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REPORT OF THE MALONEY ACT POLICY COMMITTEE
TO THE
BOARD OF GOVERNORS
OF THE
INVESTMENT BANKERS ASSOCIATION OF AMERICA

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October 27, 1938

On June 28, 1938, the Maloney Act Policy Committee of the Investment Bankers Association of America and the Special Committee on the Maloney Act of the Investment Bankers Conference, Inc., met in New York City to consider generally the whole problem presented by the Maloney Act and specifically how best to organize and register thereunder. At this meeting it was decided, first, that the two committees thereafter should work together as a joint committee; and, second, after an extended discussion of the larger problems of policy involved, to employ Mr. Joseph C. Hostetler, of the firm of Baker, Hostetler and Patterson, Cleveland, attorney for the Investment Bankers Conference, Inc., to make a study of the Act and the questions involved in the registration of a national securities association thereunder from a completely detached point of view, and to make recommendations accordingly.

This study was made and reported back to the Committee under date of September 17, 1938. (A copy of this report, together with copies of all the documents to which it refers, is filed herewith and made a part hereof.)

A meeting of the Joint Committee was held in New York City on October 4, 1938, at which there was an all-day discussion of the report and numerous other problems which were raised by members of the Committee.

The major question, provoked by the recommendations of Mr. Hostetler and preliminary discussions within the industry and with the S.E.C., to be decided by the October 4th meeting of the Joint Committee, was whether or not the Conference, with the changes necessitated by the Act and experience, should be registered as a national securities association. A very full and frank discus-

sion 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 its registration, 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 nearly unanimously in favor of using the Conference as the vehicle to register, with only such changes in its present structure as may prove necessary to qualify it under the Act, and as experience has proven desirable. Several members qualified their approval by urging that consideration be given to the election of a new Board of Governors, at or about the time of the actual registration.

A long discussion followed on the details of the Investment Bankers Conference, Inc. set-up, as a result of which a number of changes were suggested, the more important of which were as follows:

- (1) NAME. It was unanimously agreed that the name of the Investment Bankers Conference, Inc., be changed and the name "Securities Dealers Association" was suggested as most likely to be acceptable.
- (2) PURPOSES OF THE ASSOCIATION. The opinion was expressed by several members that the Charter should limit the activities of the new association to carrying out the provisions of the Act. However, after hearing the argument of counsel, it was agreed that the present "purpose"

clause in the Conference Charter be retained, except for the addition of a clause providing for registration under the Act, but that the activities of the Association be strictly limited in the By-Laws.

- (3) MEMBERSHIP. Under the Law membership in the Association must be open to all registered dealers with certain qualifications, and this part of the By-Laws must be changed accordingly.
- (4) DUES. In view of the impossibility of predicting costs at this time it was felt desirable to leave a large measure of discretion to the Board of Governors but, if possible, to limit the liability of members. Our counsel is now working on this provision.
- (5) ORGANIZATION. It was felt desirable to maintain the present structure of Governors and District Committees as nearly as possible. It may be necessary to make some changes in the methods of election and this matter is now under discussion with the Commission and with our counsel. It was also felt that a large measure of discretion should be vested in the Board of Governors as to the paid staff of the new organization, and this provision of the By-Laws will be changed accordingly. It was also felt desirable to enlarge the present size of the Nominating Committees in the districts from the present number of three to five or more, to insure better all around representation.

After discussion it was also decided that Governors of the Association should not be eligible for reelection to succeed themselves.

- (6) ADOPTION AND AMENDMENT OF RULES AND BY-LAWS. It was agreed that the present method of the Conference, whereby Rules and By-Laws become effective, unless a negative vote is registered, should be changed to require an affirmative vote. The Drafting Committee and counsel now have under consideration the details of such a provision.
- (7) RULES OF FAIR PRACTICE. After careful consideration it was decided that the present rules afford a reasonable base on which to start the new organization, and that so far as possible, in conformity with the law, they be retained in their present form.

- (8) COMPLAINT PROCEDURE. It will be necessary to work out a more complete and formal method of handling complaints than now exists in the Conference structure and this matter is also receiving careful consideration by counsel.
- (9) AFFILIATES. While the Committee would prefer to leave the matter of organization of affiliates to the consideration of the new Board of Governors, it may be necessary under the law to make provision for their organization before registering and, if so, this will require a great deal more time to work out than has so far been available. This matter is also receiving careful consideration of counsel in consultation with the Commission.
- (10) PROCEDURE. A Drafting Committee of nine was selected to work out the general outline of the plan. This Committee met on the day following the meeting of the Joint Committee, went over the Conference set-up in great detail and gave certain general instructions to counsel. It also authorized Messrs. Ford and Starkweather to confer with the S.E.C. on all of the above points and some other less important ones raised by the Joint Committee, to be sure that there was no serious disagreement on them.

A meeting was accordingly held in Washington, D. C., on Tuesday, October 11, 1938, with Commissioner Mathews, and members of his staff. The representatives of the Drafting Committee explained to the Commission's representatives the actions taken at the New York meetings and its intention to proceed along the lines indicated, unless the Commission felt that such procedure would be futile in the light of the Commission's present thinking on the matter. A general discussion ensued with respect to problems raised by the Joint Committee, all of which, of course, are subject to Commission approval before an association can register under the Act.

There was a full and frank discussion of all of these problems, but in view of the general and tentative nature of the discussion and the fact that many of these problems involved questions of principle which ultimately would have to be definitely passed upon by the full Commission, the representatives of the Commission there present were unwilling to make any definite commitments. They did agree, however, to take all the problems raised under consideration, and to ascertain the full Commission's thinking or position with respect to each of them at the earliest possible moment. In view of the exploratory nature of this discussion, it does not seem wise to attempt further to report it, although it is fair to say that the Commission's representatives did not discourage the Drafting Committee from proceeding along the general lines indicated at the New York meetings.

It would appear that from this point on, the activities of the Joint Committee as such should probably cease and that the further negotiations with the Commission should be carried on by some special committee of the Conference. It is our understanding that the Special Committee of the Conference have recommended such action to their Board of Governors. The function of the I.B.A. in this matter from this point on would appear to us to be largely advisory, and we would suggest that the regular Over-the-Counter Committee of the I.B.A. be instructed to confer with the new committee of the Conference, as to the working out of the definite and detailed plan. It may very likely be desirable for the Conference to include in their committee representatives of other dealer organizations who may also be members of the Conference.

This summarizes the activities of your Committee working in conjunction with the I.B.C. Committee from the passage of the Act to date. As a result of the study which has been made during this period, and the discussions and conclusions of the Joint Committee, your Committee wishes to make the following recommendations to the Board of Governors:

RECOMMENDATIONS OF THE MALONEY BILL POLICY COMMITTEE

to the Board of Governors of the I.B.A.

- (1) That the Board of Governors of the I.B.A. approve the contemplated registration of the I.B.C. as a national association under the Maloney Act, with such changes as are necessary to comply with the Act, and also such changes as have been recommended by the Special Committees of the Conference and the I.B.A.
- (2) That the I.B.A. use its best efforts to assist in any possible way in the formation of the association under the Act, and that its members be urged to join and support it.
- (3) That the original registration be accomplished, if possible, with as simple a structure and set of rules as the Commission will approve, and that the further development of the new association's work be left, so far as possible, to the Governors of the new association, working in cooperation with the Commission and the industry.
- (4) That the Committee having completed the work for which it was appointed, be now discharged and that the appropriate regular committee of the association be instructed to confer and advise with the I.B.C. with a view to assisting in its further negotiations.

Respectfully submitted,

MALONEY BILL POLICY COMMITTEE

By

John K. Starkweather,

Chairman.