

A. G. Geary of Independence Fund Corporation.
 Sidney A. Anderson of Independence Fund Corporation.
 W. H. Ward of Foundation Plan, Inc.
 R. B. Dean of Foundation Plan, Inc.
 D. W. Barton of Income Foundation (Baltimore).

June 1939:

Paul Cabot of State Street Investment Corporation.
 Hugh Bullock of Calvin Bullock.
 Merrill Griswold of Massachusetts Investors Trust.
 O. Kelly Anderson of Consolidated Investment Trust.
 Robert Adler of Selected American Shares.
 Mahlon C. Traylor of Massachusetts Investors Trust.

January 23, 1940:

Paul Barholet of Tri-Continental Corporation.
 F. Wilder Bellamy of National Bond and Share Corporation.
 Hugh Bullock of Calvin Bullock.
 Raymond D. McGrath of General American Investors, Inc.
 Ronald H. McDonald of National Bond & Share Corporation.
 Alfred Jaretzki, Jr. of Sullivan & Cromwell.
 Cyril J. C. Quinn of Tri-Continental Corporation.
 Arthur H. Bunker of Lehman Corporation.

January 28, 1940: Dudley Swim of National Investors Corporation.

January 29, 1940:

Investment brokers who are investment counselors: Messrs. Davis, George, Lago, Dunn, Woerkelar, Fulton, Henson, Glazier, Shields, Woods.

January 30, 1940:

Alfred Jaretzki, Jr. of Sullivan & Cromwell.
 Raymond D. McGrath of General American Investors, Inc.
 F. Wilder Bellamy of National Bond and Share Corporation.
 Arthur H. Bunker of Lehman Corporation.
 Cyril J. C. Quinn of Tri-Continental Corporation.
 Ronald H. McDonald of National Bond & Share Corporation.
 Hugh Bullock of Calvin Bullock.
 Paul Barholet of Tri-Continental Corporation.

February 1, 1940:

Paul Cabot of State Street Investment Corporation.
 Merrill C. Griswold of Massachusetts Investors Trust.
 Hugh Bullock of Calvin Bullock.
 Ferdinand Eberstadt of Chemical Fund, Inc.
 W. T. Gardiner of Incorporated Investors.
 John S. Myers of Affiliated Fund, Inc.
 Mahlon C. Traylor of Massachusetts Distributors, Inc.

February 3, 1940:

A. J. Wilkins of Wellington Foundation, Inc.
 Allen N. Young of Income Estates of America.
 J. L. Thomas of F. I. F. Plan Corporation.
 J. H. Meyers of American Participations, Inc.
 Arnold Huber of Hamilton Depositors Corporation.
 A. H. Geary of Independence Shares Corporation.
 Sidney A. Anderson of Independence Shares Corporation.

February 6, 1940:

Alfred Jaretzki, Jr. of Sullivan & Cromwell.
 Paul Barholet of Tri-Continental Corporation.
 Raymond D. McGrath of General American Investors.
 Arthur H. Bunker of Lehman Corporation.
 Cyril J. C. Quinn of Tri-Continental Corporation.
 Ronald H. McDonald of National Bond & Share Corporation.
 Leon Cole of Atlas Corporation.

February 8, 1940:

Merrill Griswold of Massachusetts Investors Trust.
 Ferdinand Eberstadt of Chemical Fund, Inc.
 Edward Conway of Chemical Fund, Inc.
 Robert Adler of Selected American Shares.
 William T. Gardiner of Incorporated Investors.
 Steven Hurd of State Street Investment Corporation.
 Henry Vance of Massachusetts Distributors.
 John S. Myers of Affiliated Fund, Inc.
 Mr. Nyle of Mutual Investment Fund.
 Hugh Bullock of Calvin Bullock.

- February 8, 1940:
 W. R. Bull of Republic Investors and Sovereign Investors.
 Donald Wheaton of Republic Investors and Sovereign Investors.
 Hartwell H. Bellows of Spencer Trask Fund.
 Walter L. Morgan of Wellington Fund, Inc.
 D. M. Barringer, Jr., of Delaware Fund, Inc.
 Thomas W. Ruth of United Securities Company of Missouri.
 H. C. Shalleross of Fiscal Fund, Inc.
 Alfred H. Geary of Independence Shares Corporation.
 Sidney Anderson of Independence Shares Corporation.
- February 8, 1940: Walter S. Mack, Jr., of Phoenix Securities Corporation.
- February 9, 1940:
 Robert Adler of Selected American Shares.
 Steven Hurd of State Street Investment Corporation.
 Harris Berlack of New York Stocks, Inc.
 Ferdinand Eberstadt of Chemical Fund, Inc.
 Edward B. Conway of Chemical Fund, Inc.
 William T. Gardiner of Incorporated Investors.
 Hugh Bullock of Calvin Bullock.
 Henry T. Vance of Massachusetts Distributors, Inc.
 Merrill C. Griswold of Massachusetts Investors Trust.
 Mahlon E. Traylor of Massachusetts Distributors, Inc.
 John S. Myers of Affiliated Fund, Inc.
- February 9, 1940:
 Ferdinand Eberstadt of Chemical Fund, Inc.
 J. Langdon Sullivan of Commodity Corporation.
- February 9, 1940:
 C. A. Johnson of Central States Electric Corporation.
 Oswald L. Johnston of Atlas Corporation.
 Floyd C. Odum of Atlas Corporation.
 Leon Cole of Atlas Corporation.
 Richard Wagner of Chicago Corporation.
- February 10, 1940:
 James N. White of Scudder, Stevens & Clark.
 Dwight C. Rose of Brundage, Story & Rose.
 Mr. Van Cleef of Van Cleef & Hageman.
 Mr. Wood of Van Cleef & Hageman.
 Mr. Standish of Standish, Racey & McKay.
 Mr. Sedgwick of Loomis, Sayles & Co.
- February 13, 1940: Charles F. Eaton, Jr., of Eaton & Howard.
- February 14, 1940:
 Charles Francis Adams of Massachusetts Investors Trust.
 Mr. Hay of General Electric Co.
 Mr. McEvoy of General Electric Co.
- February 15, 1940: Mahlon E. Traylor of Massachusetts Distributors, Inc.
- February 19, 1940: Dudley Swim of National Investors Corporation.
- February 21, 1940:
 Harris Berlack of New York Stocks, Inc.
 Hugh Long of New York Stocks, Inc.
 John S. Myers of Affiliated Fund, Inc.
 Hugh Bullock of Calvin Bullock.

At these meetings, the substance of the various provisions of the bill were discussed fully with members of the industry. The minutes of one meeting that of January 23, 1940, were reprinted by Lehman Corporation and circulated by this company to all members of the industry. A copy of this pamphlet was introduced in the record.

After these various conferences between members of the industry, members of the Commission and the staff of the Investment Trust Study, the staff of the study and the members of the commission held numerous lengthy conferences to reexamine in detail all suggestions and criticisms made at the previous meetings with members of the industry in order that no phase of any question should escape full consideration.

A comparison of some of the provisions for regulation of investment companies set forth in the memorandum of January 23, 1940, circulated by Lehman Corporation, and the provisions covering the same matters in the bill will show how various changes were made in the draft of the bill to take care of objections of the industry raised during the conferences.

Various companies and their representatives also submitted memoranda, about 40 in number, covering several hundred typewritten pages on particular

points. The scope of these memoranda and the topics discussed are indicated in the list attached hereto.

MEMORANDA SUBMITTED BY MEMBERS OF INDUSTRY

MANAGEMENT INVESTMENT COMPANIES

- Affiliated Fund, Inc. (John Sherman Myers), February 1, 1940:
On behalf of open-end companies relative to senior securities.
- Affiliated Fund, Inc. (John Sherman Myers), February 7, 1940:
Various points in part 3, chapter V, in relation to open-end companies having senior securities with particular emphasis on touch-off clause.
- Affiliated Fund, Inc., February 2, 1940:
Unamortized discount of debentures and payment of dividends out of paid-in surplus plus annual reports and dividend notices.
- Atlas Corporation, February 15, 1940:
Investment company to designate its type on registration and not to change except with consent of the Commission.
Nine months delay before act becomes effective.
No restriction of dividends out of earned surplus.
Once preferred securities, same tax rights to apply to all.
Should not force underwriting to be done through a subsidiary.
Objects to cross-holding provision, the management contracts being cancelable with 60 days' notice, not being able to sell stock at less than asset value.
- Boston Fund, January 30, 1940:
For administration of two or more funds.
- Boston Metal Investors, Incorporated, February 3, 1940:
Memorandum Re proposal that after 1 year there shall be no interlocking officers and directors between different investment company systems.
- Century Shares, February 5, 1940.
Compensation of management on basis of percentage of assets on a specified date.
Custodianships.
Brokerage affiliations.
Voting privileges in Massachusetts Trust.
- Chemical Fund, Inc., February 3, 1940.
Memorandum Re the segregation of management and distribution of open-end mutual investment trusts.
Re proposed restrictions on the formation of sponsors of an existing trust of new trusts, including trusts for underwriting, speculative, or other purposes.
- The Chicago Corporation, February 8, 1940.
Intermediate financing generally by investment companies.
- Delaware Fund, Inc., February 2, 1940.
Directors interlocking with other investment companies, banks and insurance companies and portfolio companies.
Segregation of management and distribution.
Common administration of more than one trust.
Suggested antiswitching law between funds under common management.
Interlocking directorships in investment companies.
Annual renewability of management contracts and of distribution contracts.
Letter of February 8, 1940, re limitation of switching between commonly managed trusts and limitation of size.
Separation of management and distribution.
Renewal of management contract.
Importance of legislation that shares be sold between 10 and 3 p. m. at a price to be fixed at the close of the market.
Borrowing.
Reasonable limitation of load.
- Eaton & Howard Management Funds, January 31, 1940.
Memorandum for the management of more than one fund by one organization.
Common management and distribution.
Regarding regular voting by beneficiaries or shareholders of investment trusts or investment companies.
Dividend restriction.

- Eaton & Howard Funds—Continued
Common control of management and selling.
- Fidelity Fund, January 31, 1940.
Duration of contract between investment company and underwriter.
Separation of management company and underwriter.
Directors of banks and insurance companies as investment company directors.
Rapidly with which new trust can be organized by any one organization.
Pricing policy.
Load.
Letter of January 30, 1940, to Griswold against underwriting contract being limited to 1 year.
- General Capital Corporation, February 7, 1940.
Re having only minority on board.
- Groups Securities, Inc., memorandum to Mr. E. B. Twombly from Herbert R. Anderson, February 9, 1940.
Re limiting short-term profits to 30 percent of total income.
Re one investment company buying another.
Re cross-ownership.
Re interlocking investment company officers and managers.
Re underwriter being an officer where he is not the manager.
Re formation of new trust by same sponsor.
Re registration of independent directors.
Re annual renewal of management contract.
Re "arm's length" dealing.
Re restriction on change of directors.
Re restriction on payment of dividends.
Re reasonableness of load and limited transferability of shares.
- Hamilton Depositors Corporation, March 9, 1940.
Objection to 50 percent limitation on load in first year—restriction as to size of down payment.
- Independence Fund of North America, Inc. February 5, 1940.
Advantage of trust form against majority vote in corporation.
- Keystone Custodian Funds, Inc., March 9, 1940.
Schedule of eliminations and substitutions during 1939 on various funds.
- Lehman Corporation, March 7, 1940.
Study re trading and portfolio securities where Lehman Corporation had directors.
Study re relative percentages of outstanding capital owned by Lehman Corporation in portfolio companies.
- Massachusetts Distributors, Inc., February 26, 1940.
General advantages of open-end companies.
Possibility of limiting the expenses to 1 percent exclusive of taxes, brokerage and interest.
Dividend policy except for tax reasons.
Capital gains should not be paid.
- Re limitation on size.
- Massachusetts Investors Trust, January 31, 1940.
Re limitation of size of investment trusts.
- Massachusetts Investors Trust, January 31, 1940.
Re possible prohibition of trust "systems."
- Massachusetts Investors Trust, January 31, 1940.
Payment of dividends and reinvestment of capital.
- Massachusetts Investors Trust, January 31, 1940.
Voting rights in open-end trust and removal of trustees.
- Massachusetts Investors Trust, February 6, 1940.
Re interlocking directorships.
- Massachusetts Investors Trust, February 3, 1940. (two letters).
Management running more than one trust and segregation compelling disposal of Supervised Shares.
Underwriting.
Money for new or small companies raised from capital contributed by investment trusts.
- Massachusetts Investors Trust, February 3, 1940.
Re limitation on size.
- Massachusetts Investors Trust, March 5, 1940.
Open-end companies not dangerous from point of view of size.

- National Investors Corporation, February 6, 1940.
 Increasing portfolio diversification requirements to 7½ percent.
 Exemption from all excess profit taxes.
 Necessity of distributing capital profits in cash to qualify for tax exemption.
 "Aging" as a restriction on trading.
 Tax law difficulty today requiring distribution.
 Recognition of distribution paid out in redemptions.
 Special Stock Exchange arrangements for investment trusts.
- New York Stocks, Inc., February 3, 1940.
 Re senior securities in open-end companies.
 Re common management of two or more investment companies.
- New York Stocks, Inc., February 6, 1940.
 Memorandum against segregation of distribution and management.
- Selected American Shares, Inc., February 8, 1940.
 Re segregation of management and distribution in open-end companies.
- State Street Investment Corporation, February 2, 1940.
 Re administration of one or more funds.

INVESTMENT COUNSEL

- Berle & Berle, January 29, 1940.
 Re investment advisers legislation, supplemented by another letter on February 2, 1940.
- Estabrook & Co., Boston, February 2, 1940.
 Special Committee of the National Association of Securities Dealers in regard to the proposed sections covering investment counsel in the proposed law regulating investment trusts.
- Scudder, Stevens & Clark, February 9, 1940.
 Re proposed regulation of investment counsel funds.
 Re administration of more than one fund.
 Re independent majority of board.
 Re restrictions on dividend.
- Standish, Racey & McKay, Inc.
 Re proposed regulation of investment counsel.

Mr. HEALY. We also have a compilation of the various recommendations made by representatives of the industry. We offered this once in our opening and then withdrew it. I do not know whether it is wise to encumber the record with so much printing or not. If it is filed as an exhibit it would not have to be printed.

Senator HUGHES (presiding). It may be filed as an exhibit.

(The compilation of various recommendations made by representatives of the investment industry was filed with the committee.)

Mr. HEALY. That includes the whole text of the exhibit supplied by Tri-Continental.

Mr. SCHENKER. Senators, in [section 10] there is a provision which relates to the interlocking of the distribution and management of open-end companies. The majority of the people, as I recall, who came here to testify with respect to that problem are the managers of the investment trusts and also have the distribution contracts, so that they are substantially the same people. In some instances they are not the same people. In Mr. Griswold's case—the Massachusetts Investors Trust—the management is vested in Mr. Griswold and his four trustees and the advisory board. They are separate and distinct and wholly independent of Mr. Traylor's organization, Massachusetts Distributors.

This bill provides, in substance, that the board of directors of an investment trust, that is, a majority of them, have to be independent of the distributors, and that the principal executive officer has to be independent of the distributors. The bill however permits the distributors to act in an investment advisory capacity to the investment

trust. The ultimate decision as to taking or leaving that advice must be with the independent board of directors.

You might ask what prompted us to put in that provision. I will take just a few minutes to see if I cannot indicate the problem and what we intended to do.

In the first place, take this dilution problem. Mr. Bane indicated that a substantial portion of the securities of open-end companies was sold in the high points of the market. The management is interested in the selling of securities, because these sales increase the size of the fund and therefore increases the management fees. If the manager is the same individual as the distributor he is also interested in the distribution load.

In that situation you have no independent check by any independent people to see whether it is to the interest of the shareholders that the shares be sold at that time and have this dilution take place.

Where you do not have a segregation between the distributor and the manager there are two motivations for increased sales. He not only gets the management fees, but also the distribution load. We say that in those circumstances there ought to be an independent board of directors to look after the shareholders, because the management and the distributor can look after themselves.

That is No. 1. Even more fundamental than that is this problem. These open-end companies sell their securities continuously. They do it for two reasons. One is to increase the size of the fund, and the other, of course, to overcome the redemptions by some shareholders. If they did not sell continuously and they had a lot of redemptions, the size of the fund would shrink and maybe ultimately disappear. So, to counteract those redemptions, they sell their securities continuously.

Then what happens? I do not think anybody will effectively deny this. When the salesman goes out and sells these investment trust securities, an investor may ask, "What securities have you in your portfolio?" and the salesman will show the prospect the portfolio. What is the consequence of that disclosure? The result is that in our opinion—and it really is not denied—there is a pressure on management to invest in certain types of securities, not because they think these securities are the best investment in the world to make at that time, but because that type of security is popular among the people at that time. If an open-end company is selling its securities at a time when war babies are popular, if the company does not have war babies in its portfolio it will not be able to sell the investment-trust securities even though the management feels that war babies are the worst investment in the world to make at this time. If alcohol stocks, as they were in 1933, are popular, unless the investment company had alcohol stocks in its portfolio it might not be able to sell its investment trust shares.

As a result we feel, and it is not really denied, that there is a pressure on managements to make certain investments, not because they think they are good investments, but because it will help their sales campaign. We say that under those circumstances we feel that there cannot be a complete unity between management and distributors and that there ought to be an independent insulation to protect the investor against that type of activity.

Mr. Eberstadt went even further and said that he felt that the board of directors should not only be independent from management but the directors should be independent of each other.

It is to meet that situation that we say there should be an independent board of directors and an independent principal executive officer. We say that if you want to act as investment adviser you can act as investment adviser and get a fee for this advice, but the ultimate decision should be with the independents. That is the underlying reason for that provision.

Now, if I may take a second on the recurrent promotions. I listened a good deal to the arguments on recurrent promotions and, curiously enough, if I may use this expression, everybody was trying to crash in on this idea of venture capital. The argument was: "Don't forbid recurrent promotions, because you will stop the capital market; you will ruin the country," and so forth.

Let us see how much there is to that argument. Is that the reason they are urging recurrent promotions, or is there some other reason? The fact of the matter is that Mr. Eberstadt wrote me a letter and said that every company should be an open-end company but should not have senior securities. As a matter of fact, if one has an open-end company he cannot go into that type of activity—venture capital. Why? Because if he is going to make capital available to a small business and get an equity position, he does not have a listed security; he does not have a marketable security; but he has an illiquid block of stock. The open-end company cannot put itself, to any substantial extent, in that type of stock because if there are redemptions the company cannot liquidate the illiquid block of stock to raise cash to meet the redemptions. So the fact is—and this is not theory—that every open-end company practically has every dollar of its money invested in the blue chips on the New York Stock Exchange. United States Steel and the American Telephone Co. are not looking for an investment company to finance them. If an investment company is going to perform the function of supplying a small industry with capital, the investment company cannot be an open-end company; that is clear.

Furthermore, this venture capital is not as simple as it looks, because, as Mr. Bunker will tell you, it requires a special type of training. It is not the same type of training as is required for trading in securities. You have to have special research facilities; and, further than that, the number of situations where an investment trust can invest are comparatively limited.

So that all this emphasis on organizing new investment companies to open up the capital markets makes no impression on me at all, because I am convinced, and I think everybody else is convinced, that it is only closed-end companies that can engage in that type of activity. However, under this bill open-end companies as well as the closed-end type of company can go into that type of transaction. Even a diversified investment company can use 15 percent of its money as venture capital.

In some respects the technique of the industry used in connection with recurrent promotions represents the technique throughout their entire presentation. They take the extreme case and say that "The prohibition against recurrent promotions will prevent me from organizing a venture capital organization. Therefore take the provision on recurrent promotions out."

This bill does not prevent the formation of any new companies. If anybody wishes to organize a venture capital company all he has to do is to make application with the Commission and, if there are no conflicts with the existing company and if the new company complies with the specific standard set forth in the statute, he can organize the new company. What we are trying to prevent is the organizing of companies just to be able to manufacture securities which they can sell.

Just one more observation. There was one gentleman who was asked, "Why have you senior securities in your capital structure?" He said, "If I didn't have senior securities, I am exactly like State Street, and I can't meet State Street's competition. State Street has had such a good performance that I have to have a type of security I can sell."

So he organized an open-end company with debentures in its capital structure, so he could sell the debentures. He also is able to say, "You can get leverage in my open-end company."

I would like to introduce for the record a schedule of the number of companies which were organized by one sponsor, and also a schedule showing the cost to the American public of switches from one company that was organized to another company organized by the same sponsor, and into still another company organized by the same sponsor. Ultimately, his whole investment is practically taken from him through these loads. That is the problem with which you are confronted. That is the problem that that section is intended to deal with. If anybody wants to organize a venture capital corporation he will have no difficulty in that respect.

May I introduce this for the record, please?

Senator HUGHES (presiding). Yes; it may go into the record.

(The document referred to is here printed in full as follows:)

SECTION 11. RECURRENT PROMOTIONS

There are two types of problems: (1) the concentration on distribution to the prejudice of management; and (2) the conflicting positions of sponsors of more than one trust. The first situation has been particularly prevalent among the fixed trust—open-end sponsors—the second among the closed-end sponsors as well as the fixed trust—open-end sponsors.

THE OPEN-END—FIXED TRUST SPONSORS

The total sales of all fixed trusts from 1927 to 1935 was over \$900,000,000. Of the \$900,000,000 or more of sales, about \$760,000,000 were made by six sponsors.

TABLE 6.—*Total sales of leading sponsors as of December 31, 1935*

Calvin Bullock:	
Fixed trusts:	
Nation-Wide Securities Co. trust certificates, series A (1924).....	\$3, 279, 377
United States Electric Light & Power Shares, Inc., trust certificates, series A (1927).....	58, 313, 822
United States Electric Light & Power Shares, Inc., trust certificates, series B (1930).....	47, 965, 802
Nation-Wide Securities Co. trust certificates, series B (1930).....	25, 132, 108
Total.....	<u>\$134, 691, 109</u>

952 INVESTMENT TRUSTS AND INVESTMENT COMPANIES

TABLE 6.—Total sales of leading sponsors as of December 31, 1935—Continued

Calvin Bullock—Continued.

Management investment companies:	
Bullock Fund, Ltd. (1932).....	\$2, 495, 000
International Superpower Corporation (1928).....	15, 865, 325
Carriers and General Corporation (1929).....	21, 390, 000
Bullock Fund, Ltd. (new) (1932).....	2, 354, 000
Canadian Investment Fund, Ltd. (1932).....	3, 428, 885
Nation-Wide Securities Co. (Maryland) (1932).....	9, 186, 996
United States Electric Light & Power Shares, Inc. (Maryland) (1932).....	(¹)
Dividend Shares, Inc. (1932).....	30, 103, 755
Total.....	84, 823, 961
Distributors Group, Inc.:	
Fixed trusts:	
North American Trust shares, 1953 (1929).....	184, 891, 572
Cumulative Trust shares (1930).....	13, 104, 788
North American Trust shares, 1955 (1931).....	28, 493, 077
North American Trust shares, 1956 (1931).....	30, 469, 262
North American Trust shares, 1958 (1933).....	950, 540
Total.....	257, 909, 239
Management investment companies:	
North American Bond Trust (1932).....	9, 415, 889
Group Securities, Inc. (1933).....	5, 800, 000
Foreign Bond Associates, Inc. (1933).....	280, 000
Total.....	15, 495, 889
Massachusetts Distributors, Inc.:	
Fixed trusts:	
Industrial trustee shares (1924).....	(¹)
Diversified trustee shares (1925).....	10, 322, 635
Diversified trustee shares, series B (1927).....	16, 104, 196
Diversified trustee shares, series C (1929).....	40, 331, 571
Diversified trustee shares, series D (1931).....	12, 516, 401
Total.....	79, 274, 803
Management investment companies:	
Massachusetts Investors Trust (1924).....	77, 204, 553
Supervised Shares, Inc. (1932).....	10, 204, 553
Total.....	87, 409, 106
Maryland Sponsors, Inc.:	
Fixed trusts:	
Fixed trust shares (1927).....	9, 824, 876
Basic industry shares (1928).....	6, 507, 103
Fixed trust shares, series B (1929).....	2, 274, 966
Fixed trust oil shares (1930).....	299, 430
Corporate trust shares (1929).....	144, 995, 823
5-year fixed trust shares (1931).....	1, 695, 641
Corporate trust shares, accumulative series (1931)....	19, 019, 311
Corporate trust shares, series AA (1931).....	15, 891, 624
Corporate trust shares, accumulative series (Modified) (1932).....	12, 194, 122
Corporate trust shares, series AA (modified) (1932)....	10, 464, 524
Total.....	223, 167, 420
Deduct for modified shares.....	19, 804, 639
Total.....	203, 362, 781

¹ Unknown.