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MEMORANDUM OF CONFERENCE HELD ON APRIL 24, 1963
WITH INDUSTRY REPRESENTATIVES REGARDING
THE COMMISSION'S LEGISLATIVE PROGRAM

The Commission met with the following industry representatives to discuss the Commission's legislative proposals which were to be submitted to Congress to implement the recommendations contained in the report of the Special Study of Securities Markets (copies of the proposals had been furnished to the industry group on April 19):

Avery Rockefeller, of Dominick and Dominick, Chairman of the Group
Bayard Dominick, President of the Association of Stock Exchange Firms
James H. Ording, Executive Director, Association of Stock Exchange Firms
G. Keith Funston, President, New York Stock Exchange
James E. Day, President, Midwest Stock Exchange
Joseph Welch, of the Investment Company Institute
Robert L. Augenblick, General Counsel, Investment Company Institute
Thomas McGovern, counsel, American Stock Exchange
Paul Kolton, Executive Vice President, American Stock Exchange
Martin J. Keena, Vice President in charge of Securities Division, American Stock Exchange
William Foshay, special counsel, Investment Bankers Association
Amyas Ames, President, Investment Bankers Association
Dorsey Richardson, President, Investment Company Institute
Samuel Rosenberry, counsel, New York Stock Exchange
Edward C. Gray, Executive Vice President in charge of operations, New York Stock Exchange
Wallace H. Fulton, Executive Director, National Association of Securities Dealers, Inc.
Hudson B. Lemkau, Vice Chairman, National Association of Securities Dealers, Inc.
Stanley Tempco, counsel, National Association of Securities Dealers, Inc.
Marc A. White, counsel, National Association of Securities Dealers, Inc.
Duke Chapman, Vice President, New York Stock Exchange
Murray Hansen, counsel, Investment Bankers Association

Chairman Cary opened the discussion by referring to his letter of April 3 to the industry group, and particularly to the suggestion therein that the group might wish to form a series of committees to deal with the separate areas covered by the proposed legislation. He indicated, however, that this was a matter for the group's decision.

Chairman Cary then stressed the time element involved in getting the proposals before Congress, stating that Chairman Harris of the House Interstate and Foreign Commerce Committee had directed the Commission to have the proposals before the House and Senate Committees at a very early date and had stated that if the proposals were not before Congress within the early future they would not be considered this year. Mr. Cary advised the group that under these circumstances he was forced to transfer some of the time pressure over to it. He also advised, in this connection, that the Commission was making every effort to get the report of the Special Study of Securities Markets to the public as soon as possible, but, in

the meantime, he offered to send additional copies of the Summary Report to the industry group upon request.

Mr. Cary stated that except for the area involving the margin problem, the proposals furnished to the group would compose the Commissio legislative package this year. He indicated that because of the necessit of coordination with the Federal Reserve Board in the area of margin requirements, it was not possible to say at this time whether or not that subject would be covered in a later package.

Turning to the procedural aspects of the program, Mr. Cary advised that the Commission had formed a central drafting committee with respect to all of the bills with Mr. Loomis in charge, and with Messrs. Fleischer, North, Ferber and Shreve, among those who would also be parti pating in the committee. In addition, he stated that the program had be divided into five areas with a Commissioner assigned in an oversight capa over each area, as follows: (1) the statute relating to qualifications persons entering the securities business and the proposed 10(c) anti-fra type of statute--Commissioner Whitney; (2) the quotations statute and am ments to the Securities Act of 1933 with respect to distributions of sec ties--Commissioner Woodside; and (3) the whole area of reporting and of proxy requirements and of insider trading provisions--Commissioner Cohen Mr. Cary suggested that the industry group might, in view of the problem involved in examining the statutes in a technical way, also wish to form a drafting committee. Whether or not one committee was formed, or separa committees for each area, was left to the group's discretion, but Mr. Car indicated that, for practical reasons, ultimately the group's suggestion would have to be funnelled down into a few hands. He also mentioned possible problems that might arise in terms of adequate coverage and representation of particular groups or areas of the country, such as the "insiders" trading group on the West Coast.

Finally, Mr. Cary raised the question of whether the proposal should be made public. He indicated that since they were in draft form and subject to change, he did not think it advisable to publish them at this time. On the other hand, he recognized that since the proposals were made available to a number of people, it was very likely that some of them would get into the hands of the press. Under these circumstanc Mr. Cary suggested it might be well to issue a press release announcing that the drafts had been made available to a number of industry people for their consideration and generally outlining the areas covered in th proposals. Mr. Cary stated that he did not think the actual drafts sho be made available to the general public at this time, but indicated tha if their were certain persons which the industry group believed should see the proposals, the Commission would have no objection, as long as i was done with the understanding that they were not public documents.

The discussion was then turned over to Mr. Avery Rockefeller Chairman of the group. Mr. Rockefeller stated that it had been decide forming the securities industry liaison group to use the group concept than the committee concept since the members of the group represented of the securities industries and associations. He indicated that the

would act solely in coordinating policy and would take no votes. If there was a division of opinion in a particular area, such division would be identified. He stated that it was with this understanding that the draft proposals had been received last Friday, and he assured the Commission that with the exception of a few staff members the drafts had not gone beyond the members of the group present at the conference.

Mr. Rockefeller pointed out that none of the representatives had had a meeting with their respective boards since the proposals had been received, and that they could not commit themselves without discussing the matters first with their boards. He stated that the group had taken the policy position not to make any statements as a liaison group. He indicated that this also would apply to any comments coming from the group to the press, and that the group would prefer to have any press relations handled by the Commission. Mr. Rockefeller stated that within the first 10 days of May almost every organization represented would have a board meeting, and in response to his inquiry as to how far they could go in discussing the proposals with their boards, Mr. Cary indicated that the Commission would not object to their making the proposals available to their board members.

Mr. Rockefeller assured the Commission that the group wished to cooperate to the upmost and that it understood the time problem involved. He indicated, however, that the time factor presented a serious problem to them in terms of being able to adequately discuss the details of the proposals. He stated that the group felt quite strongly that the best legislation would result from a cooperative effort. He repeated, however, that the members could not express any opinion on any particular phase of the legislation until they had had an opportunity to confer with their boards. Thereupon, Mr. Rockefeller opened up the discussion to the members of the group.

Mr. Ames, President of the Investment Bankers Association, expressed the view that, properly handled, a constructive force could be built up in industry behind what he felt was a common objective of industry and the government. Toward this end, he suggested that the proposed legislation be made available to various people in the industry so that they would understand the objectives and would have an opportunity to express their differences in a constructive way. He stated that the proposals contained much that the industry had wanted for years and that because of this he believed it would be possible to obtain some positive industry backing. In this connection, he suggested that it might be constructive to obtain the views of the Committee on Legislation of the Investment Bankers Association. He also suggested that it might be advantageous to publish position papers on various phases of the legislation setting forth clearly areas of agreement and disagreement. He stated that presentation of this material to Congress would enable it to better understand the issues and to produce more effective legislation.

Mr. Richardson, of the Investment Company Institute expressed his entire agreement with Mr. Ames' position. He indicated that the investment company industry wanted to cooperate in every way possible. He stated, however, that it would be necessary to consult with their

governing bodies before they would be in a position to make an orderly study of the proposals and give an official opinion on them.

Mr. Funston, President of the New York Stock Exchange expressed the industry's appreciation of the Commission's cooperation in giving the industry an opportunity to review the legislation before it was submitted to Congress in definitive form. He stated that responsive to this the industry wished to do whatever it could to further such cooperation in a meaningful, practical way. He pointed, out, however, that past legislative endeavors indicated that this could not be done in a very short period of time. He stressed that it would be very difficult for the various boards, which would be meeting in the next month, to take a firm position on this legislation until they knew what the entire report would say and what the complete legislative package would contain. He inquired in this connection what the Commission had in mind with respect to timing, in what status of development it intended to submit the legislation, and whether it wanted industry approval.

In response, Mr. Cary indicated that in view of the pressure being exerted by the House and Senate Committees, the Commission proposed to submit the proposals sometime between the 1st and 15th of May. He stated that under the circumstances he realized it would be unrealistic to expect to be able to submit a bill that had been totally agreed upon. However, he indicated that during this period the Commission would like to have, at the earliest possible time, suggestions as to the language in particular sections and indications of agreement or disagreement with the various principals involved in the proposals. He stated that it would be essentially the Commission's bill stemming from and based upon the Report of the Special Study, but that the Commission would endeavor in every way possible to eliminate anything that did not appear to make sense and to make any possible improvements in the proposals. Mr. Cary indicated that if May 1st was unrealistic, perhaps industry could give some indication of its position one week later.

Mr. Funston indicated in this regard that it should be possible to have an informal group meeting to discuss the proposals, and, without trying to resolve the situation, to advise the Commission of the views of the various members. He pointed out, however, that there was the risk that opposite views might later be taken by certain of these organizations at Congressional hearings.

Commissioner Whitney indicated that the Commission was aware of the problems that the group had in connection with their various boards. He stated, however, that between now and May 15 he would like an indication from the members of the group as to whether the legislation was "in left field, right field, or in the ball park at all." He stated that they could check with their boards later, but that the Commission needed to know their general attitude as soon as possible.

Mr. Lemkau, Vice Chairman of the NASD, pointed out that there were persons outside the various organizations represented by the group who would be effected by the legislation, and inquired as to how their reaction could be obtained. He referred particularly to industries af-

fected by the various reporting, proxy and insider trading provisions, as well as non-members of the NASD who would be required to form self-regulatory agencies under the proposed provisions.

In response Mr. Cary suggested that perhaps the Commission might contact the Chamber of Commerce and the National Association of Manufacturers to obtain their reactions. He pointed out that the Chamber of Commerce had in the past opposed similar legislation, primarily as a matter of tradition. He indicated, however, that because of the nature of the present legislation it was possible that it might now take a different position. He stated that it would seem advisable to contact other industries and inquired whether there were any suggestions as to how this might be done effectively other than in getting in touch with the heads of the two institutions referred to. As to non-members of the NASD, Mr. Loomis pointed out that there was no focal point through which this group could be reached, but he suggested that there were probably members of the liaison group who were in touch with some of them and that perhaps their reactions could be obtained in that way.

Mr. Day, President of the Midwest Stock Exchange, raised the question of timing and inquired whether there was any way in which the group could join with the Commission in requesting additional time to work up the legislation. He indicated that it would take time to resolve the wide differences of opinion in his group with respect to various phases of the legislation and that before he expressed an opinion on it he would like to have an opportunity to discuss it with other segments of the industry.

Mr. Ames agreed that it would be impossible to reach constructive conclusions and bring together the various points of view of thoughtful men in the industry by May 15. He felt that failure to consult such persons would tend to create a very strong negative force. In view of this, he inquired to what extent, after the legislation was introduced, it would be possible to try to coordinate the views of others. He stated that while much of the legislation appeared desirable, there were serious problems involved which needed careful study.

Mr. Cary responded that the Commission hoped to continue working jointly with industry groups after the legislation had been introduced, and that it was his understanding that it would be subject to revision while before Congress. He repeated that he did not expect to be able to submit proposals on which everyone was in agreement, but that the Commission hoped that the proposals would be responsible ones which a number of industry people had reviewed and had agreed were in good statutory form and represented a responsible approach.

Mr. Foshay, Special Counsel for the Investment Bankers Association, stated that it had been his experience in the past in developing legislative programs that effective legislation had resulted from careful, thoughtful joint efforts at conferences between the industry and the SEC, that the SEC had always held the whip hand and at a certain point would halt the debate and indicate that it would go ahead and file

the bill and that industry could file its dissent. He stated that when such legislation had been presented to Congress it had been a responsible package and Congress had been able to understand where the issues lay and the views of both sides. He endorsed this approach, but stated it could not be done in such a short length of time. He suggested that if the Congress was made aware of this problem it might be persuaded to allow more time to work out the technical aspects of the legislation before it was presented; or in the alternative, to permit the bills to be introduced immediately, but with the understanding that substitute bills would be presented after conferences. Mr. Poshay expressed the view that if one of these approaches was not adopted, all the Commission would get would be a "seat of the pants" reaction and even this would be with an eye toward testifying. He stated that, speaking as a counsellor, he could assure the Commission, that a lawyer either prepared his clients for meetings or for hearings and that these were two different things.

Mr. Cary agreed to make further inquiries with respect to the question of obtaining more time. He stressed, however, that in any event he hoped to make some progress between now and May 15 in obtaining the industry views in terms of draftmanship, policy positions, etc. He repeated that he would hope that this cooperative effort would not end on the date the bill was introduced, and that he was sure it would be capable of substantial amendment after it had been submitted.

Turning to the proposals themselves, Mr. Funston expressed the view that they should be drawn with more specificity rather than with such broad generalization. He stated they should be more specific in terms of spelling out the particular practices to which they were directed, and, in the area of delegation of authority to self-regulatory bodies, that they should be more specific as to the areas of responsibility and as to the Commission's role in the general oversight capacity. He inquired how it could be made clear that oversight was not interjection by the SEC into broadened areas of self-regulation.

Mr. Cary expressed the Commission's willingness to go over the various areas with Mr. Funston to obtain his views with respect to specificity. As to the Commission's interjecting itself into particular cases, he indicated that there was no need for concern in the light of budgetary, and philosophical and historical factors inherent in the area. The SEC would not grow substantially, but the organizations would grow, and that while it seemed that the SEC's power of oversight should exist philosophically he did not believe the exercise of it would be necessary to any major extent. As to the carving up of responsibilities to prevent duplication, Mr. Cary expressed the view that it would be best for the organizations themselves to tackle this problem.

Mr. Day stated that in his view there were many areas best left to generalities, and that generality was often a blessing. He expressed concern over the cost of the various roles and duplication of roles on the part of the organizations and also the SEC. He pointed out that most of

the members of his exchange were also members of the New York Stock Exchange and the NASD, and they would bear the costs. He stated for this reason he was very anxious to see the entire package. Mr. Cary agreed that any such program would involve some cost, but suggested that it would be preferable for the industry to grow and bear such costs rather than for the SEC to expand to an enormous extent. Mr. Whitney suggested that this opportunity should be seized to educate the investing public about the expenditure of commissions--to the effect that a part of every commission dollar went to policing. As to any subsequent legislation relating to the present proposals, Mr. Cary, limiting himself to the securities industry and excluding the investment company area, advised that the Commission did not contemplate an additional package except in connection with security credit margin. Mr. Cary indicated that in the light of the final chapters of the report of the Special Study there might be some difference of approach with respect to over-the-counter markets and exchanges, but that by and large the Commission considered that the bulk of the material relating to legislation was in the hands of the group.

The question was then raised by Mr. Rosenberry as to when Chapter XII of the Special Study Report would be available and what the implication of the Chapter would be on the legislative proposals--particularly Section 10(c) of the Securities Exchange Act of 1934 which dealt with abuses in the field of corporate publicity and public relations. He inquired whether a self-regulatory body would have an obligation either to the Commission or to the public to raise standards above the minimum set by law.

Mr. Cary responded that the Commission would welcome the raising of standards by the Exchange; that this philosophy had always been in existence and would not be changed by this legislation. Commissioner Cohen added that the Commission would hope that the self regulatory bodies would set standards of their own, and that Section 10(c) was not designed to cover this area, but to reach an area which the Exchange did not reach.

Mr. Funston explained that the concern was that Section 10(c) might be too broad as presently written and might set impossible standards in view of Chapter XII responsibilities. He raised the question whether the Exchange would be held responsible for fraudulent, deceptive or manipulative acts because a listed company gave out certain information. He stated that the Section was too broad and that it should make it clear that the prohibition would apply only to specific practices that were defined by rule and that it should not apply to anyone who had acted in good faith. In this connection, Mr. Rosenberry also expressed concern over the tremendous civil liability potential.

Mr. Foshay suggested the possibility of breaking the package into two parts. The first part, for example, could include amendment of Section 4(1) of the Securities Act of 1933. He indicated he personally

had no problem with this, that it had been gone through before, that he was prepared to recommend it to his client right now. He stated that he did not see any great problems in Frear-Pulbright except for the question coming from the West Coast as to whether it was wise to apply insider trading provisions literally to the over-the-counter market where there might be some real benefits from having partners of dealers on the boards of unseasoned companies for awhile. As to Section 10(c), he raised the question why it could not be in the same legislative format as 10(a) and (b) and suggested that he might be able to discuss his views on this with Mr. Loomis later in the day. In connection with the quotations systems, he pointed out that this was a new area and he would not attempt to comment on it until he had had the benefit of advice from those people in the business who were working in that area. He suggested that the first three bills might be included in package one and also perhaps the quotations statute depending on how fast it could be worked out. However, when it came to the bills dealing with qualifications and enforcement provisions and powers of the NASD, he stated that these raised more difficult problems and that if more time could be taken in working out these proposals, better results could be obtained.

Mr. Rosenberry suggested that the amendments to Section 12(b), et should be made a part of the Frear bill so that if the Frear package failed a situation would not be created where even greater distinctions were drawn between listed and non-listed securities. Mr. Foshay felt that insurmountable filing problems would be created because every one of AT&T's patents might have to be filed. Commissioner Cohen felt that this last could be dealt with by exemption.

Mr. Cary expressed the Commission's desire to have the group's views in as great detail as it wished to give them, and suggested that perhaps attention could first be directed to the area of qualifications and enforcement.

In response to Mr. Rosenberry's inquiry as to whether the bill covered every employee of a broker-dealer, or was limited to principal officers and supervisory employees, Mr. Loomis advised that the definition of associated persons was the existing definition in Section 15(b), and th every employee was automatically controlled by his employer.

In answer to Mr. Foshay, who, in referring to the training syste developed in the industry, inquired as to how such trainees would fit into the testing and qualifications requirements of the Section, Mr. Loomis, replied that the language on the subject was rather general and left to the NASD the authority to classify and to determine who should take an examination and what type should be taken. He pointed out that the effect of the language was to specify objectives which were to be achieved and the various means which the association could employ to accomplish these objectives and also to specify that the Association could classify persons in any way it saw fit for this purpose.

Mr. Loomis agreed with Mr. Rosenberry's interpretation that the Commission's power in Section 15A(k) was "carte blanche" and not limited to those items mentioned. Mr. Loomis explained that the purpose in making it so broad was to cover the various areas in which the study had suggested that action be taken and in which self-regulatory bodies should take responsibilities.

Mr. Rosenberry referred to the language in paragraph (5)(D) of Section 15A(b) reading as follows: "...(D) provide that persons in any such class other than prospective members and partners, officers and supervisory employees...of members, may be qualified solely on the basis of compliance with specified standards of training and integrity..." and inquired whether that would mean that the association could not require examination. Mr. Loomis advised that the language had been taken from the Uniform Securities Act and its purpose was to specify that aside from supervisory personnel, experience did not have to be required.

On the subject of foreign dealers, Mr. Loomis indicated that the legislative requirements had not been changed by the new proposals. Mr. Foshay suggested that it might be good to clarify this area and not leave it to "no action" letters.

The suggestion was made that the various subjects enumerated in Section 15(A)(k)(2) might be included instead in Section 15A(b), where it was enumerated what the rules of registered securities associations should be. Mr. Loomis indicated that there was a language problem involved, and that the Commission had thought it would be better not to make it mandatory that all of these rules be adopted immediately by the associations. He explained that one of the objectives in this particular area was to bring the power of the NASD more into conformity with that of the stock exchanges.

In response to the inquiry as to whether the Commission planned to leave Section 19(b) in substantially the same form, Messrs. Cary, Loomis and Whitney indicated that there was no proposed legislation in that area, and that 10(c) and 15A(k)(2) were the only new areas not outlined in the letter.

Mr. Gray, Executive Vice President of the New York Stock Exchange, then referred to the penalty of closing a branch office. He inquired (1) if there was a limitation as to time, (2) whether the Commission would still proceed to close a branch office if a firm replaced its supervisory personnel in the branch office in question with other qualified people, and (3) whether customers of a closed branch could be serviced by remaining branches.

Mr. Cary, in response, referred to the Sutro case, and expressed the view that in cases of this type which were so flagrantly illustrative of the absence of supervision, that the branch office should be closed regardless of the persons involved. Mr. Cary indicated there would be no prohibition to servicing of customers of a closed branch. As to the limitations on time, Mr. Loomis pointed out that the statute provided

that a branch office so closed could not be reopened without Commission approval.

Mr. White, counsel for the NASD, again raised the problem of allocation of responsibility in referring to the fact that the Commission would now have the power to impose lesser sanctions than revocation and inquiring as to who would determine which organization should proceed against an individual and whether action on the part of one organization would preclude action on the part of any other body. Mr. White indicated that this would present a triple problem if the Commission had the right to proceed against individuals.

Mr. Loomis agreed that this point would have to be worked out. He stated that the statute merely provided that in those areas in which the Commission would proceed, the Commission could mold the sanction more precisely to the problem just as the association could do in its cases. He expressed the view that in a case where a crime was committed by an individual in a firm, it might be appropriate for the Commission to take action rather than the self-regulatory body because it was a criminal offense and not just a breach of the ethics of the business.

The question was then raised as to why it was necessary to continue to name an individual as a cause, when the Commission could now proceed directly against him. Mr. Loomis agreed that this was a good point and suggested that perhaps the group could be of help in working this out.

Mr. Rosenberry then referred to the du Pont Homsey problem and inquired why the cross-bar from membership in the Exchange and the NASD should not operate whenever the Exchange suspended or expelled a member, and why it should only operate when it found a person guilty of conduct inconsistent with just and equitable principles of trade. He suggested the amendment of Section 15 to provide that the Exchange would not have to find an individual guilty of such conduct in order to permit the NASD to bar him from membership. Mr. Loomis indicated that any cross-bar approach which the NASD and the Exchange could work out would be helpful to the Commission.

(The conference was recessed at 12:45 P. M., and was reconvened at 1:30 P. M.)

Upon resumption of the conference, Mr. Cary indicated that he would like to clarify his position with respect to any further proposals which might be introduced. He repeated that the Commission at this time did not contemplate anything further, with the exception of securities credit, but that it had not seen some of the material to be submitted by the Special Study of Securities Markets, particularly on the subject of relationships of associations and self-regulatory bodies and he did not want to feel foreclosed or in bad faith, in the event additional proposals appeared necessary, and added that in such event the group would be informed immediately of any such additional proposals. Thereupon, the discussion was resumed of the proposals relating to qualification and enforcement.

Reference was made to the proposed revision of Section 3(a) of the 1934 Act which contained definitions of the terms "person associated with a broker or dealer" and "person associated with a member." It was stated that the terms appeared to be interrelated and included a reference to controlling or being controlled by such broker or dealer. The suggestion was made that this might be of particular interest to investment companies and that the meaning of the word "control" might need some clarification since it raised a question as to whether this might extend jurisdiction over the fund and investment adviser to the NASD by reason of the breadth of these definitions.

Mr. Loomis advised in this connection that the definition of a person associated with a broker or dealer was drawn directly from the existing Section 15A so that the problem referred to was now in existence in the sense that the NASD had disciplinary control over the activities of these persons. He explained that the only reason for defining these phrases here was to avoid repeating existing language over and over again in those provisions where the Commission or the NASD was authorized to take direct action over persons associated with a broker or dealer, or, in the case of the NASD, persons associated with a member.

The question was then raised whether this would mean that when a broker or dealer became a member of the NASD, a fund would also be brought under the jurisdiction of the association. Commissioner Cohen advised that the definition was clearly not intended to reach investment companies and pointed out that the language referred to individuals rather than companies and therefore would not include funds. Mr. Loomis added that the provision had two purposes--(1) disciplinary action against a member, and (2) to provide jurisdiction to the NASD to require an individual to cease being associated with a broker or dealer. He stated that he could not visualize a fund being brought into either of these contexts. He agreed, however, that this was an area which might be clarified.

Mr. Rosenberry pointed out that paragraph (b) of Section 15A prohibits the fixing of rates of commission by the NASD, which was in conflict with Section 15A(k)(2), and stated this was probably an oversight.

Mr. Foshay expressed concern that for the first time a violation of the Investment Company Act would be a basis for disqualifying a broker-dealer or one of its employees from doing business. He pointed out that if a broker-dealer unwittingly was caught in a transaction between two organizations which was in violation of the Investment Company Act he could be put out of business. He raised the point whether it was reasonable to automatically disqualify a broker-dealer from the securities business in general on the basis of abetting a violation or participating in a violation of the Investment Company Act. He stated that the Investment Company Act differed from the Securities Exchange Act in many respects and that this would be an easy area for a salesman to run afoul without realizing it.

Mr. Loomis pointed out that inadvertent violations of the 1934 Act also occurred, that the Investment Company Act problem would probably

not arise very often, but that there was such a case pending at the present time where the violations had not been of the inadvertent type.

Quotations Statute

Commissioner Whitney advised that it was contemplated that the quotations bureau industry would be a self-regulatory body. He stated that if a company provided quotations to subscribers it was a bureau, but if it simply sold a system which the Exchange or someone else operated, then it was not. Mr. Fleischer added that the statute exempted quotations supplied directly by the Exchange.

In response to Mr. Lemkau's question concerning quotations on listed and unlisted bonds put out under the company's own letterhead, Mr. Whitney advised that this was incidental to the company's business and therefore it would be exempt from the statute, and was,additionally, a form of "tombstone."

Mr. Foshay inquired why a broker-dealer could not be excluded from the quotations statute since he was already subject to the anti-fraud provisions of the 1934 Act. Mr. Loomis responded that there would be no reason for a broker-dealer to set himself up as collecting and disseminating quotations and that the 1934 Act did not reach that field. He stated that the Commission did not want anyone in the business of collecting and disseminating quotations who was not subject to the statute, and that it was intended that anyone proposing to be a quotations bureau would have to register as such. Mr. Loomis added that "incidental to business" meant incidental to buying and selling securities--not collecting and disseminating quotations.

Commissioner Whitney further advised that the Commission believed that the newspapers should obtain their quotes from regulated bureaus--the NASD, the Exchange or a registered bureau. He stated that a broker could give his quotes to the NASD and that the newspapers in turn could obtain their quotes from the NASD, but not directly from a broker. Mr. Loomis added that a broker could place a brief advertisement in a newspaper stating that he made markets in certain securities and giving quotations on those securities. However, he could not give quotes on any securities at random whether or not he made a market in them. Mr. Foshay presented the illustration of two local dealers, each making a market in 10 of the same securities and perhaps five different ones and each sending to the newspaper every day the bid and asked prices in his particular market. He inquired who would be the bureau and whether this was not incidental to their business.

Mr. Cohen explained that the exemption here was designed to deal with a situation like a put and call broker. If the newspaper and the public knew the quotes were the broker's there was a difference; but when many people did the same thing, it became an anonymous part of a big quote sheet. Mr. Cohen pointed out that the last sentence of the statute was designed to provide the Commission with rule-making power to deal with variations of this type of thing. Mr. Cohen further pointed out that

the intent was to make the "quoter" responsible for his own quotes. Mr. Loomis added in this regard that aside from individual ads, the Commission believed that the newspapers should get their quotations from the NASD or the Exchange rather than some other source.

Reference was made by Mr. McGovern to subsection 15(B)(e) which gave the Commission power to require that the rules of the quotations bureaus be designed to treat fairly with all persons using or seeking to use the facilities of the bureaus. He inquired whether this would permit an exchange to deny bid and ask quotes to non-members.

Mr. Cohen responded that this provision was intended to deal with the due process problem and that the Commission was concerned only with arbitrary action, discrimination and unfairness. Mr. Woodside added that to the extent the bureau was connected with the Exchange and receiving its quotations from the Exchange it would not be a quotations bureau within the meaning of the statute. He indicated that some clarification should probably be made in this area.

In connection with exempting "exempt securities," Mr. Foshay inquired whether the Commission would not want to specifically exempt World Bank bonds and other such securities. Mr. Loomis pointed out that these were the categories dealt with in the 1934 Act. He stated that certificates of deposit could probably also be included in this category.

With reference to Section 15(B)(1), Mr. Loomis agreed that this was a rather broad grant of rule-making power. He went on to explain that the Commission recognized that quotations were important, primarily in the over-the-counter market, that there was not any regulatory mechanism at all for them now, and that the Commission had had problems with them, not because the National Quotation Bureau was not doing extremely well, but because its facilities were limited. So, for the reasons set forth by the Special Study, it was decided to bring it under regulation. He stated that the statute had been modeled on the Maloney Act thus bringing into the regulatory scheme the concepts of self-regulation so that the bureaus would have both the authority and responsibility to take steps to eliminate undesirable conditions and generally to improve the system. He pointed out that there had been a number of instances in the New York area in which persons had by devious means inserted in the sheets quotations for a company that did not exist or had long since ceased to have any assets. He stated that it was this type of scheme to defaud as well as less serious offenses that were meant to be dealt with.

Section 10(c)

Mr. Rosenberry inquired whether it was the Commission's intent to limit the statute to the type of fraudulent information disclosed in the Report of the Special Study. Commissioner Whitney responded that the Commission had attempted to be a little more precise and at the same time to use verbage that was not new and already had a history.

Mr. Foshay expressed the view that the broadside approach of the statute could only tend to discourage the disclosure of corporate news which might be of importance to the investor. He stated that corporations felt that at some point they had to announce that certain negotiations were going on, but that if, after such announcement, the negotiations fell through, they ran the risk under the statute of a law suit for attempting to effect the market. He expressed the view that this section discouragedadequate disclosure of information to the investor, and suggested that perhaps this could be resolved by recasting the language of 10(c) to conform to 10(a) and (b) which provided that the Commission would define by clear and precise rule the practice which it wished to prohibit. Mr. Funston disagreed, expressing the view that the specific practices which were meant to be prohibited by the Section should be set forth.

Commissioner Whitney responded that the Commission was aware of this problem, but had felt that the wording of the statute placed a very heavy burden on the plaintiff. Mr. Loomis added that when a corporation disseminated information which it believed the public should have, the view could hardly be taken that this was a fraudulent, deceptive or manipulative act.

Mr. Rosenberry raised the question of stabilization. He stated that this was done for the purpose of manipulating the market and therefore would be in violation of the Act, and Mr. Woodside suggested that perhaps the word manipulative could be eliminated from the statute.

Frear-Fulbright Package

In connection with the Frear-Fulbright package, it was agreed that it would be advisable for the Commission to contact the Chamber of Commerce and the National Association of Manufacturers for the purpose of obtaining their views on this legislation. Mr. Richardson suggested contacting Mr. Gullander, President of NAM.

As to the status of banks, Mr. Rosenberry pointed out that an unlisted bank would operate only under the banking authority regulations, but that banks registered on an Exchange would also be subject to Commission regulation. He suggested that banks be exempted from the 1934 Act altogether since they already were in the 1933 Act, and that the listing requirements of the stock exchange be left up to the Exchange. Mr. Foshay added that Mr. Saxon, the Comptroller of the Currency, had indicated that he would promulgate rules, and he suggested that the Federal Reserve Board might be willing to promulgate rules in the area which Mr. Saxon's rules did not reach.

The Commission brought out at this point that while there had been no special focus by the Special Study on bank stocks, there had been some fraudulent activities in these stocks in connection with mergers. Also, it was pointed out that the study had conducted a thorough examination of reporting by banks which indicated deficiencies in proxy statements and reports as compared to other over-the-counter companies. Mr.

Cohen observed that Congress was responsible for the 1933-1934 Act distinction.

Mr. Lemkau referred to the provision requiring companies with 300 stockholders or more to register with the Commission and inquired what this would mean in terms of the volume of paper work and whether it could be handled. Mr. Cohen responded that according to the tables there was a substantial amount of trading in securities of companies with this number of shareholders, and that on the average these companies were fairly good size--approximately one-half million dollars in assets. He stated that the Commission had given a good deal of thought to the problem of paper work, in terms of manpower and cost, and was convinced that this would not present undue hardship.

Mr. Foshay inquired whether there would be the possibility of having a general exemption for an ordinary underwriting under Section 16(b).

Mr. Cohen responded that it was recognized that a broker-dealer sitting on a board might be the only person making a market, and that Section 16(b) might have the effect of destroying the market. For that reason, the recommendation was that this question should be treated on an ad hoc basis rather than categorically. He stated that this was an area in which the experience and suggestions of industry would be helpful in working out solutions if the legislation was passed.

As to the status of foreign securities traded in the market, Mr. Cohen advised that the exemptive provision was designed in such a way as to provide the Commission an opportunity to deal with that problem precisely. He stated that the Commission could exempt if it was persuaded that enforcement of the Act was not feasible and investors might otherwise be hurt. He added that the Commission's exemptive power was unlimited, but that a phrase had been added dealing precisely with the foreign situation in order to avoid the possible problem that might arise in a case where it would be difficult to say it was in the public interest to exempt, but where the Act could not be enforced. He conceded that more work needed to be done in this area.

Mr. Kolton, of the American Stock Exchange, then stated that since the purpose of the legislation was to take out of the hands of management certain arbitrary decisions with respect to disclosure, etc., he would be interested in the Commission's thinking as to why it whuld put back into the hands of management certain arbitrary decisions as to the possibility of having listed or unlisted trading privileges by the deletion of Section 12(f)(3).

Mr. Loomis responded that Section 12(f)(3) as it stood now had a very limited effect, and had had no practical significance. He stated that if this legislation was passed there would be approximately 5000 companies which might be picked up by exchanges and traded on an unlisted basis under Section 12(f)(3). He stated that the Commission believed that this was a little too drastic a shift of securities from one market to another and that 12(f)(3) had never really been intended by

Congress to have any such dramatic effect. Consequently it had been concluded that the 12(f)(3) guides should be replaced because the purpose of this legislation was to get disclosure and other protections in the over-the-counter market rather than cause the transfer of large blocks of securities on the Exchange. He indicated that it was quite possible a certain number of companies would be included in this category under Section 12(g) and would decide to list, but that the Commission did not feel that unlisted trading should have an expansion of this magnitude.

In response to Mr. Kolton's argument that, if it was indicated that an unlisted security could benefit from the action market, the Commission would lose the legal lever to persuade the company to be traded on a central market by eliminating 12(f)(3), Mr. Loomis stated that it was a matter of policy and judgment, but that it would be extremely difficult for the Commission to make a judgment on 5000 cases. He added that the Commission's experience had been that there were exchanges which would like unlisted trading in almost every security in which they might get any trading, and that under Section 12(f)(3) there was the possibility the Commission might get applications for each of the 5000 companies. He stated that if the Commission was to have this power it would have to be administered a little differently than under Section 12(f)(3). He stated that when the Section had been adopted, in 1936, that the Commission and Congress had been dealing with the entirely different question of whether unlisted trading privileges should be terminated, and that it had been determined at that time that this would be too disruptive to existing markets.

Mr. Kolton replied that in his view, it was in the public interest for the Commission, not management or the exchanges, to determine the question whether a security should be traded on an exchange. Mr. Loomis pointed out that the actual question involved here was whether securities should move en masse from unlisted to listed.

Mr. Day, while conceding that Mr. Kolton had a good point, expressed his agreement with Mr. Loomis, and indicated that he thought that Section 12(f)(3) would result in a large volume of applications being filed and would create general chaos. He indicated that he thought that Section 12(f)(2) should be tighter and tougher.

Commissioner Whitney asked for suggestions in this respect and Mr. Kolton indicated that he would like to study the matter and then suggest some guide posts.

Mr. Gray indicated that the Exchange preferred full listing, but questioned whether it would be forward looking or regressing to say that from here on out only the management determines the question of trading on an exchange even though the public auction market might be of benefit to stockholders. Mr. Day expressed his preference for the notion that management should decide whether companies should be listed or not.

The discussion then turned briefly to Sections 12 and 13 of the 1934 Act, with Mr. Rosenberry suggesting that the application of Section 12(b) to exchanges only aggravated an already aggravated situation between listed and unlisted companies. He suggested that this be tied to the Frear-Fulbright package.

In conclusion, Chairman Cary agreed to consult with the Chairmen of the respective House and Senate Committees with respect to the timing problem. He offered to make additional copies of the proposals available to the group for duplication and repeated that there was no inhibition as far as the Commission was concerned upon the members of the group making the proposals available to whomever they thought necessary, as long as it was understood that this was not a public document.

The conference was adjourned at 3:15 P. M., and the members of the group were invited to confer with the individual Commissioners and staff members with respect to the various proposals.

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