

5. NEW HAMPSHIRE

The New Hampshire securities statute includes within its definition of "securities" "contracts of services and advice relating to investments, or membership in organizations or associations purporting to render such services or advice," which, in other words, describes the services of an investment counselor. A further provision of the act provides that "dealers in securities," which would thus include persons selling investment counsel advice, must register with the securities commission. The State Securities Commission has the authority under the statute to investigate the financial standing and reliability of a prospective dealer and to pass upon the advertising material to be used by such person in connection with his activities.⁷

6. OKLAHOMA

The State of Oklahoma, by an amendment to its Securities Act in May 1933, provided that only registered dealers may function as investment counselors,⁸ but exempted lawyers and certified public accountants. Registration was conditioned upon the posting of a bond to account for customers' funds and securities and to satisfy judgments obtained by customers against the dealer in actions based on security transactions.

7. RHODE ISLAND

Rhode Island provides for the registration of brokers, and in the definition of broker includes every person who "for any cause acts as investment counsel and advises the purchase and sale of securities."⁹

STATE STATUTES WITH RESPECT TO INVESTMENT COUNSELORS

CALIFORNIA

Definition.—The words "investment counsel" as used in this act shall include every person or company other than a broker, who in this State, for compensation, engages in the business of advising others either directly or through publications or writings as to the value of securities or as to the advisability of investing in or purchasing of securities, and every person other than a broker or certified public accountant who issues or promulgates analyses or issues reports concerning securities: *Provided, however,* That said term shall not be construed to include any licensed, practicing attorney who renders or performs any of said services in connection with the practice of law.

Registration of the investment counselor.—No person or company, other than a broker, shall act as an investment counsel until such person or company shall have first applied for and secured from the commissioner a certificate then in effect authorizing such person or company so to do. Every such certificate shall expire on the 31st day of December next after its issuance unless sooner suspended or revoked.

To secure such certificate, the applicant shall make and file in the office of the commissioner an application therefor in writing, verified by or in behalf of the applicant. In such application, the applicant shall set forth, in addition to such other information as may be required by the commissioner:

- (1) The name, residence, and post-office address of the applicant;
- (2) If a corporation, association, joint-stock company, or partnership, the name, residence, and post-office address of each of its managing officers, agents, or partners, as the case may be;
- (3) A succinct statement of facts showing that the applicant and each of its managing officers and agents or partners, as the case may be, is of good business repute and possess the experience and education which would qualify him to act as investment counsel; and
- (4) The general plan, character, and method in which applicant proposes to conduct its business.

If the applicant is a corporation or an association organized under the laws of any other State, Territory, or government it shall file with its application a copy of its articles of incorporation or association, together with a certificate executed

⁷ See State legislation *infra*.

⁸ *Ibid.*

⁹ *Ibid.*

by the proper officer of such State, Territory, or government, not more than 30 days before the filing of such application, showing that such applicant is authorized to transact business in said State, Territory, or government, and also in such form as the commissioner may prescribe its written instrument irrevocably appointing the commissioner and his successor in office its true and lawful attorney upon whom all process in any action or proceeding against it, arising out of or founded upon the fraud of such applicant in the conduct of its business as investment counsel, may be served with the same effect as if said corporation or association were organized or created under the laws of this State and had been lawfully served with process therein.

The commissioner shall examine such application for an investment counsel's certificate and shall make such further investigation of the applicant and its affairs as he shall deem advisable. If from such examination the commissioner shall be satisfied—

(a) That the applicant and its officers, directors, and members, if any, are of good business repute and in the opinion of the commissioner qualified by experience and education to conduct an investment-counsel business;

(b) That neither the applicant nor its officers, directors, or members, if any, have violated any of the provisions of this act or of chapter 226 of the statutes of 1923; and

(c) That neither the applicant nor its officers, directors, or members, if any, have engaged or are about to engage in any fraudulent transaction, he shall issue such certificate. Otherwise, he shall deny the application and notify the applicant of his decision: *Provided, however*, That if the only ground for such denial falls under subdivision (b) or (c) of this section, the commissioner may, in his discretion, waive such ground for denial and issue a certificate to the applicant if satisfied that in the particular case the application of either subdivision is purely technical and does not substantially affect applicant's honesty and integrity, and that the inability of applicant to meet either of these requirements will in no way interfere with a proper performance by the applicant of his duties as an investment counsel.

The commissioner may at any time temporarily suspend any investment counsel's certificate issued by him if he finds, after a hearing upon such notice as he, in his discretion, shall deem reasonable, that there exists any of the grounds hereinabove enumerated for the denial of an application for an investment counsel's certificate. If, at the expiration of 30 days from the date of such suspension, the certificate so suspended has not expired or has not been revoked, as hereinafter provided, it shall be deemed reinstated. The commissioner must revoke any investment counsel's certificate, if, after hearing upon notice, he shall find the existence of any of the grounds, hereinabove enumerated, for the denial of an application for an investment counsel's certificate: *Provided, however*, That such revocation shall be discretionary with the commissioner if the only ground for such revocation falls under subdivision (b) or (c) of this section and he is satisfied that in the particular case the application of either subdivision is purely technical and does not substantially affect applicant's honesty and integrity, and that the inability of applicant to meet either of these requirements will in no way interfere with a proper performance by the applicant of his duties as an investment counsel. (Deering, General Laws of California (1937), vol. I, act 3814, S. 2 (12), S. 9.)

CONNECTICUT

Definition.—The term "investment counsel" shall include any person, who, in this State, shall engage in the business of advising others, either directly or by mail or through publications or writings, as to the value of specific securities or as to the advisability of investing in purchasing or selling such securities, for a compensation or commission or at a profit, but shall not include any national banking association or Federal savings and loan association located in this State or any State bank and trust company, industrial bank, savings bank, or building and loan association under the supervision of the bank commissioner, nor any person registered as a "broker" under the provisions of chapter 212 of the general statutes, as amended.

Registration of the investment counselor.—Each registration of an investment counsel shall set forth, in addition to such other information as may be required by the commissioner, the following: (a) The name, residence, and post-office address of the registrant; (b) the form of organization under which registrant conducts business; (c) if such investment counsel be a corporation,

an association, a joint-stock company or a partnership, the name, residence, and post-office address of each of its directors, managing officers, agents, or partners, as the case may be, together with such information in respect to the business record or experience of each such direction, officer agent, or partner and such other information as may be required by the commissioner; (d) the general plan, character, and method by which the registrant proposes to conduct his business and the form of business he is engaged in or is transacting; (e) a statement as to whether such investment counsel or, if such investment counsel be other than an individual, whether any partner, principal, officer, director, or branch manager thereof has been convicted by a court of competent jurisdiction in any State or country of any criminal offense in connection with any transaction involving the sale or offer for sale of securities; or has been enjoined or restrained by order of any court, commission, or public official from selling or offering for sale securities in any State or county or continuing any practices in connection therewith, or been arrested or prosecuted for any violation of law involving securities in this or any other State, or been convicted of any criminal offense of any nature or sentenced to imprisonment in a jail or other penal institution, or, having applied for registration or having been registered or licensed as a dealer, broker, or salesman of securities in any State or country, has had such registration or license refused, suspended, canceled, or withdrawn, either by request or otherwise. If such investment counsel or any such partner, principal, officer, director, or branch manager has ever been convicted, restrained, enjoined, arrested, or prosecuted, or has had any registration or license refused, suspended or canceled, or withdrawn, by request or otherwise, such investment counsel's registration shall have incorporated therein complete details thereof.

The registration of an investment counsel shall be sworn to before a person qualified to administer oaths by the person making the same and shall state that the alleged facts therein contained are true of his own knowledge and, if such person be a partnership, such oath shall be made by a member thereof and, if such person be a corporation or any other form of an association, such oath shall be made by an executive officer thereof. Any person who shall make a false statement in such registration or in any sworn statement or affidavit attached thereto shall be subject to the penalties prescribed for violation of the provisions of section 1533c of the 1935 supplement to the general statutes and of the provisions of any other section of the general statutes violated thereby. Said commissioner may adopt forms to be used by persons registering as investment counsel as herein required, and shall furnish such forms to any person requesting the same, without charge.

Upon receipt of the registration of an investment counsel, accompanied by the fee required by this act, and upon compliance with the provisions of this act, the commissioner may make such further investigation of the registrant and his affairs as he shall deem necessary or advisable. Upon the completion of such examination or investigation, the commissioner, shall, subject to his authority to refuse such registration as hereinafter provided, enter the name of such person on a register of investment counsel to be kept in his office, properly indexed and open to the public, provided no registration shall be so entered within five years after the date of a conviction of any criminal offense in connection with any transaction involving securities, or within 5 years after the date of the issuance of any permanent injunction or restraining order in connection with securities, or within 5 years after the cancellation of any license or registration as broker, dealer, or salesman, in this or any other State as a result of alleged fraudulent transactions on the part of any such registrant, or, if the registrant be a partnership or a corporation or any other form of an association, on the part of any partner, principal, officer, or director thereof. The commissioner is authorized to refuse to accept the registration of an investment counsel for any reason which is cause for the cancellation of such registration, or whenever the commissioner shall have reason to believe that such refusal is necessary to protect the public against fraud. The commissioner shall not issue any certificate or written evidence to any person registered as an investment counsel. Each person who has registered as an investment counsel, shall immediately file with the commissioner in writing any change of residence, mailing address, or place of doing business, or any other changes in such registration that may, from time to time, occur.

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If the commissioner shall be satisfied, either after an investigation or otherwise, that any person registered as an investment counsel (a) has violated

any of the provisions of this act; (b) has violated any of the provisions of said section 1533c; (c) has rendered advice of a fraudulent nature, with intent to perpetrate a fraud in connection with or relating to the purchase, sale, or continued investment in any security; (d) is in any way dishonest or is conducting or has conducted his business as investment counsel in a fraudulent manner or is about to engage in any fraudulent transaction; (e) has failed or refused to file such information with respect to the business or the facilities of the organization of such investment counsel as has been required by the commission, or (f) has made a material false statement in the registration, the commissioner, upon notice to such person and affording him an opportunity to be heard, may cancel such person's registration. Notice from the commissioner sent by mail in a sealed envelope, postage prepaid, to such person at his principal address, shall be deemed sufficient notice to such person. The commissioner shall not cancel the registration of any investment counsel except upon such notice to such person given as herein provided.

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Each person registered as investment counsel shall pay to the commissioner for the use of the State an annual fee of fifty dollars. Any registration, unless sooner revoked, shall expire at midnight on June thirtieth next succeeding the effective date of such registration. Such fees shall be paid in advance and no person shall be deemed to be registered as an investment counsel unless he shall have paid the fee herein provided for. In addition to such annual fee, each person registered as an investment counsel shall pay the actual cost, as determined by the commissioner, of any investigation or examination made of such investment counsel's affairs under the provisions of said section 1537c, as amended, or any provision of this act, by or on behalf of the commissioner. (Connecticut, General Statutes (Supp. 1937), Ch. 212, Sec. 7470.)

MICHIGAN

Hereafter it shall be unlawful for any person to engage in the business of dealing in securities whether exempt from or included in the provision of such decision of this act without first procuring a license and continuing to be licensed therefore, as hereinafter provided, * * *. For the purpose of this act, any person who for any consideration acts as an investment counselor and advises the purchase and sale of securities, shall be deemed a "dealer" * * *. (Michigan, Public Acts of 1935, act 37, sec. 21.)

NEW HAMPSHIRE

Under this chapter dealer shall mean any individual, partnership, association, or corporation engaging in the selling or offering for sale of securities, except through the medium of, or as agent or salesman of, a registered dealer. But sales made by or in behalf of a resident of this state in the ordinary course of bona fide personal investment of his personal holdings, or change of such investments, shall not constitute such resident, or the agent of such resident, if not otherwise engaged either permanently or temporarily in selling securities, a dealer therein. A nonresident desiring to make such sale of his personal investments must first obtain the approval of the insurance commissioner.

Securities shall include all classes of stocks and shares, bonds, debentures, evidences of indebtedness and certificates of participation, certificates of warehousemen, rights and interests in land from which petroleum or minerals are, or are intended to be, produced, ship shares, and investment contracts in the form of a bill of sale, or any similar device, and contracts of services or advice relating to investments, or membership in organizations or associations purporting to render such service or advice.

* * * * *

No dealer in securities shall, in this State, by direct solicitation or through agents or salesmen, or by letter, circular, or advertising sell, offer for sale, or invite offers for or inquiries about securities, unless registered as a dealer under the provisions of this chapter.

Any dealer desiring registration shall file written application therefor with the insurance commissioner, accompanied by a registration fee of \$25, the fee to be returned if the application is not granted.

The application shall be in such forms as may be prescribed by the commissioner, and shall state in writing the principal place of business, the name or style of doing business, and the address of the dealer, the names, residences, and busi-

ness addresses of all persons interested in the business as principals, officers, directors, or managing agents, specifying as to each his capacity and title, and the length of time during which the dealer has been engaged in the business.

The commissioner may examine or cause to be examined at the expense of the applicant or dealer the affairs and condition of a registered dealer in securities or an applicant who desires to become registered as such dealer. An applicant shall furnish in addition to the information required in the application such other documentary evidence of condition and responsibility as the commissioner may require, including without limiting the generality of the foregoing, authentic copies of articles of incorporation, partnership agreements, bylaws, balance sheets, and earning statements. By December 1 of each year every licensed dealer in securities shall furnish under the oath of such responsible member or members of the dealer's organization as the commissioner may require an annual financial statement for the period ending June 30 of each year, exhibiting with reasonable detail assets, liabilities, profit, and loss of the dealer for a period of 1 year upon a form to be furnished by the commissioner.

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The application filed with the commissioner for registration as a dealer shall be held for investigation for a period of 4 weeks from the date when the application reaches the commissioner.

Upon being satisfied of the applicant's good repute, financial standing, reliability, and right to public confidence, the commissioner may register the applicant as a dealer.

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The commissioner may, unless furnished with satisfactory evidence as provided in the preceding sections, or in case of violation of any provision of this chapter, or in case of dishonest, deceitful, or fraudulent conduct on the part of any dealer in connection with the carrying on of the business, revoke such dealer's registration, and may, having reasonable cause to believe that such facts exist, suspend such dealer's registration until satisfied to the contrary. (New Hampshire, Public Laws, ch. 284, secs. 2, 6.)

OKLAHOMA

Registration of dealers and salesmen, requirements, bonds, fees.—No dealer or salesman shall engage in business in this State as such dealer or salesman or sell any securities, including securities exempted in section 4, of this act, except in transactions exempt under section 5 of this act, unless he has registered as a dealer or salesman in the office of the commissioner pursuant to the provisions of this section. No person other than a registered dealer, shall in this State, for a commission or compensation, act as investment counsel or engage in the business of advising others directly or through publications or writings as to the value of securities or as to the advisability of investing in or purchasing securities; provided, however, that this provision shall not be construed to include any licensed practicing attorney who renders or performs any of said services in connection with the practice of law or to any certified public accountant who issues or promulgates analysis or issues reports concerning securities.

Provided, that nothing in this act shall require such registration, for the sale of insurance, by agents, who are required to be licensed for such purpose by the commissioner of insurance.

An application for registration in writing shall be filed in the office of the commissioner in such form as the commissioner may prescribe, duly verified by oath, which shall state the principal office of the applicant, wherever situated, and the location of the principal office and all branch offices in this State, if any, the name or style of doing business, the names, residence, and business address of all persons interested in the business as principals, copartners, officers, and directors, specifying as to each his capacity and title, the general plan and character of business, and the length of time the dealer or salesman has been engaged in business. The commissioner may also require such additional information as to applicant's previous history, record, and association as he may deem it necessary to establish the good repute in business of the applicant.

There shall be filed with such application an irrevocable written consent to the service of process upon the commissioner in actions against such dealer in manner and form as hereinbefore provided in section 9.

If the commissioner shall find that the applicant is of good repute and has complied with the provisions of this section, including the payment of the fee

hereinafter provided, he shall register such applicant as a dealer upon his filing a bond in the sum of \$5,000, running to the State of Oklahoma, conditioned that the dealer shall properly account for any moneys or securities received from or belonging to another and shall pay, satisfy, and discharge any judgment or decree that may be rendered against such dealer in a court of competent jurisdiction in a suit or action brought by a purchaser of securities against such dealer in which it shall be found or adjudged that such securities were sold by the dealer in violation of this act or that such purchaser was defrauded in the sale of such securities. Such bond shall be executed as surety by a surety company authorized to do business in this State; or such bond may be a personal bond, provided that the dealer shall keep on deposit with the commissioner, as surety, securities exempt under subdivisions (a), (b), or (e) of section 4 of this act of the marketable value of at least the amount of such bond, which said securities shall be returned to such dealer when the liability under such bond has terminated or been satisfied. One recovery upon such bond shall not void same, but it shall be subject to successive suits and recoveries until the penalty thereof is exhausted; provided, that the aggregate liability of the surety on such bond for all such suits and recoveries shall not exceed the sum of five thousand (\$5,000.00) dollars; and, provided further, that no action shall be brought for recovery under the provisions of this act after two years from the date of the act or transaction in violation thereof. Upon suits being filed to recover damage from a dealer who has executed a bond, with a surety company as surety thereon, in excess of the amount of any such bond, the commissioner, by written notice served upon such dealer, may require such dealer to give a new bond, and if the same is not given within twenty (20) days after such service the commissioner may revoke the registration of such dealer. (Oklahoma Statutes, title 71, ch. 5, S. 41.)

RHODE ISLAND

The term "broker" shall mean and include every person, other than a salesman, who in this State engages, either for all or part of his time, directly or through an agent, in the business of selling any security, whether issued by himself or another person, or in the business of purchasing or otherwise acquiring such securities for another with the purpose of reselling them, or of offering them for sale to the public, for a commission or at a profit, or for any consideration acts as an investment counselor and advises the purchase and sale of such securities.

No person shall sell securities as a broker or salesman respectively within the State unless he is registered as such with the chief of division of banking and insurance. Said chief shall not register any person as a broker or salesman unless said chief shall determine that the character of such person is such that he will conduct the business of broker or salesman without fraud. If demanded by said chief, any person desiring to register as a broker or salesman shall furnish the names of three responsible citizens of Rhode Island who can vouch as to the character of the applicant. If it appears to said chief that any person registered as a broker or salesman is violating any of the provisions of this chapter or is conducting his business as broker or salesman in a fraudulent manner or is violating any of the regulations of said chief, said chief, upon notice to such person, shall cancel such person's registration.

Upon the finding by said chief that a person may act as a broker or salesman within the State, the name of such broker or salesman shall be entered in the register of brokers or salesmen; but the finding of said chief that a person shall not act as a broker or salesman, and that his name shall not be entered in or should be cancelled on the register shall be in the form of an order to that effect. Where the registration of a person as salesman or broker is canceled for cause said chief shall so note upon the register.

Every person applying for registration as a broker or salesman or filing any lists or information or making application to said chief to sell securities, shall file with said chief his permanent mailing addresses and such changes thereof as may thereafter from time to time occur. Notice from said chief sent by mail in a sealed envelope, postage prepaid, to such person at such address shall be deemed sufficient notice to such person. Said chief shall not suspend or forbid the sale of securities or cancel the registration of any broker or salesman except upon notice to such person given as aforesaid.

Every such broker who is not a resident of this State, shall, at the time of filing his application for registration, also file a written instrument appointing

said chief in his name of office and his successor in office to be the true and lawful attorney of such nonresident broker in and for this State upon whom all lawful process in any action or legal proceeding against said nonresident broker may be served with the same effect as if said nonresident broker were a resident of this State. Said power or attorney shall stipulate and agree on the part of said nonresident broker that any lawful process against said nonresident broker which is served on said attorney shall be of the same legal force and validity as if served on said nonresident broker, and that the authority shall continue in force so long as any liability remains outstanding against said nonresident broker in this State. A copy of such appointment, duly certified by said chief, shall be received in evidence in all courts in this State. Service from such attorney shall be deemed sufficient service upon the principal. Whenever the said chief shall have been duly appointed attorney to receive service of all lawful process for any such broker, said chief shall forthwith forward by mail, postage prepaid, a copy of every process served upon said chief to said broker at his last known post-office address. For each copy of process said chief shall collect to and for the use of the State the sum of \$2, which shall be paid by the plaintiff or moving party at the time of such service, to be recovered by him as part of his taxable costs if he succeeds in his suit or proceeding. The term process when used herein includes any writ, summons, petition, or order whereby any suit, action, or proceeding shall be commenced or any other process, original or mesne, in connection therewith. (Public Laws of Rhode Island, 1935-36, ch. 2339, secs. 5, 6.)

(Memorandum entitled "Statutory Regulation of Investment Counselors—by Research Department, Illinois Legislative Council," is as follows:)

STATUTORY REGULATION OF INVESTMENT COUNSELORS, BY RESEARCH DEPARTMENT,
ILLINOIS LEGISLATIVE COUNCIL, SPRINGFIELD

These reports are intended to provide a factual source of information with regard to problems concerning which the general assembly may be called upon to act. The research department of the legislative council is engaged in objective fact finding under the general supervision of the members of the council, who also serve in the general assembly. Recommendations for the consideration of proposed legislation or particular policies are not made by the research department.

Those who have funds to invest, whether the sums be large or small, face the difficult task of finding trustworthy guides to their investment problems. Some types of investment information have been available for many years, but the growth of investment services generally has been most marked in the period since 1930. This has been explained by one writer who points out that the stock-market collapse of 1929 destroyed what he calls the restful supposition that sound investments could be safely put away and forgotten. The same writer adds that every intelligent investor today knows that insecurity prevails and, accordingly, looks for some leadership in his investment problems.¹ There are a great variety of services to which the investor may turn for advice and leadership.

Giving precise meaning to the term "investment counselor" presents many difficulties, partly because there exist few statutory definitions, partly because the concept of the "profession" is comparatively new, and also because even those who engage in investment counseling have reached no general agreement as to the exact scope of their activities. In the broadest sense, investment counseling is the giving of advice concerning the purchase or sale of securities. This is a service that is rendered to some extent by a great variety of organizations and individuals, including investment houses, brokers, banks, attorneys, journals, and statistical agencies. In a narrower and more idealistic sense, an investment counselor is one who, for a valuable consideration, devotes his time exclusively "to render to clients, on a personal basis, competent, unbiased, and continuous advice regarding the sound management of their investments."²

¹ Frank P. Breckinridge, "Investment Counsel—Faith or Folly," Commerce, October 1936, p. 17.

² Securities and Exchange Commission, Report on Investment Counsel, Investment Management, Investment Supervisory, and Investment Advisory Services (August 17, 1939), p. 28.

While those who regard investment counseling as being of a professional character consider that their activities should be confined to giving specialized advice in individual cases, there are many so-called investment counselors who engage either regularly or incidentally in activities manifestly of a non-professional character. Thus, some counselors give investment advice in conjunction with their activities as brokers or dealers in securities. Other investment counselors publish manuals or periodicals. Still others may also be engaged in real estate management or in any number of different occupations. In ordinary usage the title of investment counselor is applied to individuals who may not even profess to be more than intelligent tipsters as well as to individuals of considerable training and experience who render a service of at least a semi-professional nature.

In form of organization, investment counselors range from a small unit with a single proprietor to a large corporation with several hundred employees and administering funds totaling millions of dollars. Thirty investment counsel firms in Illinois responded to a questionnaire sent by the Federal Securities and Exchange Commission, but this is admittedly not a complete enumeration, and the total number is certainly many times as large. Illinois ranked fourth to New York, California, and Massachusetts in the number of investment counsel firms replying to the questionnaire.

(1) STATE OR FEDERAL REGULATION

A basic assumption in adopting regulation of investment counselors as a public policy would be that the business, or profession, is affected with a degree of public interest adequate to justify reasonable regulation under the State's police power. Because of the dangers to the public from fraudulent or misinformed advice, the courts would quite probably uphold reasonable regulations. This point of view is supported by the existence of some type of regulation in several States. The legality of such regulation could not, however, be definitely established in Illinois unless a statute were enacted and its validity ruled upon by the courts. Accordingly, the major question is first the desirability and legality of regulation generally.

Statutes providing for some measure of regulation regarding investment counselors exist in six States. These States are California, Connecticut, Michigan, New Hampshire, Oklahoma, and Rhode Island. In addition, administrative officers in several other States have attempted regulation of investment counselors under general statutory provisions applying to dealers in securities, although these statutes do not specifically mention investment counselors.

The National Government has not enacted any statute for the regulation of investment counselors. However, the Federal Securities and Exchange Commission has been making a study of investment counsel organizations in connection with a general survey of investment trusts and investment companies. The Commission reports that various persons concede that the problem of investment counselors must be dealt with on a national basis in order to be solved.³

It appears accordingly that question may arise not only as to the desirability of any regulation of investment counselors but also as to the relative merits of Federal and State regulation. This report is concerned solely with possible regulation of investment counselors by the State government of Illinois. Three bills providing for such regulation were introduced during 1939⁴ in the regular session of the Sixty-first General Assembly, but no legislation on the subject was enacted.⁴

Some limited administrative regulation of investment counselors does exist in Illinois. The rules promulgated by the Secretary of State under the securities law provide that all advice given by investment counselors shall be solely on the basis of advantage to the investor, and without regard to possible profits to the counselor through the sale of securities or through handling transactions for the investor. It is further provided that any counselor who in any manner acts as a dealer in securities or in a related capacity must obtain registration under the law. This registration is required of security dealers, brokers, solicitors, agents, and issuers of securities. Registration is not required of investment counselors who merely give advice as to investments without placing contracts for the purchase or sale of securities. The rule on this subject is as follows:

³ Securities and Exchange Commission, Holding Company Act Release No. 1696 (Aug. 23, 1939), p. 7.

⁴ The 3 bills are Senate bills 505, 570, and 601.

"Investment counsel or advice, whether by one specializing solely in rendering investment counsel or advice, or by a dealer or broker, incidental to usual transactions in securities, shall be strictly on the basis of fiduciary relationship between the counselor or advisor and the investor or prospective investor. In no event shall such counsel or advice be influenced or colored by the element of profit or compensation through the sale or trade-out of any security held by the investor. Any advice or counsel given to an investor respecting the position of a security held by such investor must be solely on the basis of interest or pecuniary profit to the investor. Any investment counselor who in any manner whatsoever, either directly or indirectly, places or assists in placing any contract for the purchase or sale of securities is held to be a registrant and must be qualified as provided by the provisions of the Illinois securities law."⁵

The administrative officers who enforce the securities law of Illinois inform us that they doubt whether the rule quoted above has had much effect, and that persons denied registration as brokers and dealers may set themselves up in business as investment counselors. Since the securities department can penalize violations of the rule only by revoking or denying registration, there is no way in which the securities department can enforce the rule against those who do not desire registration. It is thought, however, that the existence of the rule may be of some advantage in furnishing State's attorneys with a possible basis for criminal action charging violations of the securities law. In any event, it appears that no effective regulation of investment counselors now exists in Illinois.

The effectiveness of possible self-regulation of investment counselors by means of national, regional, or State associations of those who engage in this type of enterprise should perhaps be considered in connection with proposals for statutory regulation. Without a doubt, much can be done toward promoting high standards of ethics and qualifications by the device of adopting high standards for membership in voluntary associations and by enforcing such standards. At least two associations exist with this as one of their declared purposes.⁶

Self-regulation of investment counselors through voluntary associations would not, however, solve the problem of regulation. The associations that now exist do not have a membership broad enough to exercise effective control over the general body of investment counselors. Furthermore, the type of investment counselor that resembles a tipster, and against whom the public is in the greatest need of protection, is not likely to conform voluntarily to any code of ethics. Accordingly, it may be concluded that if regulation is thought desirable, such regulation must be entrusted to an agency possessing powers of compulsion.

(2) DEFINITION OF INVESTMENT COUNSELOR

A major problem in considering a regulatory statute would be the need and desirability of defining the application of the law. Careful definition is necessary because those who now call themselves investment counselors might avoid the use of that title if by that means they could escape whatever regulation is provided. A definition might also seem desirable in order to make it clear whether the regulatory measure applies only to investment counselors who give specialized advice concerning particular investments or also to the publishers of factual services who supply statistical and analytical information concerning market developments generally.

The several bills in relation to investment counselors introduced in the last session of the general assembly did not seek to regulate as investment counselors purely informative services, although they did cover services which offered predictions as to market developments. The definitions in the bills were similar, the following definition being taken from senate bill 601:

"'Investment counselor' means any person, firm, or corporation who for compensation or any consideration of value gives or purports to give advice with respect to the advantages or disadvantages of investing in any security as defined by the provisions of the Illinois securities law, or who charges or accepts any consideration or provides therefor, for issuing, publishing, distributing, delivering, mailing, or sending any telegram or telephone message or in any

⁵ Secretary of State, Securities Department, "Rules and Regulations With Reference to Dealing in Securities Under the Illinois Securities Law" (effective December 1, 1938), rule 15.

⁶ These are the Investment Counsel Association of America (formed during 1937), with headquarters in New York City, and the Investment Counsel Association of Southern California.