

October 18, 1938.

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OUTLINE OF ACTIONS, DELIBERATIONS AND FINDINGS OF

SPECIAL COMMITTEE ON THE MALONEY ACT OF INVESTMENT BANKERS CONFERENCE, INC.

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and

MALONEY ACT POLICY COMMITTEE OF INVESTMENT BANKERS ASSOCIATION

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course of the summer various other meetings were held by representatives of the Committee with Chairman Douglas and Commissioner Mathews at which the basis was laid for a common and cooperative approach to the questions under consideration. In an endeavor to combine economy with accomplishment, no general meetings of the Committee were held, all questions being debated by correspondence.

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Following this meeting and at its suggestion, Messrs. Starkweather, Ford and Hostetler met in Washington with Commissioner Mathews and members of the Commission staff to advise the Commission of the action of the Committee and its proposed procedure. During the course of the summer various other meetings were held by representatives of the Committee with Chairman Douglas and Commissioner Mathews at which the basis was laid for a common and cooperative approach to the questions under consideration. In an endeavor to combine economy with accomplishment, no general meetings of the Committee were held, all questions being debated by correspondence.

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numerous other suggestions were raised by members of the Committee. (A copy of Mr. Hostetler's report, together with copies of all the documents to which it refers, are filed herewith and made a part hereof.)

The major question before the October 4th meeting, provoked by the recommendations of Mr. Hostetler and preliminary discussions within the industry and with the Commission, was whether or not the Conference, with changes necessitated by the Act and experience, should be registered as a national securities association. A very full and frank discussion was had on all aspects of this problem. Consideration was given to the formation of an entirely new organization, using as much of the Conference as possible, but nevertheless making a clean break and a new start. It was also debated whether either immediately prior or immediately subsequent to registration of the Conference, there should be a complete new election of the Governing Committee. The question as to whether a federation of local associations might not be preferable to a strong national association with subordinate district organizations or affiliates was raised and rejected. All of these suggestions, as well as many others, were talked out in detail and at the conclusion of the discussion, the Committee voted in favor of using the Conference as the vehicle to register, with only such changes in its present structure as prove necessary to qualify under the Act, and as experience has proven desirable. Three members qualified their approval by urging that consideration be given to the immediate holding of an election of Governors.

A long discussion ensued of the details of the I.B.C. structure, as a result of which a number of changes were suggested. A brief summary of the discussion and conclusions follow:

CERTIFICATE OF INCORPORATION

(1) It was unanimously agreed that the name of I.B.C. be changed and the name Securities Dealers Association adopted, the present title not being fully descriptive and in possible conflict with the laws of certain states.

(2) There was considerable discussion with respect to the so-called purpose clauses of the Certificate of Incorporation, and a number of the Committee members felt that the purpose of the Corporation should be restricted solely to effectuating the purposes of the Maloney Act. It was decided, however, that it would be wiser to leave Paragraph Third of the Certificate, which sets forth the objects and purposes of the Corporation, as it is, to add a clause clearly setting forth the Corporation's purpose to register as a National Securities Association under the Act, and to make such restrictions upon the activities of the Corporation as were deemed wise in the By-Laws and Rules.

BY-LAWS

(1) As the By-Laws are presently drawn, District Committees of the Conference are given the discretion to disapprove an application for membership if they feel that the applicant's admission would be detrimental to the welfare, objects and purposes of the Conference. The Act prevents the granting of this discretion and this clause, accordingly, must be amended to comply with the requirements of the Act.

(2) At the present time, upon being admitted to membership in the Conference, members agree that no officer or member of the Governing or any District or other committee shall be liable, except for willful fraud, to the applicant or to any other member for any action taken in good faith in their official capacity in connection with the administration of the affairs

the By-Laws. In addition, both the committee and counsel felt that it is desirable, in the interest of clearly limiting the liability of members for debts of the Corporation, that the amount of assessments which can be levied in any one year be as definitely set forth as possible. On the other hand, it is of course necessary that the Governing Committee, in the formative stages of the organization under the Act, be given reasonable discretion because of the virtual impossibility of determining accurately in advance the probable cost of effective operation. It was the Committee's opinion that this provision of the By-Laws should be so redrawn as to give members the maximum protection against liability and at the same time the Governing Committee as much discretion as possible.

(6) In discussing the provisions of the By-Laws having to do with organization and administration, a number of important problems came up for consideration. At the present time the Governing Committee, under the By-Laws, is the governing body of the Corporation. It is composed of twenty-one members, each of whom is elected for a three-year term, but only seven are elected each year. The terms were so staggered at the outset that after each annual election, there are seven men on the Committee who have been there two years, seven who have been there one year, and seven new members. The Governing Committee appoints the members of fourteen District Committees and the District Committees so appointed elect their own Chairmen. The members of the Governing Committee are elected by the members, each District electing at least one member to the Governing Committee and Districts Numbers 12, 8 and 2, electing five, three and two members, respectively. The members of the Governing Committee are elected through the use of the Nominating Committee device, the Nominating Committee being appointed by the District Chairman with the advice and consent of his District Committee.

The nominee selected by the Nominating Committee is certified to the members in the District, and 10% or more of the members of the District, but in no case less than ten members, may propose additional candidates. If no additional candidates are proposed, then the candidate selected by the Nominating Committee is automatically elected. Of course, if additional candidates are proposed, an election is held.

Some members of the Committee suggested that the size of the Governing Committee should be increased to permit a wider representation of all types and sizes of houses in the business. One suggestion was that the District Chairmen should be made members of the Governing Committee, particularly since they are already entitled to attend all meetings of the Governing Committee as members of the Advisory Council. Another suggestion was that additional members should be elected directly from the Districts. After an extended discussion, however, it was finally decided that the size of the Governing Committee should not be increased at the present time.

Representatives from two districts felt strongly that District Committees should be elected rather than appointed, and all aspects of this suggestion were canvassed in detail, but a substantial majority of the Committee felt that no change in this regard should now be made.

To assure a certain turnover in the personnel of the Governing Committee, it was proposed that no regularly elected member of the Governing Committee for a full term should be permitted to stand for re-election for a period of twelve months after the expiration of the term to which he was so elected. The sense of the meeting was that this suggestion should be adopted.

(7) At the present time Nominating Committees to select candidates for the office of member of the Governing Committee are required to be

composed of only three members. It was felt that in the interest of broader representation on Nominating Committees, the size of the Committees should be increased from three to five, and after discussion it was so decided.

(8) The Conference, under its present By-Laws, is now required to maintain an office in Washington, D. C. It was the sense of the meeting that this provision should be changed to give the Governing Committee complete discretion to maintain such offices as shall from time to time be determined by it to be necessary and appropriate.

(9) There was much discussion of the present provisions of the By-Laws having to do with officers and employees. As these provisions are presently drawn, the Governing Committee annually is required to elect from its members a Chairman, one or more Vice-Chairmen, and a Treasurer. It may also elect such other officers as it shall deem necessary. The Governing Committee is also required to elect a Director, who need not be a member of the Governing Committee, nor a member of the Conference. The Director, under the By-Laws, performs the usual duties of a Secretary of a corporation and has such other powers and duties as shall be determined from time to time by the Governing Committee. No elective officer, under the By-Laws, other than the Director, is entitled to compensation. There was considerable feeling that these provisions were too rigid and that the new association might well find it desirable to have a paid Chairman, or perhaps two or more paid executive officers. It was decided, therefore, to recommend the Governing Committee be given broader powers in this respect.

(10) Under the present By-Laws, the Governing Committee of the Conference is authorized to adopt rules of fair trade practice, but these rules do not become effective until approved by the members. After registration, they must also be approved by the Commission. The method of

approval presently provided requires submission of the proposed rules to all members and unless they are disapproved by a majority of the membership within thirty days, they stand as adopted. It was felt, for a variety of reasons, that under the new set-up, there should be an affirmative vote required, and it was finally decided that this provision should be changed to provide that a proposed rule should not become effective unless a majority of all the members of the Conference voted, and the majority of those voting approved.

RULES OF FAIR PRACTICE

The present Rules of Fair Trade Practice of the Conference were not taken up individually in detail, but a long discussion was had as to whether the association registering under the Act should start off with a few relatively simple rules, similar to the present rules of the Conference, and work on from such a start in the light of experience and necessity, or whether an attempt should be made to draw a comprehensive code of fair trade practices similar to that in effect under the Code. It was finally the unanimous judgment of the Committee that it would be much wiser to adopt the former course and to start off with only the present rules of the Conference.

COMPLAINT PROCEDURE

It was generally recognized that the present Complaint Procedure of the Conference would not be adequate in a number of respects to comply with the requirements of the Act, and that it would have to be substantially rewritten. It was the Committee's feeling, however, that in so doing emphasis should be placed on the handling of complaints by the District Committee in the district in which the member against whom complaint is levied, with the right of appeal to the Governing Committee and subsequently to the Commission or provided in the Act.

At the conclusion of the meeting the following resolution was adopted:

"BE IT RESOLVED that Messrs. Ford and Starkweather appoint a committee of not in excess of nine members, geographically and otherwise representative, which committee shall take under consideration all the conclusions, instructions and suggestions of this meeting, and act as a Drafting Committee for the purpose of drafting a definite plan to facilitate registration of the I.B.C. with the S.E.C. This plan, when drafted, shall be submitted to this committee for suggestions, etc., and then shall be submitted to the respective governing bodies of the I.B.A. and I.B.C. at their meetings to be held in the latter part of this month."

Pursuant to the above resolution, Messrs. Ford and Starkweather appointed the following as members:

Sydney P. Clark
E. F. Connely
Nevil Ford
Francis Patton
A. W. Snyder
John K. Starkweather
John J. Sullivan
Frank Weeden
Orrin G. Wood

The Drafting Committee met on October 5th and considered all the changes, additions and proposals suggested by counsel and Joint Committee. Messrs. Starkweather, Ford and Hostetler were directed to tell Commissioner Mathews, informally, of the general line of recommendations proposed by the Committee that it might be determined if the Commission and the Committee were working towards a meeting of minds. This was done at a meeting in Washington on October 11th with Messrs. Mathews, Bonner, Purcell, Davis and

Pavenstadt representing the Commission.

The accompanying recommendations are offered to the Boards of Governors of Investment Bankers Conference, Inc. and Investment Bankers Association as a result of the deliberations herein outlined and in the belief they will lead to the registration of Investment Bankers Conference as a national securities association, as defined by the Maloney Act, in form best suited to the present needs and requirements of the industry and the Securities and Exchange Commission.

FOR THE JOINT COMMITTEE

Nevil Ford

John K. Starkweather

Joseph C. Hostetler