

Minutes of Meeting of Executive Committee
of Investment Bankers Code Committee
Held in New York, October 16, 1934

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A meeting of the Executive Committee of the Investment Bankers Code Committee was held pursuant to call at eleven o'clock on Tuesday morning, October 16, 1934, at Room 1700, 44 Wall Street, New York.

The following were present:

B. Howell Griswold, Jr., Chairman,
Francis A. Bonner, Vice Chairman,
Rollin A. Wilbur, Managing Director, ex-officio
Sydney P. Clark, Treasurer
Paul V. Keyser, Counsel, ex-officio
Ralph T. Crane, Member of the Code Committee
Sidney J. Weinberg, Member of the Code Committee
Frank J. Scheffy, Deputy Managing Director,
Charles A. Mead, Secretary,
Myron L. Ratcliffe, Representative of the
National Recovery Administration.

MR. KEYSER: Mr. Chairman, I present to you a list of registered investment bankers who are now in default in the payment of assessment number one. I ask that this list be entered in the record of this meeting. It shows the name and address of the registrant, the date registered, the amount of the assessment that was levied, the date the registrant was notified of the assessment and its amount, and the date that he was sent a second notice after failure to pay in response to the first notice. There is also shown the date on which the notice to show cause was sent to the registrant. There are in all 105 delinquents on this list. I now ask, Mr. Chairman, that you make as a part of the record of this meeting a copy of the form of notice to show cause which was sent to each of these 105 registrants.

... On motion duly made, seconded and carried, the list and the notice to show cause were made a part of this record, and are attached hereto ...

MR. KEYSER: This notice to show cause was intended to provide these registrants with the opportunity to appear at this meeting and to show cause, if any cause they have, of why their registration shall not be suspended or cancelled for the failure to pay the assessment levied against them, in respect of which they are now in default more than sixty days.

I ask, Mr. Chairman, that a public call be made to ascertain if there is any one of these registrants who has received this notice who wishes to appear and take advantage of this opportunity.

CHAIRMAN GRISWOLD: Before that is made, may I ask a question as to whether or not anybody has offered any written explanation?

MR. KEYSER: Mr. Mead, could you inform Mr. Griswold as to any replies that we may have in writing?

SECRETARY MEAD: We have quite a number of them. We have them organized here in line with the list so, if necessary, we can take up each case and pass on each separately. A number of people expect action as a result of their recent letters to us.

CHAIRMAN GRISWOLD: Then the proper order of procedure would be for this Executive Committee to take that question up later?

MR. KEYSER: That was my idea.

... There being no objection on the part of the Executive Committee, Mr. Scheffey made such public call, and reported there were two parties who desired to be heard ...

***SOL SCHWAMM, of H. L. SCHWAMM & CO.

entered***

MR. SCHWAMM: My brother, Harvey, is really the one concerned, I am merely his representative this morning. I tried to telephone this morning and make arrangements for an adjournment of this hearing if that were possible. My brother will be back at the end of the week; or if you wish I can state the facts of the case.

CHAIRMAN GRISWOLD: I think that would be better. We have sent full notice, and there are quite a number of the Committee present, so it would be very inconvenient if this matter could not be disposed of now, especially as you state you are in a position to give us the facts.

MR. SCHWAMM: Here is the thing he felt: In view of the fact that a number of his friends had only been taxed \$25, he saw no reason why he should pay \$50.00. From what he said, when I was speaking to him, I believe that when he filed his application for registration he mentioned that there were in his employ eight people. In doing that, this was the reason: There were a number of fellows hanging out in the office, just hangers-on, or free lances you might call them. They occasionally brought in something, but they received no compensation of any kind, that is any fixed compensation. If they did bring in a deal, and any money was made on it, they were given a split. Those people are not there any more. The only employees left are myself and the girl, the stenographer. As I understand from Mrs. O'Keefe, the schedule of taxation is \$25 for one to five, I think we should be taxed that amount.

CHAIRMAN GRISWOLD: Is there a letter from them in the correspondence to that effect?

SECRETARY MEAD: We have no correspondence in this connection.

MR. SCHWAMM: At the time he intended to appear in person and present his case, but he was called to Washington; consequently I saw this on his diary and thought I would run up myself to see if I couldn't arrange an adjournment.

CHAIRMAN GRISWOLD: Do you want to ask any questions?

MR. BONNER: What type of person did you call these four men?

MR. SCHWAMM: Free lance.

MR. BONNER: What substantial difference was there between these four men and the typical salesmen who work strictly on a commission basis and receive no salary?

MR. SCHWAMM: They were not salesmen of ours, they were free lancers. You see they didn't make their office with us, so to speak. They could be reached there, and if a telephone message came in we could take it. Of course, if they came across any sort of proposition that might interest us, they would let us know, and if something did result in the way of some money being realized they, of course, would be included in whatever profits were made, but they were not salesmen in any sense of the word.

CHAIRMAN GRISWOLD: Did they solicit business for anybody except you?

MR. SCHWAMM: Yes, as a matter of fact, I can give you one example in point. I believe McGovern was included as one of the eight. He is a registered banker on his own right.

CHAIRMAN GRISWOLD: Registered banker in his own right?

MR. SCHWAMM: He has filed an application which has been approved himself.

CHAIRMAN GRISWOLD: What is the general character of your business?

MR. SCHWAMM: Municipal bonds, specialist in municipal bonds.

CHAIRMAN GRISWOLD: Do you sell anything else beside municipal bonds?

MR. SCHWAMM: Unless an order comes in to buy a few shares of bank stock, but our business is primarily municipal bonds.

CHAIRMAN GRISWOLD: How long have you been in this business?

MR. SCHWAMM: In the municipal bond business?

CHAIRMAN GRISWOLD: Yes.

MR. SCHWAMM: Since about March 1933. He, my brother, has been in business of course before that, but since he has confined himself to municipal bonds that has been for a period from approximately March of last year, March 1933.

CHAIRMAN GRISWOLD: When you say he, you are speaking of your brother?

MR. SCHWAMM: Yes.

CHAIRMAN GRISWOLD: Was he in the general investment business before that?

MR. SCHWAMM: Yes, before that he did a general investment business, real estate bonds. That was what he confined himself to mostly at that time, the period prior to March 1933.

CHAIRMAN GRISWOLD: Under the same firm name you now have?

MR. SCHWAMM: Yes, H. L. Schwamm & Company.

MR. WEINBERG: Do I understand you right that now you only have two people on your payroll; that is, yourself and a stenographer?

MR. SCHWAMM: That is right.

MR. WEINBERG: And your brother is the only other person who comprises that firm?

MR. SCHWAMM: To comply with the law there is a nominal partner, another brother of mine. To use the firm name of H. L. Schwamm & Company, "& Company" necessitates there being another partner to do business under that fictitious name; but he, of course, is only nominal. He has no active part in the business. He is not there.

MR. BONNER: Then there is really your two brothers, you and a stenographer now?

MR. SCHWAMM: That is correct, that is all we have now.

MR. KEYSER: Are you speaking of the situation as it was on March 26, 1934, or are you speaking of the situation as it is just now today?

MR. SCHWAMM: The situation today is what I have described now. The situation as it was in March was according to how he filed that statement. Is that how it is based?

MR. KEYSER: Yes, the assessment is based on the personnel as of the 26th of March.

MR. SCHWAMM: That is what I was attempting to explain now. If these people are to be included as salesmen then, of course, it will be necessary for him to pay the \$50, but that is the point I want to determine now.

MR. WEINBERG: Did these men sell from your list?

MR. SCHWAMM: No sir.

MR. WEINBERG: Did they handle any securities that you owned at all?

MR. SCHWAMM: No, sir, only their own originations which they would bring in to us if they saw fit.

CHAIRMAN GRISWOLD: What do you mean their own originations?

MR. SCHWAMM: Suppose one of these men would contact a client, and that client would own a certain number of bonds, and he would convince that client or the client would come to him and say he owned this particular lot of securities and he wanted to change his portfolio. If he thought we could assist him he would bring the business to us.

CHAIRMAN GRISWOLD: And from that point on he would be paid for selling from your list?

MR. SCHWAMM: Yes. That of course would not comprise our list necessarily.

CHAIRMAN GRISWOLD: But it would be securities that you owned?

MR. SCHWAMM: No, they never sell any securities we own.

CHAIRMAN GRISWOLD: You take a commission order from them?

MR. SCHWAMM: That is the idea, a commission order.

CHAIRMAN GRISWOLD: Is there any further statement you care to make?

MR. SCHWAMM: That is all.

MR. KEYSER: Do you wish to make any tender of payment?

MR. SCHWAMM: If I can be given a definite answer I will promise payment by the end of the week, or if it is necessary to have it today, I will bring it in today.

CHAIRMAN GRISWOLD: What you want is a ruling as to whether you owe \$25 or \$50?

MR. SCHWAMM: That is right. I want a ruling as to whether I owe \$25 or \$50.

MR. BONNER: Did you say these four men gave the same service to other houses?

MR. SCHWAMM: No.

MR. BONNER: Did they have desk room with you?

MR. SCHWAMM: They didn't have desk space. They might have telephone calls sent to our office, and if any message came in for them we would take them.

MR. BONNER: They didn't have desks in your office?

MR. SCHWAMM: No.

CHAIRMAN GRISWOLD: Are there any further questions anyone would like to ask Mr. Schwamm? We are much obliged to you for calling, and we will let you know what our ruling is a little later.

***The Committee excused Mr. Schwamm, and in his absence engaged in an executive committee discussion of the facts of his case and reached the following conclusions:

1. That H. L. Schwamm & Company, having submitted their personnel report, should be considered as bound by the statements made in that report as to their personnel and employees.

2. That the facts as presented to the Committee this morning do not disclose any actual mistake regarding the facts reported.

3. That so-called free lance men associated with a house in the manner described by the petitioner are to be regarded as employees.

4. That H. L. Schwamm & Company should, therefore, be directed to pay \$50, the amount properly assessed against them as assessment number one.***

MR. SCHWAMM reappeared before the Committee.

MR. GRISWOLD: Mr. Schwamm, the judgment of the Committee is two-fold: First of all, those men were regarded as employees when you made that return. We see no reason to think you were not correct in your judgment at that particular time. Secondly, free lance men in the sense in which you used the term will be regarded by the Code Committee as employees of an office.

MR. SCHWAMM: All right that is the rule I wanted. Now tell me when the assessment must be paid.

MR. KEYSER: It should be paid within the next few days.

MR. SCHWAMM: My brother will be back on Friday.

CHAIRMAN GRISWOLD: We have no desire to press you with relation to it.

MR. KEYSER: It should be in no later than the 22, Mr. Chairman.

CHAIRMAN GRISWOLD: The 22nd is Monday.

MR. SCHWAMM: That will be time enough.

The respondent heard the decision of the Committee and said that the payment would be made by the date fixed by the Committee, October 22, 1934

Mr. C. R. CARTER, of C. R. CARTER & COMPANY, 120 Broadway, New York, entered

CHAIRMAN GRISWOLD: You are the head of the firm, Mr. Carter?

MR. CARTER: Yes, sir.

MR. KEYSER: You are Mr. C. R. Carter, of C. R. Carter & Company?

MR. CARTER: Yes.

MR. KEYSER: Mr. Chairman, the assessment in this case is \$25. The first notice to the respondent was sent out on the 8th of June, the second notice was sent to the respondent on the 26th of July. Failing to pay, he was sent a notice to show cause, with a due date of October 6, in the form which has already been entered in the record. Now you may proceed, Mr. Carter, and make such answer as you desire.

MR. CARTER: Here is a letter sent under date of October 5, which crossed that.

MR. KEYSER: You wish to have this letter entered in the record as the reply to the notice to show cause?

MR. CARTER: I sent that before I received the notice to show cause. It practically explains the situation in a few words.

MR. KEYSER: We have the original of this?

SECRETARY MEAD: Yes, sir.

MR. KEYSER: Mr. Chairman, I will read for the sake of the record the text of the letter to which Mr. Carter refers, and a carbon of which he has handed me. The letter is dated October 5, 1934. It is addressed to the Regional Code Committee of New York District: "In reference to your

letter referring to code assessment overdue, thereby making this firm subject to suspension as a registered investment banker, we would say that due to business conditions it has been impossible to comply with this requirement, but it is our intention to pay this assessment in the near future.

"We would appreciate your delaying action regarding suspending us from the Investment Bankers Code for a reasonably short time."

CHAIRMAN GRISWOLD: Have we the power do you think, Mr. Counsel, to do that?

MR. KEYSER: It lies within the discretion of the Committee if the grounds are stated to the Committee which seem to be proper to allow time to be given.

CHAIRMAN GRISWOLD: When would you expect to pay, Mr. Carter?

MR. CARTER: I thought possibly thirty days.

CHAIRMAN GRISWOLD: Thirty days from October 5 when you wrote the letter?

MR. CARTER: Yes.

CHAIRMAN GRISWOLD: Is there anything more any of you desire to ask?

MR. CRANE: I assume it is based on bad business.

MR. CARTER: Yes, it is.

MR. CRANE: Do you think there is a prospect that you will be able to pay it by then?

MR. CARTER: Yes, I do.

MR. CRANE: This will cause a great deal of complaint from those who haven't paid if we allow you more time than we allow them.

CHAIRMAN GRISWOLD: It is a dangerous precedent.

MR. CRANE: It will hinder us with others, but at the same time we are all in the same business.

MR. CARTER: It looks as if I ought to be able to do it then because there is some stuff that I am working on now that should develop very soon, and there will be no prior charge ahead of this assessment because I have got my expense account fixed so it doesn't cost me anything to operate.

CHAIRMAN GRISWOLD: Are there any further questions anyone would like to ask Mr. Carter? Have you any?

MR. KEYSER: No.

CHAIRMAN GRISWOLD: If not, Mr. Carter, will you retire, please? We will let you know our decision later.

*** Mr. Carter withdrew from the room, and in his absence, and in executive committee meeting, the committee took under consideration the facts of his case, with the result that it was the conclusion of the Committee that Mr. Carter be advised tomorrow that he should send in the payment of his first assessment not later than the 31st of October; that if his payment is not received by that date his name is to be included in the list of defaulting registrants to be reported to the Code Committee for final action on November 1***

MR. KEYSER: Mr. Chairman, that concludes all of the cases of registrants who have received the notice to show cause and who have appeared here and expressed any desire to be heard personally. We do have a number of letters which have been received from the persons to whom the notice to show cause was sent. Some of these letters have been written since the receipt of the notice to show cause; some of them were written before the notice to show cause was sent out. I think that each case should be given individual attention, and my suggestion is that all of this correspondence be turned over to the managing director and the deputy managing director to be personally reviewed, with instructions that if there are any good causes shown as to why the assessment has not been paid the facts of such cases be reported to the Code Committee at the meeting to be held on November 1.

I also suggest that in all cases where the notice to show cause has been sent to the registrants and no good cause is shown for the non-payment of the assessment number one, and the assessment number one is not paid on or before October 31, that each of such registrants be reported to the Code Committee at the meeting to be held November 1 for cancellation of their registration for non-payment of the assessment number one.

... On motion duly made, seconded and carried, it was so ordered ...

MR. KEYSER: May it also appear on the record that during the course of these proceedings the Committee has spent several hours in formally reviewing many of the letters that have been sent in by the registrants to whom the show cause notice was issued.

At one o'clock, Mr. Scheffey advised that Messrs. C. Russell Davis and John W. Haar, of L. L. Haar & Company, 70 Pine Street, New York, desired to be heard, and he was instructed to bring them into the room.

MR. KEYSER: Do you gentlemen appear in response to the notice to show cause which has been sent you in regard to the non-payment of assessment number one?

MR. C. RUSSELL DAVIS (President of L. L. Haar & Company): Yes, partial payment of it.

MR. KEYSER: You say the partial payment of it?

MR. DAVIS: We paid something on it.

MR. KEYSER: The record shows that L. L. Haar & Company, Inc., were assessed \$75. Twenty-five dollars has been paid on account so the firm is now in default to the extent of \$50.

You gentlemen go right ahead and state any facts you wish to present.

MR. DAVIS: There has been a considerable amount of correspondence pertaining to this assessment from the time it was levied. We have practically no organization, and have not had all year. At the time we made our first report to you we had some salesmen we were trying to hold on to, but since then we have gotten now to the worst kind of a skeleton organization, and we felt the assessment was too high since we have been practically doing nothing. Seventy-five dollars is really more money than we have made all year.

CHAIRMAN GRISWOLD: You are not particularly lonely in that respect.

MR. DAVIS: So we paid \$25 and asked them to review the matter again, and this was in response to that request.

MR. KEYSER: The bill for \$75 was first sent to the firm on June 8, 1934. The second notice was sent to them on July 26. This correspondence here begins with June 11, which was very promptly after the receipt of the first bill of \$75.

This letter recites "in view of the fact that for the past several months we have had no business whatever, we have reduced our expenses and today have only one person on the payroll."

CHAIRMAN GRISWOLD: What was the date of that?

MR. KEYSER: June 11, very promptly after they got the first bill. That was responded to by the Code Office to the effect that the assessment was based upon their personnel report, which showed that they had 14 persons in their organization on March 26, 1934, and that was the regular basis of the assessment. Haar & Company responded under date of August 25,

and I will read you this letter: "In reply to your letter of July 26 with reference to our letters of June 11 and 14 pertaining to assessment in connection with the Investment Bankers Code, we are still of the very firm opinion that this assessment is entirely too high. We are attaching hereto our money order for \$25, and it is impossible for us to pay any more at this time. If, after reviewing our case, we cannot have an adjustment, you will simply have to wait for the balance as we have had little or no business during this year. At the time you sent out the questionnaire regarding the number of salesmen, we were endeavoring to maintain our sales force pending the preparation we were making for a new security offering. However, after waiting three months in an effort to end the confusion with the Federal Trade Commission and the various blue sky requirements of the state, we gave the deal up, and the expenses of that affair practically put us out of business. We have had nothing but a skeleton organization, with practically no salaries this whole year pending the developments in the business, and the past general market has not helped us at all. We think that together with many others we are frankly victims of the times, conditions and very confusing legislation, and the imposing of this additional assessment will work a hardship on us."

CHAIRMAN GRISWOLD: What is the principal type of business that you do?

MR. DAVIS: Just the ordinary run of investment securities, stocks and bonds. We have most of our distribution in the retail way out in the Middle Western States, and we have connections in Iowa and Illinois, but the drought and times have practically -- well, there is no business out there, and there hasn't been for quite some time.

CHAIRMAN GRISWOLD: How long have you been in business?

MR. DAVIS: Since September 1930.

MR. JOHN W. HAAR (Vice-President of L. L. Haar & Company): Mr. Davis and I had a different opinion of what was meant by employees. We had certain part-time salesmen that we were endeavoring to keep on the payroll and had paid them a drawing account up to the end of last year. They were still part of our organization in March, but at the same time they were free to do other work if they were able to find it. Figuring on that basis, we didn't actually have fourteen employees on March 1, that is assuming that the seven men --

CHAIRMAN GRISWOLD: They were not engaged in other work in your office?

MR. DAVIS: No.

CHAIRMAN GRISWOLD: They were not reporting to the office?

MR. DAVIS: They were selling, selling insurance and everything else.

CHAIRMAN GRISWOLD: You gentlemen can well realize what a difficulty we have in administering this code with these part time, or commission, or what you call free lance men in the business. If we don't consider them one of your employees, there is no telling how far that will go. You evidently considered them as employees, or you would not have reported them as such. If they were in your office and engaged in a different line of work, you might pro rate them as they do, for instance, if the banking business, say 50 per cent to your business and 50 per cent to the banking business. I am looking at the equity side of this just now and not the strict legal side of it, for the strict legal ruling is clear.

When did you first begin to drop these men?

MR. DAVIS: The first part of April, around the tenth of April.

CHAIRMAN GRISWOLD: You got your bill in June and promptly responded to the bill?

MR. KEYSER: Yes, it was very courteous attention to the matter on the part of the house. Unfortunately the basis of the assessment is fixed by the law, and the report as made by you was in accordance with the facts so that legally you have an assessment against you to the amount stated.

CHAIRMAN GRISWOLD: You see what our difficulty is; we are forced to do certain things according to the law.

MR. DAVIS: I see your point.

CHAIRMAN GRISWOLD: There must be some fixed point which is applicable to everybody, that that was the date.

MR. DAVIS: We have been trying to keep our doors open.

CHAIRMAN GRISWOLD: And you have in your organization now how many?

MR. DAVIS: Just Mr. Haar and myself in New York now, and we have one man in Iowa, and another man out there who is part time. He sells insurance and kind of sees if there is any business to be gotten for us, but the whole business would not amount to \$1000 during the year. Unfortunately, we were one of the few houses that started in business at you might say the beginning of the depression, thinking it was over, so we have gone through it hoping and hoping.

CHAIRMAN GRISWOLD: I just want you to understand our position. The Committee has not just this individual case to decide, nor can they use their own individual opinion on it. They have got many more to decide who come in the same category, and their decision must be according to the rules. We have not the power to release you. There are 21 men in the full Committee, and in justice to them we must decide your case on the rules. If we did otherwise, it might very well be that we would have complaint on the part of the firms that have already paid their assessment. I just want you to understand the basis on which the consideration of your case must lie.

Has anyone any further question to ask either of these gentlemen?

MR. KEYSER: If that is all the gentlemen have to present, we will take the case under consideration and advise you.

MR. DAVIS: I thank you for the time.

MR. HAAR: I suppose you gentlemen are going to consider this now. Is it possible if you decide against us to give us more time to pay our assessment.

CHAIRMAN GRISWOLD: We will let you know later.

Messrs. Davis and Haar withdrew. The case of L. L. Haar & Company was considered by the Committee in executive meeting with the result that it was the judgment of the Committee that the personnel report was made in accordance with the facts and the requirements; that the assessment as made was properly the amount to be assessed, and that unless the firm is able to make payment of the unpaid balance by or before October 31, the case must be reported to the Code Committee at the meeting of November 1 for cancellation of the assessment.

MR. KEYSER: For the record of the meeting I wish to present the certificate of the managing director dated October 16, 1934, in regard to an attached list of applications for registration as registered investment bankers. I ask that the certificate and the list both be printed in the record, and that in accordance with the certificate of the managing director the firms shown by the attached list be approved for registration as registered investment bankers.

... The motion was duly made, seconded and carried, and it was so ordered that the names shown on the attached list submitted by the managing director be approved for registration ...

CHAIRMAN GRISWOLD: The Executive Committee decided that in connection with the one hundred-odd cases reported by the Managing Director as not having submitted their first personnel report that the Managing Director communicate with such registered investment bankers, calling to their attention their delinquency, and stating that under the rules approved

by the NRA failure to submit a personnel report within the time limit specified, which had been exceeded in their case, gave the authority to the Code Committee to place the organization in Group 12, which, on the basis of the last assessment, would cost them \$300; that the Code Committee would take such action and submit their names to the NRA for grouping in Class 12 unless by October 31 they had submitted a personnel report to the Code Committee, together with a check for the assessment levied upon the group in which they properly fell on the basis of personnel reports. In the event of their being placed in Class 12, and the failure to pay the assessment within the time specified in the rules, the Code Committee would proceed to cancel their registration certificates.

... The meeting adjourned at two-fifteen o'clock, to meet again at three-fifteen o'clock ...

A meeting of the Executive Committee of the Investment Bankers Code Committee reconvened at three-fifteen o'clock, on Tuesday afternoon, October 16, 1934, at Room 1700, 44 Wall Street, New York.

The following were present:

B. Howell Griswold, Jr., Chairman,
Francis A. Bonner, Vice Chairman
Rollin A. Wilbur, Managing Director, ex-officio,
Paul V. Keyser, Counsel, ex-officio,
Ralph T. Crane, Member of the Code Committee,
Orrin G. Wood, Member of the Code Committee,
Frank J. Scheffy, Deputy Managing Director,
Charles A. Mead, Secretary,
Myron L. Ratcliffe, Representative of the
National Recovery Administration.

A discussion ensued between Mr. Wilbur and Mr. Keyser in connection with non-registered assentors who have failed to pay their initial assessment as billed. Mr. Mead presented a list of 167 such cases, and advised that such investment bankers have received a second notice of their delinquency. Mr. Griswold felt the only recourse was to bring a civil suit. Mr. Keyser recommended that they be put on a suspended account and the list be referred to the NRA for such action as they may see fit.

... On motion duly made by Mr. Bonner, seconded and carried it was so ordered ...

As to stock exchange houses and banks reporting no personnel, in connection with the first assessment, Mr. Scheffey read to the Committee the letter prepared by Mr. Mead. A discussion ensued as to the advisability of sending the letter, and it was finally decided that the names should be divided among the regional code committees for personal interview or such other contact as they might think advisable; and as to the names that could not be reached in such a manner the contact should be by correspondence.

In connection with the advisability of a committee to consider the matter of the gathering of statistics, as provided for under Article X, Section 1, on motion duly made, seconded and carried, the Chairman was empowered to appoint such a committee.

A long discussion followed as to the advisability of permitting registrants to advertise the fact that they are registered, and it was decided that action should be deferred on this matter for the time being.

As to the request of Harris & Leftwich for a detailed accounting, including list of assessments and record showing those not paying assessments, after a long discussion Mr. Ratcliffe advised that he would make inquiries and see what had been done in similar cases that have come to the

notice of the NRA and advise Mr. Wilbur and Mr. Keyser as to the result of his investigations.

The report of the Interpretations Committee, given by Mr. Wood follows:

MR. WOOD: We have five things that we think ought to be considered as changes in the Code. One is this question of concessions; the second is the matter of old issues in syndicates; the third is the three-day clause; the fourth is discretionary accounts; and the fifth is a recommendation that has been drafted by the New York Municipal Dealers covering the question of billing bonds at net prices and never showing a quarter off unless the dealers did and the request that net prices be used in conversation and correspondence.

The first is the easiest one, and that is the question of discretionary accounts. The definition of an investment banker excludes an employee, and we wonder whether it should not be "investment banker or employee will have the right to sell bonds to a discretionary account." It seems to me there is a hole there that can be plugged. It says, "No investment banker who is authorized to purchase or sell securities for the account of a customer in his discretion shall sell to or buy from such customer," etc., "unless he shall have obtained the previous written consent to each transaction." The proposal would be, "No investment banker or employee of such investment banker," which would prevent an investment banker turning over to an employee a discretionary account.

... After discussion, on motion duly made, seconded and carried it was ordered that Section 2 of Article IX should be so amended ...

MR. WOOD: Here is the real nut, this question of concessions to registered banks. There was a long discussion this morning on this clause as drawn. Ben sat in on it and Paul Keyser was there, as was Rollin Wilbur. It was suggested that a committee go to the NRA and discuss this matter and the suggested amendment that Mr. Marks and I came to. This was after you gentlemen left. I will now read it to you, if you would like to hear it.

To preface this, I have come to the conclusion, and I have a long argument here that may be good or bad -- I think Paul feels the same way -- that as the Code is now drawn banks that are registered are wide open for concessions and purchases on their own account, or when they act as agent or in any other way.

MR. KEYSER: That is not quite correct. Let us get this thing right. The Code as now drafted in respect of concessions on new issues to registered bankers lays down no rule of its own but allows the syndicate managers to make their own rule about the same.

MR. WOOD: That is right.

MR. KEYSER: And if the rule is such that dealers can have a concession the bank can get it on its own securities on its own purchase, so ---

MR. WOOD: We attempted, as you will remember, to deal with this matter by an interpretation at Atlantic City and put one through that a concession could only be given to dealers in securities in which they were legally allowed to underwrite. I think there is a question we exceeded our authority in the Code when that happened, and I think also that it is probable that any way we deal with this matter it will have to be done by amendment.

This amendment here is drafted on a different theory than the one at Atlantic City. The one at Atlantic City was drafted on the basis of refusing commissions to banks on any business except that they were allowed to underwrite. This in effect puts the commission on a basis of a payment for service, and here is the rough wording. It has to be polished up I think. It follows George Whitney's suggestion with certain changes:

"No investment banker shall be allowed a commission or concession by the selling syndicate or selling group or by a member of such selling syndicate or selling group in the manner permitted by section 4 (b) unless he shall have stated in writing to the managers of the selling syndicate or of the selling group or to such member of the selling syndicate or selling group at the time of the confirmation of the purchase or entering of subscription that he claims a commission or concession upon the purchase price of the security in question, and that such securities are being acquired either (a) for the direct account of clients, or (b) for the investment banker's own account but for prompt distribution to the client."

That is where Mr. Whitney ends, and this is a shot at another thing:

"But financial institutions authorized by law to receive deposits must certify to the bankers of the selling syndicate or selling group, or to such member of the selling syndicate or selling group, that such commission or concession is for securities purchased or subscribed for against customers' orders actually received."

That is an addition to Whitney's suggestion, and is a change from him, and really brings this thing, as I see it, in line with the Banking Act of 1933.

Under the Banking Act of 1933, these banks are not allowed to deal in securities. Now if they subscribe for a security which they have not sold to a customer, they are taking the position of a dealer unless they expect to take those into their account at a concession, which is one thing we want to stop. "Provided this rule should not apply to governments and municipalities," because they are allowed by law to be dealers in those.

... At this point a long discussion ensued, and the members were given the opportunity to present their personal points of view, and finally on motion duly made, seconded and carried, the language of the Whitney amendment was adopted with two changes: (1) Inserting the word "solely" for the word "direct"; (2) Leaving out the word "prompt" ...

MR. WOOD: There is nothing definite on this one, but the Interpretations Committee has felt that it might be well to consider tying in on rules of price old issues where there is a syndicate in the old issue. We cannot, of course, as I understand it, make a rule on old issues where there is not a syndicate. An example of what I am thinking: For instance here is an old issue that came out yesterday, these Skolan bonds. They are following the Code, but there is no reason why they should, and unless you tie those old syndicate issues in you are going to fall down on your one price.

I had in mind a syndicate where they were originators who later offered a right to participate on some terms to a group of dealers. I had not visualized a syndicate as being a place where three or four dealers got together and bought an issue and took up an option on an issue though, perhaps, that ought to be included because there you could again break down the one price principle even under such a plan.

... A discussion ensued, and on motion duly made, seconded and carried it was ordered that Messrs. Griswold, Marks, Keyser, Wilbur and Wood were to form a committee and attempt to draft provisions in the Code to carry out the one price idea in old issues in syndicate accounts...

MR. WOOD: Regarding the three-day clause, the proposed addition, as drawn by Mr. Keyser, Mr. Marks and I believe is better than Mr. Whitney's, and reads this way:

"After the receipt of such prospectus or description any investment banker who is to be offered a participation in a selling syndicate, or member in a selling group, may advise prospective purchasers in regard to the security, but no manager shall at any time in advance of the day fixed by the manager for the public offering disclose to any investment banker invited to become a participant in a selling syndicate or a member of a selling group the interest which such investment banker will have in such selling syndicate or selling group, and no such investment banker shall accept orders for such securities before the date fixed by the manager for the public offering.

We were going to put in this clause:

"This shall not nullify the rights in Section 5 below."

That would have to be drafted by you, Paul.

MR. KEYSER: This is a complete substitute for the three-day clause.

... On motion duly made, seconded and carried, it was ordered that this should be presented to the Code Committee at its next meeting ...

MR. WOOD: There is a letter from the New York Municipal Dealers. The purport of the letter was billing at net prices, never showing a quarter off unless the dealers did, and the request that net prices be used in conversation and correspondence. It would apply to all issues; as a matter of fact, the Code would prevent it on anything else except on old issues, Section 7 of Article IX.

... A discussion took place, and on motion duly made, seconded and carried, it was ordered that as this applied to all issues outside of groups, it should be brought up at the next meeting of the Code Committee ...

MR. WOOD: There is one other matter only, and that is this house business, calling at houses. As now drafted, that deals only with the sale of securities. It does not deal with the purchase of securities. I think it might be drafted to deal with purchases, as well as sales.

MANAGING DIRECTOR WILBUR: Chase is opposed to that.

MR. WOOD: Here is another thing that troubles me on that: We were asked to interpret in the Interpretations Committee what is a business person, a retired business person, a professional person and a farmer, and we just made the statement that we couldn't interpret that; that it was so broad that there was no possible interpretation; that it included everybody. I still live in hopes that we are going to do the American public a favor by going back to what we originally had in the Code, and that is making it necessary to obtain permission before you can go to a person's house. The NRA knocked that out from under us in the last minute encounter, but I am wondering whether if we went to them again and discussed the problem, we couldn't get that thing changed so there is a protection to the public.

CHAIRMAN GRISWOLD: I still think we are just as right now as we were then.

MR. RATCLIFFE: Of course at that time, it was a week-end, and we were anxious to get the old code through, so we dropped it.

MR. WOOD: I thought that with that pressure over we might go back again and see if we could get a decent clause in there.

MR. BONNER: I think that should be submitted to the industry if we amended that.

MR. WOOD: I think it would be well to go back where we were originally, which means retaining the present clause with the omission of the last clause: "This section shall not apply to the solicitation of business persons, retired or professional persons, or farmers." Just strike that clause out, and change it so that you can't purchase because you can do just as much damage in buying below the market as you can in selling above the market.

What is the opinion here: Should we try to get that revamped, or should we leave it as it is?

MR. BONNER: I think if you changed that by executive order you would have a tremendous number of people who should be kept in the Code who would be antagonistic. I think if that were put up to the industry and they voted for it, you could wipe out the objections of your Boston and Indianapolis crowd.

... On motion of Mr. Wood, which was seconded and carried, it was ordered that this matter should be forgotten for the moment in order that the Interpretations Committee could see what could be done in the way of interpreting the clause ...

MR. RATCLIFFE: I had a telephone call from Washington relative to the legal approval of the budget and base of contribution. Paul Keyser says that the Finance Committee has approved the budget and base, but they felt this was not sufficient and they want the whole committee to approve it. I think it would be satisfactory if in addition to the Finance Committee's approving it, the Executive Committee in session now approve it.

... On motion duly made, seconded and carried it was ordered that the budget as approved by the Finance Committee, together with the basic amount of contributions, be approved by the Executive Committee ...

Mr. Wilbur outlined the steps taken in connection with compliance and suggested that a committee be appointed in an advisory capacity. It was pointed out by Mr. Griswold that Mr. Wilbur had the power to act in this matter as he saw fit. Accordingly no committee was appointed, but it was suggested that Mr. Wilbur act as he saw fit under the circumstances.

... The meeting adjourned at six o'clock ...
