Judge Norton, counsel for Investors Syndicate, is here.

Mr. COLE. Who?

Mr. SCHENKER. Judge Norton is here, and wants to express the same opinion.

STATEMENT OF WILLIS I. NORTON, MINNEAPOLIS, MINN.

Mr. COLE. Judge Norton, we will be glad to her you.

Mr. NORTON. Mr. Chairman and gentlemen of the committee.

Mr. COLE. Judge, will you state your name, sir, and your address?

Mr. NORTON. Willis I. Norton, Minneapolis, Minn.

Mr. COLE. You want to make a statement, Judge, on behalf of the Investors Syndicate?

Mr. NORTON. I shall be pleased to.

Our company is very heartily in favor of, and very heartily endorses this bill. We think it is sound legislation.

Mr. BOREN. I would like, Mr. Chairman, to inquire into something of the history and extent of the operations of the Investors Syndicate. It is a name that we have heard a great deal in my State, and I am particularly interested in a brief financial description and a history of the organization and its expansion, and so forth.

Mr. NORTON. The Investors Syndicate was organized as a corporation under the laws of Minnesota in 1894. It has operated ever since that date in that State and has gradually extended its operations until now it operates in, I think, 42 of the States of the United States and practically all of the Provinces of the Dominion of Canada. It has grown until its assets are around, I should say, approximately $160,000,000.

Mr. BOREN. Those assets are represented by what sort of investments?

Mr. NORTON. They are insured loans in the F. H. A., $65,000,000—I am not pretending to be precise—other first mortgages probably $28,000,000 to $30,000,000, maybe more, and the rest are high-grade bonds and cash. Very few stocks.

Mr. BOREN. Has the company ever gone through any reorganization?

Mr. NORTON. No.

Mr. COLE. Is that all?

Mr. NORTON. That is all, Mr. Chairman. Thank you.

Mr. COLE. Thank you, Judge.

STATEMENT OF JAMES WHITE, REPRESENTING SCUDDER, STEVENS & CLARK, BOSTON, MASS.

Mr. COLE. Mr. White.

Mr. WHITE. Mr. Chairman, my name is James White. I am a general partner of Scudder, Stevens & Clark, of Boston, New York, and Philadelphia. We are affected by both titles of the bill, as we have a small investment trust. My firm is heartily in favor of this bill.

We think it is necessary and we think it is constructive both in the public interest and in our own interest; in that of our investment counsel business, and investment trust business.

So far as we know, we were the first firm to use the term "investment counselor," although we were not the first investment advisers, and

we have always had a real interest in the industry, as such, aside from our own personal fortunes.

We have tried to keep it on a professional basis, and we have tried to encourage other firms to maintain it on a professional basis.

In the present form we think this legislation provides a set of rules that we can operate under without any difficulty at all; that it will certainly discourage people going into our line of business who are not qualified to or who have any thought of using a professional status as a cloak to cover up larceny or any illegal operations.

Mr. BOREN. Will you briefly define the operation of or procedure of an investment adviser?

Mr. WHITE. That is a fairly broad statement, because the term includes people who send out bulletins from time to time on the advisability of buying or selling stocks, or even giving tips on cheap stocks, and goes all of the way from that to individuals and firms who undertake to give constant supervision to the entire investments of their clients on a personal basis and who even advise them on tax matters and other financial matters which essentially are not a question of choice of investments.

We are of the latter type.

Mr. BOREN. Then any broker who acts in the capacity of advising a client in his dealings, himself, is not a buyer and seller of securities, except as an agent for the client, would be an investment counselor?

Mr. WHITE. Well, the term as it is used in this bill includes only investment advisers who get paid for giving advice, as I understand it.

Mr. BOREN. And they may or may not be at the same time agents for a brokerage firm?

Mr. WHITE. They may or may not be connected with a broker or dealer.

Mr. BOREN. Any lawyer that confined his business principally to legal advice and financial opinions, as to proper investments, would become an investment adviser, would be not?

Mr. COLE. Not under this bill.

Mr. WHITE. I believe the bill says he is not, if he does that sort of thing only incidental to his practice of law.

Mr. BOREN. I said if he confined himself to it entirely.

Mr. WHITE. If he confined himself entirely to managing estates and investments for advisory fees, I should think he would be included.

Mr. BOREN. At least at the present time, before the enactment of legislation, the particular character whom I have described, would come under that general classification?

Mr. WHITE. Well, under my interpretation of the wording of the bill he would.

Mr. COLE. You mean by that, Mr. White, that there is a possibility of some law firms being placed under the jurisdiction of the Securities and Exchange Commission in this bill?

Mr. WHITE. No. I have not felt so.

Mr. COLE. What is the difference between the statement I have just made and your answer to Mr. Boren?

Mr. WHITE. Because I know of no law firm whose practice in the managing of investments for a fee is anything but incidental to their business. There are some firms, some estate-managing firms, who happen to be members of the bar; but they do not hold themselves out as practicing attorneys.

Mr. COLE. I expect it is fair to say, is it not, that the legal profession, regulated as it is at home, with admissions to the bar and special training in their profession which the State law recognizes, that there would not be any demand to put them under this bill, would there?

Mr. WHITE. I think that they themselves would demand it, from what they have said to me.

Mr. COLE. They would?

Mr. WHITE. They do not mind being regulated in their activities.

Mr. COLE. Well, in the hearings in the Senate, several of the Senators raised considerable objection to the possibility of the bill reaching law firms, for instance, their own firms, where they resided, and I gather from reading the testimony and discussions on the bill, that the only reason that these law firms are not under the bill is that they are pretty well regulated at home.

Mr. WHITE. I do not think that there would be any effort on the part of the Securities and Exchange Commission to regulate them.

If you will read Professor Dodd's testimony, which followed ours, you will see that he said that he felt it was ridiculous for anybody who held themselves out to give certain advice to the public not to want to be regulated by anybody; that he himself, as a lawyer, was regulated by both the State and the Federal Governments, and he would not want to be a lawyer unless he were so regulated.

Mr. COLE. And your profession is now without any regulation, is that riight?

Mr. WHITE. Well, we have some State regulations, but they vary a good deal, and some are very casual, and some are very complete. They are not uniform and we feel that it is much more desirable, especially if any question of interstate commerce is going to arise, to have Federal legislation rather than regulation of the type of State legislation we have.

Mr. COLE. Now, did you agree with this bill when it was originally introduced?

Mr. WHITE. No; we disagreed very strongly.

Mr. COLE. The same as the investments trusts groups?

Mr. WHITE. Yes; and we went through the same procedure and came out at the same conclusions.

Mr. COLE. Do you have a copy of a proposal which was presented to your profession or your industry?

Mr. WHITE. We did not make a similar proposal to the industry as a whole.

Mr. COLE. Why not?

Mr. WHITE. Well, in the first place, there are only a few investment counsel firms, which came down here and registered any opposition.

Mr. COLE. What I am getting at is this: I am rather impressed with the statement of one of the witnesses here this morning who said that after objecting to the original bill, a proposal was worked out with the Securities and Exchange Commission, and that was sent throughout the country, 5 weeks ago, to all of their industry; their observations came in, and the bill was then drafted, and sent to them. In response they found that 95 percent of the industry was favorable to the bill.

Mr. WHITE. Yes.

Mr. COLE. Now, was not the same thing done with your industry?

Mr. WHITE. No.

Mr. COLE. Why not?

Mr. WHITE. Because you have to go back a little further. The investment trust industry formed a committee representing a large number of investment trusts, took an active part in opposition to the bill, and they kept in pretty close touch with each other.

Now, the investment counselor firms did not do the same thing. Some of the older firms which were represented in the Senate committee hearings did work together. But some of our firms, and for that matter, other types of investment advisers who are not investment counselors, showed no interest either for or against the legislation. We did not feel it was necessary to get in touch with anybody who had shown no interest in the opposition, in our working with the Securities and Exchange Commission to redraft the bill.

Mr. COLE. I was under the impression from what you said that your investment advisory group was represented nationally here the same as the other groups.

Mr. WHITE. That is not true, Mr. Cole.

Mr. COLE. Then who submitted the proposed changes that you worked out with the Securities and Exchange Commission after the introduction of the original bill; whom did you submit them to?

Mr. WHITE. We went over them with the firms who had been represented in opposition before the Senate subcommittee.

Mr. COLE. How many firms are there in the United States that are affected by title II of this bill?

Mr. WHITE. Well, there must be several hundred, anyway. You see it goes all of the way from publications, weekly tips on stocks which you can buy for a dollar a year, to people who charge a minimum of a thousand dollars a year for consultation or constant supervision of anybody's account, and you have a great many different kinds of advisers and a great many different kinds of advice affected by this bill. There are a great many different kinds of advisers, all included, the nature of whose work is very different.

Mr. BOREN. Mr. Chairman, I agree with you that they should be quite willing to have some regulation, just like the legal profession has, and that may be, with such a comparatively few throughout the United States, the best way to meet this problem.

I do not want to see the lawyers in this country covered by this bill.

Mr. WHITE. Well, from the remarks of Mr. Schenker before the Senate subcommittee, I do not think he would either.

Mr. COLE. What?

Mr. WHITE. I do not think that Mr. Schenker does either.

Mr. COLE. No. I have read his statement to that effect.

Mr. WHITE. Might I just say that our main concern with that bill was that the nature of our business is so different from that of investment trusts. Our only asset is confidence, so to speak, of our clients in us.

Mr. COLE. What is the difference—you are covered by title I?

Mr. WHITE. Yes, sir.

Mr. COLE. What is the difference between that and title II; why should you not be covered by title I?

Mr. WHITE. That is simply because we have open-end investment trusts, which is the way we give investment counsel to small investors, you see. Our main objection to the bill that came up before the Senate subcommittee was that it did not protect the confidential relation-

ship between ourselves and our clients, and also that it gave the Commission too broad powers to get rough with what is really and essentially a pretty delicate type of business, as I say, based on confidence between our clients and ourselves. Both of those differences have been adjusted to our complete satisfaction and we really hope that this bill will go through, and go through at this session.

Mr. COLE. All right. We thank you.

Mr. BOREN. Mr. Chairman.

Mr. COLE. Mr. Boren.

Mr. BOREN. Conceding that the testimony before the Senate Committee indicates the desire on everybody's part to be a genuine desire to exempt the lawyers from the definition of investment advisers, it appears to me that the language used and the definitions for, I believe, investment advisers, specifically include the lawyer who holds a contract to advise a company or who has the power to determine what securities or other property shall be bought and sold by a company, and that it specifically exempts that group who publish information such as a tip and so on that you have referred to.

Now, I do not know that I have stated it specifically enough so that it can be clarified, or that it has been clarified; and if not, I feel that it is a point that should be definitely clarified here.

My interpretation of the language is——

Mr. WHITE (interposing). Mr. Congressman, I feel very strongly that a lawyer should be included if his main source of income, his main business, is the giving of investment advice, because he is a member of the bar only because he has passed a bar examination, not because he makes his living that way.

Mr. COLE. Who is to determine what the percentage of his investment advisory business is and whether he comes under this bill?

Mr. REECE. The Securities and Exchange Commission, would it not?

Mr. WHITE. I should think that the Securities and Exchange Commission would have the power to do so, and I do not see why they should not. If I went to a law school and passed the bar examination and then returned to my firm and became the sole proprietor, so to speak, and all of my present partners were working for me, I would be exempted from this legislation and I do not think I would have any business being exempted from it.

Mr. BOREN. One other question, if you have finished there. I think the bill, on that point, clearly defines the terms under which a lawyer or anybody else comes under it. I am not finding any fault with your position. I just want to be clear on it, as to how far it goes in the field and its effect on the lawyers of the country.

There is this other one point, though, that I want to ask about. If I read the bill correctly, a person whose advice is furnished solely through publications distributed to subscribers in the form of publications, they are specifically exempted.

Now, should that person be exempted who puts out a monthly or weekly newspaper, we will say, advising people on that?

Mr. WHITE. Will you be kind enough to give the page from which you are reading?

Mr. BOREN. Well, it is on page 154. I am reading from page 12, in the definitions of investment advisers from this other bill. It is a little different in page numbers in this bill.

Mr. HEALY. May I suggest that there is a second definition.

Mr. BORREN. This is page 12, of S. 4108.

Mr. WHITE. That is an investment adviser of an investment company, which is different from an investment adviser in title II.

Mr. BOREN. I see.

Mr. WHITE. An investment adviser in title II means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

Mr. BOREN. Then there is a distinct separation of investment advisers under the two different sections of the bill.

Mr. WHITE. Yes.

Mr. BOREN. Then that clarifies it for me, Mr. Chairman. I thank you.

Mr. COLE. I believe that is all, Mr. White. Thank you.

Mr. WHITE. Thank you.

STATEMENT OF DWIGHT ROSE, REPRESENTING INVESTMENT COUNSEL ASSOCIATION OF AMERICA, NEW YORK, N. Y.

Mr. COLE. Mr. Rose.

Mr. ROSE. Mr. Chairman, my name is Dwight Rose. I am a general partner in the firm of Brundage, Story & Rose, 90 Broad Street, New York. I will express the views of the Investment Counsel Association of America, which is a voluntary, nonprofit, professional association composed of 63 members representing 19 different investment counsel firms located in various parts of the United States.

Mr. COLE. How many investment counsel are there in the country?

Mr. ROSE. The Investment Counsel Association had been able to discover approximately 540 organizations describing themselves either as investment counselors, or by some similar title.

Mr. COLE. How many are there?

Mr. ROSE. Five hundred and forty. However, those 540 are not performing services that we consider proper to come under the heading of investment counsel.

In my testimony before the Senate subcommittee I estimated that there were somewhere in the neighborhood of 150 to 200 individuals or firms with whom we had been in communication who might probably be described as giving professional investment counselor services, and of that number, probably half are individuals with only a handful of clients, and in many, many cases members of their own families or personal friends. So that it would come down, approximately, I should judge, to 75 or 100 that we know of who might properly come under the definition of professional investment counsel.

During the past 2½ years, beginning with the public hearings on investment counselors before the Securities and Exchange Commission, which commenced in February 1938, finally culminating in the bill now under consideration, the association has at all times had the sympathetic cooperation of the Securities and Exchange Commission, and while differences have arisen, it has been possible to adjust them satisfactorily as a result of many discussions, and in this connection we have been most appreciative of the fair and courteous consideration

given our views by Commissioner Healy, Mr. Schenker, and others on the Securities and Exchange Commission staff.

When the hearings were held on this bill before the Senate committee the association opposed it. We opposed it for three general reasons: First, in the original bill there was a confusion between investment counsel and investment trusts. We felt that the personal confidential relationship existing between the investment counsel and his client was so very different from the commodity of investment trust shares which investment trusts were engaged in selling, that any legislation to regulate these two different activities should be incorporated in separate acts. In the bill we felt that our clients were not properly protected in their confidential relationship. In the testimony before the Senate subcommittee there was quite a fight on that. It is not necessary to go into that here. Also we felt that powers given the Securities and Exchange Commission under the bill were unnecessarily broad and would lead to a great deal of uncertainty on the part of anyone who wished to practice his profession as to what might happen to him at any time.

Following the hearings before the Senate subcommittee, we had conferences with the Securities and Exchange Commission, and all of our objections have been satisfactorily adjusted.

I might also add, particularly in view of the questions that you have asked of Mr. White about the attitude of other firms, that at the time of the introduction of the original bill, or shortly following, I made a trip to the west coast and back, at which time I interviewed a large number of investment counsel firms and individuals who are not members of our association. I found almost all of them in agreement on the general principle of Federal regulation and registration, some minimum regulation, if these major objections which I have mentioned could be satisfactorily overcome. Also the association has been advised by many investment counsel who are not members of the association, located in various parts of the country, who get into New York at rather frequent intervals, that practically all of them would endorse this bill, although I am not officially authorized to represent them.

The Investment Counsel Association of America unqualifiedly endorses the present bill, the Investment Company Act of 1940 and Investment Advisers Act of 1940, and in view of the difficult financial problems confronting our national economy at this critical juncture, we urgently hope passage of the bill may be expedited at this session of Congress so the public may have the benefit of the bill and its provisions without further delay.

Mr. COLE. Are you not a lawyer?

Mr. ROSE. No, sir; I am not.

With respect to the question you asked about lawyers: We did, as you will observe from the testimony before the Senate committee, have some difficulty in excusing lawyers from regulation under this bill. However, as you analyze the history of the development of this vocation, which we like to think of as a profession, it becomes apparent that originally lawyers were about the only professional group to which an investor could go for that kind of personal, professional advice under the confidential circumstances that he desired. To some extent the development of investment counsel, if the function

is performed properly and in the public interest may result in specialization of this function, with less of it being carried on by general practitioners operating as lawyers. In the meantime, however, during this process we do not feel that the investment counsel profession has arrived at a point where we should do anything to disturb or inconvenience the present satisfactory relationship existing between clients and lawyers where in many instances they advise with respect to investments only incidental to their regular practice.

Mr. COLE. Is that all, Mr. Rose?

Mr. ROSE. Yes, Mr. Chairman. Thank, you, sir.

Mr. COLE. Thank you.

I want at this point to insert in the record a letter from Congressman Sabath. Mr. Sabath was to appear this afternoon. As many of you know, he was chairman of a special committee of the House a few years ago which conducted a very important investigation. So, he is interested in this general subject, but he finds because of the business on the floor he is unable to appear and writes a letter endorsing the bill and in favor of its passage.

(The letter referred to is as follows:)

UNITED STATES HOUSE OF REPRESENTATIVES,
COMMITTEE ON RULES,
Washington, D. C., June 13, 1940.

Hon. CLARENCE F. LEA,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: I greatly regret that I found it impossible to avail myself of your courtesy to appear in behalf of H. R. 10065.

Having been interested in this legislation for many years, I hope that favorable action will be taken. I shall be glad to arrange for a hearing before the Committee on Rules and the granting of a rule for the consideration of same.

With personal regards, I am

Sincerely yours,

A. J. SABATH.

Mr. COLE. Gentlemen, we will go on tomorrow morning at 10 o'clock. I will ask if there are any witnesses in the room other than the representatives of the Commission and Mr. Jaretzki and Mr. Motley who now desire to be heard. Are there any others who want to appear as witnesses? We will be glad to hear them.

Then, we will go on tomorrow morning at 10 o'clock.

(Thereupon, at 4:15 p. m., the subcommittee adjourned to meet at 10 o'clock the following morning, Friday June 14, 1940.)

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