SECURITIES EXCHANGE BILL OF 1934

APRIL 27, 1934. - Committed to the Committee of the Whole
House on the state of the Union and ordered to be printed

Mr. RAYBURN, from the Committee on Interstate and Foreign Commerce, submitted the following REPORT:

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 9323) to provide for the regulation of securities exchanges and of over-the-counter markets operating in interstate and foreign commerce and through the mails, to prevent inequitable and unfair practices on such exchanges and markets, and for other purposes, report favorably thereon without amendment and recommend that the bill do pass.

I. INTRODUCTORY STATEMENT

THE PRESIDENT'S MESSAGE AND LETTER

On February 9, 1934, the President sent the following message to Congress:

To the Congress:

In my message to you last March proposing legislation for Federal supervision of national traffic in investment securities I said: "This is but one step in our broad purpose of protecting investors and depositors. It should be followed by legislation relating to the better supervision of the purchase and sale of all property dealt with on exchanges."

This Congress has performed a useful service in regulating the investment business on the part of financial houses and in protecting the investing public in its acquisition of securities.

There remains the fact, however, that outside the field of legitimate investment naked speculation has been made far too alluring and far too easy for those who could and for those who could not afford to gamble.

Such speculation has run the scale from the individual who has risked his pay envelop or his meager savings on a margin transaction involving stocks with whose true value he was wholly unfamiliar, to the pool of individuals or corporations with large resources, often not their own, which sought by manipulation to raise or depress market quotations far out of line with reason, all of this resulting in loss to the average investor, who is of necessity personally uninformed.

The exchanges in many parts of the country which deal in securities and commodities conduct, of course, a national business because their customers live in every part of the country. The managers of these exchanges have, it is true, often taken steps to correct certain obvious abuses. We must be certain that abuses are eliminated and to this end a broad policy of national regulation is required.

It is my belief that exchanges for dealing in securities and commodities are necessary and of definite value to our commercial and agricultural life. Nevertheless, it should be our national policy to restrict, as far as possible, the use of these exchanges for purely speculative operations.

I therefore recommend to the Congress the enactment of legislation providing for the regulation by the Federal Government of the operations of exchanges dealing in securities and commodities for the protection of investors, for the safeguarding of values, and, so far as it may be possible, for the elimination of unnecessary, unwise, and destructive speculation.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE, *February 9, 1934.*

On March 26, 1934, the President sent the following letter to the chairman of this committee:

THE WHITE HOUSE, *Washington, March 26, 1934.*

Hon. SAM RAYBURN, *Chairman Interstate and Foreign Commerce, House of Representatives.*

MY DEAR MR. CHAIRMAN: Before I leave Washington for a few days holiday, I want to write you about a matter which gives me some concern.

On February 9, 1934, I sent to the Congress a special message asking for Federal supervision of national traffic in securities.

It has come to my attention that a more definite and more highly organized drive is being made against effective legislation to this end than against any similar recommendation made by me during the past year. Letters and telegrams bearing all the earmarks of origin at some common source are pouring in to the White House and the Congress.

The people of this country are, in overwhelming majority, fully aware of the fact that unregulated speculation in securities and in commodities was one of the most important contributing factors in the artificial and unwarranted "boom" which had so much to do with the terrible conditions of the years following 1929.

I have been definitely committed to definite regulation of exchanges which deal in securities and commodities. In my message I stated, "it should be our national policy to restrict, as far as possible, the use of these exchanges for purely speculative operations."

I am certain that the country as a whole will not be satisfied with legislation unless such legislation has teeth in it. The two principal objectives are, as I see it -

First, the requirement of what is known as margins so high that speculation, even as it exists today, will of necessity be drastically curtailed; and

Second, that the Government be given such definite powers of supervision over exchanges that the Government itself will be able to correct abuses which may arise in the future.

We must, of course, prevent insofar as possible manipulation of prices to the detriment of actual investors, but at the same time we must eliminate unnecessary, unwise, and destructive speculation.

The bill, as shown to me this afternoon by Senator Fletcher, seems to meet the minimum requirements. I do not see how any of us could afford to have it weakened in any shape, manner, or form.

Very sincerely,

FRANKLIN D. ROOSEVELT.

THE GENERAL PURPOSES OF THE BILL

To reach the causes of the "unnecessary, unwise, and destructive speculation" condemned by the President's message, this bill seeks to regulate the stock exchanges and the relationships of the investing public to corporations which invite public investment by listing on such exchanges.

The bill is conceived in a spirit of the truest conservatism. It attempts to change the practices of exchanges and the relationships between listed corporations and the investing public to fit modern conditions, for the very purpose that they may endure as essential elements of our economic system. The lesson of 1921-29 is that without changes they cannot endure.

The bill is not a moral pose or a vengeful striking back at brokers for the losses which nearly the entire Nation has suffered in the last 5 years. Nor is its purpose or effect to regiment business in any way. It is simply an earnest attempt to make belated intelligent adjustments, long required by changing conditions, in a faulty system of distributing shares in corporate enterprise among the public - a system which from the coldly objective viewpoint of the welfare of a conservative public simply has not worked. The out-of-date unsuitability to post-war conditions of a whole series of economic interrelationships of which the stock exchanges are the nerve center has uncontrollably accentuated natural moderate fluctuations of our economic system into mad booms and terrible depressions. And such booms and depressions constitute a more real danger to the stability of a moderate, honest, individualistic state than all the unsound theories in the world. This bill seeks to save, not destroy, stock markets and business, by making necessary changes in time.

The fundamental fact behind the necessity for this bill is that the leaders of private business, whether because of inertia, pressure of vested interests, lack of organization, or otherwise, have not since the war been able to act to protect themselves by compelling a continuous and orderly program of change in methods and standards of doing business to match the degree to which the economic system has itself been constantly changing - changing in the proportion of the wealth of the Nation invested in liquid

corporate securities traded in on the stock exchanges, changing in the relationship of the distribution of securities and the trading in securities to the balanced utilization of the Nation's credit resources in the financing of agriculture, commerce, and industry. The repetition in the summer of 1933 of the blindness and abuses of 1929 has convinced a patient public that enlightened self-interest in private leadership is not sufficiently powerful to effect the necessary changes alone - that private leadership seeking to make changes must be given Government help and protection.

Since the war the interest of the public at large in the ownership of corporate enterprise has grown bigger, the size of the corporate unit has increased, the diffusion of corporate ownership has widened, all correlatively. Not only is nearly one half of the entire national wealth of the country represented by corporate stocks and corporate and Government bonds, but nearly one half of that corporate wealth is vested in the 200 largest nonbanking corporations which, piercing the thin veil of the holding company and disregarding a relatively few notable exceptions, are owned in each case by thousands of investors and are controlled by those owning only a very small proportion of the corporate stock. Ownership and control are in most cases largely divorced. It is estimated that more than 10,000,000 individual men and women in the United States are the direct possessors of stocks and bonds; that over one fifth of all the corporate stock outstanding in the country is held by individuals with net incomes of less than $5,000 a year. Over 15,000,000 individuals held insurance policies, the value of which is dependent upon the security holdings of insurance companies. Over 13,000,000 men and women have savings accounts in mutual savings banks and at least 25,000,000 have deposits in national and State banks and trust companies - which are in turn large holders of corporate stocks and bonds.

With this growth in security ownership by the public, the security markets have grown proportionately in importance. Two hundred and thirty-seven million corporate shares were sold on the New York Stock Exchange in 1923; despite the depression 654,000,000 shares were sold in 1933.

With such concentration of national wealth in the form of liquid corporate securities the economic machinery of the whole country is now affected by, and is organized primarily to serve, security markets which are as sensitive as a hair trigger. A magnificently organized lending machinery which operates by wire, can, with an offer of call-loan safety and 1 percent higher interest, draw funds from local banks which would otherwise seek moderate investment in local business enterprise, to finance the pool of a far-away metropolitan speculator distributing through the stock exchanges the securities of a huge corporate merger designed ultimately to swallow and destroy local enterprise. And there is a demonstrable direct relationship between easy credit for the purchase of new securities in the stock market and the trend toward industrial monopolies so accentuated since the war.

A rise in the security markets stimulates economic activity in all lines of business, a fall in the market precipitates a decline. If the rise in the market is occasioned by an excessive use of credit, a decline in the market loosens a process of deflation which

feeds on itself and ruins not only security prices but all business as well. Between 1922 and 1929 brokers' loans increased from 1 1/2 billion dollars to 8 1/2 billion dollars. Five billion dollars of this increase took place in 3 years, 1 1/2 billion dollars in the last 3 months. In the crash of 1929 the same loans declined 3 billion dollars in the first 10 days and 8 billion dollars in the next 3 years. These figures alone will enable the economic historian of the future to describe the unhealthy prosperity of 1929 and the inevitable grief and suffering that followed in the succeeding years - grief and suffering that overwhelmed and carried away not merely the speculative gains of those who participated in the speculative debauch, not merely the savings of the most frugal and most thrifty invested in securities, but eventually the operating profits of every business in the country no matter how unrelated to stock exchanges.

All through these years the machinery of the stock exchanges and of corporate management have only grown bigger without growing different. But this significant growth in size and importance of the exchanges and the business they do with the public has necessitated a real difference in kind in the treatment of that public by the law and by business ethics. Stock exchanges which handle the distribution and trading of a very substantial part of the entire national wealth and which have developed a technique of sucking funds from every corner of the country cannot operate under the same traditions and practices as pre-war stock exchanges which handled substantially only the transactions of professional investors and speculators. And standards of corporate management adequate to inspire investor confidence in the "caveat stockholder" era of closely held stock-holder-managed companies cannot be stably perpetuated in an era where one company boasts over 700,000 stockholders, and 200 corporations control one half the corporate wealth of the country.

If investor confidence is to come back to the benefit of exchanges and corporations alike, the law must advance. As a complex society so diffuses and differentiates the financial interests of the ordinary citizen that he has to trust others and cannot personally watch the managers of all his interests as one horse trader watches another, it becomes a condition of the very stability of that society that its rules of law and of business practice recognize and protect that ordinary citizen's dependent position. Unless constant extension of the legal conception of a fiduciary relationship - a guarantee of "straight shooting" - supports the constant extension of mutual confidence which is the foundation of a maturing and complicated economic system, easy liquidity of the resources in which wealth is invested is a danger rather than a prop to the stability of that system. When everything everyone owns can be sold at once, there must be confidence not to sell. Just in proportion as it becomes more liquid and complicated, an economic system must become more moderate, more honest, and more justifiably self-trusting.

When corporations were small, when their managers were intimately acquainted with their owners and when the interests of management and ownership were substantially identical, conditions did not require the regulation of security markers. Even those who in former days managed great corporations were by reason of their personal contacts with their shareholders constantly aware of their responsibilities.

But as management became divorced from ownership and came under the control of banking groups, men forgot that they were dealing with the savings of men and the making of profits became an impersonal thing. When men do not know the victims of their aggression they are not always conscious of their wrongs. President Wilson showed a keen prophetic sense when he stated:

Society cannot afford to have individuals wield the power of thousands without personal responsibility. It cannot afford to let its strongest men be the only men who are inaccessible to the law. Modern democratic society, in particular, cannot afford to constitute its economic undertakings upon the monarchial or aristrocratic principle and adopt the fiction that the kings and great men thus set up can do no wrong which will make them personally amenable to the law which restrains smaller men; that their kingdom, not themselves, must suffer for their blindness, their follies, and their transgressions of right.

II. GENERAL ANALYSIS OF THE BILL

ITS SCOPE AND CONSTITUTIONALITY

The causes of dangerous speculation in the securities markets go far deeper than defects and abuses in stock-exchange machinery alone. They include inadequate central control of a national credit system that too easily provides for speculation funds which the national welfare much more requires in local commerce, industry, and agriculture. They include inadequate corporate reporting which keeps in ignorance of necessary factors for intelligent judgment of the values of securities a public continually solicited to buy such securities by the sheer advertising value of listing. They include exploitation of that ignorance by self-perpetuating managements in possession of inside information. Speculation, manipulation, faulty credit control, investors' ignorance, and disregard of trust relationships by those whom the law should regard as fiduciaries, are all a single seamless web. No one of these evils can be isolated for cure of itself alone. A stock-market pool, for instance, is only an effect and not a cause; the manipulator, a shell-game artist who can live only by following the county fair of too easy credit and ignorance.

A bill seeking effectively to control and regulate the securities markets therefore necessarily covers a wide filed - necessarily touches more than a few willful speculators of Wall Street, necessarily calls for the cooperation of the widespread economic interests which the securities market affects. Business which was engulfed and nearly destroyed by the speculations of 1929 has its contribution to make in the form of fair and informing reports. Banks whose assets were carried away in loans based upon values inflated by reckless speculation must co-operate in permitting coordinated control of the delicate credit system which has been left to their management despite the fact that the Nation has had to expend billions of dollars to insure their solvency.

The factual situation which makes the legislation necessary is set forth in section 2. These recitals of fact: the use of the security markets as interstate markets in which ownership passes from residents of one State to those of another; the constant use of

the postal facilities for the conduct of these markets; the abundant use of the credit facilities of national banks and of member banks of the Federal Reserve System; the effect of security prices upon transactions in interstate commerce, upon bank loans, upon taxes and upon credit available for trade, transportation, and industry - are common knowledge not only among economists but among bankers and business men everywhere. This legislation is not an attempt to reach out and correct the morals of the citizens of any one State; it is an attempt to deal with very vital economic problems going to the root of the functioning of our national credit system.

The constitutional significance of the wide delegation of powers to the Federal Reserve Board and to the Federal Trade Commission, which would administer the act, has been considered with particular care - and the delegation made only with the indication of such maximum standards for discretion as, in the considered judgment of the Committee, the technical character of the problems to be dealt with would permit. The bill legislates specifically just as far as the Committee feels it can. The original bill submitted to the Committee dealt very specifically and definitely with a number of admitted abuses. In many cases, however, the argument was made that while the solutions offered might be correct, their effects were so far-reaching as to make it inadvisable to put these solutions in the form of statutory enactments that could not be changed in case of need without Congressional action. Representatives of the stock exchanges constantly urged a greater degree of flexibility in the statute and insisted that the complicated nature of the problems justified leaving much greater latitude of discretion with the administrative agencies than would otherwise be the case. It is for that reason that the bill in dealing with a number of difficult problems singles out these problems as matters appropriate to be subject to restrictive rules and regulations, but leaves to the administrative agencies the determination of the most appropriate form of rule or regulation to be enforced. In a field where practices constantly vary and where practices legitimate for some purposes may be turned to illegitimate and fraudulent means, broad discretionary powers in the administrative agency have been found practically essential, despite the desire of the Committee to limit the discretion of the administrative agencies so far as compatible with workable legislation. It has been represented that the pleas of the representatives of the stock exchanges for the vesting of broad discretionary powers in the administrative agencies have been made with a view to subjecting the bill to constitutional attack at a later date. The Committee has, however, taken the pleas in good faith believing that the nature of the legislation is such as to justify within constitutional limitations that measure of flexibility required in dealing with so intricate a subject matter. A

ORGANIZATION OF BILL

The chief provisions of the bill may be grouped under six headings: *(a)* control of credits; *(b)* control of manipulative practices; *(c)* provision of adequate and honest reports to securities holders by registered corporations; *(d)* control of unfair practices of corporate insiders; *(e)* control of exchanges and over-the-counter markets; *(f)* administration.

CONTROL OF CREDITS

The underlying theory of the bill with respect to control of credit is as follows:

(1) Without adequate control the too strong attraction of a speculative stock market for credit prevents a balanced utilization of the Nation's credit resources in commerce, industry, and agriculture;

(2) To effect such better balance, all speculative credit should be subjected to the central control of the Federal Reserve Board as the most experienced and best equipped credit agency of the Government.

(3) To achieve that control the Federal Reserve Board should be vested with the most effectual and direct power over speculative credit, i.e., the power to control margins on the actual ultimate speculative loans themselves.

(4) Both for the direction and the protection of the Federal Reserve Board in the administration of flexible powers, Congress should offer the Board some definite margin standard to indicate the judgment of Congress that the amount of credit previously routed through the stock markets has been excessive and to indicate the approximate proportion in which such amount should be reduced.

To accomplish these purposes, sections 6 and 7 of the bill gives the Federal Reserve Board power to control speculative credit. The problem of control has been approached from several directions because of the certainty that no purpose of the bill will be more tempting to evasion. Borrowings by brokers to finance their customers are confined to borrowings from or through member banks of the Federal Reserve System or those nonmember banks which apply for a license from the Board. With respect to loans to the ultimate speculating customer, the Board is substantially given power by rules and regulations to fix margins on *(a)* all loans on securities from brokers to customers, and *(b)* loans from banks and others to customers made on equity securities and to carry or purchase securities. For the purposes of guiding and protecting the Board from undue speculative pressure in the exercise of its discretion, the bill includes as a standard for the rules and regulations of the Board a limitation of credit on the initial granting of loans to 55 percent of the current market price of the securities offered as collateral, or 100 percent of the lowest market price of the preceding 3 years, whichever is the greater.

To avoid any conceivable deflationary effects upon presently existing loans on securities, all such loans, and renewals and extensions thereof, are exempt from the application of section 6 until January 1, 1939.

The main purpose of these margin provisions in section 6 is not to increase the safety of security loans for lenders. Banks and brokers normally require sufficient collateral to make themselves safe without the help of law. Nor is the main purpose even protection of the small speculator by making it impossible for him to spread himself too thinly - although such a result will be achieved as a byproduct of the main purpose.

The main purpose is to give a Government credit agency an effective method of reducing the aggregate amount of the nation's credit resources which can be directed by speculation into the stock market and out of other more desirable uses of commerce and industry - to prevent a recurrence of the pre-crash situation where funds which would otherwise have been available at normal interest rates for uses of local commerce, industry, and agriculture, were drained by far higher rates into security loans and the New York call market. Increasing margins - i.e., decreasing the amounts which brokers or banks may lend for the speculative purchase and carrying of stocks - is the most direct and the most effective method of discouraging an abnormal attraction of funds into the stock market.

When margins are discussed with this main purpose in mind differences between the collateral value of gilt-edged bonds and speculative stocks, the credit-worthiness of particular borrowers and similar considerations which have been urged as reasons why each loan should be treated as a particular problem in itself - considerations which affect not a general national credit policy, but only the safety of a particular stock transaction from the standpoint of a particular lender and particular borrower - are unimportant.

Section 6 empowers the Federal Reserve Board to prescribe margins for both brokers and banks on securities registered on exchanges licensed under the bill (hereinafter referred to as registered securities) - both for the initial opening and for the maintenance or carrying of accounts. The Board is given complete legal authority to fix margins at any point. But a standard is included in the bill as an indication by Congress to the Board that from the standpoint of a general policy of utilization of national credit resources, the Board should control the credit available to the stock market to an amount roughly corresponding to such standard.

To protect margin requirements from evasion brokers may lend only on listed securities excepting exempted securities. Banks are subject to margin limitations only on loans on registered equity securities in cases where the loan is sought for the purpose of purchasing or carrying securities. The Board is not required to fix the same margins for banks as for brokers and is given a free hand in fixing margins for maintenance as distinguished from margins for the initial opening of accounts.

It has seemed necessary to empower the Board to fix margins for banks as well as for brokers *(a)* to prevent evasion of restrictions on brokers' margins through loans by banks; *(b)* to increase the powers of the Board over speculative loans by its member banks; and *(c)* to give the Board an effective power (it has no powers at present) over speculative loans by nonmember banks.

The margin standard in Section 6 has been expressed as a percentage of market value which may be lent upon securities rather than of the amount which the customer is required to deposit at the time of his purchase. The basic loan value provided by the standard for the initial opening of an account is 55 percent of market value of the securities lent upon, i.e., from the standpoint of what the customer must "put up", a 45-percent margin. This standard is not indicated for the purposes of maintenance of

the account. The 55-percent loan value indicated would govern in the long run of a rising market. But to afford easier margins for the present market and for a possible future declining market a more favorable alternative standard is indicated in Section 6 *(a)* (2), which, by the finding of Standard Statistics Service, would operate to permit, at the present time, an average initial loan value of 65 1/2 percent of market value on the stocks now listed on the New York Stock Exchange, or, from the customer's point of view, a margin of only 34 1/2 percent.

Under this alternative standard, the margin is only 25 percent in the case of a security that is selling at not more than 33 1/3 percent above its 3-year low. As the security increases in price the margin required gradually increases proportionately until, when the security has reached a price that is more than 80 percent above its 3-year low, a margin of 45 percent is required. This flexible margin standard permits a relatively low margin in the case of stable securities such as bonds, while it requires a higher margin in the case of volatile securities after they have risen substantially in market price. Since the margin increases as the price of the security rises, pyramiding on paper profits is made difficult.

Section 6 seems to furnish a very practical program of controlling the volume of stock-market credit, since it embodies a combination of a basic formula, initially setting minimum margins, with a more general discretionary administrative control, which should be based on the total amount of credit outstanding, the level of stock prices, the phase of the business and financial cycle, and so forth. Between the time when changes are made by the Federal Reserve Board, margin requirements would be automatically raised or lowered by the movements of stock prices. Such a self-adjusting mechanism would probably function better, in actual practice, than any system wherein margin requirements are changed only by deliberate action of the Board and remain unadjusted except when the Board takes such action.

The 55-percent standard expressed in the statute is, however, so deliberately overlenient for the purpose of encouraging the markets at this particular point in the recovery program, that the Board in exercising its discretion would be expected to lower this 55-percent figure considerably after the market reaches more normal levels.

CONTROL OF MANIPULATIVE PRACTICES

To insure to the multitude of investors the maintenance of fair and honest markets, manipulative practices of all kinds on national exchanges are banned. The bill seeks to give to investors markets where prices may be established by the free and honest balancing of investment demand with investment supply. Investors are free to buy and sell virtually without restraint. But wash sales and matched orders and other devices designed to create a misleading appearance of activity with a view to enticing the unwary into the market on the hope of quick gains are definitely prohibited. False and misleading statements designed to induce investors to buy when they should sell and to sell when they should buy are also outlawed and penalized.

But the most subtle manipulating device employed in the security markets is not simply the crude form of a wash sale or a matched order. It is the conscious marking up of prices to make investors believe that there is a constantly increasing demand for stocks at higher prices, or the conscious marking down of stocks to make investors believe that an increasing number of investors are selling as prices recede. Legitimate investors desire to buy at as low a price as possible and to sell at as high a price as possible, and honest markets are made by the balancing of investment demand and investment supply.

The provisions concerning manipulative practices have been drawn in light of the results of the recent investigation conducted by the Senate Committee on Banking and Currency. Despite all the talk of good pools and bad pools, no evidence has been submitted to this Committee that would justify the recognition of a good stock-market pool. As the Twentieth Century Fund in its recent report on "Stockmarket Control" states -

As a matter of fact, any pool which seeks to bring about a change in the price of a security through manipulation is "illegitimate" according to our definition, inasmuch as it thereby lessens the efficiency of an exchange in the performance of those functions which, as we indicated, are the only justification for its existence.

If the pool to "rig" or "jiggle" the market is wrong, it necessarily follows that the market must be purged of reports about activities for the "rise" or operations for the "decline." If brokers and other interested persons are permitted to spread through brokerage and publicity channels constant reports regarding such activities, it is doubtful whether stimulated activity would not accomplish much the same effect as is accomplished by the direct mark-up or markdown prices by the pool. For that reason the circulation of reports of market operations conducted for a rise or for a decline is prohibited.

The evidence as to the value of pegging and stabilizing operations, particularly in relation to new issues, is far from conclusive. While abuses are undoubtedly associated with such manipulation, because of the desire of the Committee to proceed cautiously such operations have not been forbidden altogether, but have been subjected to such control as the administrative commission may find necessary in the public interest or for the protection of investors.

The granting of options to pools and syndictes has been found to be at the bottom of most manipulative operations, because the granting of these options permits large-scale manipulations to be conducted with a minimum of financial risk to the manipulators. The bill, therefore, gives the administrative commission power to regulate dealing in options or trading in options. The connection of pool activity with the option has recently been recognized in the rules of the New [*] [*] [*] [*it is not always easy to trace and prove manipulative [*] [*necessary to rid the market of devices which commonly accompany or cloak these activities. Short selling and stop-loss orders, which have been the source of much abuse, are brought within the regulatory power of the administrative commission.

There is plenty of room for legitimate speculation in the balancing of investment demand and supply, in the shrewd prognostication of future trends and economic directions; but the accentuation of temporary fluctuations and the deliberate introduction of a mob psychology into the speculative markets by the fanfare of organized manipulation menace the true functioning of the exchanges, upon which the economic well-being of the whole country depends.

To make effective the prohibitions against manipulation civil redress is given to those able to prove actual damages from any of the prohibited practices.

PROVISION OF ADEQUATE AND HONEST REPORTS TO SECURITIES HOLDERS BY REGISTERED CORPORATIONS

No investor, no speculator, can safely buy and sell securities upon the exchanges without having an intelligent basis for forming his judgment as to the value of the securities he buys or sells. The idea of a free and open public market is built upon the theory that competing judgments of buyers and sellers as to the fair price of a security brings about a situation where the market price reflects as nearly as possible a just price. Just as artificial manipulation tends to upset the true function of an open market, so the hiding and secreting of important information obstructs the operation of the markets as indices of real value. There cannot be honest markets without honest publicity. Manipulation and dishonest practices of the market place thrive upon mystery and secrecy. The disclosure of information materially important to investors may not instantaneously be reflected in market value, but despite the intricacies of security values truth does find relatively quick acceptance on the market. That is why in many cases it is so carefully guarded. Delayed, inaccurate, and misleading reports are the tools of the unconscionable market operator and the recreant corporate official who speculate on inside information. Despite the tug of conflicting interests and the influence of powerful groups, responsible officials of the leading exchanges have unqualifiedly recognized in theory at least the vital importance of true and accurate corporate reporting as an essential cog in the proper functioning of the public exchanges. Their efforts to bring about more adequate and prompt publicity have been handicapped by the lack of legal power and by the failure of certain banking and business groups to appreciate that a business that gathers its capital from the investing public has not the same right to secrecy as a small privately owned and managed business. It is only a few decades since men believed that the disclosure of a balance sheet was a disclosure of a trade secret. Today few people would admit the right of any company to solicit public funds without the disclosure of a balance sheet.

The need of proper and adequate reporting as an adjunct of the proper functioning of the exchanges has been expressed by the realistic and responsible Executive Assistant of the Committee on Stock List of the New York Stock Exchange:

It has been said a hundred times that accounting is a matter of conventions, and it is questionable whether these conventions have kept pace with the changes in modern business conditions. As the art stands today, it appears to the business man to have evolved with primary emphasis upon two objects:

(a) To give to management that accurate information and aid which is essential to the successful conduct of a business, and *(b)* to give to actual and prospective creditors that accurate information essential to the determination of the volume of credit which may safely be extended and the conditions under which it may be allowed.

Under conditions of ownership where the number of partners or stockholders was small, where enterprises were largely managed by their owners, or by the personally chosen representatives of a few owners in close contact with the business, and where it was the custom to finance permanently but little beyond minimum needs and to borrow largely to meet peak needs, accounting adequately performing these two functions probably sufficiently served the needs of the then situation. In the meantime the widespread diffusion of corporate ownership, with which we are all familiar, has occurred. There are few large enterprises which have not taken on the corporate form and a large proportion of the total ownership is in the hands of millions of relatively small investors who have no direct contact with management and whose only knowledge of the company is derived from its financial reports. In recent years there has been a marked tendency to finance more or less permanently for peak requirements, becoming lenders of money at the time of minimum requirements, and so tending to lessen the aggregate volume of bank credit needed.

Because of these changes, coupled with a growing tendency toward extreme broadness and flexibility in the corporation laws of many States, the time appears to have arrived for some changes of emphasis as to the objects to be achieved by sound accounting practice. While there have been able efforts devoted toward this end, the result so far generally attained does not seem to me sufficient to meet the needs. The need of accurate information for the aid of management is still paramount; but, under conditions of today, the next object in order of importance has become "to give to stockholders, in understandable form, such information in regard to the business as will avoid misleading them in any respect and as will put them in possession of all information needed, and which can be supplied in financial statements, to determine the true value of their investments."

This is, of course, the object in which the stock exchange is particularly interested. The primary object of the exchange is to afford facilities for trading in securities under the safest and fairest conditions attainable. In order that parties may trade on even terms they should have, as far as is practicable, the same opportunities for knowledge in regard to the subject matter of the trade.

The exchange is interested in the accounts of companies as a source of reliable information for those who deal in stocks. It is not sufficient for the stock exchange that the accounts should be in conformity with law or even that they should be conservative; the stock exchange desires that they should be fully and fairly informative.

The president of the New York Stock Exchange has effectively answered those who contend that such publicity will give advantage to competitors:

The public, today, insists upon more complete and accurate financial statements from publicly owned companies and I am sure that the officials and directors of these corporations, realizing the reasonableness of this demand, will furnish investors with adequate information. There have not been many instances where the failure to give complete information was due to a desire on the part of directors or officers to secure unfair personal advantage. However, many company officials did not publish complete financial statements because they were afraid that the disclosure of too much information would put their companies at a disadvantage in meeting competition, not only from other American corporations, but frequently from foreign companies engaged in the same line of business. Thi fear, though genuine, has in large measure proved to be unfounded.

The reporting provisions of the proposed legislation are a very modest beginning to afford that long-denied aid to the exchanges in the way of securing proper information for the investor. The provisions carefully guard against the disclosure of trade secrets or processes. But the idea that a fair report of corporate assets and profits give unfair advantage to competitors is no longer seriously entertained by any modern business man. The realistic corporate executive knows that his alert competitors have a pretty good notion of what his business is and if he is unable to compete with them it is because he is hopelessly behind in the keen competitive struggle. The reporting provisions of the legislation have been approved by such conservative investment services as Moody's and Standard Statistics and, despite the wild fears spread throughout the country by powerful lobbyists against this bill, intelligent business men recognize that general knowledge of business facts will only help and cannot hurt them. The possession of these facts has for a number of years been the exclusive perquisite of powerful banking and industrial groups. Making these facts generally available will be of material benefit and guidance to business as a whole.

CONTROL OF UNFAIR PRACTICES BY CORPORATE INSIDERS

A renewal of investors' confidence in the exchange markets can be effected only by a clearer recognition upon the part of the corporate managers of companies whose securities are publicly held of their responsibilities as trustees for their corporations. Men charged with the administration of other people's money must not use inside information for their own advantage. Because it is difficult to draw a clear line as a matter of law between truly inside information and information generally known by the better-informed investors, the most potent weapon against the abuse of inside information is full and prompt publicity. For that reason, this bill requires the disclosure of the corporate holdings of officers and directors and stock-holders owning more than 5 percent of any class of stock, and prompt disclosure of any changes that occur in their corporate holdings. Short selling and selling against the box by insiders are prohibited. These provisions have been called the "anti-Wiggin provisions" of the bill. The Committee is aware that these requirements are not air-tight and that the unscrupulous insider may still, within the law, use inside information for his own advantage. It is hoped, however, that the publicity features of the bill will tend to bring these practices into disrepute and encourage the voluntary maintenance of proper fiduciary standards

by those in control of large corporate enterprises whose securities are registered on the public exchanges.

Fair corporate suffrage is an important right that should attach to every equity security bought on a public exchange. Managements of properties owned by the investing public should not be permitted to perpetuate themselves by the misuse of corporate proxies. Insiders having little or no substantial interest in the properties they manage have often retained their control without an adequate disclosure of their interest and without an adequate explanation of the management policies they intend to pursue. Insiders have at times solicited proxies without fairly informing the stockholders of the purposes for which the proxies are to be used and have used such proxies to take from the stockholders for their own selfish advantage valuable property rights. Inasmuch as only the exchanges make it possible for securities to be widely distributed among the investing public, it follows as a corollary that the use of the exchanges should involve a corresponding duty of according to shareholders fair suffrage. For this reason the proposed bill gives the Federal Trade Commission power to control the conditions under which proxies may be solicited with a view to preventing the recurrence of abuses which have frustrated the free exercise of the voting rights of stockholders.

CONTROL OF THE EXCHANGES AND OVER-THE-COUNTER MARKETS

The importance of the actual workings of the exchanges themselves' although great, should not be exaggerated. The stronger and more subtle economic forces affecting speculation come from without the exchanges. But as this speculation converges upon the exchanges, the control of the exchange mechanism is a necessary part of any effective regulation. It is for that reason that the bill gives the Federal Trade Commission broad powers over the exchanges to insure their efficient and honest functioning. Theoretically floor trading has been assumed to be of value in stabilizing prices and preventing undue fluctuations. The studies conducted by the special counsel for the Senate Committee on Banking and Currency have thrown considerable doubt upon the value of floor trading. The large floor traders seldom stem the tide but run with it. Their activity tends to accentuate the moves of the market and to stimulate undue speculation. The importance of active, constant trading can readily be exaggerated. A relatively stable market over a period is of much greater importance to investors than a fictitiously stable market that involves no more than one eighth of a point spread between sales but results in wide fluctuations over days or weeks. The market's liquidity depends upon its relative stability and not upon the spreads between momentary sales. To prevent the artificial stimulation of the market that comes from excessive speculative trading unrelated to investment, the Commission is given power to regulate and, if need be, prevent floor trading. The Commission is further given power to prevent excessive trading by members off the floor who at times are tempted to stimulate the market by numerous in and out transactions which cost them nothing more than the nominal commissions paid to the $2 brokers.

No issue has been more disputed than that centering about the functions of the specialist. There are many who believe that the exchange mechanism would function better without the specialist, that the work done by the specialist could be done more effectively by a clerk or official of the exchange clearing the orders in a purely mechanical way, much as they are cleared today on the New York Stock Exchange in the "bond crowd." There are others who believe that a specialist should be obliged to act either as a dealer or as a broker and should not be permitted to combine the functions of dealer and broker. The jobber on the London Stock Exchange is essentially a dealer-specialist who deals only with other jobbers and with brokers, and does not act as a broker himself or deal with the public directly. It is generally admitted that there are serious abuses in connection with the work of specialists. The New York Stock Exchange tightened its rules in regard to specialists on the very eve of the hearings held by the Committee. It is true that some of the worst evils associated with the specialist have centered around their participation in pools, but there are inherent difficulties in the situation where under normal circumstances the available orders are known to the specialist only - and perhaps his favored friends - and not to everyone dealing in the security involved. Inasmuch as the stock exchanges objected to the laying down of any statutory rule governing specialists, their suggestion has been adopted of giving the Commission effective power to control the activities of specialists and to experiment with various devices of control.

Another perplexing problem in regard to the working of the exchanges has been that centering about the dealer-broker relationship. There is an inherent inconsistency in a man's acting both as a broker and a dealer. It is difficult to serve two masters. And it is particularly difficult to give impartial advice to a client if the dealer-broker has his own securities to sell, particularly when they are new securities for which there is no ready market. The combination of the functions of dealer and broker has persisted over a long period of time in American investment banking and it was found difficult to break up this relationship at a time when the dealer business was in the doldrums and when it was feared that the bulk of the dealer-brokers would, if compelled to choose, give up their dealer business and leave, temporarily at least, an impaired mechanism for the distribution of new securities. Consequently it was deemed impracticable at this time to do more than require the dealer-broker to disclose to his customer the capacity in which he was acting and to refrain from taking into margin accounts new securities in the distribution of which he had participated during the preceding 6 months.

The bill proceeds on the theory that the exchanges are public institutions which the public is invited to use for the purchase and sale of securities listed thereon, and are not private clubs to be conducted only in accordance with the interests of their members. The great exchanges of this country upon which millions of dollars of securities are sold are affected with a public interest in the same degree as any other great utility. The Commission is empowered, if the rules of the exchange in any important matter are not appropriate for the protection of investors or appropriate to insure fair dealing, to order such changes in the rules after due notice and hearings as it may

deem necessary. The exchanges may alter their rules if more effective means are discovered to meet the same or new problems. Although a wide measure of initiative and responsibility is left with the exchanges, reserved control is in the Commission if the exchanges do not meet their responsibility. It is hoped that the effect of the bill will be to give to the well-managed exchanges that power necessary to enable them to effect themselves needed reforms and that the occasion for direct action by the Commission will not arise.

The committee has been convinced that effective regulation of the exchanges requires as a corollary a measure of control over the over-the-counter markets. The problem is clearly put in the recent report of the Twentieth Century Fund on "Stock Market Control":

The benefits that would accrue as the result of raising the standards of security exchanges might be nullified if the over-the-counter markets were left unregulated and uncontrolled. They are of vast proportions and they would serve as a refuge for any business that might seek to escape the discipline of the exchanges; and the more exacting that discipline, the greater the temptation to escape from it. Over-the-counter markets offer facilities that are useful under certain conditions, but they should not be permitted to expand beyond their proper sphere and compete with the exchanges for business that, from the point of view of public interest, should be confined to the organized markets. This constitutes the sanction for Federal regulation of over-the-counter dealers and brokers. To leave the over-the-counter markets out of a regulatory system would be to destroy the effects of regulating the organized exchanges.

ADMINISTRATION

The bill places the administration of the legislation, apart from credit phases, in the Federal Trade Commission. It provides, however, for the enlargement of that Commission by two members and the creation within it of a special division which will administer both this bill and the Securities Act of 1933. Unquestionably these two measures are so closely related that they should be administered by the same body, and unquestionably if no new commission were to be appointed that administration should be lodged in the Federal Trade Commission, which has so ably organized the administration of the Securities Act of 1933.

Insofar as the proposals of the stock exchanges suggest a separate stock-exchange authority, it should be kept in mind that the name by which the body administering the act is known is not important. The legislative essentials are the same whether the body is called an authority or a board or a Federal commission. Those essentials are how much power the administrative body shall have and whether it shall be made up entirely of representatives of none but the public interest, or of "expert" representatives, as such, of stock exchanges and of other distinct classes in the community.

Insofar as "experts" are concerned, it is a commonplace of administrative statesmanship that boards of men who are experts in details rarely agree among themselves, and in their very expertness with the trees seldom perceive the woods of broad

public policy. The well-learned lesson of democratic government with "experts" is that they should be kept on tap but not on top.

Insofar as making up a permanent Government regulatory body from representatives of special vested interests is concerned, it has been long ago learned that no harmony of policy can result from a regulatory body packed with advocates of warring interests, and that the inevitable result of placing on a regulatory authority able advocates who have at heart the definite interest of a particular class which will profit by the least possible regulation is stultification of the regulation.

III. ANALYSIS OF THE BILL BY SECTIONS

SECTION 1. SHORT TITLE

This section provides that the act may be cited as the "National Securities Exchange Act of 1934".

SECTION 2. THE NECESSITY FOR REGULATION AS PROVIDED IN THIS ACT

The purpose of this section is to indicate the facts which give rise to the necessity for the legislation and justify the exercise of congressional power. The evidence submitted to the committee, together with that produced before the Senate Banking and Currency Committee during its recent extensive investigation and facts that have become common knowledge during the national economic crisis of the past few years, abundantly justify the findings recited in this section.

SECTION 3. DEFINITIONS AND APPLICATION OF ACT

(a) This subsection defines the terms used in the act. Most of these definitions are self-explanatory. Banks are expressly exempted from the definitions of "broker" and "dealer." The definition of "bank" in paragraph (6) includes banks organized under the laws of the United States, members of the Federal Reserve System, and any other bank performing the normal functions of receiving deposits or exercising fiduciary powers and which is subject to supervision and examination by State or Federal authorities. In paragraph (10) the words "oil, gas, or other" have been stricken out of that part of the definition of "security", as it appeared in earlier prints of the bill, which included any "certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease." From the use of the words "other mineral royalty or lease" in the earlier print it is clear that an oil or gas royalty or lease was considered to be one kind of mineral royalty or lease, and thus no actual change is made by striking out the words indicated above. An "exempted security" is defined in paragraph (12) to include certain specified classes of securities. In addition, the Secretary of the Treasury may designate for exemption the securities of corporations in which the United States has a direct or indirect interest; and the Federal Trade Commission (elsewhere referred to as the "Commission") is given power to place in the category of "exempted securities" any other securities (including unregistered securities the market in which is predominantly intrastate) where it deems such action necessary or appropriate in the public interest or for the protection of investors. A large number of the provisions in the act expressly exclude "exempted securities."

Thus the Commission is able to remove from the operation of any one or more of these provisions any securities as to which it deems them inappropriate. It may attach such conditions to such exemption as it deems desirable. The Commission may therefore make appropriate exemptions for the protection of the holders of defaulted securities and foreign securities if the issuers refuse to register.

(b) The Commission and the Federal Reserve Board are given power to define accounting, technical, and trade terms.

(c) The act is not to apply to instrumentalities and agencies of the United States, except where they are specifically included.

SECTION 4. TRANSACTIONS ON UNREGISTERED EXCHANGES

This section forbids the use of the mails and interstate commerce to any exchange which is not registered as a "national securities exchange" under section 5, but authorizes the Commission to exempt from this prohibition small exchanges as to which it finds that registration would be impracticable and unnecessary in the public interest or for the protection of investors. Such exemption may be withdrawn under stated circumstances.

SECTION 5. REGISTRATION OF NATIONAL SECURITIES EXCHANGES

Subsection (a) provides for registration as a "national securities exchange" upon application by any exchange which agrees to comply and to require its members to comply, with the act and the rules and regulations thereunder, and which furnishes the Commission with required information.

An exchange desiring registration is required by subsection (b) to provide for the disciplining of members who are guilty of conduct "inconsistent with just and equitable principle of trade", and must include in this category any willful violation of the act or any rule or regulation thereunder.

It is provided in subsection (c) that exchanges may adopt any rules not inconsistent with the act or the rules and regulations thereunder or the laws of the State in which it is located.

Subsection (d) directs the Commission to grant an application for registration if it appears that the exchange is so organized as to be able to comply with the act and rules and regulations thereunder and to insure fair dealing and the protection of investors.

Subsection (e) provides that the Commission's order granting or denying an application for registration shall be made within 30 days unless the application has been withdrawn.

Subsection (f) permits an exchange to withdraw its registration upon such terms as the Commission may deem necessary for the protection of investors.

SECTION 6. MARGIN REQUIREMENTS

The Federal Reserve Board is directed by subsection (a) to prescribe by rules and regulations the maximum amount of credit which may be extended and maintained on any security (other than an exempted security) which is registered on a national securities exchange. As far as the initial extension of credit is concerned it is indicated by the act that this should be based on a standard of 55 percent of the current market price of the security or 100 percent of its lowest market price during the preceding 36 calendar months, but in no case more than 75 percent of the current market price. Until July 1, 1936, the lowest price on or atter July 1, 1933, is to be considered as the lowest price during the preceding 36 calendar months. Matters of detail concerning the maintenance of margins, substitutions, additional purchases, withdrawals, and transfers of accounts are left to be determined by the Board, which is also given power to prescribe regulations with regard to margins in the case of delayed deliveries, short sales, arbitrage transactions, securities which have not been on the market for 36 months, and similar matters of administrative adjustment.

Under subsection (b) the Federal Reserve Board may depart from the standard indicated in subsection (a) for the initial extension of credit by (1) lowering margin requirements insofar as it deems necessary for the accommodation of commerce and industry, having due regard to the general credit situation, and (2) prescribing such higher margin requirements as it may deem necessary or appropriate to prevent the excessive use of credit to finance speculative transactions in securities. Thus the effect is to make the margin provisions of the act completely elastic, giving the Federal Reserve Board discretion, but at the same time indicating a standard to which it is to adhere except under the circumstances indicated.

Subsection (c) makes it unlawful for a member of a national securities exchange or a broker or dealer who does business through such a member to extend or maintain credit in violation of the regulations prescribed under subsections (a) and (b), or without collateral or on collateral other than an exempted security or a security registered upon a national securities exchange, except insofar as this is permitted by rules and regulations of the Federal Reserve Board where such use of credit is not for the purpose of purchasing or carrying securities or of evading the margin requirements for registered securities.

Subsection (d) authorizes the Board to make rules and regulations so far as may be necessary to prevent evasion of this section through loans from persons who are not covered by subsection (c) and permits the imposition, upon loans made for the purchasing or carrying of registered securities, of limitations similar to those which may be imposed upon members, brokers, and dealers. It is expressly provided that such regulations shall not apply to loans not made in the course of business (such as purely personal loans), to loans on exempted securities, to loans to aid dealers in the distribution of securities not through the medium of a national securities exchange, to bank loans on any security other than an "equity security", or to such other loans as the Board may deem it necessary or appropriate to exempt. (An equity security is defined in sec. 3 (a) (11), and is, to speak generally, a stock or a security convertible into a security similar thereto.)

Subsection (e) makes the provisions of this entire section inapplicable to credit outstanding at the effective date of the act until January 31, 1939. This is designed to prevent forced liquidation.

SECTION 7. RESTRICTIONS ON BORROWING BY MEMBERS, BROKERS, AND DEALERS

By subsection (a), borrowing on registered securities (other than exempted securities) by members, brokers, and dealers who do a business through members is confined to loans from member banks of the Federal Reserve System or from nonmember banks which agree to comply with the provisions of this act, the Federal Reserve Act, and the Banking Act of 1933, insofar as they relate to the use of credit to finance transactions in securities. This, however, is subject to certain exceptions in case of transactions between members, brokers, and dealers and in emergency cases.

Subsection (b) prohibits a member, broker, or dealer to permit his indebtedness (except on exempted securities) in the ordinary course of business as a broker to exceed 2,000 percent of his net capital or such lower percentage thereof as the Commission may prescribe.

A broker is forbidden by subsection (c) to commingle the securities of customers without their written consent; and by subsection (d) regardless of such consent to pledge customers' securities with those of persons who are not customers or under circumstances that will subject customers' securities to a lien in excess of the aggregate indebtedness of the customers. This means that a broker cannot risk the securities of his customers to finance his own speculative operations. He is also forbidden by subsection (e) to lend a customer's securities without the latter's written consent.

SECTION 8. PROHIBITION AGAINST MANIPULATION OF SECURITY PRICES

Subsection (a) makes it unlawful for any person to use the mails, or interstate commerce, or any facility of a national securities exchange, or for any member of a national securities exchange by use of any means, to participate in certain practices in connection with securities registered on a national securities exchange.

Under paragraph (1) of this subsection it is made unlawful for the purpose of creating a misleading appearance as to the real nature of the market or activity of trading in the security, (A) to effect any transaction which involves no change in the beneficial ownership of the security, or (B) to enter orders for the purchase of a security with the knowledge that orders of substantially the same size, at substantially the same time and at substantially the same price, for the sale of such security will be entered by or for the same or different parties, or (C) to enter orders for the sale of a security with the knowledge of orders of substantially the same size, at substantially the same time and at substantially the same price, for the purchase of such security, will be entered for the same by or for the same or different parties. These provisions strike at wash sales and matched orders.

Paragraph (2) makes it unlawful to effect any series of transactions in a security for the purpose of raising or depressing the price of such security. Of course, any ex-

tensive purchases or sales are bound to cause changes in the market price of the security. If a person is merely trying to acquire a large block of stock for investment, or desires to dispose of a big holding, his knowledge that in doing so he will affect the market price does not make his action unlawful. His transactions become unlawful only when they are made for the purpose of raising or depressing the market price. This provision catches the rigging and jiggling of the market, and prevents the marking up or down of prices by pools.

Inducing the sale or purchase of securities by the making of a false or misleading statement of a material fact is outlawed by paragraph (4), unless the person making the statement had no reason to believe the statement was false or misleading.

Paragraphs (3) and (5) make it unlawful to induce the purchase or sale of a security by circulating in the ordinary course of business or for a consideration information that a security will change in price as a result of market operations for a rise or fall. These provisions are aimed at the "tipster sheet" and the practice of customer's men in inducing customers to buy or sell by spreading rumors with regard to the operations of pools.

The "pegging" of security prices is regulated by paragraph (6). Many experts are of the opinion that the artificial stabilization of a security at a given price serves no useful economic function. On the other hand the practice has been wide-spread on the part of many investment bankers who regard it legitimate, particularly if the public is aware of the plan. Instead of being prohibited, therefore, this practice is left to such regulation by the Commission as it may deem necessary for the prevention of activities detrimental to the interests of investors.

Subsection (b) is concerned with the use of options in connection with transactions on national securities exchanges. Options and trading against options are the usual concomitants of pool operations. Inasmuch, however, as it has been urged that all options are not affected with the manipulative taint it is made unlawful to trade in or against options only when in violation of such rules and regulations as the Commission may deem necessary in the public interest or for the protection of investors.

Subsection (c) empowers the Commission to make regulations regarding the guaranteeing of options for registered securities by members of national security exchanges.

Subsection (d) makes it clear that the options to be regulated under subsections (b) and (c), which include so-called "puts", "calls", "straddles", and "privileges" - which are commonly used for manipulative and speculative purposes - do not include duly registered warrants or rights to subscribe to a security or the right of the holder of a registered convertible security to have it converted.

Subsection (e) provides that persons who willfully participate in the manipulative or speculative practices which are forbidden by subsections (a), (b), and (c) shall be liable for the damages they cause to innocent investors who have bought or sold the security in question at a price which has been effected by such unlawful practices. A de-

fendant may recover contribution from any other participant in the illegal transactions who would have been liable if sued jointly. Suits for recovery under this subsection must be commenced within 3 years after the violation.

Subsection (f) exempts from the operation of this section all "exempted securities."

SECTION 9. REGULATION OF THE USE OF MANIPULATIVE DEVICES

This section makes it unlawful to use the mails or interstate commerce or any facility of a national securities exchange to effect a short sale of, or to employ any stop-loss order in connection with a transaction in, a registered security in contravention of the regulations of the Commission.

SECTION 10. SEGREGATION AND LIMITATION OF FUNCTIONS OF MEMBERS, BROKERS, AND DEALERS

Subsection (a) directs the Commission to regulate or prevent, by rules and regulations, floor trading on the part of members. By this means those who are actually on the scene of speculation may be restricted from taking undue advantage of this privilege. The Commission is also directed by rules and regulations to prevent such excessive speculation on the part of members who operate from off the floor as it may deem detrimental to the maintenance of a fair and orderly market. The Commission may make such exemptions as are necessary or appropriate in the case of "exempted securities", arbitrage transactions, and transactions by odd-lot dealers and specialists.

Subsection (b) authorizes the registration of members as odd-lot dealers or specialists, or both, pursuant to the rules of the exchange, and subject to rules and regulations of the Commission. The odd-lot dealer may be permitted to deal for his own account only so far as necessary in the performance of his particular function. The Commission is directed to limit the specialist in his dealings for his own account to those which are necessary for the maintenance of a fair and orderly market. The specialist is forbidden to reveal the orders on his books to favored persons. This information must be available to all members or else kept confidential. The specialist is likewise prohibited from exercising purely discretionary orders as distinct from market or limited price orders.

Subsection (c) authorizes the Commission to exempt small exchanges from the provisions of this section. This will prevent hardship on those exchanges where the functions of members are not as highly specialized as on the larger markets. Provision is made for withdrawing the exemption in proper cases.

Subsection (d) provides that any member, or any person doing business through a member, who acts both as a broker and dealer shall not use the mails, or interstate commerce, or any national securities exchange to effect any transaction which involves purchasing chasing for a customer on margin, or selling to him on margin, any security which the broker or dealer has been engaged in distributing within 6 months. This strikes at one of the greatest potential evils inherent in the combination of the broker and dealer function in the same person, by assuring that he will not induce his customers to buy on credit securities which he has undertaken to distribute to the public.

A broker-dealer must also reveal to his customers whether he acts as principal or as agent in order that the customer may be aware of any factors tending to influence the broker's advice.

Subsection (e) directs the Commission to investigate and report to Congress by January 3, 1936, on the question of completely segregating the activities of brokers and dealers.

SECTION 11. REGISTRATION REQUIREMENTS FOR SECURITIES

Subsection (a) prohibits members, brokers, and dealers from effecting any transaction on a national securities exchange in any security which is not exempted or registered under the provisions of this act.

The application to be filed by the issuer of a security with the exchange and with the Commission as a prerequisite to registration is described in subsection (b).

In paragraph (1) is indicated the information which the Commission may require an issuer to file in its application for registration. These provisions are self-explanatory.

Under paragraph (2) various documents such as articles of incorporation, bylaws, and underwriting arrangements may be called for.

Subsection (c) authorizes the Commission if it deems any of the information specified under subsection (b) to be inappropriate in a given case or class of cases to require in lieu thereof the submission of appropriate information of a comparable character. This assures adequate elasticity without giving the Commission unconfined authority to elicit any information whatsoever.

If an exchange approves the registration of a security and so certifies to the Commission, the registration becomes effective within 30 days under subsection (d), subject, however, to the provisions of section 18. An issuer may cancel its registration at any time subject to such conditions as the Commission may prescribe as necessary for the protection of investors. Registration of unissued securities for trading on a "when, as, and if issued" basis is permitted subject to regulations of the Commission in cases where the registration is not primarily designed to distribute the security to investors other than the present security holders of the company. This permits the creation of an adequate market in which the holders of rights to unissued securities may trade them as against the value of the unissued securities. At the same time the Commission will be able to prevent the practice of running up the price of a security prior to its issuance, so that it is finally issued at an excessive price.

In order to preclude congestion during the period when the act first comes into force, subsection (e) would permit the provisional registration of securities already listed on exchanges without compliance with the registration requirements set forth in this section. Such registrations may be effective until July 1, 1935, by which date there should be more than adequate time for formal registration.

Subsection (f) provides that unlisted trading (the practice of admitting securities to trade upon the application of a member of the exchange and without any action on the part of the corporation) shall be permitted by the rules and regulations of the Commission until July 1, 1935, in securities admitted to unlisted trading before March 1, 1934. Such securities are to be regarded as registered securities, except that they are exempt from the requirements of sections 11, 12, and 15, but in quoting transactions exchanges must specify the securities which are admitted merely to unlisted trading.

SECTION 12. PERIODICAL AND OTHER REPORTS

Subsection (a) requires the issuers of registered securities to keep the information filed under section 11 reasonably up to date and to make annual reports, certified by independent public accountants if the Commission deems this necessary, and such quarterly reports as may be deemed essential.

Subsection (b) permits the Commission to specify the form in which reports shall be made, the details to be shown in financial statements and the methods to be followed in calculating the items indicated in their preparation. The purpose is to give some assurance that reports will not hide the true condition of the company. In the case of the reports of any person whose accounting is subject to the provisions of any law of the United States or of any State, the rules and regulations of the Commission imposing requirements with respect to reports are not to be inconsistent with the requirements imposed by such law; but if the Commission believes that such requirements are inadequate from the point of view of the investor, it may impose additional requirements. In other words, while the act carefully avoids unnecessary duplication of reports, it permits the Commission to require the reporting of all matters regarded as essential under the act for the protection of investors.

SECTION 13. PROXIES

Subsection (a) prohibits the solicitation of proxies in contravention of such rules and regulations as the Commission may prescribe in the interest of the issuer and its security holders.

By subsection (b) it is made unlawful for a member of a national securities exchangee or a broker or dealer who transacts a business in securities through a member to give proxies with respect to securities carried for a customer in contravention of such rules and regulations as the Commission may prescribe for the protection of investors.

SECTION 14. OVER-THE-COUNTER MARKETS

The use of the mails and interstate commerce for the creation of markets, other than regular exchanges, is made the basis for such regulation of these markets as the Commission may find to be necessary or appropriate to insure to investors protection comparable to that which is accorded in the case of registered exchanges under the act. Such rules and regulations may include provision for the registration of brokers and dealers and of the securities traded. Securities already traded in on exchanges at the time the act becomes effective may be subjected to special regulation if they do not become registered under section 11. This will enable the Commission to distinguish be-

tween the securities of the type normally subject to speculative and manipulative abuse and those not customarily bought or sold on exchanges.

SECTION 15. DIRECTORS, OFFICERS, AND PRINCIPAL STOCKHOLDERS

Under subsection (a) directors and officers of the issuer of a registered equity security (other than an exempted security) and holders of more than 5 percent of any class of a registered equity security (other than an exempted security), are required at the time of registration to file with the Commission a list of their holdings of the issuer's securities and to file monthly reports of their dealings in such securities. This is to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company.

By subsection (b) directors, officers, and principal security holders are forbidden to sell registered securities (other than exempted securities) short or to sell for delivery after 20 days. The latter provision is for the purpose of preventing "sales against the box" whereby those in possession of inside information sell their holdings but keep the stock registered in their name, so that their change of position does not become known until delivery is made at a later date.

SECTION 16. ACCOUNTS AND RECORDS, REPORTS, EXAMINATION OF EXCHANGES, MEMBERS, AND OTHERS

By subsection (a) national securities exchanges, their members, and brokers and dealers who do business through them, as well as brokers and dealers who maintain over-the-counter markets, are required to keep such records as the Commission may prescribe in the public interest or for the protection of investors. These records shall be open to reasonable inspection by the Commission.

Subsection (b) gives the Federal Reserve Board necessary powers as to reports and examinations in connection with the exercise of its functions under the act.

SECTION 17. LIABILITY FOR MISLEADING STATEMENTS

Subsection (a) provides that any person who makes or causes to be made any statement in an application, report, or document, which is false or misleading as to a material fact, shall be liable to a person who in reliance on the statement and in ignorance of its false or misleading character has purchased the security to which it relates at a price affected by it, unless the person sued proved that he acted in good faith without knowledge of the false and misleading character of the statement.

Subsection (b) provides for contribution between persons who would be liable to be sued jointly, and subsection (c) limits the time for bringing a suit to 3 years after the violation.

SECTION 18. POWERS WITH RESPECT TO EXCHANGES AND SECURITIES

Subsection (a) authorizes the Commission when it deems such action necessary - (1) to suspend or withdraw registration of an exchange which the Commission finds has violated the act or the rules and regulations thereunder or has failed to take ade-

quate steps to enforce compliance therewith by its members, (2) to deny, postpone, suspend, or withdraw the registration of the security in case of violation by the issuer, (3) to suspend or expel a member or officer of an exchange who is guilty of a violation or of aiding a violation by acting as broker for a person whom he has reason to believe is engaged in a violation, and (4) summarily to suspend trade in any registered security for a period not exceeding 10 days or with the approval of the President of the United States summarily to suspend all trade on a registered exchange for not more than 90 days. Orders issued pursuant to (1), (2), and (3), must be preceded by appropriate notice and opportunity for hearing; action under (4) is of an emergency nature and therefore limited in time.

Subsection (b) authorizes the Commission to amend the rules of an exchange in certain particulars by rules and regulations, after the exchange has failed to comply with the Commission's written request for such amendment of the rules of the exchange as the Commission deems necessary or appropriate for the protection of investors or to insure fair dealing or administration of the exchange.

SECTION 19. LIABILITIES OF CONTROLLING PERSONS

By subsection (a) a person who controls a person subject to the act or a rule or regulation thereunder is made liable to the same extent as the person controlled unless the controlling person acted in good faith and did not induce the act in question.

Subsection (b) makes it unlawful for any person to do, through any other person, anything that he is forbidden to do himself.

Subsection (c) makes it unlawful for a director, officer, or security owner, without just cause, to hinder, delay, or obstruct the making of reports required of an issuer under this act.

In this section and in section 11, when reference is made to "control", the term is intended to include actual control as well as what has been called legally enforceable control. (See Handy & Harmon *v.* Burnet (1931) 284 U.S. 136.) It was thought undesirable to attempt to define the term. It would be difficult if not impossible to enumerate or to anticipate the many ways in which actual control may be exerted. A few examples of the methods used are stock ownership, lease, contract, and agency. It is well known that actual control sometimes may be exerted through ownership of much less than a majority of the stock of a corporation either by the ownership of such stock alone or through such ownership in combination with other factors.

SECTION 20. INVESTIGATIONS; INJUNCTIONS AND PROSECUTION OF OFFENSES

(a) The Commission is authorized to investigate violations of the act. The Commission is further authorized to investigate and to publish information concerning any facts, conditions, practices, or matters which it may deem necessary or appropriate to aid in the enforcement of the act or in prescribing rules and regulations.

(b) The Commission is authorized through its members, or officers designated by it, to administer oaths and affirmations, subpena witnesses, compel their attendance, and require the production of books, papers, correspondence, memoranda, and other records.

(c) This subsection relates to compelling attendance and testimony of witnesses and the production of evidence.

(d) This subsection is similar to one contained in the Federal Trade Commission Act, and provides that no person shall be excused from attending and testifying, but relieves any natural person from prosecution with respect to or on account of any matter concerning which he may testify or produce evidence.

(e) The Commission is authorized to seek the aid of the United States district courts to enjoin acts or practices in violation of the provisions of the act or rules and regulations.

(f) The district courts of the United States are given jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of the act or any order made thereunder.

SECTION 21. HEARINGS BY COMMISSION

This section provides that hearings of the Commission may be public and may be held before the Commission or any member or members thereof or any designated officer or officers and requires that appropriate records of hearings shall be kept.

SECTION 22. RULES AND REGULATIONS; ANNUAL REPORTS

(a) The Commission and the Federal Reserve Board, respectively, are authorized to make such rules and regulations as may be necessary for the execution of the functions granted to them under the act and are authorized for such purposes to classify issuers, securities, exchanges, and other persons or matters.

(b) The Commission and the Federal Reserve Board are directed to include in their annual reports to Congress such information and such recommendations for further legislation as they may deem advisable relating to the matters within their respective jurisdictions under the act.

SECTION 23. INFORMATION FILED WITH THE COMMISSION

(a) This subsection makes it clear that no person is to be required to reveal trade secrets or processes in applications, reports, or other documents.

(b) Any person filing information may object in writing to the public disclosure thereof, and the Commission is authorized to hear objections when it deems it advisable. In cases where objections are made the Commission is not to make the information public unless in its judgment disclosure thereof is in the public interest.

(c) It is made unlawful for any member, officer, or employee of the Commission to make disclosure of information which is not made available to the public as authorized in subsection (b).

SECTION 24. COURT REVIEW OF ORDERS

(a) This section relates to review by United States Circuit Courts of Appeal of orders of the Commission, on the petition of any person aggrieved. On such review the court is to have exclusive jurisdiction to affirm, modify, and enforce or set aside the order, in whole or in part. Findings of fact by the Commission are to be conclusive if supported by substantial evidence. The judgment and decree of the court is to be final subject to review by the Supreme Court in accordance with sections 239 and 240 of the Judicial Code.

(b) The commencement of proceedings under subsection (a) is not to operate as a stay of the Commission's order unless the court so orders.

SECTION 25. UNLAWFUL REPRESENTATIONS

No action or failure to act by the Commission or Federal Reserve Board is to be construed to indicate approval of any security or transaction or to indicate a finding that any statement or report is true and accurate or not false or misleading. It is declared to be unlawful to make any representation that any such action or failure to act is to be so construed or has such effect.

SECTION 26. JURISDICTION OF OFFENSES AND SUITS

The district courts of the United States, the Supreme Court of the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States are given jurisdiction of violations of the act and of rules and regulations thereunder, and of suits in equity and actions at law brought to enforce any liability or duty created by the act or by the rules and regulations thereunder.

SECTION 27. EFFECT ON EXISTING LAW

(a) This subsection reserves rights and remedies existing outside of those provided in the act, but limits the total amount recoverable to the amount of actual damages. It provides that the jurisdiction of State commissions shall not be affected insofar as it does not conflict with the provisions of the act or the rules and regulations thereunder.

(b) It is provided that nothing in the act shall be construed to modify existing law with regard to certain relationships between exchanges and their members.

SECTION 28. VALIDITY OF CONTRACTS

(a) This subsection declares void any condition or stipulation requiring any person to waive compliance with any provision of the act or any rule or regulation thereunder or any rule of exchange.

(b) This subsection declares void contracts made in violation of the provisions of the act or the rules or regulations thereunder, and contracts made prior to the enactment of the act which involve the continuance of any relationship or practice prohibited by the act or any rule or regulation thereunder.

(c) This subsection includes provisions to negative any construction of the act which would affect the validity of loans and liens in certain cases. Cases are specified in which the act is to be construed to afford a defense to the collection of any debt or obligation or the enforcement of a lien.

SECTION 29. FOREIGN SECURITIES EXCHANGES

(a) This subsection makes it unlawful for brokers or dealers to use the mails or any instrumentality of interstate commerce to effect upon an exchange outside the United States transactions in securities of issuers who reside in or are organized under the laws of, or have their principal place of business in, the United States or any place subject to the jurisdiction thereof, in contravention of the rules and regulations of the Commission.

(b) It is provided that the act shall not apply to any person insofar as he transacts a business in securities outside the jurisdiction of the United States unless he transacts such business in contravention of the rules and regulations of the Commission prescribed to prevent evasion of the act.

An annual registration fee for exchanges is provided for in this section. Such fee is to be an amount equal to one five-hundredth of 1 percent of the aggregate dollar amount of the securities sales transacted on the exchange during the preceding calendar year. Amounts received as fees will be deposited in the Federal Treasury.

SECTION 31. MEMBERS AND EMPLOYEES OF FEDERAL TRADE COMMISSION

(a) This subsection provides for two additional members of the Federal Trade Commission. It authorizes the Commission to divide the members thereof into divisions (each to consist of not less than three members) and to direct that any of its functions arising under this act or any other provision of law may be assigned or referred to any such division. Provision is made for rehearing before the full Commission of decisions, orders, or other action by a division. A rehearing is not to suspend the operation of that division unless the Commission makes an order to that effect.

(b) For the purposes of this act and of the Securities Act of 1933 the Commission is authorized to employ and fix the compensation of attorneys, examiners, and other special experts without regard to the provisions of other laws applicable to the employment and compensation of officers and employees of the United States.

SECTION 32. PENALTIES

Penalties are provided for willful violation of the act or any rule or regulation thereunder the violation of which is expressly made unlawful, or for the making or causing to be made any statement in any application, report, or document filed under the act if such statement is false or misleading with respect to any material fact. The penalty provided is a fine of not more than $10,000 or imprisonment for not more than 2 years, or both, except that when the violation is by an exchange a fine not to exceed $500,000 may be imposed.

SECTION 33. SEPARABILITY OF PROVISIONS

This section declares the policy of Congress that if any provision of the act or the application of such provision to any person or circumstance is held invalid the remainder of the act or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

SECTION 34. EFFECTIVE DATE

The act is to take effect upon its enactment, except that certain of its provisions are to become effective July 1, 1934, and certain other provisions are to become effective on August 1, 1934.

SUPP. VIEW BY:

SCHUYLER MERRITT

SUPPL. VIEW:

Mr. MERRITT, from the Committee on Interstate and Foreign Commerce, submitted the following

MINORITY REPORT

[To accompany H.R. 9323]

There can be no doubt that the securities exchange bill, as reported by the House Committee on Interstate and Foreign Commerce, is greatly improved over the bill as originally produced.

The original bill, drawn under the natural resentment which resulted from the revelation of many abuses in the stock exchanges and in other agencies for distributing stocks, was primarily a punitive and preventive measure. As is often the case, those who drew the bill were so intent upon the relatively few who had committed these offenses that its effect on innocent and honest people was overlooked. The provisions of the bill would practically have stopped business on the stock exchanges and would have frozen the liquid assets of the Nation, and so still further restricted business and caused still further disasters to the banks.

Many of the original provisions of the bill which would have produced these disasters have been modified or eliminated. So far as the bill relates to practices of stock exchanges it cannot be severely criticized.

But the original fundamental objection still remains, namely, that it gives the commission which is in charge of administering the bill indeterminate power over all issues of stock, and thus over all corporations in the country. This may seem a broad statement, but from the best statistics which can be obtained, it is estimated that there are 10 million stockholders of record in this country after allowing for duplication, and that, not allowing for duplication, there are about 26 million stockholders of

record; that is, 26 million individual stock holdings. It is evident that the value of all these stock holdings may be affected by the action of the commission under this bill.

In addition to this there are, of course, thousands of millions of dollars of bonds and other obligations issued by corporations which are held by insurance companies and savings banks and other trustees for the benefit of millions of owners. It is not contended that this bill is going to ruin all these people, but it is sure that the handling of all this immense amount of liquid capital is going to be more complicated and less free than without the legislation.

As will be seen by reference to the bill, the powers of the commission are varied and important. The commission has power to license an exchange, to exempt an exchange from registration, and to withdraw such exemption. The commission also has power to suspend trading on an exchange for any violation of its regulations. It can control over-the-counter markets, it can make rules and regulations for the segregation and limitation of functions of members, brokers, and dealers on the exchanges.

The bill provides very minute directions as to the registration of a security on a national exchange and requires detailed information as to its organization, as to the directors and officers of a corporation, giving their salaries and any bonus or other profit-sharing arrangements. It requires also a statement of any remuneration, including bonuses, for any employee whose total compensation exceeds $10,000 per annum, and other information going into great detail as to the management of a corporation, which information most corporations, for good reasons, would prefer to consider confidential. Annual and quarterly statements are required, and finally, the commission is given blanket power to require information, and provided any report required under the bill is found inapplicable to any specified class or classes of issuers, to require such reports of comparable character as the commission may deem applicable.

The commission has full power as to the solicitation of proxies for any special or annual meeting. There is a provision that any person who is a large stockholder, and owns or controls more than 5 percent of any class of stock, shall file a statement with the exchange of the amount of his holdings, and at the end of each month shall file a statement indicating any change in his ownership.

Any person who makes a false or misleading statement with regard to any material fact is liable to a suit for damages by anyone who suffers, unless the person making the statement can prove that he acted in good faith and did not believe that the statement was false and misleading.

The commission, whenever it thinks any person has violated any provision of the act, or any rule or regulation thereunder, can investigate, and for that purpose any member of the commission or any officer designated by it can subpena witnesses and compel their attendance and require the production of books, etc., from any place in the United States or any State at any designated place of hearing. And finally, anyone who willfully violates any provision of the act shall, upon conviction, be fined not more

than $10,000 and imprisoned not more than 2 years, or both, except that when such person is in an exchange a fine not exceeding $500,000 may be imposed.

The above brief enumeration of some of the provisions of the bill will be enough to show why this bill has created the greatest attention and interest throughout the length and breadth of the Nation. It is safe to say that no bill has produced more correspondence for Members of Congress than this bill.

This interest has been referred to by some members of the administration and by some leading Members of the House and Senate as propaganda, but bearing in mind the 10 million individuals who are holders of stocks, their interest in this bill is perfectly natural and proper and should not be attributed to propaganda. It is simply a legitimate desire on the part of the owners to protect their property from undue and unnecessary depreciation.

There can be no question that there has been very wide-spread fear of such depreciation from the enactment of this bill. It may be argued that there is nothing in the bill to warrant the fear and that such fear is uncalled for. The same arguments were used with reference to the Securities Registration Act, which it is now proposed to modify, and it may be that the arguments have force as to both the acts, but fear is a psychological state which cannot be overcome at once by argument. When a man reads a complicated bill relating to his own industry or his own property, and finds it filled with intricate instructions and directions and which gives broad and undefined powers to a commission to make further rules and regulations and to impose penalties, and when further the bill winds up with a statement of possible heavy fines and imprisonment for a violation of any of these rules and regulations, almost anyone is justified in feeling fearful as to doing business in connection with organizations or securities covered by the bill.

What is essential to any sound recovery of business and to any real extension of employment and the use of credit in enterprise is confidence. The creation of new commissions having power over business and the creation of new regulations and penalties do not tend to quiet and confidence, but to the contrary, and thus retard business.

A minority of the committee suggest that however sound many of the provisions of the bill may be, the immediate consequences of its enactment would not be helpful, but rather the reverse, in the existing economic situation.

It is not probable, and, it may be said, hardly possible, that there should be any dangerous speculation or inflation of credit on the stock exchanges during this year. The stock exchanges have of their own motion made rules and regulations to do away with many of their previous evil practices. It is noticeable in the committee, which has given long and careful study to this bill, that the longer it was studied the more every member of the committee became convinced of the far-reaching effects of the bill, not only as to its extent over the Nation, but as to its ramifications in all branches of business. If there is no immediate crisis which would seem to call for legislation, it would

seem to be the part of wisdom, before enacting legislation of such far-reaching consequences, to enable those who are especially expert in the business and those who are especially affected by the bill to study it carefully and submit their recommendations concerning it to the next Congress.

For the above reasons, therefore, it is recommended that the bill should not be passed by this Congress.