

Subsection (d) is a provision saying that no foreign company can make a public offering of its securities in this country—that is, a foreign investment company—and it says:

No investment company, unless organized under the laws of the United States or of a State.

That supplements those other provisions with respect to foreign corporations: One which says that a foreign corporation cannot register; two, that it is exempt from all the provisions; three, that he cannot sell his securities in this country.

Senator WAGNER. He cannot sell them unless he registers?

Mr. SCHENKER. He cannot sell his own capital securities, and he can never do it, Senator, because this provision says he cannot register.

Now, section 8 is the mechanics of the registration of these investment companies, and the mechanics set forth is that the company may register by filing a notification of registration, which will be a simple form, and the registration becomes effective immediately upon receipt of it by the Commission.

Senator WAGNER. Mr. Schenker, are there any of these foreign companies now that are doing business?

Mr. SCHENKER. Well, there are foreign investment trusts.

Senator WAGNER. I mean, have you found any difficulty there?

Mr. SCHENKER. Of course, we had no jurisdiction over them in our investigations.

Senator WAGNER. I wondered if you had had some contact with them.

Mr. SCHENKER. There are some people in this country, of course, who own Canadian trusts, and I think that you cannot avoid securities seeping over the boundary, even with these provisions, so that eventually there will be some infiltration of these securities into this country. At least, it cannot be done through a formal public offer.

Now, I described subsection (a) in section 8.

Subsection (b) says that the registered investment company—that is, the company that filed this simple notification of registration—is required in a reasonable time to fill out a registration form which the Commission will prescribe.

Now, what are the things that are going to appear on that registration statement? It says:

A description of the investment and management policies and of the business done and to be done by the registrant, including "What class are you? What activities are you going to engage in? What portfolio securities do you have?"

And in addition to that, the type of information that would be required if you were going to file a registration under the Securities Act of 1933.

The registration of these companies, Senator, will require the information required under the Securities Act of 1933, and in addition, a more specific elaboration and a more precise enumeration of the particular activities in which they are going to engage.

What have we done, Senator? In order to eliminate the duplication, we have made provision that if the company has filed under the Securities Act of 1933, or if it has filed under the Securities Exchange Act of 1934, it can use that registration statement and just add the

supplemental information which is required to make its registration under this act complete, so that we have at least attempted in our recommendation to the committee to eliminate that duplication.

Subsection (d) says in effect that when the Commission finds that a company has ceased to be an investment company, then the Commission, upon such conditions as it deems necessary for the protection of investors or the public interest, shall cancel its registration as an investment company.

We come to section 9, which deals with the registration of certain affiliated persons and underwriters. That provides that:

It shall be unlawful for any person, unless registered under this section, to serve or act in any of the following capacities for a period exceeding 60 days.

We have taken these 60 days to give them some time to move around. If a person is going to become a director of a company, he can act for 60 days. In the interim he can file his registration with the Commission and the Commission can pass upon it. In other words, he can take his duties up within those 60 days.

Whom do we desire to register with respect to this—an officer, director, manager, or investment adviser? Those are the people who run the company. Also, the depositor, manager, or investment adviser of or for a registered unit investment trust. Also the principal underwriter for a registered open-end management investment company, registered unit investment trust, or registered face-amount certificate company.

Then there is the distributor, who sells these installment plans, and I will explain why we included that last category in a moment. Broadly stated, this provision requires the registration of the people who are closely associated with the management of the company and the distribution of its securities.

There are one or two points about this provision that I would like to emphasize. In the first place, Senators, you will notice that there is no provision made in this legislation which says that the Commission for any cause can revoke the registration of an investment company. That would be a broad power, because the Commission really would be able to control whether the company stays or does not stay in business. We have found in our experience, for instance, in connection with the delisting of the securities on the exchanges, the managers, the insiders, or the board of directors, for some reason or other, may want the securities delisted from the securities exchange, and the Commission has no alternative but to grant that application, even though it may rebound to the detriment of the stockholders.

You may get a situation where there are acts of misfeasance in connection with the company which may require the delisting.

Now, the proposed recommendation of the Commission is that, in connection with any misfeasance by the officers or directors, the sanction shall be placed upon the individuals who are guilty of the misfeasance. Therefore we think it is essential, and that is why we propose in our recommendation that there be registration of those who are intimately tied up with the management of the company and intimately tied up with the distribution of their securities.

Now, another thing, Senator, and that is this: As we have emphasized repeatedly, you are dealing with a peculiar type of institution in the investment trusts. You are dealing with large liquid pools of the public's funds, which usually are gathered up on the theory that

people are expert managers who can manage these funds for the public, so that they would have the requisite safety for old age and so forth, as you heard from the literature we read this morning.

Section 9 says what? A person who is an officer, director, manager, or distributor should not be put in a position of having uncontrolled discretion with the management of other people's savings, if (1) he is a jailbird who has been convicted in connection with a securities fraud, or (2) if he has been subject to an injunction in connection with a securities fraud.

In addition to that, there may be situations where a person may have slipped and have been convicted. The bill does not make it incumbent upon the Commission or imperative or unconditional that the Commission shall refuse registration. The Commission, if it finds that it is not against the public interest or the protection of the investor, may allow such a person to organize an investment company.

The basic subject of this provision is that people who have been guilty of securities frauds ought not to be put in control of other people's money.

In subsection (b) on page 20 we said if a person has registered as an investment counselor under title 2, that registration is sufficient here.

Now, when I talk about people who have been convicted, of people who have been guilty of fraud, I am not speaking of imaginary things. We have had cases like that. One of the worst clean-outs was the Kenyon group of companies. A person who was at that time a fugitive from justice got control of them, turned them over to Kenyon, and cleaned up a million dollars.

Also, reference has been made to the *Continental Securities case* that Mr. Fulton described to you—I am not being facetious about this—because I talked with the people who were involved in this picture. The fellow who started that deal rolling was a fellow by the name of Espey. At the very time that Espey was working that thing out, the sheriff was looking for him. The way Frear and Ferretti described that situation, you would think it was the four Marx brothers. The marshal would come in one door and Espey would duck in the other room. When the marshal left he would come in the room again, and they drew up the papers there to accomplish that transaction.

This provision that this person would have to disclose his background and submit to the Commission that statement is provided so that the Commission can see whether he is the sort of person who ought to have control of other people's money.

Senator WAGNER. Did the marshal finally get him?

Mr. SCHENKER. No, Espey was not picked up, and I don't think he has been picked up yet.

Senator WAGNER. He is in the same class with those examples described by Mr. Healy, men who left the room and never came back again?

Mr. SCHENKER. That is right.

That is one function of the section.

Another function of the section is to make available to the investor a little of the background of these people who are going to manage their money.

The probabilities are that you will hear, when the industry discusses these provisions, that the effect of this provision will be that the only

ones you will be able to get to be the directors of investment companies, are messenger boys, and that type of individual. I do not want to be misunderstood. I am not disparaging people in the industry, but the fact of the matter is that when that statement is made they are not talking hypothetically; they are talking historically.

Take the *Continental Securities case*—

Senator TAFT (interposing). I do not know of any industry where directors and officers have to register. Isn't this something new in legislation?

Mr. SCHENKER. Well, Senator, you take under the Securities Exchange Act of 1934, section 15; every over-the-counter broker and dealer had to register, and it seemed to us, Senator, if Congress—

Senator TAFT (interposing). It says any officer, director, manager, or investment adviser. The banks are more important than these, and you do not require people to register to become managers of banks or presidents or vice presidents. If you are going to do it at all, should you not begin with banks?

Mr. SCHENKER. On that aspect, Senator, no banks, in my opinion, would put on the board of directors any individual who did not satisfy—

Senator TAFT (interposing). That is not answering my question at all. I am asking you whether there is any other industry in the world that requires registration for officers, directors, managers, and advisers of companies. Do you know of any such industry?

Mr. SCHENKER. Do I know of any other industry? No; Senator.

Senator WAGNER. Of course, it does not necessarily follow that because it has not been done in other industries it should not be done here, provided the abuses make that essential. That is a matter for us to decide in order to protect the public interest and the investors.

Mr. HEALY. May I interject a word there? The only basis upon which registration can be revoked or suspended are three: A person is not eligible to serve on an investment trust if he has been convicted by a court of competent jurisdiction of a fraud in connection with securities.

Senator TAFT. I do not think I would have any objection to such a provision. My objection is to this idea of registering people who are going into business. It seems to me that if you do it for investment trusts you ought to do it for every company in the United States, and then you get to the point where everybody is registered and everybody has to go to the Federal Government for permission to carry on business or to get a job, even.

Mr. HEALY. They do not have to get our permission, Senator, under this. The registration becomes effective almost automatically, and we can revoke it provided this person has been convicted of a crime involving securities—convicted by a court—or has been subjected to an injunction by a court.

Senator TAFT. Why have any registration? Why all of this red tape? This is regimentation, 100 percent. We are talking about regimentation perhaps when it is not justified, but it is regimentation when you say a man cannot engage in this industry as officer, director, manager, or investment adviser without a license. That is regimentation.

Mr. HEALY. That is not what it says. What it says is that he cannot manage these liquid pools of capital, contributed by small investors, if he has been convicted of a crime—