

## INVESTMENT TRUSTS AND INVESTMENT COMPANIES

TUESDAY JUNE 4, 1940

UNITED STATES SENATE,  
SUBCOMMITTEE ON SECURITIES AND EXCHANGE  
OF THE BANKING AND CURRENCY COMMITTEE,  
*Washington, D. C.*

The subcommittee met, pursuant to adjournment, on Friday, May 31, 1940, at 12:30 a. m., in room 301, Senate Office Building, Senator Robert F. Wagner presiding.

Present: Senators Wagner (chairman of the subcommittee), Hughes, Herring, and Downey.

Senator WAGNER. The subcommittee will come to order.

We have before us the confidential committee print of June 4, 1940, of S. 3580. Judge Healy, we will be glad to hear from you.

### STATEMENT OF ROBERT E. HEALY, COMMISSIONER, SECURITIES AND EXCHANGE COMMISSION, WASHINGTON, D. C.

Mr. HEALY. Mr. Chairman and members of the subcommittee, we are still in agreement with the investment-trust industry.

Senator WAGNER. I believe there was one question left open at our meeting on last Friday. That was in reference to the face-amount companies so-called, was it not?

Mr. HEALY. That is right.

Senator WAGNER. And you expressed at that time confidence that these companies and the Securities and Exchange Commission would reach an agreement.

Mr. HEALY. Yes.

Senator WAGNER. Has an agreement been reached on that matter?

Mr. HEALY. Yes. We have reached an agreement with the only representative of the face-amount companies we have been in contact with, and that agreement is embodied in the redraft of sections 28 and 29 as now appear in the June 4 print of S. 3580.

I might say that the lawyer who represents one of the largest face-amount companies—and there are only two large ones—the Investors Syndicate, is here, and also one of their officials, Mr. Crabb.

Senator WAGNER. Who will speak here for them?

Mr. HEALY. I presume the attorney—no; I am informed that Mr. Crabb will speak.

Senator WAGNER. We will be glad to hear Mr. Crabb.

**STATEMENT OF E. E. CRABB, PRESIDENT, INVESTORS SYNDICATE,  
MINNEAPOLIS, MINN.**

Senator WAGNER. How do you spell your name?

Mr. CRABB. It is spelled C-r-a-b-b.

Senator WAGNER. Will you give your full name so we may have it on the record?

Mr. CRABB. My name is E. E. Crabb, president, Investors Syndicate, Minneapolis, Minn.

Senator WAGNER. We will be glad to hear from you.

Mr. CRABB. I might say that our company was organized in 1894 and has been in continuous operation ever since. We have something over 350,000 certificate holders, and our gross assets amount to slightly over \$160,000,000.

I think we are the largest in our field, and probably represent in the neighborhood of 75 percent of the face-amount business of the United States.

We have gone over this bill very carefully with representatives of the Securities and Exchange Commission. We are in agreement with them and are very much gratified to have the bill.

Senator WAGNER. Do you think it important for the investment-trust industry that a regulatory bill of this character be enacted into law by the Congress?

Mr. CRABB. Yes, sir.

Senator WAGNER. Well, I might say that that has been the attitude of all other representatives of the investment trust industry affected by this legislation. They have been cooperative, and I think this legislation represents a very sound approach to the problem of regulation.

Mr. CRABB. We feel that that is true.

Senator HERRING. What agreement, if any, was reached as to deposits placed in States for the purpose of guaranteeing certificate holders in States.

Mr. CRABB. That is covered by section 28 (b), I believe.

Mr. SCHENKER. It is section 29, is it not?

Mr. CRABB. I believe it is section 28 (c).

Senator WAGNER. On what page of the bill is that to be found?

Mr. CRABB. Page 107.

Mr. SCHENKER. Might I explain that, Senator Herring?

Senator HERRING. Yes; if you please.

**STATEMENT OF DAVID SCHENKER, CHIEF COUNSEL, INVESTMENT  
TRUST STUDY, SECURITIES AND EXCHANGE COMMISSION, WASH-  
INGTON, D. C.**

Mr. SCHENKER. The way the proposed law is set up, the Investors' Syndicate may form a new company after the enactment of this bill. They may stop selling in the old company, although they will make collections on certificates, so that this bill in no way, Senator Herring, touches deposits that have been made to secure certificates issued up to the time of the passage of this bill.

With respect to future certificates which will be sold—in the event a State law requires a deposit the company has the right to make the

deposit. If such deposit is made and the company goes bankrupt, then certificate holders of a State in which the deposit was made will get a preference with respect to moneys realized on liquidation of this collateral. In event certificate holders in another State do not have the same amount of collateral deposited in their State, enough collateral to pay them in full, then the bill provides that people in a particular State who had a deposit upon which they realized some payment will have to wait until the residents of other States receive an amount equal to the amount that the people living in the States having deposits received, and from there on they all share *pari passu*.

So we have not abolished deposits, but since the Congress is legislating on a national basis we wanted to have an equalization provision, to the end that a resident of one State will not be preferred over a resident of another State.

Senator HERRING. It will be just a question of whether a State will be willing for a company to do business in that State. In the case of our State, we will expect protection for certificate holders.

Mr. SCHENKER. The fact that this bill provides that such a deposit can be made, and the deposit can be of any size, I think will meet that situation. But a company can only get credit with respect to certain reserve provisions deposited under the law of the State. In other words, this bill does not prevent any State in the future insisting upon a deposit for the protection of its certificate holders.

Senator WAGNER. In other words, it does not change the present status.

Mr. SCHENKER. No; except to this extent—

Senator WAGNER (continuing). I mean, so far as the requirement of a deposit is concerned.

Mr. SCHENKER. That is right. The only change the bill does make is this—and it is really not a change, but an addition: The addition is that where you have a deposit in a State, and the certificate holders get a sum of money on that deposit, they cannot share in the general funds of the company until other people receive an amount equal to what the people in that State receive. So that if a security commissioner of a State has a 100 percent deposit and a company goes bankrupt, the deposit he holds will be liquidated and certificate holders in that State will receive the money and be paid in full.

If a securities commissioner of a State has a deposit which he thought was sufficient in the first instance to pay in full, but in the process of liquidation the collateral realizes less, then the certificate holders do not get 100 percent, but, say, 95 percent. That means that the residents of other States would have to get 95 percent, and then they all would share equally after that.

Senator HUGHES. But they get the full benefit of their deposit?

Mr. SCHENKER. Yes. And the securities commissioner of a State can require a deposit in any amount he wants.

Senator HERRING. I think that is all right.

Mr. SCHENKER. I believe we have nothing further to present.

Senator WAGNER. Is there anything else to be presented? [A pause without response.] Before we resolve ourselves into executive session to vote on the bill does any member of the subcommittee wish to ask any representatives of the investment trusts who may be present any questions with reference to the bill?

Senator DOWNEY. Do I understand that the representatives of the investment trusts and of the Securities and Exchange Commission are virtually in agreement now?

Senator WAGNER. Not virtually but actually in agreement.

Senator DOWNEY. That is a most amazing thing in this chaotic world right now.

Senator WAGNER. I think it is.

Senator DOWNEY. It is really the first encouraging thing I have heard in several weeks. How was this miracle brought about?

Mr. SCHENKER. I think I might fairly say that a great deal of it is attributable to the cooperative spirit of the industry.

Senator DOWNEY. I am glad to hear that and hope it is an index of what we may expect from now on.

Senator HERRING. Mr. Schenker, could you not say a kind word for the subcommittee?

Mr. SCHENKER. Certainly.

Senator WAGNER. It is another illustration of the value of cooperation. I do not care to recall particularly the fact that I was Chairman of the National Labor Relations Board, in addition to being a Senator. It was a busy time, let me tell you, along in 1933 and 1934. I learned that notwithstanding people may appear to be very far apart, yet when they actually sit down at a table and look at one another and talk to one another, in 99 cases out of 100 they reach an agreement. I think all too often we keep apart when we should sit down and talk things over.

Senator HUGHES. Mr. Chairman, I think you should hold that job now.

Senator WAGNER. Oh, I do not know about that, but was merely trying to point out what can be achieved when people are willing to cooperate by sitting down and talking over their differences.

Mr. HEALY. I think we ought to give full credit to the members of this subcommittee; and I think, further, that Mr. Jaretzki, counsel for the closed-end investment trusts and Mr. Motley, counsel for the open-end companies, have been very patient and very able in handling their end of this matter. I think they are entitled to a large share of the credit, if there is any.

Senator WAGNER. I am willing they shall have it. We recognize Mr. Jaretzki in New York as not only a very able and very conscientious attorney but one who is interested in public affairs.

Senator DOWNEY. Mr. Chairman, is it not a fact that generally conscientiousness and ability go together in the legal profession? You seemed to emphasize one of them.

Senator WAGNER. Oh, no. I was just explaining how we in New York feel about Mr. Jaretzki.

**STATEMENT OF ALFRED JARETZKI, JR., MEMBER OF THE FIRM  
OF SULLIVAN & CROMWELL, NEW YORK CITY**

Mr. JARETZKI. Might I just say this in response to Senator Herring's suggestion: I think both the representatives of the Securities and Exchange Commission and of our group have been very conscious throughout our discussions of the point of view of the members of this subcommittee as indicated by the various questions propounded during the hearings. I think we have endeavored to be guided, in

reaching this agreement on recommendations, by the thoughts expressed by the members of this subcommittee. I hope we have satisfied the subcommittee in doing that.

Senator WAGNER. The subcommittee had that in mind very early in the hearings, because Senators generally mentioned that fact to me. They wondered why the representatives of the investment trust industry and of the Securities and Exchange Commission could not get together and guide us in this matter.

We now wish to thank you gentlemen, one and all. We will go into executive session and consider the bill.

Will you stay around for a short time in order to be available in event any member of the subcommittee wishes to ask you any question?

Mr. HEALY. Certainly, Mr. Chairman.

(Thereupon at 11:12 a. m., Tuesday, June 4, 1940, the subcommittee went into executive session.)