yr Conv G, due 1933 (Jan)— \$4,780,000	June 29, 1923						Principal & inter- est due Jan 1, not paid
Punta Alegre Sugar Company 7% 15-Yr S F Conv Debent- ures, due 1937—\$757,000	July 8, 1922			July 1, int not paid		No payments Stricken from Last May 20	
Radio-Keith-Orpheum Corpora- tion 6% 10-Yr G Deb, due 1941—\$726,800	Nov 18, 1932						June 1, int not paid
Robbins & Myers Co 7% First Mtge 20-Yr S F G, due 1942— \$3,000,000	Oct 22, 1922	Dec 1, 1927, int not paid No subse- quent pay- ments made		Stricken from Last June 28			
Richfield Oil Company of Cal- ifornia 6% First Mtge and Col Tr G Bds, Series A Converti- ble, due 1944—\$19,560,500	Aug 15, 1929					May 1, int not paid	
Rio Grande Southern Railroad Company 4% First Mtge G, due 1940— \$2,233,000	Before 1900...	Jan 1, 1922, int not paid No subsequent payments made					
4% First Mtge G, due 1940, Gtd—\$2,277,000	June 27, 1900						
Rock Island, Arkansas & Louisi- ana Railroad Company. 4½% Gtd First Mtge G, due 1934— \$11,000,000	Sept 14, 1910						Sept 1, int not paid.
St Louis, Iron Mountain & South- ern Railway Company 4% River & Gulf Div First Mtge 30-Yr G due 1933—\$34,548,000	Nov 11, 1903						Principal & inter- est due May 1, not pd May 1 May 1, int paid approx May 8.
St Louis-San Francisco Railway Company 4% Prior Lien Mtge G, Series A, due 1950—\$58,007,700	Apr 25, 1917						Jan 1, int not paid
5% Prior Lien Mtge G, Series B, due 1950—\$13,787,150	Apr 25, 1917						Jan 1, int not paid
4½% Cons Mtge G, Series A, due 1978—\$109,866,000	Mar 6, 1928						Mar 1, int not paid
St Paul and Kansas City Short Line Railroad Company 4½% First Mtge due 1941—\$9,379,500	Apr 10, 1912						Aug 1, int not paid

DOMESTIC CORPORATION BONDS—Continued

Name of Bond	Date Listed	Prior to 1928	1928	1929	1930	1931	1932	1933
Schulco Company, Inc 6½% Gtd Mtge S F G due 1946— \$2,669,000	Sept 9, 1928							Jan 1, int not paid on Jan 1 Jan 1, int pd approx Mar 22 July 1, int pd on July 1
Seaboard Air Line Railway Co 4% Atlanta Birmingham First Mtg 30-yr, due 1933— \$5,910,000	Jan 11, 1911					Sept 1, int not paid	No payments...	No payments
6% First Cons Mtge G, Series A, due 1945—\$63,199,000	Jan 12, 1921					Mar 1, int not paid	No payments...	No payments
4% First Mtge 50-Yr G, due 1950 Plan—\$5,581,000	Apr 9, 1902					} Apr 1, int not paid	No payments...	No payments
Sampled—\$4,194,000	Dec 7, 1909						No payments...	No payments
4% Ref Mtge Gold due 1959— \$23,800,000	Aug 15, 1911					Apr 1, int not paid	No payments...	No payments
Seaboard-All Florida Railway 6% Gtd First Mtge G, Series A, due 1935—\$25,000,000	Feb 11, 1926					Feb 1, int not paid	No payments...	No payments
6% Gtd First Mtge G, Series B, due 1935—\$2,000,000	Apr 19, 1927					Feb 1, int not paid	No payments...	No payments
Seaboard & Roanoke Railroad Co 5% First Mtge Currency, due 1926, ext to July 1, 1931— \$2,500,000	July 19, 1926					July 1, int not paid	Stricken from List Nov 2	
Sharon Steel Hoop Company 5½% First Mtge S F G, Series A, due 1948—\$6,200,000	June 14, 1928							Feb 1, int pd \$10 in cash & \$17 50 in scrip Aug 1, int paid in cash
Shubert Theatre Corporation 6% Gold Debentures, due 1942— \$6,450,000	Dec 15, 1927					June 15, int not paid	No payments...	No payments Stricken from List Apr 13
Spokane International Railway Company 5% First Mtge 50- Yr Gold, due 1955—\$4,200,000	Aug 31, 1909							July 1, int not paid
Stevens Hotel Company 6% First Mtge 20-Yr S F G, Series A, due 1945—\$13,000,000	June 24, 1926						Jan 1, int not paid on Jan 1 Jan 1, int pd approx Jan 5 July 1, int not paid	No payments
Studebaker Corporation 6% Gold Notes, due 1942—\$14,946,100	Nov 11, 1932							June 1, int not paid

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STOCK EXCHANGE PRACTICES

Sugar Estates of Oriente, Inc 7% First Mtge S F G, due 1942— \$6,050,000	Nov 23, 1922					March 1, int not paid	No payments Stricken from Last Nov 2	
Toledo, Peoria & Western Rail- way Company 4% First Mtge G, due 1917—\$4,500,000	Before 1900	Interest and principal due July 1, 1917, not paid			Stricken from Last April 10			
Twenty-third Street Railway Company 5% Improvement & Ref Mtge 50-Yr G, due 1962— \$1,500,000	June 24, 1915					July 1, int not paid	No payments	No payments
Ulster and Delaware Railroad Company 5% First Consolidated Mtge G, due 1928 and Certificates of Deposit—\$1,499,000	( <sup>6</sup> )		Principal due June 1, not paid, int due June 1, paid Dec 1, int paid	June and Dec interest paid	June interest paid Dec in- terest paid	No payments	Bonds stricken from Last Feb 5 \$570 on a/c of prin pd approx Feb- ruary 18, on C/Ds \$190 addi- tional on a/c of prin pd approx April 27, on C/Ds Certificates of D e p o s i t s stricken from Last Oct 28	
4% First & Ref Mtge 50-Yr G, due 1952—\$700,000	Mar 9, 1904					Oct 1, int not paid	Stricken from Last April 20	
Union Elevated Railroad Com- pany (Chicago) 5% First Mtge Gold, due 1945—\$4,387,000	Before 1900						Oct 1, int not paid	No payments
United Railways Company of St Louis 4% First Gen Mtge, due 1934—\$30,769,000	Apr 23, 1903							July 1, int not paid
Wabash Railroad Company 5% First Mtge, due 1939— \$33,900,000	Before 1900							May 1, int not pd May 1, May 1 int pd approx June 2
5½% Ref & Gen Mtge G Series A, due 1975—\$12,500- 000	Mar 13, 1925						Mar 1, int not paid	No payments
3½% Omaha Division First Mtge G, due 1941—\$3,173,- 000	Feb 26, 1902							Apr 1, int not pd May 1 Apr 1, int pd approx June 2
5% Ref & Gen Mtge Series B, due 1976—\$15,500,000	Mar 24, 1927						Feb 1, int not paid	No payments

<sup>6</sup> Bonds listed before 1900 C/Ds May 31, 1928.



Wickwire Spencer Steel Company 7% Prior Lien Collateral & Ref Mtge Conv S F G, Series A, due 1935—\$7,410, 500	Sept 30, 1925	Nov 1, 1927, int not paid No subsequent payments made					Stricken from List Nov 18	
7% First Mtge S F G, due 1935—\$12,630,000	Dec 8, 1920		Jan 1, int not paid No sub- sequent pay- ments made				Stricken from List Nov 18	
Willys-Overland Company 6¼% First Mtge S F G, due Sept 1, 1933—\$2,000,000	Mar 13, 1924							Mar 1, int not paid No fur- ther payments made.
Winchester Repeating Arms Com- pany 7¼% First Mtge 20-Yr G, due 1941—\$6,860,000	Dec 24, 1922					April 1, int not paid	No payments Stricken from List Jan 13	
Wisconsin Central Railway Com- pany 4% Superior & Duluth & Ter- minal First Mtge 30-Yr G, due 1936—\$7,500,000	Apr 14, 1909							May 1, int not paid
4% First Gen Mtge 50-Yr G, due 1949—\$23,585,000	Feb 25, 1909							Jan 1, int not paid

FOREIGN CORPORATION BONDS

Abitibi Power & Paper Co, Limited 5% First Mtge G, Series A, due 1953—\$48,267,000	Aug 20, 1929						June 1 int not paid	No change
Alpine Montan Steel Corp. 7% Closed First Mtge 30-Yr S F G, due 1955—\$4,562,800	Sept 9, 1925						Sept 1 int not paid in U S	No change
Antilla Sugar Company 7¼% First Mtge 15-Yr S F G, Series A, due 1939—\$5,250,000	July 24, 1924					Jan 1, int not paid	Stricken from the list Aug 30, 1932	
Agricultural Mortgage Bank of Colombia 6% 20-Yr Guaranteed S F G, due 1947—\$3,329,000	Feb 24, 1928							Offer made to pay Aug 1 int ¼ cash bal in scrip
20-Yr 6% Guaranteed S F G, Issue of April 1928 due 1948— \$4,200,000	Aug 9, 1928							Apr 15 int not pd Offer made to pay Apr 15 int ¼ cash bal in scrip, approx June 28

FOREIGN CORPORATION BONDS—Continued

Name of Bond	Date Listed	Prior to 1923	1923	1929	1930	1931	1932	1933
Baragua Sugar Company First Mtge 15 Yr S F G, 7½% bonds, due 1937—\$4,500,000	Aug 24, 1922	-----	-----	-----	-----	July 15 int not paid	Stricken from the list Sept 20, 1932	
Berlin City Electric Co, Incorporated 6½% 30-Yr S F Deb, due 1959—\$14,140,000	July 11, 1929	-----	-----	-----	-----	-----	-----	Aug 1 int not paid
Camaguey Sugar Company 7% First Mtge S F G, due 1942—\$4,650,000	Nov 9, 1922	-----	-----	-----	-----	-----	Apr 15 int not paid Stricken from the List Nov 5	
Canada Steamship Lines, Limited 6% First & Gen Mtge G Series A, due 1941—\$17,666,000	Sept 15, 1927	-----	-----	-----	-----	-----	-----	Apr 1 int not paid
Cespedes Sugar Company 7½% First Mtge S F G, due 1939—\$1,991,000	Feb 10, 1927	-----	-----	-----	-----	Sept 1 int not paid	Stricken from List Nov 18	
Chile, Mortgage Bank of 6½% Guaranteed S F G, due 1957—\$18,612,000	Aug 26, 1925	-----	-----	-----	-----	Dec 31 int not paid	No int paid....	No int paid
6% Guaranteed S F G, due 1691 (1928 Issue)—\$19,353,000	June 27, 1923	-----	-----	-----	-----	Oct 31 int not paid	No int paid....	No int paid
6¾% Guaranteed S F G of 1926, due 1961—\$18,622,500	Aug 26, 1926	-----	-----	-----	-----	Dec 31 int not paid	No int paid....	No int paid
6% Guaranteed S F G of 1929, due 1962—\$19,582,000	May 15, 1930	-----	-----	-----	-----	Nov 1 int not paid	No int paid....	No int paid
Colombia, Mortgage Bank of 6½% 20-Yr S F G of 1927, due 1947—\$4,000,000	Feb 24, 1928	-----	-----	-----	-----	-----	Apr 1 int not paid	No int paid
7% 20 Yr S F G of 1928, due 1946—\$4,353,000	Feb 24, 1928	-----	-----	-----	-----	-----	\$10 paid on a/c Nov 1 int	No int paid
Colombia, Mortgage Bank of 7% 20-Yr S F Bds of 1927, due 1947—\$2,828,000	Feb 24, 1928	-----	-----	-----	-----	-----	Feb 1 int not paid	No int paid
Consolidated Hydro-Electric Works of Upper Wuerttemberg 7% First Mtge 30-Yr S F G, due 1956—\$3,639,500	Dec 23, 1926	-----	-----	-----	-----	-----	July 15 int not paid	No int paid
Deutsche Bank Amer Prt Cts representing participation in 5-Yr 6% Notes, due Sept 1, 1932—\$25,000,000	Nov 11, 1927	-----	-----	-----	-----	-----	Sept 1 int paid Principal not paid due to emergency decrees of German Govt Stricken from the List Nov 9, 1932	

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STOCK EXCHANGE PRACTICES



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Above Certificates extended to September 1, 1935—\$25,000,000	Sept 16, 1933							Sept 1 int not paid
Eastern Cuba Sugar Corporation 7½% 15-Yr Guaranteed Mtge S F G, due 1937—\$3,000,000	Sept 27, 1922					Sept 1 int not paid	No int paid.....	No int paid
Electric Power Corporation 6¼% Guaranteed First Mtge S F G, due 1950—\$6,750,000	Mar 13, 1925							Sept 1 int not paid <sup>7</sup>
Gelsenkirchen Mining Corp 6% 6-Yr Secured Notes, due 1934—\$15,000,000	July 10, 1930							Sept 1 int not paid. <sup>7</sup>
General Electric Company, Germany 7% 20-Yr S F G Deb, due 1945—\$7,650,000	Jan 26, 1925							July 15 int not paid <sup>7</sup>
German Central Bank for Agriculture 6% Farm Ln Sec G S F, due 1960—\$22,647,000	July 11, 1927							July 15 int not paid <sup>7</sup>
Harpen Mining Corporation 6% G Mtge Series of 1920, due 1949—\$9,875,000	July 25, 1929							July 1 int not paid <sup>7</sup>
Holland-America Line 6% 25-Yr S F, due 1947—\$27,000,000	Apr 27, 1933					Payment of Nov 1, int postponed	Nov 1931, int pd approx May 2 No payment on May 1, coupon 1% pd a/c Nov 1, coupon, Nov 1	1% pd a/c May 1, coupon, May 1
Hungarian Land Mortgage Institute 7½% S F Ld Mtge G Series A, Dollar Bonds due 1961—\$2,867,000	Nov 17, 1927						May 1, int not paid in U S	No change
Series B Bonds of the above issue—\$2,893,000	Apr 4, 1929						May 1, int not paid in U S	No change
Ilseder Steel Corporation 6% G Mtge Series of 1923, due 1945—\$10,000,000	Oct 31, 1923							Aug 1 int not paid <sup>7</sup>

<sup>7</sup> We understand that in accordance with the German Decree of June 9, 1933, funds to pay interest on certain German Bonds are being deposited in Germany

STOCK EXCHANGE PRACTICES

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FOREIGN CORPORATION BONDS—Continued

Name of Bond	Date Listed	Prior to 1928	1928	1929	1930	1931	1932	1933
Jugoslavia, State Mortgage Bank of 7% Sec S F G, due 1957—\$11,542,000	Nov. 8, 1929						\$13 54 pd on a/c Oct 1 int on Oct 1	Arrangements made to pay 6 coupons maturing Oct 1932 to April 1935, either (1) in dinars at rate of 56 78 dinars per dollar or (2) in U S Dollars to extent of 10% face of cpns balance in 5% Funding Bonds
Mexican bonds National Railways of Mexico 4% 70-Yr Gtd Gen Mitge S F Bonds, due 1977. Plain—\$54,421,500	May 12, 1909	April 1914 int paid in scrip on part of issue. No payments made on subsequent coupons						
Assented—\$43,701,400	Apr. 7, 1924	Int on Cash War Nos 3 & 4, due Apr & Oct 1924 amt. to \$23, pd. approx Feb 5, 1927. No payments made on subsequent War.						
4½% 50-Yr Prior Lien S F Bonds, due 1957 Plain—\$92,361,600	May 12, 1909	Jan & July 1914 int. pd in scrip on part of issue. No payments made on subsequent coupons.						

Assented—\$81,867,900	Apr. 9, 1924	Int. on Cash War No. 3, due July 1924, amt to \$11.-87½, pd approx Feb 5, 1927. No payments made on subsequent Warrants					
National Railroad Co of Mexico 4½% Prior Lien Gold Bonds, due 1926 Plain—\$23,000,000	May 14, 1922	Jan & July 1914 int. pd inscrip on part of issue No payments made on subsequent coupons					Stricken from List on Nov 2
4½% Prior Lien Gold Bonds, due 1926 (Assented)—\$21,780,000	May 24, 1924	Int on Cash War No 3, due July 1924, amt. to \$14 12½, pd approx Feb 5, 1927. No payments made on subsequent Wts					
4% First Mortgage Gold Bonds, due 1951 Plain \$24,749,000	May 14, 1922	April 1914 int paid in scrip on part of issue No payments made on Subsequent cpns					
Assented—\$23,330,500.	May 24, 1924	Int on Cash War No 3, due Apr 1924, amt to \$10 pd approx Feb 5, 1927 No payments made on subsequent Wts					

FOREIGN CORPORATION BONDS—Continued

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STOCK EXCHANGE PRACTICES

Name of Bond	Date Listed	Prior to 1928	1928	1929	1930	1931	1932	1933
Mexican bonds—Continued. Mexican International Rail- road Co. 4% First Consolidated Mortgage Gold, due 1977 Plain \$6,277,000.....	Listed before 1900	Sept 1914 int. paid in scrip on part of issue. No payments made on sub- sequent epns.						
Assented—\$3,962,500...	May 24, 1924	Int. on Cash War No. 8, due March 1924, amt. to \$10 pd. ap- prox. Feb. 8, 1927. No pay- ments made on subsequent Wts.						
Institution for Encouragement of Irrigation Works and Development of Agriculture, S.A.: 4½% Gtd 35-Yr. Sinking Fund Bonds, due 1943. Plain—\$26,000,000.....	June 22, 1900	May 1914 cou- pon not paid.						
Assented—\$21,414,500.	May 14, 1924	Int. on Cash War No. 3, due May 1924, amt. to \$11.87½ paid approx. July 7, 1926. Int. on Cash War No. 4, due Nov. 1924, amt. to \$16.87½ paid approx. Feb 5, 1927. Int on Cash War No. 6, due Nov 1925, amt. to \$20.25 paid approx. Mar. 7.	Int on Cash	No payment....	No payment....	No payment....	No payment....	No payment

Vera Cruz & Pacific Railroad Co 4½% Gdt First Mortgage Gold Bonds, due 1934 Plan—\$7,000,000.....	Oct. 25, 1908	War No 5, due May 1925, amt to \$20.26 paid approx. August 1, 1927. July 1914 int. paid in scrip on part of issue No payments made on subsequent epns						
Assented—\$6,518,000 ..	May 14, 1925	Int on Cash War Nos 3 & 4, due July 1924 & Jan 1925, amt to \$28 75 paid approx Feb 5, 1927 No payments made on subsequent Wts						
Karstadt, Rudolph, Inc 6% First Mtge Col S F due 1943—\$13,793,000	Nov 11, 1929							May 1 int not paid
Krenger & Toll Company 5% Sec S F G Deb, due 1959—\$43 417,500	Mar 8, 1929						Sept 1 int. not paid	Stricken from List Feb 7, 1933
Certificates of Deposit for above—\$4,178,000.	May 25, 1932						Sept 1 int not paid	Class A Certificates of Deposit substituted Feb 8, 1933 Partial distribution of \$22 50 per \$1,000 to holders of record of Class A Cts on Aug 29
Lautaro Nitrate Company, Limited 6% First Mtge Conv G, due 1954—\$32,000,000	June 20, 1929						July 1 int not paid	No int paid
Lower-Austrian Hydro-Electric Power Company 6½% Gtd. 20-Yr Closed First Mtge G, due 1944—\$2,596,500	Dec 24, 1924						Aug 1 int not paid in U S	No change
Ontario Power Service Corp, Limited 5½% 20-Yr First Closed Mtge S F G, due 1950—\$20,000,000	Dec 30, 1930						July 1 int not paid	Stricken from List May 17, 1933

FOREIGN CORPORATION BONDS—Continued

Name of Bond	Date Listed	Prior to 1928	1928	1929	1930	1931	1932	1933
Paulista Railway Company 7% First & Ref Mtge S F G Ser A, due 1942—\$2,610,500	June 7, 1923						Sept 15 int not paid	\$17 50 pd. on a/c Sep. 15, 1932, int approx Mar 1 Sept 1, int not paid <sup>7</sup>
Rhine-Main-Danube Corporation du% Gtd S F G Deb, series A, Rhine 1950—\$4,732,500	July 29, 1926							July 1, int not paid <sup>7</sup>
6%-Ruhr Water Service Union 1925-Yr S F Ext G Deb due Rh53—\$8,934,000	April 10, 1930							Aug 1, int not paid <sup>7</sup>
One-Westphalia Electric Power Corporation 6% Series of 1928, Sons Mtge Gold, due 1953— 20,000,000	Sept 25, 1928							No change
Rima Steel Corporation 7% closed First Mtge 30-Yr S F G due 1955—\$2,735,000	Feb 11, 1925						Aug 1, int not paid in U S	Aug 1, Int not paid <sup>7</sup>
Saxon Public Works, Inc 7% Gtd Ext Ln G First Mtge Bds, due 1945—\$15,000,000	Feb 3, 1925							July 1, int not paid <sup>7</sup>
Siemens & Halske, A G 7% 10-Yr Sec S F G due 1935— \$2,750,000	Apr 28, 1927							Sept 1, int not paid <sup>7</sup>
Siemens & Halske Stock Corpora- tion and Siemens-Schuckert- werke Company, Ltd 6½% 25-Yr S F G Deb, due 1951— \$22,478,000	Sept 8, 1927							Aug 1, int not paid
Silesia Electric Corporation 6½% Series, S F Mtge Gold, due 1946—\$3,300,000	Feb 10, 1927							Aug 1, int not paid
Silesian Landowners Association in Breslau, Bank of 6% First Mtge Col S F G, due 1947— \$4,050,000	Dec 13, 1928							Aug 1, int not paid
Tyrol Hydro-Electric Power Com- pany 7% Gtd Sec Mtge S F G, due 1952—\$2,608,000	Dec 27, 1928							Aug 1, int not pd Aug 1 Aug 1, int pd approx Au- gust 8 July 1, int not paid <sup>7</sup>
United Steel Works Corporation 6½% 20-Yr S F Deb, Series A, due 1947—\$22,524,000	June 12, 1930							

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STOCK EXCHANGE PRACTICES

Vertientes Sugar Company 7% First Mtge S F G, due 1942— \$3,200,000.	Dec 12, 1922						June 1, int not paid. Strok- en from Last Nov 5	
Westphalia United Electric Power Corporation 6% S F G, Series A, First Mtge, due 1953— \$19,120,000.	Aug 23, 1928							July 1, int not paid. <sup>†</sup>

**FOREIGN GOVERNMENT AND MUNICIPAL BONDS**

Antioquia, Dept of (Republic of Colombia) 7% 20-Yr Ext Sec S F G, Series A, due 1945—\$6672,500.	Nov 11, 1926						Non-payment of Interest July 1, payment of \$23 80 on a/c approx July 18	No int paid.
7% 20-Yr Ext Sec S F G, Series B, due 1945—\$5,604,300.	Nov 11, 1926						Non-payment of Interest July 1, payment of \$23 80 on a/c approx July 18	No int paid.
7% 20 Yr Ext Sec S F G, Series C, due 1945—\$2,334,900	July 23, 1927						Non-payment of Interest July 1; payment of \$23 80 on a/c approx July 18	No int paid.
7% 20-Yr Ext Sec S F G, Series D, due 1945—\$5,550,000	Aug 9, 1928						Non-payment of Interest July 1, payment of \$23 80 on a/c approx July 18	No int paid
7% 30¼-Year Ext Sec S F G, First Series, due 1957— \$3,925,000	Aug 25, 1927						\$7 paid on a/c of interest due April 1, on April 1	No int paid.
7% 30¼-Yr Ext Sec S F G, Second Series, due 1957— \$3,942,000	Dec 30, 1927						\$7 paid on a/c of interest due April 1, on April 1	No int paid
7% 30¼-Yr Ext Sec S F G, Third Series, due 1957— \$4,350,000	July 12, 1928						\$7 paid on a/c of interest due April 1, on April 1.	No int paid

<sup>†</sup> We understand that in accordance with the German Decree of June 9, 1933, funds to pay interest on certain German Bonds are being deposited in Germany.

FOREIGN GOVERNMENT AND MUNICIPAL BONDS—Continued

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STOCK EXCHANGE PRACTICES

Name of Bond	Date Listed	Prior to 1928	1928	1929	1930	1931	1932	1933
Austria Province of Lower 7½% Sec S F G due 1950—\$1,969,500	Apr 28, 1927						Non-payment of Dec 1, interest in U S	No change
Province of Upper 7% Ext Sec S F G, due 1945—\$4,046,000	Mar. 11, 1928						Non-payment of Dec. 1, int in U S	No change
6½% Ext Sec S F G, due 1957—\$6,971,500	Apr 26, 1928						Non-payment of Dec 15, int in U S	No change
Bavaria, Free State of 6½% Ext S F G, due 1945—\$3,772,000	Sept 23, 1928							Non-payment of Aug 1, int
Bogota, City of (Republic of Co- lombia) 8% Ext. S F G of 1924, due 1945—\$5,966,000	May 28, 1925						Non-payment of Apr 1, int	No change
Bolivia, Republic of 8% Ext 25-Yr Ref S F G, due 1947—\$22,073,500	June 2, 1922					\$22 paid on a/c May 1, int on May 1	No change	No change
7% Ext Sec S F G, due 1969—\$23,000,000	Jan 30, 1929					Non-payment of Mar 1, int in U S	No change	No change
7% Ext Sec Gold, due 1958— \$14,000,000	Apr 5, 1927					Non-payment of Jan 1, int in U S	No change	No change
Brazil, United States of 8% 20-Yr Ext G Loan, due 1941—\$50,000,000	May 20, 1921					Dec 1, int pd in Funding Bonds	June 1, int pd in Funding Bonds Dec 1, pd in Fund- ing Bonds	June 1 int pd in Funding Bds
7% 30-Yr. G, due 1952—\$25- 000,000	June 7, 1922					Dec 1, int pd in Funding Bonds	June 1, int pd in Funding Bonds Dec 1, int pd in Fund ing Bonds.	June 1, int pd in Funding Bds
6½% Ext S F Bds of 1926, due 1957—\$56,108,000	Aug 26, 1926						Apr 1, int pd in Funding Bonds Oct 1, int. pd in Fund ing Bonds	Apr 1, int paid in Funding bds Oct 1, int paid in Funding bds



6 1/4% Ext S F Bds of 1927 due 1957—\$39,709,000	Mar 14, 1928							Apr 15, int. pd in Funding Bonds Oct 15 int pd in Funding Bonds	Apr 15 int pd in Funding Bds Oct. 15 int. pd in Funding Bds
Bremen, State of 7% 10-Yr Ext Ln Gold due 1935—\$14,609,500	Dec 24, 1925								Sept. 1 int not paid <sup>7</sup>
Budapest, City of 6% Ext S F G Ln 1927 due 1962—\$19,119,000	June 24, 1927							June 1, int not paid in U S	No change
Buenos Aires, Province of 6 1/2% Ref Ext S F G, due 1961—\$33,873,000 <sup>7</sup>	Feb 27, 1928								Mar 1 int not paid
6 1/4% Ext S F G Bonds of 1930, due 1961—\$11,610,500	Aug 21, 1930								Feb 1 int not paid
Bulgaria, Kingdom of 7% Settlement Loan 1926, due 1967—\$4,137,000	Dec 23, 1926								\$17 50 pd on a/c int due July 1
7 1/4% Stab Ln 1928, due 1968— \$12,843,500	Nov 22, 1928							\$18 75 pd on a/c int due Nov 15 on Nov 15	No int paid
Caldas, Dept of (Republic of Colombia) 7 1/4% 20-Yr Ext Sec S F G, due 1946—\$9,932,500	Sept 9, 1926							Non-payment of int Jan 1 Jan 1 int paid approx Jan 9	No int paid.
Cauca Valley, Dept of (Republic of Colombia) 7 1/2% 20-Yr Sec S F G, due 1946—\$3,403,500	Apr 28, 1927							Oct 1 int not paid	No change
Chilean Consolidated Municipal Loan 7% 31-Yr Ext S F G "A", due 1960—\$15,000,000	Feb 27, 1930							Mar 1 int not paid	No change
Chile, Republic of 7% 20-Year Ext Ln S F G, due 1942—\$15,380,500	Nov 29, 1922					Nov 1 int not paid	No change	No change	No change
6% Ext S F G, due 1960— \$40,116,000	Oct 18, 1926					Oct 1 int not paid	No change	No change	No change
6% G Ext Bds Ry Ref S F due 1961—\$44,152,000	Jan 29, 1928						Jan 1 int not paid	No change	No change
6% Ext S F G, due 1961— \$25,935,000	Feb 2, 1927						Aug 1 int not paid	No change	No change
6% Ext Ln S G F, due Sept 1, 1961—\$15,823,000	Sept 5, 1928					Sept 1 int. not paid	No change	No change	No change
6% Ext Ln S F G, due 1962—\$9,892,000	Mar 11, 1929					Sept 1 int not paid	No change	No change	No change
6% Ext Ln S F G, due 1963—\$24,745,000	Apr 25, 1930					Nov 1 int not paid	No change	No change	No change

<sup>7</sup> We understand that in accordance with the German Decree of June 9, 1933, funds to pay interest on certain German Bonds are being deposited in Germany

STOCK EXCHANGE PRACTICES

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FOREIGN GOVERNMENT AND MUNICIPAL BONDS—Continued

Name of Bond	Date Listed	Prior to 1928	1928	1929	1930	1931	1932	1933
Imperial Chinese Government 5% Hukuang Rys S F G Ln of 1911—£5,700,000 (British, French, American, and German Issues)	July 18, 1913	"Flat" Dec 15, 1924, due to non-payment of Dec 15 int. Dec. 15 int. on French, British & Amer. Issues pd Jan 26, 1925 Dec 15 int on Ger- man Issue pd Feb 11, 1925 Dec 15, 1919 int (No 17 cpn) on Ger- man Issue pd Mar 2, 1925 June 15, 1925 int on French, British & Amer. Issues pd. June 15, 1925 Dec 15, 1925 int. on Fr. Br & Amer. Issues pd June 16, 1928 June 15, 1920 & June 15, 1925 int on Ger Issue pd June 24, 1926 June 15, 1926 int on Fr Br. & Amer Is- sues pd June 16, 1927. Dec. 15, 1925 int on German Issue pd Sept. 14, 1927.	No change.....	Dec 15, 1926 int on Fr Br & Amer Issues pd July 23, 1929	June 15, 1927 int on Fr Br & Amer Issues pd June 16, 1930	June 15, 1927 int on German Is- sue and Dec. 15, 1927, int. on Br. Fr & Amer. Issues pd June 15, 1931.	Dec 15, 1927 int on German Is- sue and June 15, 1928, int on Br Fr & Amer Issues pd June 15, 1932	June 15, 1928 int. on German Is- sue and Dec. 15, 1928, int on Br Fr & Amer Issues pd June 15, 1933.
Colombia, Republic of 6% Ext S.F G, due 1961—\$21,205,000.	Mar. 27, 1928	-----						July 1 int pd ½ cash balance in script.

Cordoba, City of. 7% 10-Yr Ext S F G of 1927, due 1937—\$1,477,000	Apr 12, 1928						Nov 15 int not pd on Nov 15 Nov 15 int pd ap- prox Nov. 21	No int paid.
7% Ext S F G of 1927, due 1937—\$4,376,500	Aug 11, 1927						Aug 1 int not paid	No change
Costa Rica, Republic of 7% Ext Sec S F G, of 1926, due 1931— \$7,939,000	Aug 9, 1927					\$23 pd on a/c of Nov 1, int	No int paid.....	No int paid
Cundinamarca, Dept of 6½% Ext Sec S F G, due 1930— \$11,537,000	Aug 23, 1928						\$19 72 paid a/c May 1, interest	No payments
Graz, Municipality of 8% Mort Ln G, due 1934—\$2,418,000	Apr 15, 1928						Nov 1, int not paid in U S	No change
Greek Government 7% 40-Yr Sec S F G, due 1964—\$10,361,000	Dec 17, 1924						May 1, int not paid	\$21 (30% pay- ment made on a/c int due Greek Fiscal Year 1932-33) approx April 20
6% 40-Yr Sec S F G Stabi- lization & Refugee Ln of 1923, due 1968—\$16,581,500	Jan 31, 1928						Aug 1 int not paid.	\$18 (30% pay- ment made on a/c int due Greek Fiscal Year 1932-33) approx Apr 20
Heidelberg, City of 7½% Ext 25- Yr S F G, due 1930—\$1,254,000	Apr 29, 1928							July 1, int not paid <sup>7</sup>
Hungarian Consolidated Munici- pal Loan 7½% 20-Yr Sec S F G, due 1945—\$7,994,000	Feb 25, 1928							Jan 1 int not paid in U S July 1 int not paid in U S
7% 20-Yr Sec S F G, Ext Ln 1926, due 1946—\$5,163,000	Jan 13, 1927						July int not paid in U S	Jan & July int not paid in U S
Leipzig, City of 7% S F G, Ext Ln 1926, due 1947—\$4,121,000	June 24, 1928							Aug 1, int not paid <sup>7</sup>
Medelin, Municipality of 6½% G Bds of 1928, due 1934— \$8,378,000	Dec 27, 1928					Dec 1 int not paid	\$9 10 paid on a/c Dec 1, 1931 int on July 5	No int paid

<sup>7</sup> We understand that in accordance with the German Decree of June 9, 1933, funds to pay interest on certain German Bonds are being deposited in Germany

FOREIGN GOVERNMENT AND MUNICIPAL BONDS—Continued

Name of Bond	Date Listed	Prior to 1928	1928	1929	1930	1931	1932	1933
Minas Geraes, State of 6½% Sec Ext S F G Bds of 1928, due 1958—\$8,284,000	Dec 13, 1928						Mar 1 int. not paid \$8 56 paid on a/c June 6	No int paid
6½% Sec Ext G Ln 1929, Series A, due 1969—\$7,687,000	Sept 26, 1929						Mar 1 int not paid \$8/56 paid on a/c June 6	No int paid
Mexico, Republic of 6% 10-Yr Treasury Notes, Series A of 1913, extended to 1933 (Assented)—£5,629,080	June 5, 1924	\$24 25 paid on Cash War No 3 due July 1924, approx July 7, 1926 \$29 10 paid on Cash War No 4, due Jan 1926, approx Feb. 5, 1927 \$29 10 paid on Cash War No. 5, due July 1926, approx. Aug 1, 1927	\$29 10 paid on Cash War No 6, due Jan 1926, approx Mar 7	No payment....	No payment....	No payment....	No payment....	No payment
4% External Gold Loan of 1910, due 1945 (Assented)— £9,167,320	June 4, 1924	\$14 55 paid on Cash War No 3, due July 1924, approx July 7, 1926 \$19 40 paid on Cash War No 4, due Jan 1926, approx Feb 5, 1927 \$19 40 paid on Cash War No. 5, due July 1926, approx. Aug 1, 1927.	\$19 40 paid on Cash War No 6, due Jan 1926, approx Mar 7	No payment....	No payment....	No payment....	No payment....	No payment

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STOCK EXCHANGE PRACTICES

5% Cons Ext Gold Loan 1899, due 1945 Plain—£21,180,720.....	Apr 11, 1900	July 1914 int not paid. No payments made on sub- sequent cou- pons						
Assented—£8,831,520.....	Apr. 7, 1924	\$19 40 paid on Cash War Nos 5 & 6, due Apr & July, 1924, approx July 7, 1926. \$24 25 paid on Cash War Nos 7 & 8, due Oct. 1924 & Jan 1925, approx Feb 5, 1927 \$24 25 paid on Cash War Nos 9 & 10, due Apr. & July, 1925, approx Aug 1, 1927	\$24 25 paid on Cash War Nos. 9 & 10, due Oct. 1925 and Jan 1926, approx Mar 7, 1928	No payment.....	No payment.....	No payment.....	No payment.....	No payment
Mexico, United States of 4% Gold Loan Debt of 1904, due 1954 Plain—\$37,037,500.....	May 24, 1905	June 1, 1914 opn not paid No payments made on sub- sequent cou- pons						
Assented—\$33,439,000.....	Apr 9, 1924	\$9 paid on Cash War No 3, due June 1924, approx July 7, 1926 \$14 paid on Cash War No 4, due Dec 1924, ap- prox. Feb 5, 1927 \$18 paid on Cash War No. 5, due June 1925, ap- prox Aug. 1, 1927.	\$18 paid on Cash War No 6, due Dec 1925, approx Mar. 7.	No payment.....	No payment.....	No payment.....	No payment.....	No payment

FOREIGN GOVERNMENT AND MUNICIPAL BONDS—Continued

Name of Bond	Date Listed	Prior to 1928	1928	1929	1930	1931	1932	1933
Montevideo, City of 7% S F G, due 1952—\$6,000,000.	Aug 7, 1922	-----	-----	-----	-----	Dec 1 int not paid	Dec 1931, int pd approx Jan 4	No int paid
6% So Blvd Ln Ext S F G Series A, due 1959—\$4,852,000	Sept 12, 1929	-----	-----	-----	-----	-----	May 1 int not paid on May 1 May 1 int paid Sept 12	No int paid
New South Wales, State of 5% 30-Yr Ext S F G, due 1957— \$23,453,500	July 28, 1927	-----	-----	-----	-----	-----	Feb 1 int not paid on Feb 1 Int payments r e s u m e d approx Feb 20	No change
Nuremberg, City of 6% 25-Yr Ext S F G, due 1952—\$3,932,- 000	Feb 24, 1928	-----	-----	-----	-----	-----	-----	Aug 1 int not paid ?
Panama, Republic of 5% 35-Yr Ext Sec S F G, Series A, due 1963—\$11,435,000	July 3, 1928	-----	-----	-----	-----	-----	-----	May 15 int not paid
Pernambuco, State of 7% Ext Sec S F G, due 1947—\$5,594,- 000	Aug 26, 1927	-----	-----	-----	-----	-----	Sep 1, int not paid	No change.
Peru, Republic of 7% Sec S F G, due 1959— \$15,000,000	July 16, 1927	-----	-----	-----	-----	Sept 1 int not paid	\$17 94 paid on a/c Sept 1, 1931, int on May 26	No int paid.
6% Peruvian Nat Ln Ext S F G, 2nd Ser, due 1961— \$25,000,000	Oct 24, 1928	-----	-----	-----	-----	Apr 1 int not paid	\$16 70 paid on a/c May 1, 1931, int on May 26	No int paid.
6% Peruvian Nat Ln Ext S F G, 1st Ser, due 1960— \$45,873,000	Dec 21, 1927	-----	-----	-----	-----	June 1 int not paid	\$4 46 paid on a/c June 1, 1931, int on May 26	No int paid
Porto Alegre, City of 7½% 40-Yr S F G Ext Ln of 1925, due 1968—\$7,890 000	June 9, 1927	-----	-----	-----	-----	-----	Jan 1 int not paid	No change
8% Guar 40-Year G Ext Ln of 1921, due 1961—\$3,320,000	Apr 6, 1922	-----	-----	-----	-----	Dec 1 int not paid	No change.....	No change.
Rheinels Union 20-Yr 7% S F Mtgs, G, due 1946— \$20,313 000	May 13, 1926	-----	-----	-----	-----	-----	-----	July 1 int not paid ?
Rio de Janeiro, City of 8% 25-Yr S F G, due 1946— \$12,000,000	Oct 8, 1921	-----	-----	-----	-----	-----	Apr 1, int not paid	No change.

6½% Ext Sec S F G , due 1953—\$30,000,000	May 24, 1928					Aug 1, int not paid.	\$10 06 paid on a/c Aug 1, 1931, int Jan 11	No int paid.
Rio Grande do Sul, State of								
8% 25-Yr S F G Ext Ln of 1921, due 1946—\$5,950,000	Jan 27, 1922						Apr 1, int not paid	No int paid
7% 40-Yr S F G Ext Ln of 1926, due 1966—\$9,713,000	Apr 12, 1928					Nov 1, int not paid	No int paid.....	No int paid
7% Cons Munica Ln 40-Yr S F G , due 1967—\$3,912,500	June 27, 1929					Dec 1, int not paid	No int paid.....	No int paid
6% Ext S F G Bds of 1928, due 1968—\$23,000,000	Oct 25, 1928					Dec 1, int not paid	No int paid.....	No int paid
El Salvador, Republic of								
8% Customs First Lien S F G Series A, due 1948—\$3,377,500	Nov 28, 1923						Jan 1 int not paid on bonds	No int paid
Certificates of Deposit for above	May 4, 1932							July 1 int pd less protective Com ex per \$1,000
Sao Paulo, City of								
8% 30 Yr Ext Sec S F G due 1952—\$3, 588, 500	Mar. 2, 1922					Nov 1 int not paid.	\$19 paid on a/e Nov 1931 int approx Aug 12	No int paid
6½% Ext Sec S F G of 1927, due 1957—\$5,900,000	Nov 11, 1927					Nov 15 int not paid	No int paid.....	No int paid.
San Paulo, State of								
8% 15-Yr S F G Ext Ln of 1921, due 1936—\$4,568,000	Mar 8, 1920						July 1 int not paid	No int paid.
7% Sec S F G Ex Water Wks Ln of 1926, due 1956—\$6,914,000	Mar 26, 1926						Mar 1 int not paid on Mar 1 \$29 paid on a/c Mar 11 int Mar 11	No int paid.
8% Sec 25-Yr S F G Ext Ln of 1925, due 1950—\$14,719,000	Mar 31, 1925						\$32 paid on a/e July 1 int	No int paid.
6% 40-Yr S F G Ext Dollar Ln of 1928, due 1968—\$14,695,000	Aug 24, 1928						Jan 1 int not paid	No int paid
Santa Fe, Province of								
7% pub Credit Ext S F G , due 1942—\$9,713,500.	Sept 23, 1926						Sept 1 int not paid	No int paid.

<sup>1</sup> We understand that in accordance with the German Decree of June 9, 1933, funds to pay interest on certain German Bonds are being deposited in Germany.

FOREIGN GOVERNMENT AND MUNICIPAL BONDS—Continued

Name of Bond	Date Listed	Prior to 1928	1928	1929	1930	1931	1932	1933
Serbs, Croats & Slovenes, Kingdom of 7% Sec. Ext G, Series B, due 1962—\$30,000,000	Nov 14, 1928						Nov 1 int. not paid	Arrangements made to pay 6 coupons maturing Nov. 1932 to May 1935, either (1) in dinars at rate of 56/78 dinars per dollar or (2) in U S dollars to extent of 10% face of cpns balance in 6% Funding Bonds
8% 40 Yr Sec Ext G, due 1962—\$15,250,000.	Dec. 8, 1922						Nov 1 int not paid	\$7 paid on a/c of Nov 1932 cpn approx July 17 Arrangements made to pay 6 coupons maturing Nov. 1932 to May 1935, either (1) in dinars at rate of 56/78 dinars per dollar or (2) in U S dollars to extent of 10% face of cpns Balance in 5% Funding Bonds (with exception of Nov. 1, 1932, cpn on which no partial payment in cash will be made)
Styria, Province of. Ext Sec S F 7% G, due 1946—\$3,450,000	Jan 26, 1928						Aug 1 int not paid in U S.	No change



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Tolma, Dept of (Republic of Colombia) 7% 20-Yr Sec S F G, due —, \$2,112,000	May 10, 1928						\$27 paid on s/c May 1 int on May 2	No int paid
Uruguay, Republic of 8% 25-Yr S F Ext Ln G, due 1946—\$7,500,000	Aug 11, 1921							Aug 1 tint not pd in dollars on Aug 1 \$23 75 pd on \$40 cpns and \$11 87 pd on \$20 cpns surrendered for cancellation, approx Aug 2
Vienna, City of 6% Ext Ln S F G, due 1952—\$27, 215, 000	Aug 23, 1928						Nov 1, int not paid in U S	No change

STOCK EXCHANGE PRACITICES

7391

## SCHEDULE E

N Give the following information for each of the years from 1928 to 1933 inclusive

(1) All Committees of the New York Stock Exchange and the names of the members of each Committee.

*Answer*—The standing committees of the Exchange are appointed at the first meeting of the Governing Committee following the Annual Election of the Exchange, which is held in May of each year. A list of the Committees so appointed for each of the years from 1928 to 1933, inclusive, is given below. In addition, from time to time the Governing Committee has appointed special committees to consider particular problems such as the increase in membership of the Exchange, etc., and certain other special committees dealing with particular problems, such as the Special Committee on Wages, the Special Committee on Survey, etc. The names of the members of such Special Committees will be furnished if requested.

## STANDING COMMITTEES

1928

## ADMISSIONS

Oliver C Billings  
Howard Butcher, Jr.  
Jay F. Carlisle  
Louis C. DeCoppet  
Emlen M. Drayton  
Charles R. Gay  
Robert Gibson, Chairman  
W. Eugene Kimball  
Allen L. Lindley  
Peter J. Maloney  
Edward Roesler, Vice-Chairman  
William V. C. Ruxton  
Charles S. Sargent  
Edwin A. Seasongood  
Chalmers Wood

## ARBITRATION

Winthrop Burr, Chairman  
Jay F. Carlisle  
Louis C. DeCoppet  
Howard C. Foster  
Charles R. Gay  
Walter W. Hess  
Allen L. Lindley, Vice-Chairman  
Peter J. Maloney

## ARRANGEMENTS

Oliver C. Billings, Chairman  
George U. Harris  
Herbert L. Mills  
Charles Morgan  
L. Martin Richmond  
Bertrand L. Taylor, Jr.  
Richard Whitney, Vice-Chairman

## BUSINESS CONDUCT

Edgar Boody  
Winthrop Burr, Chairman  
Allen L. Lindley  
H. G. S. Noble, Vice-Chairman  
Richard Whitney

## CONSTITUTION

Emlen M. Drayton  
George U. Harris  
Sherman B. Joost  
Charles Morgan, Vice-Chairman  
Edwin A. Seasongood

## FINANCE

Edgar Boody, Vice-Chairman  
Emlen M. Drayton  
W. Eugene Kimball  
Joseph H. Seaman  
Arthur Turnbull  
The President and Treasurer

## LAW

Winthrop Burr  
Walter L. Johnson  
James B. Mabon, Chairman  
H. G. S. Noble, Vice-Chairman  
Arthur Turnbull

## ODD LOTS AND SPECIALISTS

Hamilton F. Benjamin  
Edgar Boody  
Charles R. Gay  
Warren B. Nash, Vice-Chairman  
L. Martin Richmond, Chairman

## PUBLICITY

James C. Auchincloss, Chairman  
Walter L. Johnson  
William B. Potts  
L. Martin Richmond  
Blair S. Williams, Vice-Chairman

## QUOTATIONS AND COMMISSIONS

James C. Auchincloss  
Hamilton F. Benjamin  
Howard Butcher, Jr.  
Howard C. Foster  
Walter W. Hess

1928

## QUOTATIONS AND COMMISSIONS—CON.

Edward Roesler, Vice-Chairman  
Joseph H. Seaman  
Bertrand L. Taylor, Jr.  
Erastus T. Tefft, Chairman

## SECURITIES

Robert Gibson  
Sherman B. Joost  
Herbert L. Mills  
Edwin A. Seasongood  
Chalmers Wood, Chairman

## STOCK LIST

Frank Altschul  
Edwin M. Carter  
Robert Gibson, Chairman

## STOCK LIST—CON

Walter L. Johnson  
William V. C. Ruxton  
Charles S. Sargent

## CONFERENCE COMMITTEE

E. H. H. Simmons, Chairman  
James C. Auchincloss  
Oliver C. Billings  
Winthrop Burr  
Robert Gibson  
Richard Whitney, Vice-Chairman  
James B. Mabon  
Warren B. Nash  
William B. Potts  
L. Martin Richmond  
Erastus T. Tefft

1929

## ADMISSIONS

Harold O. Barker  
Oliver C. Billings  
Jay F. Carlisle  
Louis C. DeCoppet  
Charles R. Gay  
Robert Gibson, Chairman  
George U. Harris  
Sherman B. Joost  
Robert Lehman  
Peter J. Maloney  
Edward Roesler, Vice-Chairman  
Wm. V. C. Ruxton  
Charles S. Sargent  
E. T. H. Talmage, Jr.

## ARBITRATION

Jay F. Carlisle  
Louis C. DeCoppet  
H. C. Foster  
Charles R. Gay  
Allen L. Lindley, Chairman  
Peter J. Maloney, Vice-Chairman  
George M. Sidenberg  
George P. Smith

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Oliver C. Billings, Chairman  
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Emlen M. Drayton  
George U. Harris  
Herbert L. Mills  
L. Martin Richmond  
Bertrand L. Taylor, Jr., V-Ch.

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H. G. S. Noble  
E. T. H. Talmage, Jr.  
Richard Whitney, Chairman

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George M. Sidenberg  
George B. Wagstaff

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Joseph H. Seaman  
Arthur Turnbull  
Blair S. Williams  
The President and Treasurer

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Richard Whitney

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L. Martin Richmond  
Blair S. Williams, Vice-Chairman

## QUOTATIONS AND COMMISSIONS

James C. Auchincloss  
Hamilton F. Benjamin  
H. I. Foster

1929

## QUOTATIONS AND COMMISSIONS—CON

H. C. Foster  
 J. Clark Moore, Jr  
 Edward Roesler, Vice-Chairman  
 Joseph H. Seaman  
 Bertrand L. Taylor, Jr.  
 Erastus T. Tefft, Chairman

## SECURITIES

Robert Gibson  
 Walter L. Johnson  
 Sherman B. Joost, Vice-Chairman  
 Herbert L. Mills, Chairman  
 Herbert G. Wellington

## STOCK LIST

Frank Altschul  
 Robert Gibson, Chairman

## STOCK LIST—CON

Wm V. C. Ruxton, Vice-Chairman  
 Charles S. Sargent  
 Joseph H. Seaman  
 Herbert G. Wellington

## CONFERENCE COMMITTEE

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 William B. Potts  
 L. Martin Richmond  
 Erastus T. Tefft

1930

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 Jay F. Carlisle  
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 Sherman B. Joost  
 Robert W. Keelips  
 Robert Lehman  
 Peter J. Maloney  
 William V. C. Ruxton  
 George M. Sidenberg  
 Raymond Sprague  
 E. T. H. Talmage, Jr  
 George B. Wagstaff

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 Blair S. Williams

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 Alexander B. Gale

## BUSINESS CONDUCT—CON.

George U. Harris  
 H. G. S. Noble  
 E. T. H. Talmage, Jr.

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 George P. Smith

## PUBLICITY

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 Edward C. Fiedler  
 Raymond Sprague

1930

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 Edward Roesler, Vice-Chairman  
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 Howard C Foster  
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 Joseph H Seaman  
 Bertrand L Taylor, Jr  
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 George P. Smith

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1931

## ADMISSIONS

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1931

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 J. Clark Moore, Jr.

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 E. H. H. Simmons  
 Erastus T. Tefft

1932

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 Raymond Sprague  
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 Blair S. Williams

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 George P. Smith  
 Blair S. Williams

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 John A. Cissel  
 Herbert L. Mills  
 L. Martin Richmond

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 A. Varick Stout, Jr.  
 Lewis A. Williams

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 L. Martin Richmond  
 Edward T. H. Talmage

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 A. Heyward McAlpin  
 George B. Wagstaff

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 Joseph H. Seaman  
 The President and Treasurer

1932

## LAW

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Arthur Turnbull

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Douglas R. Hartshorne

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Jay F. Carlisle, V-Ch.  
Edward C Fiedler  
George U. Harris  
A. Varick Stout, Jr.

## QUOTATIONS AND COMMISSIONS

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Edward Roesler, Vice-Chairman  
James C Auchincloss  
Arthur F Broderick  
Herbert I. Foster

## ADMISSIONS

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Edward C Fielder  
Charles R Gay  
George U Harris  
Harold Hartshorne  
Louis E Hatzfeld  
Walter L Johnson  
Peter J Maloney  
A. Heyward McAlpin  
Charles M Newcombe  
George P Smith  
Raymond Sprague  
E. T. H Talmage, Jr.

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Howard C Foster  
Louis E Hatzfeld  
Robert W. Keelips  
George M. Sidenberg  
George P Smith  
Blair S Williams

## ARRANGEMENTS

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Bertrand L. Taylor, V-Ch.  
Arthur F Broderick  
John A. Cissel  
Herbert L Mills

## QUOTATIONS AND COMMISSIONS—CON.

Howard C Foster  
J Clark Moore, Jr.  
Bertrand L Taylor, Jr.  
Herbert G. Wellington

## STOCK LIST

Frank Altschul, Chairman  
Herbert G Wellington, Vice-Chairman  
Warren B Nash  
Joseph H. Seaman  
E. H. H Simmons  
Raymond Sprague

## CONFERENCE COMMITTEE

Richard Whitney, Chairman  
Allen L Lindley, Vice-Chairman  
Frank Altschul  
James C Auchincloss  
Oliver C Billings  
Warren B Nash  
H. G. S Noble  
L Martin Richmond  
Edward Roesler  
E H. H Simmons  
Bertrand L Taylor, Jr.  
Erastus T. Tefft

1933

## ARRANGEMENTS—continued

Charles M. Newcombe  
L. Martin Richmond  
Raymond Sprague  
Lewis A. Williams

## BUSINESS CONDUCT

Allen L. Lindley, Chairman  
L. Martin Richmond, V-Ch.  
George U. Harris  
H. G. S. Noble  
E. T. H. Talmage, Jr.  
Blair S. Williams

## CONSTITUTION

George M. Sidenberg, Chairman  
Lewis A. Williams, V-Ch.  
Harold Hartshorne  
A. Heyward McAlpin  
Harry H. Moore

## FINANCE

Arthur Turnbull, Chairman  
E T. H. Talmage, Jr., Vice-Chairman  
Jay F Carlisle  
Edward C Fiedler  
Joseph H Seaman  
The President and Treasurer

## LAW

H. G. S. Noble, Chairman  
E. H. H. Simmons, Vice-Chairman

1933

## LAW—continued

Allen L. Lindley  
Warren B Nash  
Arthur Turnbull

## ODD LOTS AND SPECIALISTS

L Martin Richmond, Chairman  
Charles R. Gay, Vice-Chairman  
Paul Adler  
James C. Auchincloss  
Douglas R. Hartshorne

## PUBLICITY

James C Auchincloss, Chairman  
Jay F. Carlisle, V-Ch  
Edward C. Fiedler  
George U. Harris  
A. Varick Stout, Jr

## QUOTATIONS AND COMMISSIONS

Erastus R Tefft, Chairman  
James C. Auchincloss, V-Ch  
Arthur F Broderick  
John A. Cissel  
Howard C Foster  
Robert W Keelips  
Bertrand L Taylor, Jr.  
Herbert G Wellington  
Alexander C Yarnall

## SECURITIES

Walter L Johnson, Chairman  
Herbert L. Mills, V-Ch  
Edward E Bartlett, Jr  
Edward C Fiedler  
Douglas R Hartshorne

## STOCK LIST

Frank Altschul, Chairman  
Herbert G Wellington, V-Ch  
Harry H. Moore  
Joseph H. Seaman  
E H H. Simmons  
Raymond Sprague

## CONFERENCE COMMITTEE

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H G S. Noble  
L Martin Richmond  
Edward Roesler  
E. H. H. Simmons  
Bertrand L Taylor, Jr.  
Erastus T Tefft

## COMMITTEE EXHIBIT No 114, FEBRUARY 26, 1934

(This exhibit consists of a letter dated November 27, 1933, from Charles E. Hudson, President, San Francisco Mining Exchange, to Ferdinand Pecora, together with accompanying data, letter appears in full on page 1209.)

SECRETARY'S OFFICE, SAN FRANCISCO MINING EXCHANGE,  
327 Bush Street, San Francisco, Nov 27, 1933

MR FERDINAND PECORA,  
*Counsel, Committee on Banking and Currency,*  
285 Madison Ave., New York City.

DEAR SIR: Complying with your request we are inclosing herewith today's quotation sheet which gives the bids and offers and sales of stocks listed on this Exchange, together with the names and addresses of the members of the Exchange.

In this connection, I wish to remark that our Exchange may be termed a white chip trading rendezvous for stock Mining and oil stocks are necessarily of a speculative character and we do not attempt to make the public think that they are anything else. A hole in the ground today may be a mine of value tomorrow and the mine of immense development may run out of its ore and be a tremendous hole in the ground the next day. Our stocks for that reason, as I said before, are speculative and do not have the immense quantity of water that many of the industrial stocks contain. The fact is, we have to supply water from the desert area while the industrials are usually organized by promoters and supplied with water with great hydraulic pumps from the Atlantic Ocean.

If we can be of further service, we are at your command

Yours very truly,

CHAS E HUDSON,  
*President*

P.S.—The bankers generally don't help us because our activities interfere with their game



SAN FRANCISCO MINING EXCHANGE

(FOUNDED 1862)

Public sessions Daily, 9 30 to 1.30, Saturday, 9 30 to 11 30

327 BUSH STREET, SATURDAY, NOVEMBER 25, 1933 PHONE GARFIELD 3206

OFFICERS

Chas E Hudson, President; W H Hannon, Vice President, K Cohn, Secretary, R A Broy, Treasurer

MEMBERS

Amigo, H J, Russ Bldg (H J Amigo & Co)  
 Bevis, J E, Reno, Nev, Brown, R Fred, 327 Bush St, Broy, Geo L, 381 Bush St, and Broy, R A, 381 Bush St (Geo L Broy & Co)  
 Busby, F M, 155 Montgomery; Clemens, G M, 155 Montgomery (R L Colburn Co), 639 S Spring St, L A  
 Coe, E W, 127 Montgomery (E W Coe & Co)  
 Coffin, A F, 335 Bush St (A F Coffin & Co)  
 Cohn, K, Russ Bldg. Elliot, Emery W, 514 Mills Bldg (Elliot & Co)  
 Epstine, C B, 329 Bush St; Epstine, H E, 329 Bush St, Eyre, Perry Merchants Exchange  
 Flach, Geo J, 321 Bush St (Hudson Sons Co).  
 Forsyth, W D, 321 Bush St, Frankenthal, A, New York City; Goodman, Gerald M; Hannon, W H, Alexander Bldg; Harris, D D, 335 Bush St (A F Coffin & Co)  
 Hayward, F, 155 Montgomery; Hudson, Chas E, 321 Bush St. (Hudson Sons Co)  
 Judge, Jr Martin, 1 Montgomery (Martin Judge, Jr & Co)  
 Kendall, Zeb, Virginia City, Nev; Kinley, W, Mills Bldg, Kryer, L H, Los Angeles, 639 So Spring St  
 Leary, E R, 321 Bush St, Nowell, A R, 415 Montgomery (Lohmann & Nowell)  
 Peters, H Z, Russ Bldg, Richardson, J N, 327 Bush St; Schlanzer, F A, Reno, Nev, Shaw, B F, 127 Montgomery St (Shaw Bros)  
 Thomas, Arthur, Salt Lake City (Arthur Thomas, Inc)  
 Walker, F H, 155 Montgomery (Gartland & Walker)  
 Wilson, Boyd L, Berkeley; Wingfield, Geo, Reno, Nev, Wollberg, A S, 325 Bush St (Zadig & Co)  
 Zeitlin, R, Los Angeles (E Graham Elliott Co)

Closing quotations

	Bid	Asked		Bid	Asked
A			C		
Acme.....	01	02	Calumet.....	13	15
Aladdin.....	01	02	Carrie <sup>1</sup> .....	.....	02
Alto.....	.....	02	Gen. Eureka Com <sup>1</sup> .....	60	65
Amador.....	02	04	Gen Eureka Pfd.....	60	70
Apex.....	.....	02	Chollar Extension.....	06	08
Arizona Comstock <sup>1</sup> .....	.....	.....	Comstock Gold Point.....	14	19
Arrowhead Dev.....	02	03	Comstock Keystone <sup>1</sup> .....	09	14
B			Com Tun & Drainage.....	54	55
Belmont Metals.....	03	05	Cons Chollar <sup>1</sup> .....	2 35	2 40
Belmont Osborn.....	03	05	Concordia.....	02	04
Best & Belcher.....	07	10	Cons Gold Mng Co <sup>1</sup> .....	04	.....
Big Jim <sup>1</sup> .....	07	.....	Con Virginia.....	21	24
Black Bear.....	03	04	Cory Mines <sup>1</sup> .....	04	07
Black Mammoth.....	11	13	D		
Blue Ridge Midway.....	01	03	Dayrock.....	1 00	.....
Booth.....	01	02	Divide.....	10	11
Broken Hills.....	.....	02	Divide Annex.....	01	02
Brougner.....	01	02	Divide Ex Con.....	02	04
Bun-Hill & Sullivan <sup>1</sup> .....	36	.....	Dividend.....	01	02
Butler Gold.....	01	02	Double "O".....	01	03

<sup>1</sup> Producing companies

Closing quotations—Continued

	Bid	Asked		Bid	Asked
Empress <sup>1</sup> D	60	65	New Southerland		
Falcon F	05		North Divide Ex.		02
Genu Con G	14	30	Obra Mines O		
Giant Mines		02	Operator	05	06
Gipsy Queen		02	Ophir	01	02
Goldanda <sup>1</sup>	40	50	Pacific Butte P	20	23
Goldfield Con <sup>1</sup>	20	21	Pony Meadows		02
Gold Ledge	18	20	Red Hill R	01	02
Gold Metals	01	02	Rosetta		
Gold Reef		02	Round Mtn <sup>1</sup>	02	05
Gold Shares	10	12	San Rafael S	02	03
Gold Zone	01	02	Searchlight <sup>1</sup>	11	13
Great Bend			Silver King	01	02
Grass		02	Simon		
Halifax	04	08	Smuggler <sup>1</sup>	03	04
Hercules Mines	02	02	Sonora Standard <sup>1</sup>	04	05
High Div.	01	02	Standard Gold	06	08
Idaho Maryland <sup>1</sup>	3 15	3 65	Sunshine <sup>1</sup>	36	40
Indian		02	Thomson T	2 90	
Jack Waite <sup>1</sup> J	23	30	Tom Reed <sup>1</sup>		
Jumbo Extension <sup>1</sup>	02	03	Ton North Star	01	02
Kelsey <sup>1</sup> K	40	49	Trinity Gold Bar <sup>1</sup>	01	02
Keystone	05	08	Union Con <sup>1</sup> U		
Lucky Strike L	05	06	Vera Mines Corp. V	08	15
Manhattan Con M		02	Verdi		
Manhattan Gold <sup>1</sup>	01	02	Veta Grande Gold		04
Mexican <sup>1</sup>	35	45	West End W	01	02
Minesamerica	10	10	West End Ex.	13	13
Mirabel		25	Western Merger <sup>1</sup>	01	02
Myra		02	West Mines <sup>1</sup>	02	
New Cal Ton N	01	03	White Caps	25	28
Newmont <sup>1</sup>			Wilson, Reo	05	08
			Yuba Sierra <sup>1</sup> Y	02	05
				43	44

<sup>1</sup> Producing companies.  
<sup>2</sup> U L

SAN FRANCISCO MINING EXCHANGE

(Saturday, November 25, 1933)

SALES

FORMAL SESSION		INFORMAL SESSION—continued
Double "O":		Calumet
4000	02	1000
		14
		Cen-Eka-Com:
		200
		60
		Chollar Ex..
		4000
		07
		3000
		08
		Comstock K .
		1500
		13
		Com Tun. & D.:
		200
		50
		650
		52

INFORMAL SESSION—continued	
Con Chollar.	
600-----	2 30
200-----	2 32½
500-----	2 32½
300-----	2 35
400-----	2 35
200-----	2 37½
300-----	2 37½
300-----	2 37½
Cory Mines	
1000-----	06
Empress	
100-----	60
Genii Con	
1200-----	15
Golconda:	
800-----	42
700-----	43
Gold Ledge:	
500-----	19
1000-----	20
1500-----	20
Idaho Mryld	
350-----	3. 25
Jack Waite	
1000-----	24
1000-----	25
Jumbo Ex	
200-----	03
1000-----	02
Kelsey	
600-----	45
Bar silver-----	43
Gold-----	33. 76

INFORMAL SESSION—continued	
Lucky Strike:	
3000-----	05
5000-----	06
Man Gold:	
1000-----	01
Ophir.	
500-----	21
Red Hill:	
3000-----	03
Sonora Std.:	
400-----	39
200-----	39
100-----	39
100-----	39
300-----	39
West Mines:	
1000-----	27
2500-----	27
500-----	26
Yuba Sierra:	
500-----	42
500-----	42
1000-----	42
300-----	43
200-----	43
100-----	43
300-----	43
300-----	43
150-----	43
750-----	43
1000-----	43
Unlisted:	
Belmont-----	Bid 20 Asked
Tonopah mining..	85

Facilities for investigating securities are available for every one. Investigate before investing

Stocks listed on a recognized exchange are safer than unlisted issues. Trade only in listed stocks.

The data on these sheets are collected with care, but neither the completeness nor the accuracy of the information is guaranteed; no responsibility is assumed for any of the statements herein contained nor for any omissions or inaccuracies therein.

COMMITTEE EXHIBIT No. 115, FEBRUARY 26, 1934

Mr Chairman, as I stated in my opening remarks, the New York Stock Exchange has constructive suggestions to make in regard to the pending legislation for the regulation of stock exchanges.

The purposes to be accomplished by such legislation are First, the prevention of fraudulent practices affecting stock exchange transactions; Second, the prevention of the use of an excessive amount of credit for security speculation; and, Third, the elimination of practices which, though not fraudulent, permit the manipulation of security prices.

The most important question in regard to any regulatory legislation is the determination of what body shall exercise the regulatory power. Obviously this body, whether it be called a commission or an authority, must include persons who are familiar with credit conditions throughout the United States and also persons who are fully conversant with the technical problems connected with the operation of stock exchanges. In addition, a majority of the members of such a body should be outstanding individuals who would represent the public. Having this in mind, we suggest the creation of a Stock Exchange Coordinating Authority to consist of seven members

We suggest that this Authority be composed of two members appointed by the President; two Cabinet officers, who might well be the Secretary of the Treasury and the Secretary of Commerce; one person appointed by the Open Market Committee of the Federal Reserve System; and two persons representing stock exchanges, one to be designated by the New York Stock Exchange and the other to be elected by the members of those exchanges in the United States, other than the New York Stock Exchange, that primarily offer a market place for securities. Such an Authority would not only represent the interests of the public but would have the benefit of the opinions and advice of two Cabinet officers, and through its connection with the Open Market Committee of the Federal Reserve System would be in close contact with credit conditions throughout the United States. It would also include men who had detailed technical knowledge of exchange operations

We suggest that this Coordinating Authority be given plenary power to control the amount of margins which members of exchanges must require and maintain on customers' accounts, and further, that it should have plenary power to require stock exchanges to adopt rules and regulations preventing not only dishonest practices but also all practices which unfairly influence the price of securities or unduly stimulate speculation. Without attempting to define, at this time, the scope of these powers, we believe that they should include the power to fix the requirements for the listing of securities, the control of pools, syndicates and joint accounts and also options intended or used to influence market prices; the power to control the circulation of rumors or statements calculated to induce speculative activity, the use of advertising and the employment of customers' men or other employees who solicit business, to the end that all practices which may tend to create unfair prices may be eliminated. This authority should also have power to study, and, if necessary, to adopt rules in regard to those cases where the exercise of the function of broker and dealer by the same person is not compatible with fair dealing and to adopt rules in regard to short selling, if it should become convinced that regulation of this practice is necessary.

These suggestions represent the considered view of the New York Stock Exchange and I have been authorized to present them by the Governing Committee of the Exchange. I can say confidently that the Exchange will cooperate fully in attempting to prevent unwise or excessive speculation and abuses or bad practices affecting the stock market.

I appreciate the courtesy which the Committee has extended to me in affording me this opportunity to state fully the position of the Exchange in regard to this bill. I trust that the Committee will feel free to ask for any information which it may desire from the Exchange or its officials. I can assure you that all of the records of the Exchange of every character and nature will be made fully available to you and, in addition, not only the officials of the Exchange but all of its technical experts are at your disposal.

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COMMITTEE EXHIBIT No 116, FEBRUARY 26, 1934

Mr Chairman, as I stated in my opening remarks, the New York Stock Exchange has constructive suggestions to make in regard to the pending legislation for the regulation of stock exchanges. These suggestions are naturally subject to the question of the constitutional power of Congress to enact legislation regulating the business of stock exchanges and their members.

The purposes to be accomplished by such legislation are: First, the prevention of fraudulent practices affecting stock exchange transactions; Second, the prevention of the use of an excessive amount of credit for security speculation; and, Third, the elimination of practices which, though not fraudulent, permit the manipulation of security prices.

The most important question in regard to any regulatory legislation is the determination of what body shall exercise the regulatory power. Obviously this body, whether it be called a commission or an authority, must include persons who are familiar with credit conditions throughout the United States and also persons who are fully conversant with the technical problems connected with the operation of stock exchanges. In addition, a majority of the members of such a body should be outstanding individuals who would represent the public. Having this in mind, we suggest the creation of a Stock Exchange Coordinating Authority to consist of seven members.

We suggest that this Authority be composed of two members appointed by the President; two Cabinet officers, who might well be the Secretary of the Treasury

and the Secretary of Commerce; one person appointed by the Open Market Committee of the Federal Reserve System; and two persons representing stock exchanges, one to be designated by the New York Stock Exchange and the other to be elected by the members of those exchanges in the United States, other than the New York Stock Exchange, that primarily offer a market place for securities. Such an Authority would not only represent the interests of the public but would have the benefit of the opinions and advice of two Cabinet officers, and through its connection with the Open Market Committee of the Federal Reserve System would be in close contact with credit conditions throughout the United States. It would also include men who had detailed technical knowledge of exchange operations.

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# STOCK EXCHANGE PRACTICES

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FRIDAY, MARCH 16, 1934

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

The committee met at 11 a.m., pursuant to call of the chairman following adjournment on Monday, March 12, 1934, in room 301 of the Senate Office Building, Senator Duncan U. Fletcher presiding.

Present: Senators Fletcher (chairman), Bulkley, Bankhead, Adams, Goldsborough, Townsend, Carey, Couzens, and Kean.

Present also: Roland L. Redmond, counsel to the New York Stock Exchange.

The CHAIRMAN. The committee has been in executive session, but we will now hold an open session for a few minutes to receive some data from the New York Stock Exchange. Mr. Whitney, do you wish to make a statement before the committee with reference to some of these records requested by the committee?

Mr. WHITNEY. Yes, Mr. Chairman.

## STATEMENT OF RICHARD WHITNEY, PRESIDENT OF THE NEW YORK STOCK EXCHANGE—Resumed

The CHAIRMAN. You may proceed, Mr. Whitney.

Mr. WHITNEY. I will be very brief, Mr. Chairman. What you see before you on the committee table are compilations taken off the originals now in your hands, of the remaining aircraft stocks. As you will recall we turned in to you the first compilations of United Aircraft & Transportation Corporation stock on Monday last. Now we turn in to you compilations of additional stocks, these compilations, as I have said, having been taken from the original records in your hands: Aviation Corporation of Delaware common stock.

The CHAIRMAN. The compilation will be received and marked for identification.

(The compilation covering Aviation Corporation of Delaware common stock was received and marked "Whitney Exhibit No. 31 for identification, Mar. 16, 1934", and the same will be kept in the files of the committee.)

Mr. WHITNEY. Next is the compilation of Bendix Aviation Corporation.

The CHAIRMAN. The same will be received and marked for identification.

(The compilation of Bendix Aviation Corporation stock was marked "Whitney Exhibit No. 32 for identification, Mar. 16, 1934", and the same will be placed in the files of the committee.)

Mr. WHITNEY. Next is the compilation of Curtiss-Wright common stock.

The CHAIRMAN. The same will be received and marked for identification.

(The compilation of Curtiss-Wright Corporation common stock was marked "Whitney Exhibit No. 33 for identification, Mar. 16, 1934", and the same will be retained in the files of the committee.)

Mr. WHITNEY. Next is the compilation of Curtiss-Wright class A stock.

The CHAIRMAN. The same will be received and marked for identification.

(The compilation of Curtiss-Wright class A stock was marked "Whitney Exhibit No. 34 for identification, Mar. 16, 1934", and the same will be retained in the files of the committee.)

Mr. WHITNEY. Next is the compilation of Douglas Aircraft Co.

The CHAIRMAN. The same will be received and marked for identification.

(The compilation of Douglas Aircraft Co. stock was marked "Whitney Exhibit No. 35 for Identification, Mar. 16, 1934", and will be retained in the files of the committee.)

Mr. WHITNEY. Next is the compilation of National Aviation Corporation stock.

The CHAIRMAN. The same will be received and marked for identification.

(The compilation of National Aviation Corporation stock was marked "Whitney Exhibit No. 36 for Identification, Mar. 16, 1934", and will be retained in the files of the committee.)

Mr. WHITNEY. The next compilation is that of North American Aviation, Inc., capital stock.

The CHAIRMAN. The same will be received and marked for identification.

(The compilation of North American Aviation, Inc., capital stock was marked "Whitney Exhibit No 37 for Identification, Mar. 16, 1934", and will be retained in the files of the committee.)

Mr. WHITNEY. Next are two supplemental compilations of United Aircraft & Transport Corporation stock.

The CHAIRMAN. The same will be received and marked for identification.

(The first supplemental compilation of United Aircraft & Transport Corporation stock was marked "Whitney Exhibit No. 38 for Identification, Mar. 16, 1934", and the same will be retained in the files of the committee.)

(The second supplemental compilation of United Aircraft & Transport Corporation stock was marked "Whitney Exhibit No. 38-A for Identification, Mar. 16, 1934", and the same will be retained in the files of the committee.)

Mr. WHITNEY. The last is a compilation of Wright Aeronautical Corporation stock, which completes the compilations to be filed.

The CHAIRMAN. The same will be received and marked for identification.

(The compilation of Wright Aeronautical Corporation stock was marked "Whitney Exhibit No. 39 for Identification, Mar. 16, 1934", and the same will be retained in the files of the committee.)



Senator GOLDSBOROUGH. Mr. Whitney, that makes a total of nine stocks with the one heretofore filed, does it not?

Mr. WHITNEY. Yes, sir; nine in all.

The CHAIRMAN. And that completes what?

Mr. WHITNEY. That completes all the compilations taken off the originals which are now in the possession of the committee, these originals having been given to you on Monday last in answer to your request and those originals being in answer to the questionnaire we sent out as of March 3, which questionnaire is a part of your record.

Senator COUZENS. Mr. Whitney, is that what is in all these folders you have on the committee table here?

Mr. WHITNEY. Yes, sir. There are, I might explain, nine copies of each compilation, submitted for the use of the committee, and we have reserved two copies at the request of Mr. Pecora for his use.

Senator ADAMS. Mr. Whitney, have you had any occasion to study these compilations yourself?

Mr. WHITNEY. No, Senator Adams. I haven't even looked at them, except in the case of United Aircraft & Transport Corporation, I went over them because I wanted to see what the corrections consisted of.

Senator ADAMS. The reason for my inquiry is this: I was wondering whether or not to your mind there had come any conclusion as to what led to this sudden spurt of activity in the aircraft stocks? Whether or not it was to be attributed to the course of the investigation and other proceedings that have been going on for some time, or should be attributed to the rumor of cancelation of the air-mail contracts.

Mr. WHITNEY. I have come to no conclusions whatsoever.

Senator GOLDSBOROUGH. Senator Adams, do you mean in the matter of the jump from 4,000 to 44,000 shares dealt in?

Senator ADAMS. Yes.

Mr. WHITNEY. I have reached no conclusions whatsoever. We have not studied these complications at all. But they will be studied by us. They were only finished last night and came down to Washington on the midnight train.

Senator COUZENS. Mr. Whitney, I take it that you know about the sale by J. P. Morgan & Co. of some 4,500 shares of these stocks. Have you made any attempt to verify that matter, or would you attempt to do so?

Mr. WHITNEY. We would not attempt to verify it, because it was sent in over their signature as being accurate.

The CHAIRMAN. That completes the record now so far as we have called upon you for records, does it, Mr. Whitney?

Mr. WHITNEY. Yes, Mr. Chairman.

The CHAIRMAN. Are there any other questions by members of the committee?

Senator GOLDSBOROUGH. I have none.

Senator CAREY. That is certainly a large record, and it is remarkable what a little resolution can bring in.

Mr. WHITNEY. It was quite some considerable work, Senator Carey.

The CHAIRMAN. All right, if that is all.

Mr. WHITNEY. I thank you gentlemen. We are always at your disposal at any time you want us.

The CHAIRMAN. Very well, Mr. Whitney. We will take care of these records. The committee will give Mr. Pecora access to these records.

Senator COUZENS. Mr. Whitney has already stated that he retained two copies to be delivered to Mr. Pecora.

The CHAIRMAN. All right.

Senator CAREEY. Is each one of these folders prepared for a member of the committee?

Mr. REDMOND. I will make these compilations up into nine complete bundles, so that Mr. Sparkman can give one to each member of the committee desiring same.

Senator ADAMS. Do I understand that they are not in that form as they are presented here?

Mr. REDMOND. As presented here there are nine copies of each compilation. But I will be glad to sort them out right here or at a side table, for you, and in that way will make up nine complete sets.

Senator ADAMS. Very well; I should like to take one of the sets to my office.

Mr. REDMOND. I will do that right away.

The CHAIRMAN. Very well. I believe that completes the open hearing for this morning, and the committee will adjourn subject to call.

(Thereupon at 11:15 a.m., Friday, March 16, 1934, the committee adjourned subject to call.)

#### STATEMENT OF GENE McCANN, G McCANN Co, BROKERS, NEW YORK CITY

Stock exchanges as market places for securities are generally recognized as essential parts of our economic structure, but, under the present system of self-regulation, they provide the medium whereby a small group of insiders manipulate prices to the disadvantage of the millions of investors owning over 90 percent of the securities traded thereon.

Therefore, the statements by Mr. Whitney, in opposition to this bill, should be considered in the light of his position as official spokesman for this inside group and the representative on the New York Stock Exchange of J. P. Morgan & Co.

Under the present system, the governing committee of the New York Stock Exchange may adopt a rule today, suspend, cancel, or reinstate it tomorrow, suppress violations of its own rules by members of its governing committee or of the exchange, and do anything else suitable to its own convenience, all without regard to the interests of the general investing public.

The necessity for governmental regulation of stock exchanges was clearly illustrated by the failure of the New York Stock Exchange to punish a member of its governing committee, who is also a specialist, for participation in the recent so-called "alcohol stock pool"

#### SHORT SELLING

There has been much comment in favor of, and against short selling. Many believe that it is a necessary element in our security markets, and I do not believe the present Congress would pass a bill providing for the complete abolition of short selling. Therefore, I propose that there be included in the bill to regulate stock exchanges, a provision directing that:

"All sales made on any stock exchange, for the short account of any customer, must be covered within 7 days after the execution of such short sale;

and, the margin requirements on all short sales shall be the same as the margin requirements on all long sales, as set forth in this bill "

By compelling the short seller to cover his position within 7 days, the general public, knowing this, will not sell their securities on the market on the slightest decline in market quotations, created by short selling, and enable the short seller to cover his position at a profit This will act as a stabilizer of the general market and make short selling all the more hazardous because the public can demand higher prices of the short seller when the time comes for him to cover

Many investors pledge their securities as collateral for loans, and under the present system, every short sale decreases the value of that collateral In a great many cases, these loans are called when the market value of the collateral is depressed by excessive short selling, thus the inside group, due to their large financial resources, have, by short selling, compelled the small investor to sell his securities on slight recessions in the market, resulting in the ruination of the business and future of millions of our citizens

Let us try to find the real reason why Mr. Whitney favors short selling. He has said nothing about the profits in short selling, but has chosen to defend it as the medium to stabilize prices. The real reason for his defense of short selling might be said to be that more money is made quickly on the short side than on the long side, and short selling makes an active speculative market, thus increasing brokerage commissions, specialist's profits from advance knowledge of the outside trader's position, and greater possibilities for profit from pool operations

Respectfully submitted

GENE McCANN