RESULTS OF NEW PRICING METHOD

In working out a changed pricing procedure we have, during the last few months, carefully considered a number of suggestions proposed by dealers and others in the industry. However, in our opinion, the change we are making is the only one so far proposed which sufficiently solves the problems presented and yet maintains a firm offering price so that dealers may continue to operate on a practical basis.

The change we are adopting will completely eliminate the "two-pricing system" as it has been termed. The figuring of a new offering price during market hours once each day will, it is our honest conviction, sufficiently solve the so-called problem of "dilution" so that it will be reduced to such a nominal amount that, for all practical purposes, it can be completely ignored.

It is generally believed that by those of us who have carefully studied the problem that the new method should result in orders being placed by dealers and salesmen on a more regular basis as they are received and thus will spread out the business so that orders will not be accumulated and held to be executed after a known market rise, as has occasionally been the practice in the past. This in itself, we are convinced, is highly constructive.

A new bid price will become effective each day at 1 p. m., based on 12 noon prices. Thus, on days when the market is up, shareholders desiring to liquidate their shares will not have to wait until the close of the market in order to obtain the advantage of higher prices.

OTHER METHODS PROPOSED

Redetermination of price for each sale.—Probably the only method of issuing and selling new shares which could not be debated from one point of view or the other, would be to establish a new offering price each time an order for shares is received. In our opinion, however, there is no necessity whatsoever for any such theoretical mathematical accuracy and, in addition, on days of substantial business such redetermination of prices would be physically impossible. For example, on one day recently we had in excess of 800 separate sales transactions and on other days we have had close to this number.

On days when the general market level has declined, it has been physically possible to redetermine bid prices when shares are offered for redemption, but the total number of these transcations has been comparatively small.

Redetermination of price each hour while exchange is open.—For all practical purposes, we believe that changing prices twice each day will be as effective in solving problems that exist as more frequent changes. Further, the expense of more than two changes each day would not be offset by any theoretical advantage which might be gained.

Constant changes of price during the course of each day would, we feel certain, engender in the minds of shareholders, prospective shareholders, and salesmen alike an interest in hour-to-hour market movements which is contrary to the basic principle of the investment fund as a long-term investment medium.

Discontinuance of sales after unusual rise in market.—This suggestion has merit in that the major problem in connection with the present system of pricing comes only on those days when there is a substantial rise in the market. However, we believe that it does not go as far in solving the problem as a repricing of shares every day based on noon quotations, regardless of whether the rise in the market is nominal or larger than usual. It seems to us, too, that salesmen will prefer the definiteness of a price change at a known hour to the indefiniteness of the discontinuance of sales after an unusual rise in the market.

Sale of shares only when stock exchange is closed.—We have given very serious consideration to the suggestion that no shares be sold while the New York Stock Exchange is open. This method of operation is familiar to us for, when we first publicly offered shares of Boston Fund, we attempted, as an experiment and as a matter of practical protection to a small fund, to issue shares only on this basis.

Our practical experience with this method has satisfied us that it is not, under all circumstances, equitable to the new shareholders entering the fund. Also, as a result of our study, we are convinced that this method, which would completely eliminate an offering price during normal business hours, is not a reasonable or satisfactory solution to the question of pricing. It is not only contrary to general practice in the investment business but it is also contrary to sales methods followed in every other line of business endeavor.

We believe that such a pricing method would work a serious and unwarranted hardship on the dealers offering shares and would drastically reduce the total volume of business done.

CONCLUSION

We would like to emphasize our conviction that the change in pricing method which will be adopted by Massachusetts Investors Trust on January 2 and which we anticipate will be adopted by Supervised Shares and Boston Fund shortly thereafter is the best solution to the problem resulting from recent market conditions that we have so far been able to devise.

We believe it to be equitable to shareholders already in the funds and to new shareholders entering the funds. In addition, we are convinced that it is sufficiently practical from an operating viewpoint so that the activities of dealers and salesmen interested in placing shares with their customers will not be impaired.

MASSACHUSETTS DISTRIBUTORS, INC.

BOSTON, MASS., *December 27, 1939.*

Most open-end investment trusts deliberately, and not unintentionally, employ a method of pricing new shares which they know dilute the interests of their existing shareholders for the purpose of increasing sales and management fees, thus increasing the remuneration of the distributors of such shares and the managements of such trusts.

I have indicated before and I reiterate that the managements of many investment trusts have indicated to me personally and to other representatives of the Commission that they deplored the effects of the two-price system and would welcome any regulation uniformly applicable to all trusts that would tend to stamp out such abuses.

I should like to read two letters voluntarily written to the Commission illustrating this sentiment. We, at approximately the same time, received similar letters from at least nine other companies.

If you want me to, I will give you the name and signature, but I should prefer not to. This first letter is dated October 20, 1939, addressed to the Securities and Exchange Commission, my attention [reading]:

There is returned herewith, in duplicate, the questionnaire addressed to this company. We appreciate your courtesy in permitting us to forward the material at this time rather than on October 16; the work involved in assembling the information was substantial. We will, of course, be glad to furnish any additional material you may require.

We should like to take this opportunity to make certain observations regarding some of the problems of investing companies such as ourselves—observations based not only upon our studies of the material furnished in the questionnaire, but also upon other studies we have conducted over a long period of time. The general scope of the questionnaire raises questions that are by no means new to us since these and other problems have long been a matter of research on our part in a continuing effort to eliminate, insofar as practicable, all possible, as well as all actual, abuses, and to make certain that our procedure is fully and frankly set forth in our registration statements and prospectuses.

Since many of the practices, in this as in other businesses, are often influenced by competitive considerations, or studies necessarily have included examination of the practices of similar companies. Wherever it has been feasible to do so we have been quick to make changes which we felt would improve our methods and policies. The following indicate some of the steps that we have taken along these lines:

First. Prior to January 1938, ——— ——— (the national distributor for this company) acted as principal in the sale of our securities. So to act left the door open to possible profits (and losses) to be derived by the sponsor from positions taken in trust shares. It also made it possible for the sponsor to hold back or to anticipate orders for shares and to make a profit by so doing. The fact that this was possible indicated the desirability of the sponsor acting not as principal, but as sales agent in the distribution of the securities of this company—a relationship which was put into effect in January of 1938 and which still endures.

Even under the selling agency arrangement it was still possible for the sponsor to repurchase shares for its own account. While it was recognized that this, too, was undesirable, it was not possible to make the change until the charter of this company had been amended to permit it to repurchase its own shares during

market hours. This amendment was made in August of 1939 and, as it now stands, *the sponsor is permitted to act only as agent for the company in all transactions relating to its securities, both on the sale and repurchase side.*

This agency relationship makes it completely impossible for the sponsor to realize any profit, riskless or otherwise, as a result of a long or short position in the securities of this company. We firmly believe that this procedure is the proper one and, whether sponsors generally profit as a result of positions or not, it should be made uniform throughout the industry.

Second. Another instance of steps taken to eliminate possible abuses is connected with the possibility of an officer or director of this company, of the sponsor or of other associated company, personally to take a position in the securities of the company purely for speculative reasons. No instance of such a position having been taken has ever occurred, yet it was felt desirable to prohibit such individuals from purchasing shares of this company except on a purely investment basis. This policy was put into effect some time ago and makes it impossible for any "insider" to derive a speculative profit, riskless or otherwise, from a long or short position in the securities of this company. This, too, we feel is eminently proper and, whether such "insiders" generally profit as a result of such positions or not, should be made uniform throughout the business.

Third. For some time this company has been concerned over the possibility of dealers or others taking advantage of the method used in determining the price upon which its shares are to be sold. The price calculated as of a given day is effective throughout the entire following day which, as stated in the prospectus, results, in a rising market, in shares being sold at a price to net the company less than the asset value at the time of sale. This would make it possible, on a day of a sharp rise, for dealers to profit as a result of being able to place orders at a price based upon the preceding market close. To obviate this there has long been, in a standard Distributor's agreement, a provision which reads as follows:

"*Your attention is directed to the following sentence in the prospectus referred to:* 'It will be the practice of the selling agent to act only as agent, and not to profit nor to permit, knowingly, either Subselling Agents or distributors to profit by a change in the net asset value from that used in determining the price in their respective orders.'

"Your acceptance of this agreement will be deemed a commitment on your part that your practice will conform to the foregoing."

Every effort has been made to see to it that the distributors live up to this provision of their agreement and in any case where it has been found that a distributor has failed to do so, *that distributor has been removed from the selling group.* We believe that each investing company should be alert vigorously to protect itself against dealers who might be tempted to take advantage of circumstances to their own undeserved profit.

Fourth. One of the things which has given us considerable concern for some time has been the fact that practically all investing companies permit the offering price calculated as of the close of the market on a given day to remain in effect long after the new price has been calculated. It is obviously impracticable to calculate a new price any time other than at the close of the stock market. Consequently, it has been necessary that the offering price remain effective at least throughout the trading hours of the next following day. While one or two companies close off the price before the new price is calculated, others, however, carry the old price through to 5:30, others to 9 o'clock, others (including ourselves) to 12 midnight, and still others carry it until 10 o'clock the following morning. This means that there are two announced offering prices for a considerable period of time, with the lower of the two always being the price at which sales are made. It has long seemed to us that there was little or no logic backing this procedure and, while it is completely revealed in the various prospectuses, it would be *distinctly for the good of the business if this so-called two price system were eliminated.* Such elimination, however, is something which, for obvious competitive reasons, must be done by all important companies or by none. Crusaders along these lines have found that their competitors who had not changed soon had most of their business, and that they were left with only the satisfaction of believing that the procedure had been sound. In our opinion, elimination of the "two-price system" is highly desirable and is something which should be made effective for all investment trusts. We state, unequivocally, that as soon as we are able to obtain some assurance from our principal competitors that they will do likewise, we will forthwith make the necessary change in our procedure, and, of course, will amend our registration statement and prospectus accordingly.

Fifth. Because of the practical necessity of selling shares today at a price computed upon yesterday's closing prices, most investing companies have found that

the great bulk of their business is received on days of rising markets. It follows, too, that the larger the rise, the greater the business. We have often considered the desirability of restricting the number of shares sold on days when the market rise is so sharp and the corresponding increase in the asset value so great as to make additional sales at the old price undesirable. While we have not as yet reached a definite conclusion on this matter, it may well be that some steps should be taken along these lines. We have been considering the possibility of announcing to dealers that on any day when the hourly report on the movement of Dow-Jones Industrial Averages, as officially announced on the news ticker, shows an increase of 3 percent or more over the previous close, sales will be discontinued at the end of the next hour. For example, if the hourly industrial averages at 11 o'clock show an increase of 3 percent or more, sales on that day will be discontinued at 12 o'clock until the new price, computed as at the close of the market, has been determined. Such action would undoubtedly decrease substantially the volume of business done when the rise can be deemed to be too great to warrant further sales and, if made to operate jointly with the close-off of sales at the old price, as discussed above, would substantially eliminate possibilities of abuse. We feel that if the investing companies generally adopted a practice such as this, on some uniform basis, the movement would have our complete sympathy and cooperation.

As a practical matter, we believe it should be borne in mind that days such as September 5 seldom occur. It is our opinion that September 5 will prove to have been unique in the history of the Stock Exchange. For this reason we feel that the happenings of September 5 should not be taken as typical and that too many conclusions should not be drawn from the particular and special problems which arose on that day.

Please be assured of our continued cooperation at all times.

Very truly yours,

I would like to read another and shorter letter, along the same lines, but more concise. This letter is dated November 21, 1939, and is addressed to me (reading):

In connection with the recent questionnaire sent to investment trusts by your division, I should like to submit a copy of some recommendations which I made to the Investment Trust Study last year, which cover specifically on page 4 the points involved.

My fundamental premise is that the investment trust industry must either clean up or "be washed up." For its own sake—wholly irrespective of public policy—these abuses in the distribution of investment trust shares should be fully eliminated and I have no sympathy with any mere gestures, which would allow the abuses in the main to continue and not fundamentally correct the problem. What I have in mind is any proposal to adjust the price if the appreciation on a subsequent day is more than say 2, 3, or 4 percent, or to advance the time for a very few hours in making the daily price change, but at the same time leaving the one-day lag substantially in effect.

The one clearcut, effective way to eliminate the abuses growing out of the price-lag is to eliminate the price-lag itself. If all sales on any given day were based on that day's (rather than the preceding day's) asset value, the problem would be cured. After all, most redemptions are on the current day's asset value and there is every advantage in having sales on the same asset value. The objection to not having a firm price prior to 3 o'clock on any day does not impress me, particularly in view of the fact that under the present system practically no orders are received prior to the market's close, because of the desire of the dealer to compare the close of the current day's market with the previous close before deciding to place his order. As for the Far West, the Pacific Coast under such a system would have a firm price from shortly after 11 a. m. in the summer and shortly after 12 noon in the winter, and as far as having a firm price is concerned would be better off than the East.

Unfortunately, the competitive situation in the open-end trust industry is such that increased competition does not work for the benefit of the investment trust purchaser, but rather to his detriment. This appears to be attributable to the fact that the industry has not yet reached the point where the competition is for "consumer appeal" but rather for "dealer appeal." Consequently, the Securities and Exchange Commission without any legislation whatsoever could do a very effective thing if it would publish just the simplest kind of handbook—in primer style—for the investing public, which would point out the essential factors to look for and call attention to abuses such as occur in this price lag, and to

the switching device so frequently used by dealers to generate business. It is obvious that some pressure will be required to correct the abuses created by competition and if it is to go to the point of legislation it could be very effectively handled by including in the mutual trust section of the Revenue Act a provision that to qualify the investment trust must never sell its shares at a price less than its current asset value, and, for that matter, a provision for limitation of the selling load.

When this is accomplished, not in some half-hearted measure, but fully and completely, the investing public and the investment trust industry as well will be much better off. The investment trust should be an institution—in a sense the equity counterpart of a building and loan association—for the professional management of the public's investment capital. Many of the abuses have come from making the investment trust a stock-jobbing scheme and hence the emphasis upon high-pressure "peddling" of the shares. The approach to the prospective investor should not be one of offering shares at a price less than their current worth (because of a sharp rise in the market and the price lag) but rather the approach should be on a professional basis; namely, that the investor is being asked to place his investment funds—$5,000 or whatever they may be—under the management of the investment trust. From this professional point of view the question of whether a firm price accurate to the cent is available to the salesman at any given moment is of no consequence. Moreover the implication of this professional point of view as distinguished from the stock "peddling" point of view is very far reaching and constructive so far as bringing into clear relief the philosophy upon which the investment trust business should be operated by the management and viewed by the investing public.

These recommendations are presented by us directly rather than through a group in order that we may be in a position to make our recommendations clearly and candidly reflect our own beliefs, without the compromise and emasculation which generally occurs in the formulation of group opinion.

If we may be of any service in working out this problem please do not hesitate to call upon us.

I think I have made it clear that these are letters from the industry, not from outsiders.

Senator WAGNER. They recognize that that is a problem.

Mr. BANE. Apparently, very clearly so.

Now I should like to read other letters, and I think it will take me probably about 15 or 20 minutes more. This letter is along the same line——

Senator WAGNER. Are they letters of the same kind?

Mr. BANE. I have here a letter from the vice president of the Massachusetts Distributors dealing with the problem.

Senator WAGNER. I think you ought to read it. Some of the others you might put into the record if they are along the same line.

Mr. BANE. All right, sir. This letter is addressed to the Securities and Exchange Commission, attention of Mr. Lund, our expert. It is dated February 25, 1940, and reads as follows [reading]:

Last week Mr. Bane suggested to Mr. Traylor that it would be helpful if we would send down to you some suggestions with regard to rules and regulations which the Securities and Exchange Commission might draw up to govern the pricing and sale of shares of open-end investment funds. There are so many angles to the problem, we are very hopeful no attempt will be made to incorporate a specific pricing procedure in the pending legislation, for we feel that the only practical way to handle the situation is through regulation in cooperation with the industry. If no procedure is written into the law, there will be sufficient flexibility to permit a complete examination of the practical aspects of the problem and the working out of a solution for the various types of funds on some reasonable and equitable basis.

Even if no legislation is passed this session, we are anxious to see some solution to the pricing problem worked out in the near future. We believe that a major portion of the industry can agree on a practical plan. At the moment, we understand a number of funds have deferred action on any change in practice until you have completed your study so that if something practical is agreed on, no further charter changes will be necessary.

It seems to us that there are two separate points to be considered in working out a solution to the problem: (1) The setting up of safeguards through the funds and the distributors to prevent any abuse, such as "riskless trading," of whatever pricing system is adopted as standard practice; and (2) the effective reduction of so-called "dilution" to a practical minimum.

* * * * * * *

Regarding the setting up of safeguards against abuse, we would like to suggest that consideration be given to the following:

(1) No underwriter should be allowed to sell shares to a dealer unless the dealer has signed a distributing contract with the underwriter, establishing certain standards of fair practice.

(2) The dealer contract should provide for a placement period of sufficient duration to prevent "in and out" trading on any basis, whether riskless or not. This could be handled by the withholding of dealer discounts if shares are tendered for redemption within the placement period. Also, if no technical or State "blue sky" problems arise, the funds themselves might prohibit the redemption of shares issued until after the expiration of the placement period.

A placement of 7 to 10 days might well be sufficient to solve the problem and should not handicap any underwriter or dealer honestly attempting to distribute shares on a sound basis.

(3) Any dealer or street trader not bound by contract to the underwriter should be required to identify certificates tendered for redemption. This would effectively eliminate short selling against the funds.

(4) The underwriter should act as agent and not as principal in the repurchase of shares. In this connection it would probably be advisable to provide allowance for compensating the agent for out-of-pocket expenses in handling the repurchase of shares. Most open-end companies reserve the right to charge up to 1 percent to cover such expenses although, as a matter of policy, few of them have exercised this privilege.

(5) If the Securities and Exchange Commission could solve the problem of the dealer becoming involved in an underwriting liability, an underwriter should act as agent in the sale of shares as well as on repurchases. However, if the problem of dealer underwriting liability cannot be answered satisfactorily, an underwriter acting as principal should be prohibited from taking a long position by purchasing from the fund more shares than are required to fill orders received.

(6) In order to prevent "in and out" trading on the part of individuals in the management or sponsor organizations, a reasonably long placement period for shares sold to such individuals would be desirable—perhaps 45 or 60 days. The recent Ohio regulations (Q. 3) provide for the payment of the full retail price by "insiders" when purchasing shares. While we believe there is some merit in this plan insofar as minimizing trading activities is concerned, we do not believe it will be as effective in forcing purchase only for investment as a long placement period. Furthermore, forcing "insiders" to pay sales costs when no such costs are involved, does not strike us as sound business practice.

(7) In repurchasing shares during market hours, the bid price should be lowered to reflect any decline. Because there is no psychological necessity for a firm price when shares are tendered for repurchase and because the total number of repurchases is usually substantially smaller than the number of sales, it has been found practical to handle repurchases on this basis, even in the larger operations. This eliminates the possibility of profit as a result of "riskless" short selling.

* * * * * * *

With regard to the reduction of so-called "dilution" to a practical minimum, we believe that no satisfactory solution can be found to this problem until it is generally recognized that what may be a satisfactory and practical solution for one type of open-end company may not be a satisfactory solution for other types of open-end companies.

More than 85 percent of the total amount of assets of the open-end companies is represented by the type of company such as Massachusetts Investors Trust. These companies were created on the basis of their being conservative investment mediums and their portfolios represent a broad cross-section of selective diversification under continuous supervision. They are sold as a permanent type of investment and not as a medium for trading in and out for speculative profits.

The balance of the open-end companies, by and large, were designed to serve an entirely different purpose, and are represented to the public on an entirely different basis. Some of these companies are highly speculative, while the others possess varying degrees of speculative character. In these companies, the

percentage fluctuations in asset value, both up and down, exceed by a large margin the fluctuations in the asset value of the more conservative type of fund. As a result, the problem of "*dilution*" is far more acute. We are convinced, in our own minds, that a general formula for pricing cannot be worked out which will solve the problem for all types of companies alike.

We do not mean to imply that these more or less speculative funds do not occupy a perfectly legitimate place in the investment business, if properly conducted. We merely contend that they are created for a different purpose, sold on a different basis which is noncompetitive to our type of fund, and that their dilution problem cannot be solved in the same way that the problem can be solved for 85 percent of the open-end industry.

As you know, on January 1, 1940, Massachusetts Investors Trust adopted a system of pricing shares twice each day. This appears to be working out on an eminently satisfactory basis and we believe that this system, or some refinement of it, will for all reasonable purposes solve the problem for the funds similar in character to Massachusetts Investors Trust. It eliminates the accumulation of orders to be executed prior to the next advance, and it assures an adjustment of offering price upwards during market hours when the general market level has advanced so that the price received for shares more closely approximates their theoretical "liquidating" value at time of sale.

Perhaps this is not the final solution to the problem, even for the cross section open-end funds, but no one can deny that it is a constructive step forward on a basis which is practical enough to allow business to be done. We are convinced that it would be wise for the industry at this time to adopt, with the cooperation of the Securities and Exchange Commission, the two-price-a-day system and to incorporate rules for fair practice such as I outlined above. Results could be carefully checked and problems corrected as they develop. Further changes could later be made if experience indicates that they are necessary.

I expect to be in Washington on Tuesday the 27th and would like very much to have an opportunity to go over this matter with you.

It is signed by the vice president of Massachusetts Distributors.

If one were to engage for a fee an individual purportedly skilled in dealing in horses or automobiles to use one's money to buy and sell horses or automobiles in order to earn a return on the money used, and if this individual were to offer to buy all horses or automobiles at $100 and at the same time sell all horses or automobiles at $93, somebody would probably think of putting him into an asylum.

This method of doing business sounds fantastic and yet on September 5, 1939, some of these trusts were bidding higher prices for their shares than the public offering price at which the shares were being sold at the same time. In one instance one trust was selling shares at $17.78 and at the same time this same trust was offering to redeem and did redeem shares at $19.21.

Senator WAGNER. How did that come about?

Mr. BANE. The price at which they were selling during the day was based upon the prior day's close. The price at which they were redeeming shares was based upon that day's liquidating value of the underlying portfolio. The portfolio had increased in value during the time they were continuing to sell on the price of the prior day's close, at $17.78, so that as a share was turned in for liquidating they were giving $19.21 for it.

This is another graphic illustration of the effects, potential and actual, of the two-price system and indicates the deliberate underpricing of the shares by the trust.

One witness from the industry before you claimed that the two known and established prices were of little or no importance as a sales argument or as in inducement for sales, yet one other witness from the same distributing organization attempted to justify the two-price system by claiming that a firm and established price is not only

necessary in order to market the securities but is essential to the continued operation of the business.

I have had many conversations and conferences with representatives of this industry, but it was in the testimony here that I heard for the first time that two known and established prices were of no importance in making sales, in fact, were not a principal inducement in effecting sales. Certainly, from the statements contained in the letters I read, representing the views of many in the industry, and from conversations I have had, it is clear that no trust of this type has seriously attempted to abandon this practice cognizant of its dilutive effect, because they realize that they could not sell in competition with the other trusts employing the two-price system. If it is of no sales importance whatever, then practically every investment trust of this type is purposely diluting existing security holders out of mere whim and caprice and not for the purpose of meeting competition. It does not seem logical that a salesman, understanding how the shares are priced and that two prices are known from about 3 or 4 o'clock in the afternoon until 10 o'clock the next morning, will not use such a fact to induce sales. It is generally admitted by the industry that from at least 70 to 90 percent of all sales are made on a rising market, when dilution occurs. Obviously, there is a definite relationship between volume of sales and the two-price system.

The story given you by witnesses from the industry of how sales are effected was most unrealistic. To compare the pricing and sales methods and the effects thereof of these trusts with the sale of Treasury bonds is illustrative of the sales ideas and arguments of many of these investment trust salesmen. The statement made by Mr. Traylor respecting dilution arising from the sale of Government bonds is incredible. I have never seen the occasion when the Government was offering bonds for a period of 19 hours at two different prices, affording a purchaser the opportunity to purchase at the lower of the two prices.

As an illustration of the methods pursued in selling trust shares, I should like to read a paragraph from a letter from one of these companies [reading]:

> One of the primary evils, in my mind, in investment trust selling has been the price situation. Many sponsors have not gone out and sold investment trusts on their merit or on the sales appeal of diversification, but have gone out on a price appeal situation, offering someone $5 in value for $4.50. To my mind this is basically unsound and there is no reason why the same amount of business could not be obtained by using sound sales methods. It is going to be essential, however, that all trusts standardize their pricing * * * so that the purchaser cannot go across the street and buy "prices" from some other dealer. * * *

Senator WAGNER. Our committee reported yesterday a bill to amend the Trading with the Enemy Act of 1917, as amended, and it is very important. It is to come up just as soon as we finish a bill now before the Senate for consideration, which will be in about half an hour, I think. I must be there to take that bill up.

Mr. BANE. I can finish in about 5 minutes, Senator.

Senator WAGNER. Very well.

Mr. Griswold, of Massachusetts Investors Trust, in reference to the requirement that sales literature other than the official prospectus be filed with the Commission, characterizes the requirement in the bill as "bureaucracy for its own sake." He indicates that there is no necessity for it, particularly with reference to his trusts, Massachu-

setts Investors Trust, Boston Fund, and Supervised Shares. It is interesting to note that Dr. Sprague, who testified before you as a trustee or adviser of Massachusetts Investors Trust, when asked in September 1936 what he thought about certain sales literature used by investment trusts, said—in speaking of such literature—that it "is apt to contain things which may be apt to make one's hair curl a little bit."

Mr. Bunker, of the Lehman Corporation, who testified in these hearings, said in his testimony:

> In the first place it is a mistake and a very serious mistake to confuse in the slightest degree the conception of investment companies with the conception of savings banks. If a man puts his savings in a savings bank he has money in the bank, money which, subject to minor restrictions, he can withdraw at any time and which he can withdraw in the same amount which he has put in, plus interest, no more and no less. That is his contract.
>
> But if a man invests in the stock of an investment company and particularly if he invests in the common stock of an investment company, he is putting his money at the risk of the market and when he realizes on his investment he will realize the then market value of his investment, which he hopes may be more, but which may very well be less than he has paid in, by the terms of his contract.

(At this point Senator Wagner, chairman of the subcommittee, left the hearing room.)

Senator HUGHES (presiding). Please continue, Mr. Bane.

Mr. BANE. I continue the quotation from the testimony of Mr. Bunker:

> If any salesmen of investment company securities have attempted to confuse investment companies with savings banks they have been guilty of gross fraud and they should be dealt with accordingly. If additional legislation is necessary for such purpose let such additional legislation be passed. But do not allow yourself to be misled, because of fraudulent statements of this nature that have been repeated to you, into the idea that investment companies resemble savings banks.

Now let me read to you an extract from an illustrated booklet entitled "Massachusetts Investors Trust, History and General Information," put out by Massachusetts Distributors, Inc., in 1935, used as supplemental selling literature and, which so far as we know, is still used:

> Massachusetts Investors Trust is a mutual trust. It is operated on a basis similar to a mutual savings bank. Like a savings bank it depends for its future welfare and continued success upon public confidence.

Mr. Traylor said to you that it was very easy to confuse the word "dilute" with the word "loot," and he wanted to make it clear that the pricing system used by the open-end investment trusts involved no element of looting. In my previous remarks I did not refer to or use the word "loot," but so far as the net effect from the standpoint of the shareholder is concerned there would appear to be little reason for drawing a distinction, and there is little practical difference between looting and the operations of this system.

What I have said does not relate to past practices only. These practices employed by the majority of these trusts are continuing, everyday practices. It is true that some of these trusts recently made some pricing changes, not in method, but only in the length of time two known and established prices exist. But dilution has not been stoppted. It still goes on day after day.

Considering these matters in their true light and the manner in which they have been presented to you by members of the industry,