purchased his shares in the average case and, in any event, is not likely to be consequential in amount.

4. Dilution which is of real consequence, which is permanent, and which should be guarded against is measurable only by market quotations in the days, weeks and sometimes months after the sale takes place. In many cases "apparent" dilution becomes accretion, by reason of a decline in the market, at the first opening of the market following the sale which created the "apparent" dilution.

5. Permanent dilution or accretion takes place not when the shares are sold but when the cash proceeds are invested. This investment necessarily must take place after the sale and at different prices (unless there is a coincidence) from the prices on which the sale was based. Since the cash proceeds are not received for several days this investment ordinarily takes place at least several days after the sale.

6. Investment trust shares cannot be sold in the volume which is desirable in the interest of the public if an effort is made to completely eliminate "apparent dilution" by extreme restrictions of time and prices at which shares may be sold. The studies which follow show that such extreme restrictions are unnecessary.

*General Capital's experience with pricing*

Contrary to the impression which we get from the Securities and Exchange Commission's testimony and report, we believe most investment trust managements are conscientiously looking after the interests of their stockholders on the problem of pricing their shares. But if it should be conceded that managements are short-sightedly selfish General Capital at least offers an instance where the management has an interest in the trust which is so great (30 percent) that it is unlikely it would permit any material dilution to take place. In this case 30 percent of any dilution which takes place is suffered by the management.

General Capital has always watched closely for material dilution and following the occurrences in September 1939, it prepared detailed studies of its experience for the 3 years and 1 month from September 1, 1936 to September 30, 1939 (the entire period during which it had been actively offering shares for sale). These studies disclosed the following facts:

In 38.7 percent of the cases when there could have been "apparent" dilution and 39.0 percent of the cases when "apparent" dilution existed by reason of sales the "apparent" dilution disappeared and became accretion in 1 to 4 days.

In 57.2 and 56.5 percent, respectively, of the above-described cases the "apparent" dilution became accretion in 1 to 9 days.

In 66.4 and 64.1 percent of the cases the "apparent" dilution became accretion in 1 to 14 days.

In 69.4 and 69.0 percent of the cases the "apparent" dilution became accretion in 1 to 19 days.

In 73.2 and 72.6 percent of the cases the "apparent" dilution became accretion in 1 to 24 days.

In 78.5 and 76.7 percent of the cases the "apparent" dilution became accretion in 1 to 30 days.

In 90.4 and 91.5 percent of the cases the "apparent" dilution became accretion in 1 month to 3 months.

In only 9.6 and 8.5 percent of the cases did the "apparent" dilution fail to become accretion in 3 months or less.

In 69.2 percent of the cases when there could have been "apparent" dilution and 60.1 percent of the cases when "apparent" dilution existed by reason of sales the dilution was 1 percent of less per share sold.

In 92 and 86.5 percent of the cases the "apparent" dilution was 2 percent or less per share sold.

In 97.5 and 95.5 percent of the cases the "apparent" dilution was 3 percent or less per share sold.

In 99.2 and 98.2 percent of the cases the "apparent" dilution was 4 percent or less per share sold.

In only 0.8 and 1.8 percent of the cases was the "apparent" dilution over 4 percent per share sold.

Note that such "apparent" dilution would be a great deal less per share outstanding and would be substantial per share outstanding only when sales were very large in proportion to shares outstanding.

The aggregate "apparent" dilution on sales made by General Capital during the period amounted to about two-tenths of 1 percent per year on average assets at market.

The aggregate actual accretion based on the time the cash proceeds of sales were invested, estimated as carefully as possible, amounted to about three-tenths of 1 percent per year on average assets at market.

The foregoing statistics prove to our complete satisfaction that General Capital and its shareholders have not only suffered no material dilution but have actually realized a slight amount of accretion from the sale of its shares. They also indicate that the principal problem relates to the investment of the cash proceeds rather than to the sale of the shares and that this problem is not a difficult one since the opportunity for accretion in a short time, as shown by the statistics, is so great.

*Restriction of sales when "apparent" dilution is large*

The one restriction on pricing which we believe is advisable and which we believe the Securities and Exchange and Commission should impose under its authority under the Securities Act of 1933 relates to sales at times, which occur infrequently, when "apparent" dilution per share is large. We believe such a restriction should be developed by the Securities and Exchange and Commission, the National Association of Securities Commissioners (an active organization composed of the State securities commissioners), the National Association of Securities Dealers, and representatives of the industry working in cooperation. The associations mentioned have been working on this problem.

Based on our experience and our limited information concerning the industry as a whole we believe such a restriction should not limit sales where the "apparent" dilution is not over 3 percent per share sold and should not be so arbitrary as to interfere in any other way with effective sales promotion, which is in the interest of the present and prospective share holders despite the impression given that it is principally in the interest of managements and distributors.

OUTSIDE AFFILIATIONS OF DIRECTORS AND OFFICERS

We believe the bill's restrictions on outside affiliations of directors and officers would unnecessarily restrict the right of stockholders to elect whomever they wish to manage their investments. We believe the bill would unnecessarily prevent such reasonable concentration of management as is necessary to insure good teamwork and to prevent inefficiency resulting from unnecessary conflicts within the management. In the case of General Capital the bill would compel either the abolishment of the management company (Capital Managers), or the election of a number of unaffiliated directors. We believe this would not be in the best interest of stockholders and we believe a large majority (if not all) of the stockholders would share this view.

We believe the bill's restrictions in this matter would in most cases result at best in the election of some directors who would be more or less subservient to others, in whom the effective control of the management would lie, or at worst in inefficiency resulting from conflicts among the directors. We believe the bill would effectively deny to stockholders the opportunity to have the services of many of the best men for the job, because of restrictions on affiliations which actually would not, in most cases, conflict with the stockholders' best interests.

Insofar as open-end management diversified investment trusts at least are concerned we believe present Federal and State regulation applicable to this subject is adequate and that further Federal regulation is unnecessary and undesirable. We doubt if further Federal regulation of this kind is necessary or desirable for trusts of other types.

If further protection of stockholders against misconduct of directors and officers is necessary and desirable we believe it should take the form of reasonable requirements for full publicity, and reasonable restrictions against certain kinds of action without full publicity and without stockholders' approval rather than the bill's form of drastic prohibition of outside affiliations and drastic restrictions on activities.

BOSTON METAL INVESTORS, INC.,
*Boston, February 3, 1940.*

MEMORANDUM ON PROPOSAL THAT AFTER 1 YEAR THERE SHALL BE NO INTERLOCKING OFFICERS AND DIRECTORS BETWEEN DIFFERENT INVESTMENT COMPANY SYSTEMS

It appears to us that any rule which would prohibit an officer or director of one investment company from being an officer or director of another, would be most unfair to the smaller investment companies and would prevent them from obtaining the highest type of management.

When this company was being formed in the early part of 1939, the organizers sought out men of the highest standing and greatest investment ability and experience to be its directors. The number of such men is obviously limited in any community, and it was only natural that the services of the best men had already been obtained by older companies.

In the event that a rule should be enacted preventing them from being directors of more than one company, it is obvious that our company would lose their services as the older and larger companies would be able to pay them more. We should, therefore, lose the services of the best men on our Board, and be greatly handicapped thereby. We feel that this would be a most unfair discrimination in favor of the large investment companies against the small ones.

BOSTON METAL INVESTORS, INC.,
By MALCOLM W. GREENOUGH, *President.*

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BAY STATE FUND, INC.,
*Boston, Mass., April 16, 1940.*

Hon. Senator ROBERT F. WAGNER,
*Chairman, Subcommittee, Senate Committee on Banking and Currency,*
*Washington, D. C.*

DEAR SIR: We have examined the bill S. 3580, providing for the registration and regulation of investment companies and investment advisors to determine what effect its provisions might have on the stockholders' present and future investment in this trust; and on the officers' and directors' administration and management of the fund. The officers of this fund have, furthermore, discussed this bill with a number of the stockholders and, expressing the attitude of both the management and the stockholders toward this proposed legislation, ask that these objections be filed as part of the record.

We would welcome reasonable regulation as long as it is clear and understandable. It is our opinion that reasonable regulation springs from complete disclosure. Complete disclosure, however, is already required under the Securities Act.

We are absolutely opposed to this bill in anything like its present form and believe that the record of this open-end trust and others with which we are acquainted most certainly does not warrant the spirit of vindictiveness against the whole investment trust group that apparently motivates the authors and proponents of bill S. 3580.

We do not propose in this memorandum to discuss the bill in detail or show the effect of each of its sections on the operations of this investment fund. We do wish to cite particularly several provisions which we believe are entirely unreasonable and in going far beyond wise regulation would have the effect of denying to the stockholders the management that they had selected to supervise and administer their property and would quite probably necessitate the liquidation of this fund. In this connection we would point out that over 95 percent of our stockholders are personally known to at least one of the directors of the fund. They own shares in this fund because they believe in its management.

We believe unnecessary and unsound the delegation to the Securities and Exchange Commission of the power to make general rules and regulations and specific orders concerning many aspects of our operations that are solely a proper function of the management.

We are at a loss to discover the abuses by the open-end trusts that this bill seeks to correct. Maybe turn-over is supposed to be an abuse. It happens that this fund has not had a large turn-over of portfolio, but it strongly opposes any limitation on what its turn-over can be. Only the necessities of future circumstances can properly decide that. However, it may be reasonable that a trust

be required to state what its turn-over has been and compare it with what the Securities Exchange Commission may state to be its idea of a proper turn-over. Then if stockholders think the turn-over excessive, they may exercise their right to retire. Such a technique would obviate the need for rigid requirements.

We are absolutely opposed to restrictions placed on the investment policy of the management. Under rapidly changing conditions, it is neither desirable nor practicable to hold special stockholders' meetings to approve a change in investment emphasis. The stockholders have selected the management, and delegated to them the right to act in the way best calculated to accomplish the desired objectives. The stockholders do not wish to substitute the judgment of the Commission or any other group for the judgment of the management, nor can the management operate an investment fund effectively unless they are allowed complete investment freedom within such limits as are imposed by its articles of incorporation. Arbitrary and unnecessarily rigid requirements and red tape will surely impair successful operation.

The proposal (sec. 10) that certain people, because of their relationship with a company or because of their characterization as broker, and so forth, shall constitute only a minority of the directors would force resignation of directors and officers and disrupt a board selected by the stockholders as the group to which they wanted to entrust their funds. This provision would result in staffing a company with personnel that would be certain, almost by definition, to have no specialized knowledge of the field of investment. We can see no useful purpose accomplished by this section of the bill and can see a great deal of harm and confusion, with loss to the stockholders. A prerequisite to successful management is coordinated, cohesive thought, and action along the lines of a common policy.

The provision prohibiting as director a person who acts as broker for the company would cause the removal of a trained person who can be, and in our case has been, of considerable aid. Here again, complete disclosure, as in the case of turn-over, would require that all facts be given the stockholders and leave it to them to see whether or not the connection brought abuse or benefit.

This particular fund is small. On December 31, 1939, the total value was $147,000. There were 103 stockholders. The necessary expenses of auditors, custodian, and transfer agent, already impose a heavy burden against income. To comply with the provisions of the bill under section 30 requiring the filing of such reports, information, and documents as the Commission may deem appropriate and the possible demands for information of all types would penalize severely the stockholders and cause their income to be diverted to the preparation of this information for the Securities and Exchange Commission. We send to all stockholders quarterly reports, fully disclosing all pertinent information. The probability of filing numerous and an unknown number of reports with the Securities and Exchange Commission places a large contingent liability against the stockholders and must result in the diversion of the management's attention from the primary job of management itself.

We also believe that the problems of regulation of open-end investment trusts are so different from other investment companies, that they should be treated in separate bills.

Respectfully submitted.

BAY STATE FUND, INC.
By DONALD B. LITCHARD, *President.*

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A BRIEF PREPARED RELATIVE TO S. 3580—SECTION COVERING INVESTMENT COUNSEL—IN OPPOSITION

I am Donald Holbrook, with offices at 111 Devonshire Street, Boston, Mass. I am, and have been for many years, a private trustee managing estates and private trusts under the traditional Massachusetts trustee practice. I am not an attorney.

I own the majority of stock in a small corporation known as the Holbrook Co., Inc., which acts primarily as a service organization to assist me in the management of private trusts and estates. In addition to this work, this corporation acts as investment counsel to a limited clientele, who, for one reason or another do not wish the formality of trust procedure. I regard the investment counsel activities of this corporation as being on a strictly professional basis. It receives no additional compensation from brokers or from the sale or purchase of securities, and its remuneration is limited to a professional fee for services rendered.

The corporation does not solicit business in a commercial sense, and operates under the same ethical standards which are considered customary with doctors and lawyers.

The corporation has some clients outside the State of Massachusetts who have retained its services without sales solicitation. Routine correspondence with these clients would seem to bring the corporation within the meaning of the act under the heading "Interstate Business."

The writer welcomes regulation which will provide proper publicity and distinction between those who render true investment counsel on a professional basis and those who may be said to offer wholesale statistical and investment recommendations or who advise on investments for other than a professional fee. The writer, however, believes that it is not to the best interests of investment-counsel clients, now or prospective, to so restrict or supervise the activities of true investment counsel as to jeopardize seriously the investment management and operation of small counsel firms. Nor does it appear that there is any reason for a form of supervision which would mean filing of letters, documents, reports, etc., which, by the very nature of the profession, should remain confidential.

Size of firm or number of employees is not a criterion as to the competence of any investment-counsel concern. The number of accounts and the size of each account has a direct bearing on the relative facility with which a small counsel concern can handle business against a large one. It is a fact that a $1,000,000-account can be more easily handled than 10 $100,000-accounts.

The writer believes that if lawyers are exempt from the provisions of this bill a private trustee whose occupations are private-trust management, investment counsel and research should also be exempt. I know of no peculiar qualification which an individual has by the simple fact of being an attorney which makes him more competent to advise on investments than one who has made a life study and practice in this profession.

Because of the personal and confidential nature of the work, small investment-counsel concerns, even limited to one member operating under the right circumstances, have an equal and even greater opportunity of rendering sound investment counsel than a large firm handling many millions and a large number of accounts.

The writer, on account of the foregoing, believes that the present section covering investment counsel in Senate bill 3580 is not to the best interests of investors who turn to true investment counsel for unbiased and competent advice and that an unnecessary hardship on small investment-counsel firms would result from its enactment.

DONALD HOLBROOK.

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MEMORANDUM TO THE COMMITTEE ON BANKING AND CURRENCY RELATIVE TO S. 3580

The subscriber hereto is a trustee of General Investors Trust, a small trust organized under the laws of Massachusetts, (ch. 182, Revised Laws, Ter. Ed.). The trust is managed by three trustees. It is an open-ended investment trust with a portfolio which is designed to give security and substantial income and not as a common stock fund with speculative attractions. It paid to its share holders dividends of 4¾ percent during 1939 and we expect to pay 5 percent or more during the current year.

Shares are redeemable at full liquidating value immediately upon offer. Funds are in the hands of a custodian, the Boston Safe Deposit & Trust Co. under an irrevocable contract which makes it impossible for the trustees ever to handle the securities of the trust. There is no dilution permitting purchasers to buy at a lower value than the actual liquidating value. Shares are not sold during the time when the stock exchange is open and orders are taken at the closing prices of the stock exchange which fixes the price of the shares until the stock exchange reopens. The trustees receive together 6 percent of the gross income not including capital gains, and receive no other compensation or profit of any sort from the trust fund or from the distribution of its shares.

Massachusetts trusts with transferable shares of beneficial interest have been used in Massachusetts for many years and their functions, limitations and obligations have been the subject of many judicial decisions in Massachusetts. In order to prevent partnerships from limiting their liabilities by taking on the form of a trust, it is settled law in Massachusetts that if the holders of so-called cer-

tificates of beneficial interest have the ultimate contol of the trust, they are partners and are jointly and severally liable. The shareholders, therefore, do not elect trustees and if the provisions of S. 3580 requiring annual elections are enacted, it will result, under Massachusetts law, in the imposition of a joint and several liability upon each shareholder.

This question was considered 12 years ago by the Massachusetts Legislature and I am annexing hereto a copy of a report to the Massachusetts Senate upon the question.

It is submitted that shareholders have a greater protection under a Massachusetts trust than under any other form of organization. The obligation of a trustee to his beneficiaries is more strict and definite than the obligation of a director of a corporation. He cannot deal to his own advantage with the property of the trust. For example, if a trustee takes advantage of a price change to purchase shares of the trust at a figure below the liquidating value and to sell at a higher figure, as testimony before you indicates was done in September 1939, a trustee would be personally liable and the liability could be immediately enforced by a petition to the probate court with the probability that the proof of such dealing would result, not only in an order to make restitution, but in the removal of the trustee.

The beneficiary's rights under a Massachusetts trust would seem to be greater than those of stockholders of a corporation and more quickly enforceable. The corpus of the trust is much safer from the manipulations of the management than is a corporation and the protection of the shareholders against mismanagement and incompetence is in the hands of a disinterested court and available instantly, not at an annual meeting which may be months away.

We trust that you will take this form of organization into your consideration. We believe that trusts such as the one we represent have a real place in the economic structure. They give the small investor much more income than he can receive from a savings bank and by the diversification of their portfolios, give him greater security than an investment in a single stock would give.

We are not opposing proper regulation. We ourselves have cooperated with the securities divisions of various States and have taken the lead in prevention of dilution by the double-price method of selling shares. We are still to learn of any Massachusetts trust which has been charged with the abuses which S. 3580 seeks to correct, and we hope that in whatever form legislation is enacted, such legislation will not prevent the existence of the so-called Massachusetts trust.

Respectfully submitted,

JOHN H. SHERBURNE,
*Chairman, Board of Trustees, General Investors Trust.*

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[S. No. 2, the Commonwealth of Massachusetts]

REPORT OF THE BOARD OF BANK INCORPORATION AND THE DEPARTMENT OF PUBLIC UTILITIES, ACTING JOINTLY, RELATIVE TO THE REGULATION AND CONTROL OF INVESTMENT TRUSTS AND TO THE ENFORCEMENT OF THE SALE OF SECURITIES ACT, SO-CALLED.

[Banks and banking]

DEPARTMENT OF PUBLIC UTILITIES,
*December 5, 1928.*

*To the Honorable Senate and House of Representatives:*

Chapter 29 of the Resolves of 1928, reads as follows:

"RESOLVE PROVIDING FOR AN INVESTIGATION BY THE BOARD OF BANK INCORPORATION AND DEPARTMENT OF PUBLIC UTILITIES, ACTING JOINTLY, RELATIVE TO THE REGULATION AND CONTROL OF INVESTMENT TRUSTS AND TO THE ENFORCEMENT OF THE SALE OF SECURITIES ACT, SO-CALLED.

"*Resolved,* That the board of bank incorporation and department of public utilities, acting jointly, are hereby authorized and directed to investigate the subject matter of so much of the address of his excellency the governor, printed as current senate document number one, as relates to enacting additional legislation so as to prevent credulous investors from being defrauded by unscrupulous promoters and operators, and of current senate documents numbers one hundred and seventy-seven and one hundred and seventy-eight, and current house document number four hundred and sixty-one, relative to the regulation and control

of investment trusts and to the better enforcement of the sale of securities act, so-called. The joint board shall report to the general court its findings and recommendations, if any, and drafts of such legislation as may be necessary to carry the same into effect, by filing the same with the clerk of the senate, not later than December first in the current year.

Pursuant to the resolve, as quoted above, the Board of Bank Incorporation and the Department of Public Utilities, acting jointly, has held an advertised public hearing, attended by numerous persons who were given an opportunity to set forth their opinions and suggestions in full, has made an investigation, and has held several conferences at which various persons from New York and Massachusetts, interested and experienced in the business of conducting investment trusts, have appeared and stated their views.

At the present time one hundred and one investment trusts or corporations, whose business is that of investing in the securities of other corporations or trusts, have qualified their securities for sale in Massachusetts under the provisions of the so-called Sale of Securities Act. The Department of Public Utilities is requiring at the present time from each of said investment trusts or corporations engaged in investment trust business frequent reports setting forth in full its financial position, including an income account and balance sheet, a list of the securities owned or held, and the prices paid therefor and the market value thereof. The said trusts or corporations are also required to set forth in full that part of their income derived from dividends and interest received, and, further, to set forth that part of their income derived from increase or increases received from any resale or resales of their securities. This information, including balance sheets, income statements, personnel of management and regulations under which business is conducted, is open to public inspection, and therefore available to the prospective investor.

Comparisons, mistaken, we believe, have been made between investment trusts and banks in their relations to the public. Investment trusts have no depositors and thus have no cash demand liabilities such as banks have. They perform none of the functions of a bank. Investment trusts and corporations as a usual rule have no liabilities other than their liability to stockholders or beneficiaries of the same character that ordinarily pertains to any corporation or trust.

There seems to be a popular impression that a beneficiary in an investment trust is not in as good a position to protect his interest as a stockholder in a corporation engaged in a like business. This, we think, is not so as to trusts over which the courts of this Commonwealth have jurisdiction. In fact, a beneficiary is in a much more favorable position to protect his interest and to see to it that the trust is conducted in an honest and efficient manner than is a stockholder in a corporation.

Section 12 of chapter 203 of the General Laws provides that—

"The supreme judicial court, the superior court or the probate court may, upon petition of a party beneficially interested in a trust under a written instrument, and after notice to the trustee and all persons interested, remove the trustee if it finds that such removal is for the interests of the beneficiaries of the trust or if he has become insane or otherwise incapable or is unsuitable therefor."

Under this statute it seems to us that the court has broad and sweeping powers, on the petition of any beneficiary of such an investment trust, to remove the trustee or trustees if, in the opinion of the court, such removal is for the benefit of the beneficiaries. The court has no such power in the case of directors of a corporation. Thus, in our opinion, the beneficiaries of an investment trust have greater protection than the stockholders of a corporation.

Strenuous objections were made by representatives of some investment trusts and corporations doing a like business to any system of regulation which would make public their investments. It was urged that the investment trusts, in which the speakers were interested, made careful and exhaustive investigations of the business of the corporations in whose securities they invested, very often entailing months of study and the expenditure of large sums of money. They contended that it would be unfair, after the trusts had made these examinations and made investments on the strength of the information obtained, that others should be able to take advantage of their examinations and expenditures, at no expense to themselves, in investing in like securities. It was also suggested that by making public their investments it would create a competition for the securities as to which they had made an investigation which would necessarily either enhance the price or exhaust the supply of the securities. Be that as it may, in our judgment there is no practical way of regulating investment trusts except by some sort of supervision of the nature that applies to banks, or by such regulation as now applies under the Sale of Securities Act, together with publicity.

We think it inadvisable to deal with investment trusts in the same way that we deal with banks. As we have pointed out, investment trusts are in their nature no different from corporations engaged in a like business, and do not vary much, so far as the beneficiary is concerned, from any other form of collective enterprise whose purpose is the making of a profit. There seems to be no sound reason why supervision of the character applying to savings banks should be exercised over their investments or their business in the interests of the shareholders that does not pertain to any other private trust or corporation. If we once engage in such supervision of the investments of investment trusts, there seems to be no logical reason why it should not be extended to a wide field of private undertakings. To do this would bring an enormous expense upon the Commonwealth if the investments are to be supervised with any degree of effectiveness. At the same time, the mere fact that the State undertook so to supervise these investments would lead the public to place undue reliance upon such supervision, rather than to take means to inform themselves. No instance has been brought to our attention where any State has undertaken such supervision. No information has been presented to us which would warrant us, at this time, recommending any such policy upon the part of the State.

We believe that a system of filing returns with the State and making those returns private places too great a responsibility upon a regulating body, unless that body is given funds and power substantially the same as the Commissioner of Banks possesses in relation to savings banks. As a consequence, we think that if any attempt is to be made to assure the holders of investment trust certificates that the trusts are being conducted in a sound and honest manner, there should be available to the holders of trust certificates, at reasonable times, full information in relation to the character of the securities held by the investment trust. We know of no way in which this can be done except that periodically investment trusts be required to file, in addition to other information, statements of their investments which will be open to the public, and we feel that this is the system which should be adopted by the State, at least for the present. It follows that such provisions should apply to persons and corporations engaged in like business.

At the present time investment trusts, and persons and corporations doing a like business, are subject to the Sale of Securities Act, and consequently, to the extent defined in the act, come under the jurisdiction of the Department of Public Utilities. The Department has for some time in the past required statements from time to time from these trusts, persons and corporations, which information is open to such members of the public as desire to examine the returns.

Question has been raised as to whether, under the provisions of the Sale of Securities Act, the Department has the authority to require the filing of returns in the manner in which it has heretofore been done. We suggest that the Sale of Securities Act be amended so as to remove any question as to the power of the Department exercising this authority, and submit a bill to that effect, marked "A."

The resolve directs us to investigate the subject matter of Senate Documents Nos. 177 and 178. Senate No. 177 provides for the regulation of investment trusts under the supervision of the Department of Public Utilities, and Senate No. 178 provides for the regulation and control of investment trusts under the supervision of the Commissioner of Banks. The cardinal feature of both bills is that such investment trusts shall not invest in securities other than those approved, on the one hand, by the Department of Public Utilities, or, on the other, by the Commissioner of Banks. As we have already stated, we think it inadvisable to deal with the investment trusts on the analogy of banks or banking institutions. It follows that we do not recommend the adoption of the provisions of either bill.

The resolve also directs us to investigate the subject-matter of so much of the address of His Excellency the Governor, printed as Senate Document No. 1, as relates to enacting additional legislation so as to prevent credulous investors from being defrauded by unscrupulous promoters and operators. In the consideration of the whole subject-matter of the resolve we have given careful consideration to the suggestions contained in the address of His Excellency the Governor. We assume that that portion of the message of His Excellency that recommends that the duty of enforcing the statute regulating the sale of securities be transferred from the Department of Public Utilities to the Department of the Attorney General is not referred to us under this resolve. As a consequence we make no report thereon.

We are also directed by the resolve to investigate the subject-matter of House Document No. 461, relative to the better enforcement of the Sale of Securities

Act, so-called. This bill provides for the creation of a division, to be known as the Securities Division, in the Department of Public Utilities, and the appointment of a Director to have general charge of the Division, with an appeal to the Commission from the decision of the Director. This bill, we think, has merit in that it would relieve the Commission of dealing with a large amount of detail work which in its nature is foreign to the activities for which the Department was originally created, and would tend to relieve the Commission which is now overburdened with work. Moreover, the appointment of an official whose sole duty was the supervision of the enforcement of the act might tend to better efficiency. The general scope of the bill meets with our approval. We think, however, that there should be some minor amendments to the bill, and as a consequence we submit the bill in a new draft, marked "B," with the recommendation that it be adopted by the General Court.

Respectfully submitted,

BOARD OF BANK INCORPORATION,
ROY A. HOVEY,
*Commissioner of Banks.*
HENRY F. LONG,
*Commissioner of Corporations and Taxation.*
WM. S. YOUNGMAN,[1]
*Treasurer and Receiver General.*
DEPARTMENT OF PUBLIC UTILITIES,
HENRY C. ATTWILL,
EVERETT E. STONE,
HENRY G. WELLS,
LEONARD F. HARDY,
LEWIS GOLDBERG,
*Commissioners.*

"A"

[The Commonwealth of Massachusetts. In the Year One Thousand Nine Hundred and Twenty-Nine. An Act for the Better Enforcement of the Sale of Securities Act]

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

Chapter one hundred and ten A of the General Laws is hereby amended by inserting after section six thereof the following new section:

*Section 6A.* The commission may also require any person whose securities may be sold to file periodic statements, under oath and sworn to by a reputable public accountant, showing the financial condition of such person and such further information as the commission may deem advisable, in such form as it may from time to time prescribe. Failure to submit the information so required within the time specified shall be deemed by the commission just cause for the making of a finding to the effect that the sale of such securities is fraudulent or would result in fraud.

"B"

[The Commonwealth of Massachusetts. In the Year One Thousand Nine Hundred and Twenty-Nine An Act for the Better Enforcement of the Sale of Securities Act]

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

Chapter one hundred and ten A of the General Laws is hereby amended by inserting after section twelve thereof the following new section, to wit:

*Section 13.* There is hereby established within the commission and under its general supervision a division to be known as the securities division. The commission may, with the approval of the governor and council, appoint a director of the securities division who shall not be subject to the provision of chapter thirty-one of the General Laws. Said director shall hold office for the term of five years unless removed for cause by the commission, with the approval of the governor and council, or by the governor. It shall be the duty of said director to administer and enforce the provisions of this chapter, and for this purpose he shall have and exercise all the authority conferred by law upon the commission, including the authority conferred by chapter two hundred and fifty-nine of the acts of the year nineteen hundred and twenty-two, but subject to the supervision and control of the commission in such manner as the commission may determine. Said director

[1] With dissent on term of five years for Director of Securities in bill marked "B."