

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

DOCKET No.

In the matter of THE PROBLEM OF MAINTAINING ARM'S-LENGTH
BARGAINING AND COMPETITIVE CONDITIONS in
THE SALE AND DISTRIBUTION OF SECURITIES of
REGISTERED PUBLIC UTILITY HOLDING COMPANIES
AND THEIR SUBSIDIARIES

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BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

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: Public Conference concerning :
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: THE PROBLEM OF MAINTAINING ARM'S-LENGTH :
: BARGAINING AND COMPETITIVE CONDITIONS :
: in :
: THE SALE AND DISTRIBUTION OF SECURITIES :
: of :
: REGISTERED PUBLIC UTILITY HOLDING :
: COMPANIES AND THEIR SUBSIDIARIES :
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Hearing Room 1102,
Securities and Exchange Commission Bldg.,
Washington, D. C.,
Wednesday, January 29, 1941.

Met, pursuant to adjournment, at 10 o'clock a.m.

PARTICIPANTS:

COMMISSION:

JEROME N. FRANK, Chairman, (presiding),
SUMNER T. PIKE, Commissioner,
ROBERT E. HEALY, Commissioner,
EDWARD E. EICHER, Commissioner.

STAFF OF COMMISSION:

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Col. Frank A. Scott	Ch., Finance Comm. Western Reserve Univ. and University Hospital, Cleveland

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P R O C E E D I N G S

Chairman Frank: Gentlemen, let us proceed.

There are two matters that have come up recurrently in the discussions, as to which I personally would like to say a word.

There has been a good deal of discussion, of a general character, about whether there is concentration of the investment banking business.

As to that, so far as these hearings are concerned, that would seem to be relevant only with respect to whether or not it affects the desirability of such a rule as has been proposed by the Utilities Division. If there is such concentration, assuming there is, it is not the function of this Commission, under the Public Utility Holding Company Act, to do anything about it except in so far as it in some way affects the administration of that Act. I mean, we have had a very broad general discussion of it, but it is only germane in that very limited and particular way, assuming the facts to be true.

The same thing should be said of private placement. It is a very important subject to the investment banking industry, and to investors; we are very much concerned about it; but so far as these discussions at these conferences are concerned, we are only interested in it so far as it may affect the proposed rule as to competitive bidding under the

Public Utility Holding Company Act, and the proposal that such a rule should displace private placement pro tanto.

I just wanted to make that clear, because we aren't, in these conferences, trying to settle all the financial problems of the Universe.

A I understand Mr. Ford would like to make a statement for the record.

Mr. Ford: I would like to state for the record that in my references yesterday afternoon to the Boston Edison Company, I was speaking as an officer of the First Boston Corporation and not as representing the National Association of Securities Dealers.

Chairman Frank: Does Mr. Buttenweiser wish to go ahead?

Mr. Buttenweiser: Yes.

Chairman Frank: I hope you will try to make your comments short, as we want to finish today by 1 o'clock, if we can.

STATEMENT OF BENJAMIN J. BUTTENWEISER (resumed)

Mr. Buttenweiser: I think that Professor Fournier wanted to know why it was necessary or advisable to underwrite offerings of railroad securities?

Mr. Fournier: I am sorry if that is your understanding. That was not my question. My question simply related to whether or not the underwriting charge with respect to an issue of common stock that is offered by means of rights to

existing stockholders, where the price of the offering in relation to market price was judiciously chosen, would be greater or less than the underwriting charge for an equivalent bond issue. That was my remark. I am sorry if I was misunderstood.

Mr. Battenweiser: If that is the question - I have no tables before me at the moment, but I would say, relying on my recollection, that for the risk involved the underwriting spread was no greater on a common stock offering at a price below the market, or what was below the market at the time the offering was originally offered to the shareholders, than it would have been for a bond issue.

And I would like to make the point that very often what appears, in your own words, as a "judicious price" below the market, becomes a price well above the market at the time the rights are eventually available for subscription.

Chairman Frank: Are there any further questions anybody desires to ask?

(No response.)

Mr. Battenweiser: I might add that there have been very prominent cases where underwriting of offerings has been made mandatory. There is the case of the first dissolution plan of the Union Pacific and the Southern Pacific, where the Attorney General of the United States made it a part of the condition of the dissolution that the offering of the Southern

Pacific stock be underwritten. That was part of the United States Attorney General's order.

Chairman Frank: Are there any further questions?

Mr. Weiner: There are just a few things I would like to call attention to, but to go into them at length I think would inordinately expand the scope of this hearing, and I also believe it unnecessary in view of the fact that most of these matters have been gone into elsewhere.

Am I correct, Mr. Buttenweiser, that most of the things that you dwelt on here yesterday, as to the continuing relationship of the investment banker with his client, were gone into before the Wheeler Committee, that is the Senate Committee on Interstate Commerce? Do you recall that?

Mr. Buttenweiser: I don't recall that there was anything like that, as a general proposition. I think what you would term the case history of certain railroads was traced.

As I recall it, the more prominent and more recent development of that subject was before the T.N.E.C. where certain case histories, so-called, were brought out.

Chairman Frank: I think we have just got to move on. In so far as those matters were discussed before the so-called Wheeler Committee, it is a matter of record, isn't it?

Mr. Buttenweiser: Correct, sir.

Chairman Frank: And you testified, and what you had to say on the subject is a matter of record?

Mr. Bottenweiser: Yes, but if it is with regard to this so-called affiliate subject, which is what I understand to be your particular interest at the moment, I might point out that the two case histories traced prominently before the T.N.E.C., and before the Wheeler Committee, so-called, were furthest from any type of a relationship that you could possibly deem affiliate.

For instance, before the T.N.E.C. there was brought out the Chicago Union Station Company, involving my firm, and the American Tel & Tel financing, which involved Kuhn, Loeb & Company and Kidder, Peabody & Company. And I think you will all agree that there was not even the slightest element of affiliation between the Chicago Union Station Company and our firm, or between the American Tel & Tel and J. P. Morgan & Co., or between the present Morgan, Stanley & Company, and I will be delighted to enlarge on that if you want me to.

Chairman Frank: No, I think if there is anything in those records that is germane, the Commission can consider it.

Mr. Weiner: Yes, I will furnish to the Commission - and have it incorporated in the record so that it will be available for anyone - the references to the portions of that Committee's consideration of this subject which we believe to be germane.

I do want to indicate, however, that our understanding

of these matters differs from that of Mr. Battenweiser. The very problem which was pursued before the T.N.E.C. and before the Wheeler Committee in its simple aspect was that type of affiliation which didn't rest on direct stock control.

Apropos of some other things you said, Mr. Battenweiser, am I correct in my understanding that when the Interstate Commerce Committee acted on the subject of competitive bidding, perhaps persuaded by your memorandum, it limited the competitive bidding to equipment trusts, and that thereafter your firm declined to participate in bidding upon equipments?

Mr. Battenweiser: That is correct, sir. We have, after very careful and mature deliberation, come to the conclusion - for the reasons indicated in this memorandum, and which I tried to touch on yesterday - that competitive bidding is not sound.

Mr. Weiner: Is not sound?

Mr. Battenweiser: Is not sound from the interests of the borrower as well as the lender.

Mr. Weiner: Then I would take it that one would anticipate from that, that the purchasers of those securities would have a worse experience than the purchasers of the railroad securities which are sold after proper negotiation?

Mr. Battenweiser: That conclusion does not necessarily follow, when you narrow it to a limited type of security like equipment trust certificates. As a broad proposition, we

consider it sound.

With regard to equipment trust certificates, though, inasmuch as you have asked that particular question, the question can not be answered, because in recent years - that is, since 1925 - it has not been tested what would have been the experience with regard to the sale of equipment trust certificates on a negotiated basis, as against a competitive basis.

Chairman Frank: For what it is worth, though, Mr. Bottenweiser, is the following true, - that on the whole, purchasers of investment trust certificates have been paid?

Mr. Bottenweiser: Oh, indeed, they have been paid. I said nothing, Mr. Commissioner, with regard to the intrinsic merit of the security.

Chairman Frank: No, but I mean in spite of the fact that they have been sold competitively - which you think is a great disadvantage - they have been paid?

Mr. Bottenweiser: Yes.

Chairman Frank: And holders of many railroad bonds have not been paid?

Mr. Bottenweiser: Oh, but I think you will agree that the particular question you pose now is directed toward the intrinsic merit of the security, and not to the basis on which they have been sold.

Chairman Frank: We could go on and argue this for two or three days, but I am trying to bring out the fact that,

notwithstanding your opinion that there is a great disadvantage to the investors in equipment trust certificates being sold competitively, they have not been hurt?

Mr. Buttenweiser: With regard to the payment of the securities?

Chairman Frank: Yes.

Mr. Buttenweiser: Quite right, sir, but I might point this out, that there is a case on record - and it is the only one that I know of - where a prominent railroad, the Southern Pacific Company, offered for competitive bidding in 1928, \$4,815,000 equipment trust certificates, and invited bids from 60 different firms. We were one of those firms, and we wrote the usual letter to the company and said that for reasons known to them, and made clear in this memorandum, we did not believe that competitive bidding was the most advisable way to handle that, and that we would refrain from bidding; but that if they did not get what they considered a satisfactory bid, we would be glad to discuss their financial requirements with them. They received three competitive bids, and the highest was 97-1/4, as I recall. They did not consider that that was a proper bid. They came to us and we paid them 98-1/4, as I recall, a day or two later.

Mr. Weiner: When that same sort of incident happens in the reverse way, you say that the other fellow tried to steal it away from you.

Mr. Butténweiser: I don't recall that we have ever used the expression, or have we any basis for using the expression that they stole anything away from us, or that we stole anything away from them.

Mr. Weiner: We have had two or three days of references of that sort; that what happens on competitive bidding is that some fellow comes along and steals it away from the underwriter who ought logically to get it. The same implication could arise from this isolated instance as to an opportunity where you came along, after seeing the competitive bids, and then offered a better price.

That, I understood, was one of the charges that is made against those who come along and offer public utility companies a price higher than the price which they previously negotiated with their regular bankers.

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Mr. Dean: If I may make a statement on that point, I don't think that the record supports that. There was no charge - and I don't think that any member any member of the Investment Bankers Association is making the charge - that anybody who comes along and pays the highest price on competitive bidding has stolen the issue. We do make the charge that if the underwriter at the request of the issuer has spent a period of three or four months of intensive work, with the buying department of the underwriter and their counsel, working with the financial vice president and the officers of the issuer, and their counsel, over a long period of three or four months, and they have spent five or six weeks in intensive effort in drafting the indenture and clearing it through the Securities and Exchange Commission, and preparing the registration statement and clearing the registration statement, that then naturally somebody could come along on the 19th day and say, "We will pay you a higher price", because they then would be taking all the fruits of the other underwriter's work, and they would not be compensating him for it, and since they don't make that kind of an investigation and don't maintain that kind of a staff, they naturally could pay a higher price.

Now that is the only statement that has been made along those lines. If the issuer decides in the first instance that it wants to sell its securities on the basis of competitive

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bidding, so that every body starts off on an even keel, while we still think that that is against the best interest of the investor, under those circumstances I don't see how there can be any question of stealing the issue.

Mr. Weiner: I am a little surprised at what you now say, because we have memoranda here, and I understood that the whole problem of over-pricing, as was stated here, was that some issuer, or rather some underwriter who would like to get a piece of business in order to "buy" his way in, as I recall one person describing it, would bid a price higher than the securities would justify.

Mr. Dean: Of course, why not?

Mr. Bittenweiser: That doesn't apply to the case in point.

Mr. Dean: When you are taking the fruits of somebody else's work for four or five months --

Mr. Weiner: (Interposing) This is on competitive bidding, as I understood -- you are not taking the fruits of anybody's work in that case.

Chairman Frank: I think we have covered the points. Are there any further questions?

Mr. Dean: I would like to ask Mr. Bittenweiser a question.

Chairman Frank: Proceed.

Mr. Dean: Mr. Bittenweiser, in the report of the staff there is a letter quoted on page 27. Is Mr. Chamberlain in the

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room? I understand he is the author of this letter.

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Chairman Frank: He has left.

Mr. Stewart: Is it a fact that Mr. Chamberlain is the author of that letter? Might we ask the staff that question? It is in the report without being identified.

Mr. Weiner: That was Mr. Chamberlain's letter.

Mr. Stewart: Thank you.

Mr. Dean: The statement made, Mr. Bottenweiser, reads as follows:

"It is the invariable rule that the issuer is required to pay the expense of assembling the information required by the banker In cases where the negotiation falls through and the banker does not accept the issue, the cost of providing for the investigation is the loss of the issuer and not of the banker. The banker does no more in this regard than to study the material supplied to him by the issuer at the issuer's own cost."

In your experience, would you think that that was a correct statement?

Mr. Bottenweiser: No, I would not. The banker, considering an issue, does much more than study merely the material furnished to him by the issuer.

Mr. Fournier: Does the issuer supply any material to the banker?

Mr. Bottenweiser: Do you mean whether the registration

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statement is prepared by the issuer in consultation with the banker?

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Mr. Fournier: No. I will make clear what I mean.

Within your knowledge does the issuer ever engage the facilities of an engineering firm, the fees for which are paid by the issuer and the results of the study furnished the underwriter?

Mr. Battenweiser: I don't think there is any hard-and-fast rule on that. Our own custom is that when we have engineers studying a company whose securities it is our intention to offer to the public, we pay for that expert investigation.

Mr. Fournier: Do you know of any instances where the issuer has paid?

Mr. Battenweiser: I don't, off-hand, but there may be instances. I can only speak of our own custom. Our own custom is to pay our own experts.

Mr. Fournier: I may say that we have in many instances, - which we are quite prepared to cite, - where many of these services of experts have been paid for by the issuer.

Mr. Dean: That is only one phase of the investigation, Mr. Fournier, and I might say that in competitive bidding that is one of the things that makes it so difficult to compare spreads because a much greater percentage of the expenses in municipal issues, or in the competitive bidding issues, is borne

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by the issuer than in the other cases.

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Mr. Battenweiser: To enlarge on that answer,---and meaning to hurry along as much as I can, Mr. Commissioner,--- there is much more than just the investigation of the company at the time that one is considering an issue of securities, and that is one of the other advantages of continuing a banking relationship, as I see it, keeping in close contact with the company and its affairs. One is in a much better position to study, not alone the information furnished by the company but a lot of information that might not have been furnished by the issuer, and therefore to ask for certain information which the occasional investigator of that company might not be aware of.

Mr. Fournier: Might I ask, Mr. Battenweiser, in the event that the leader or manager of an underwriting syndicate engages certain experts and pays them for service in connection with the issue, would the underwriter expect to presumably be reimbursed for that through the management fee that is charged?

Mr. Battenweiser: That, I think is perfectly obvious, is a general charge to the underwriting group because, mind you, that expert is making an investigation and not alone on behalf of the leading underwriter but on behalf of all the underwriters. So that would perfectly naturally be a charge to all the underwriters.

Mr. Fournier: Therefore, if that be true, and you had

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competitive bidding, might it not well be that in the event that the issuer absorbed many of these expenses that may now be paid by the leading underwriter on behalf of the group, may it not well be that the so-called management fee might be reduced?

Mr. Bottenweiser: No, and I will tell you why. Now I am treading on light ground because it is a legal matter, and I am no expert on law, as you know. But it would seem to me that if the expense of the expert who is investigating on behalf of the underwriters is paid for by the issuer, it might very well be established that he was the agent of the issuer, and not of the underwriters, and therefore the underwriters might not be able to sustain the burden of proof that they had made an expert investigation through their own agents, because the expert who made the investigation was the agent of, and paid for by, the company.

That leads us into something that I think represents a complete conflict between the concept of competitive bidding for corporate securities and the underlying concept of the Securities Act.

Chairman Frank: Mr. Bottenweiser, has your firm dealt in utility securities?

Mr. Bottenweiser: At times, yes, sir.

Chairman Frank: Since the 1935 Act?

Mr. Bottenweiser: We have been underwriters of public

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utility securities since 1935.

Chairman Frank: You haven't originated any issues?

Mr. Battenweiser: We have not been the leading underwriter of the issues, no.

Chairman Frank: This subject, therefore, is relatively less well known to you than it is to some of the other investment bankers present?

Mr. Battenweiser: I might answer that in the affirmative.

Chairman Frank: What I mean is that the question of competitive bidding with respect to the utility securities and with relation to the Securities Act is a subject on which you are less well informed than Mr. Stanley, for instance?

Mr. Battenweiser: On that narrow subject but not as regards the liability of an underwriter in having made an investigation through an expert employed by him, ---

Chairman Frank: (Interposing) I have great respect for your knowledge and wisdom on all subjects, and know you have a wife who is a lawyer, and very capable, but we are going to hear from Mr. Jackson who insists on talking to us for an hour, and perhaps you can dispense with this.

Mr. Battenweiser: I will be glad to defer to him.

Mr. Dean: I might say, Mr. Chairman, that if the staff is going to incorporate part of the Senate Committee's reports, could we have an opportunity to incorporate a statement to combat any inferences in order that the record will not show

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that it was introduced at a public hearing without any statement.

Chairman Frank: Will you give Mr. Dean a copy of the references that you propose to use?

Mr. Weiner: Just as soon as we have compiled that.

Mr. Battenweiser: I would like to add that if the hearings, or any reference to the hearings, so far as my firm is concerned, before the Wheeler Committee, are to be introduced in this record, I would prefer, in fairness, not to have reports introduced but the actual record, and I say that because I think that the reports do not properly reflect the testimony before that Committee.

Mr. Weiner: We would produce, of course, both. However, I think it is obviously pertinent that the judgment which was drawn from the testimony by the members of that Committee, who are members of the United States Senate, should not be excluded from consideration by this Commission.

Chairman Frank: But at any rate you will furnish Mr. Battenweiser and Mr. Dean with the citations?

Mr. Weiner: Surely.

Mr. Battenweiser: There is one further subject on which I would like to touch for a moment, not as representing Kuhn, Loeb & Company now but in another role.

I happen to be chairman of the Investment Bankers Association - Technical Research Committee, and in connection with that

technical research there was undertaken, as I think you gentlemen know, a census of the investment banking business, and part of that census was a secret ballot on the entire question of competitive bidding. The reason I stress "secret" is so you can see that there could not have been any influence, one way or the other, with regard to this plebiscite of the industry.

I will not read the entire report, but I would be delighted to make it a part of the record if desired. I would like to read the one cogent paragraph.

(Reading) "It is interesting to note that out of a total of 355 replies received from members of the Association spread through the length and breadth of the country, 292, or 82-1/4 percent, expressed themselves as being unqualifiedly opposed to compulsory competitive bidding for railroad securities; 24, or 6-3/4 percent, favored it and 39, or 11 percent, submitted either non-committal or qualified replies. With regard to public utility securities, out of 357 replies, 296, or nearly 83 percent, were unqualifiedly opposed to compulsory competitive bidding; 24, or nearly 6-3/4 percent, favored it and 37, or approximately 10-1/4 percent, submitted non-committal or qualified replies. With regard to the securities of other types of corporations, out of 356 replies, 299, or 84 percent, were unqualifiedly opposed to compulsory bidding; 21, or nearly 6 percent, favored it and 36, or approximately 10 percent,

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submitted non-committal or qualified replies."

Chairman Frank: When was that questionnaire sent out?

Mr. Bottenweiser: Last August. The replies were finally tabulated by about the middle or end of December, 1940, so it is about as recent a plebiscite as has ever been held on the subject, and so far as I know the only really secret on the subject. We submit that on behalf of the Investment Bankers Association first as the most accurate statistical data that we can adduce on the subject, and second, we believe that this should, once and for all, set at rest the suggestion that has been sometimes made that this question of compulsory bidding represents a battle of the "haves" versus the "have-nots", because certainly among 357 replies there must be represented every shade of opinion.

END

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Moreover, as I have endeavored to indicate this morning, I don't believe that there is any such thing as a "have" or "have-not", because there is no claim on any financing.

There is one last observation that I would like to make, and that is in answer to a question you raised yesterday, Mr. Chairman, as to the question of aggressive competition for business. I think it is fair to say that our entire country is set up on a competitive economy, but that is not synonymous with the competitive bidding.

Here is just one illustration that I would like to make. There is, as I see it, very active competition between, we will

say, R. H. Macy & Company in New York and Gimbel's and Wana-maker's. That does not mean, however, that Macy's maintains in front of Gimbel's a representative who says to everyone about to enter Gimbel's "Don't shop here because you can shop cheaper at Macy's".

Chairman Frank: Macy's does not exactly hide under a bushel their desire to sell. In other words, they don't go to the newspapers and request them not to indicate that they would rather have the business.

Mr. Battenweiser: Nor do the investment bankers.

Chairman Frank: I mean, Macy's pretty actively solicits every customer of Gimbel's that they can through the medium of advertisement?

Mr. Battenweiser: Yes, and equally actively do the investment bankers, as I see it, but through another method, solicit business. And it is this way.

It is impossible for a person living in Washington, D.C., to shop at Marshall Fields in Chicago or Bullock's in Los Angeles, or at Filene's in Boston, but it is not impossible for a utility company located in Baltimore or in New Orleans or in Bangor, or wherever it may be, to shop for its investment banking services in Boston or New York or in Chicago or in San Francisco, or anywhere throughout the country.

Frankly, Emerson's essay on "Building a Better Mouse Trap" applies more, as I see it, to the investment banking business

than any other type of business, --

Chairman Frank: (Interposing) You wouldn't call the investment banking business a mouse trap? (Laughter)

Mr. Battenweiser: I wouldn't call it a mouse trap, but I would say that you don't have to make a beaten path to the investment banker's doorstep because he will be glad to send his representative to the place of business of the utility.

Chairman Frank: Is there anything further?

Commissioner Eicher: I always listen to Mr. Battenweiser with great interest and entertainment.

Mr. Battenweiser: Thank you, sir.

Commissioner Eicher: I recall hearing you when I was a member of the House Committee on Interstate and Foreign Commerce.

Mr. Battenweiser: I very pleasantly recall those hearings.

Commissioner Eicher: If my memory serves me right, you appeared in opposition to about every statute that this Commission is administering now?

Mr. Battenweiser: I am sorry if my memory doesn't quite accord with yours. It was not that I always opposed them, but that I made certain suggestions with regard to certain legislation, which was suggested in Congress.

Commissioner Eicher: I will accept that amendment. I do not doubt that you made many constructive suggestions.

Mr. Bottenweiser: I might add that some of those suggestions were adopted.

Commissioner Eicher: I have no doubt they were.

But as I was going to say, whenever you get through talking I feel a good deal like the devout old lady who had listened to an inspiring revival sermon. I get the impression that you feel that everything is sweetness and light in the matter of the distribution of corporate securities, and that there is just the right amount of competition, no more and no less; and the temperature is always just right.

I assume, therefore, from the conclusion that you have announced here to us yesterday and today, that if there is still any such device being used in the way of business sweetening, like the preferential lists that were prevalent prior to Pecora Investigation, you don't know about them?

Mr. Bottenweiser: If I correctly understand your question and your reference, you refer to "sweetness and light", which, as I recall, was touched on by Matthew Arnold. I don't think that everything is "sweetness and light".

But referring to Mr. Matthew Arnold, I also don't believe that the investment banking business is composed only of "barbarians, Philistines and populace", which was another one of his essays.

What I do think is this. There were certain practices which existed in the banking business in days gone by, which

I regret, and which I think many others regret, and properly so. I think it is fair for me to say that so far as I am aware, our firm indulged in very few, if any, of those. We made mistakes, certainly. I think there is no human who does not make mistakes at times.

As to whether or not there should be no change, obviously changes go on all the time. We are living in a changeable world, and I am by no means so reactionary as to think that everything that was is perfect, and everything that is being suggested is wrong.

But I do say that under the guise of reform, one wants to be very careful that one does not destroy, and as I see it, and as I said at the time of the Barkley Act discussion - which is what I think you alluded to - some of the things which I have suggested may create a vice far greater than what presently exists.

Chairman Frank: Do you think that is true of the Barkley Act?

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Mr. Battenweiser: Not as it stands now, but the first edition of the Barkley Act, I think, had in it certain underlying concepts which Congress would not want to adopt.

For instance, we have in this country a Pure Food Act, and certainly everyone must admit that it is a very good piece of legislation, and I think this is of particular interest to your Commission, if I may say so. The Pure Food Act--as I understand it, Congress in its wisdom planned it that way--insists that one must state on the bottle what are the ingredients, so that if you get Father John's Cough Medicine you will know just what is in it. But nowhere does the Pure Food Act indicate, nor, do I believe, would Congress want it to, because I do not think the Government wants to take any such responsibility, that not alone does the bottle contain the certain ingredients, but those ingredients will cure coughs and headaches, or whatever the medicine is sold to cure, - because that would represent an endorsement by our Government, which I think you will agree is an unsound concept to introduce in Government.

That was my objection to certain aspects of the Barkley Act, and it has an applicability to other Acts.

I think you gentlemen are quite right. I certainly do not want in any way to have you sidestep your responsibility so far as calling for the truth in securities, or insisting that the prospectus and registration statement and the indenture

state what the security fairly purports to be. But I don't think that Congress intended - and I should doubt that you would want to assume the responsibility of stating - that not alone is this what the security represents, but it is a sound security, and it bears the moral endorsement of a Government agency.

The reason I cite the analogy of the Pure Food Act is just this: It would be just as rash, it seems to me, and just as much against public policy, for Congress to pass a law saying that the Securities and Exchange Commission will pass on the intrinsic merit of all securities--

Chairman Frank: (Interposing) Nobody is suggesting that.

Mr. Buttenweiser: But that is the analogy, and that was what was contained in the first editions of the Barkley Act.

Chairman Frank: I am sure I would dislike to be a member of any Commission that had to do that, and nobody on this Commission is ever going to suggest it.

Mr. Buttenweiser: I am glad to hear you say that, because I am afraid that that is what the public may be led to believe.

Commissioner Healy: I can't see it that way, either.

Commissioner Eicher: One more observation.

As I recollect it, you affirmatively stated yesterday that you didn't retract anything that was contained in that

memorandum of 1922?

Mr. Battenweiser: I said something to that effect. What I really said was that I thought it applied with almost equal force with respect to everything it contained.

Commissioner Eicher: I assume, then, if that is true, that you, yourself, don't claim that so far as this problem of over-pricing is concerned, it will be any more serious under a system of competitive bidding than it would be, or than it has been under private negotiation?

Mr. Battenweiser: I think that the memorandum clearly indicates, as I tried to make clear yesterday, too, that in times of high bond market, low interest rates and high bond prices, competitive bidding will lead to over-pricing. And quite the contrary, in times of high interest rates and low bond prices, it will lead to under-pricing or under-valuing, and that is why I cited the case of the City of New York financing in 1931. That was at a time of very low bond prices, and I don't think people properly appreciated or evaluated the credit of the City at that time.

Commissioner Eicher: As I recollect it - I may be mistaken - but the extract quoted by Mr. Eaton the other day indicated rather definitely that you felt the interests of the issuer were best served by private negotiation because of the fact that he got a better price through that method?

Mr. Battenweiser: That was why I was very careful to

cite Mr. Eaton's summary, which, unfortunately, was not accurate as regards the statement contained in our memorandum, and that is why I first read Mr. Eaton's citation. I can well understand that, trying to summarize a document that he may not have seen for some little time, which was submitted in 1922, he could not be as accurate as the written text. There was no implication to impugn his memory, it was merely that I wanted to cite his testimony, and then cite to you gentlemen what was the actual test.

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Statement of Cyrus Eaton
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Mr. Eaton: I would like the privilege of speaking for a few moments at your convenience.

Chairman Frank: Do you want to do so now?

Mr. Eaton: Yes.

STATEMENT OF CYRUS S. EATON
of
Otis & Co.

Mr. Eaton: May I put into the record the pamphlet which we prepared on this subject.

(The witness hands to the reporter pamphlet entitled, "Investors, Dealers and Issuers Would Benefit by Competitive Bidding for the Securities of Public Utilities".)

Mr. Weiner: May I interrupt a moment? I don't think it is necessary for the reporter to copy any of these documents that are submitted, because those we consider all to be a part of the record.

Chairman Frank: Yes, sir, Mr. Reporter, please do not copy such documents.

Mr. Eaton: With respect to the position taken on competitive bidding before the Interstate Commerce Commission, to which reference has just been made, there was fairly interesting testimony given after the submission of the printed paper. I think Mr. Otto Kahn represented Kuhn-Loeb, and the partners of J. P. Morgan were present. This is from Mr. Otto Kahn's testimony at that time.

They were discussing the subject of what effect com-

petitive bidding would have on prices, and this is Mr. Kahn's answer:

"In my own opinion, the prices certainly would not be higher".

Now most of the objection that has been made to the rule that has been submitted for consideration has been from the standpoint of those who are selling bonds. There has been very little objection - I think I have heard none - to applying the system to preferred and common stocks.

I am very much interested in those two latter fields, and I believe the rule would work splendidly in those two fields.

In so far as concentration goes, it is probably more important with respect to common stock, at least, that they be made widely available, than that they should be restricted to a few banking houses.

With respect to their marketability under a competitive bidding rule, it seems to me that common stocks and preferred stocks can be marketed and distributed and underwritten effectively through a system of competitive bidding. There is a very wide market for common stocks that affects every nook and cranny of the country.

The high grade bonds are perhaps confined more to the institutional and big buyers, but the common stocks go everywhere, and dealers in all parts of the country are interested in them, and investors are. And if common stocks, good common

stocks, are made available, you will find banking houses growing, expanding, and developing in many parts of this country to avail themselves of the opportunity which that would present.

Now on the subject of monopoly, if monopoly doesn't exist, certainly it is not because every effort hasn't been made to create it. I think I need to say very little on that subject, because the report of the staff is so comprehensive and so convincing that it seems to me that the people who prepared that know what they are talking about.

Now I believe that one of the most important results of a rule requiring competitive bidding would be the opening and stimulating of the capital markets of this country. The financing that has been referred to with a good deal of pride here the past few days, covering the past four or five years, has been refunding operations, operations that are easily done. They are taking securities, not that had matured, but had long years to run, and they were replaced because there was an abundance of idle money, and institutions that held them were practically compelled to come back in the market and get them.

So that to me, the biggest single thing that could be done in this country to stimulate business would be to put idle money to work, and I don't believe that we are doing a full job in the investment banking fraternity. And if our

business is not the supplying of new capital, then I think there is no reason for the investment banking industry to exist at all, because obviously where securities are comfortably resting now, and the only contribution you can make is to replace that security with the same investor at a lower interest rate, you don't need an investment banker for that. That is why our business has been dwindling, we haven't been exercising imagination, we haven't been meeting the financial needs of this country. For proof of that you have only to consult the records of the 30 Governmental agencies in Washington which today are employing over \$14,000,000 in supplying the needs of our current economic demands.

Now I say that there is a concentration of underwriting that has been carried to the extent that it is extremely harmful even to those who are the beneficiaries of it.

Let me give you one illustration of where it exists, and with that I will be through on that subject.

Take our great steel industry, it is located largely around the territory in which I reside. The raw materials are in the West and the South. The transportation that carries the raw materials and the finished products is in the Middle West. The steel mills are in the South. But this is a fairly interesting thing - if you will consult the statistics for the last year and a half, you will find that the industries representing practically 100 per cent of the steel

business, the great companies that are competing companies - United States Steel, Bethlehem Steel, Inland, National, Youngstown Sheet & Tube, J. & L. - you will find that while there has been some argument among the group of bankers as to which one would lead it, you will find that when A heads the list, B is in second position, and when B heads the list, A is in second position, and if you will add them all up you will find that when you get through there is a very definite relationship between A, B, C, D and E in the totals.

That, I believe, is a hardship to the steel industry, and I believe it is exceedingly unwise for the banking fraternity to encourage it.

Now New York Investment Underwriters - and I want to speak with respect of them, because they are men of great ability and great integrity - but they are like the New York Stock Exchange, they want to do all the business of the country, and it is not possible that all of the financing operations of a nation this size could be done in one spot.

I was recently in California, and I realized how far away, geographically, New York was. You might as well ask New York to do its financing in London as to say to San Francisco that for all its large financial requirements it should be dependent on as distant and inaccessible a place as New York.

Now it just won't work. The Federal Reserve System,

with 12 financial centers, is a compromise that probably meets the needs.

Now I was depressed to have a representative of St. Louis say here a few days ago that he didn't think there was a banking house in St. Louis capable of handling a sizable issue of securities. I don't think that that is the fact, but if it is, it ought to be corrected and this Commission would render that great territory an invaluable service if they encouraged the upbuilding in that market of a strong financial house, even if you had to ask the R.F.C. to supply some preferred stock, or to help out on it.

Now there is one appeal that has been made against the competitive rule, to which no exception has been taken, and that is this, that the question has been asked - who is the issuer? I think four or five men who testified here said, "When our committee meets they ask who is the banking house?".

That was very politely and tactfully put forward here, and it is very tactfully presented elsewhere. But is very frequently said to an issuer, "If you don't pick the right banker, not only will your credit suffer but your business will not be as good."

I will give you a concrete example. When the Chesapeake & Ohio Railroad two years ago was considering refunding, it was said to them by certain people, not by the bankers but people outside the bankers, "You can't afford to change your banking house, your credit will suffer; and at the same time, if you change your banking house your business may suffer - don't take that chance."

Now the C. and O. Railroad is not a very mysterious thing. Sometimes we get a thousand miles away and look at it on blueprints and it looks like something that is hard to understand. But it is a very simple business operation.

The C. and O. Railroad transports coal from a small area in West Virginia to our steel companies, our rubber companies, our power companies, our great industries on the Great Lakes - a very simple business.

And they said, - some realistic people on that board - "Well, if the C. and O. can save \$1,500,000 or approximately that by changing bankers, we will take a chance on our credit and on our business".

And they did, and neither credit or business have suffered.

But that is brought forward very often tactfully and used with great effect, and it helps hold financing in a small group. It has been presented here very tactfully, but I think it is an argument that ought to have no weight with this Commission.

Now it has also been hinted that perhaps only in New York is there sufficient experience to deal with these problems. But I want to say to you that New York is at a disadvantage when it comes to actual contacts with the running of the fundamental businesses of this country, and if you examine the history of our great industrial enterprises, you will see that very few of them, if any, were born or created in New York. They were made in another region.

Much has been said about the months of laborious effort which the New York bankers take in studying a business before bringing out an issue of securities. I don't want to say this with disrespect, but the fact is that very often those studies are made necessary by the fact that those bankers are so far removed from where steel is being made, or rubber tires are being produced, or iron ore mines are being operated, or lake transportation being done, that they don't know.

The hard work and the long work is to educate the banker, frequently.

Now I know a lot about that, and I can assure you that there is overemphasis on that phase of it.

May I say one word on another subject; the matter of capital has been stressed. There is an abundance of capital available in this country for financing business, if people can be assured that they can have a share of that business, and that business can be done in sections other than New York.

If it is not in bad taste, I would like to give you two or three illustrations.

In 1929, after the panic had hit, Otis and Company was the sole original underwriter of \$75,000,000 of securities for the Firestone Tire and Rubber Company, \$60,000,000 of preferred and \$15,000,000 of common. Now it is true that after making the commitment with the company, we had others join in that commitment, but the original commitment was ours, and the money was all paid over.

Now Republic Steel Company was put together in its larger form not until April, 1930; while the plans had been under way for some time prior to that, they hadn't been consummated until then, and it required \$60,000,000 of preferred stock. Otis and Company was the sole underwriter of that \$60,000,000 of preferred stock.

Let me give you another illustration if it doesn't bore you.

The Goodrich Tire and Rubber Company is in our neighborhood, and they had outstanding \$25,000,000 of bank loans. They went to their traditional bankers, very prominent people in New York, in May of 1930, and they said, "Under present conditions

we can't supply you with any money, you go on with your bank loans and get along the best you can".

They came back to Cleveland and we said to them, "We think you are in danger if you do that, we will take from you \$30,000,000 of 15-year debentures."

Mr. Stuart has been good enough to say that he thinks that is the most resourceful piece of banking that ever saw done in this country under those circumstances, but I point that out simply to illustrate that geographically, closeness to an industry doesn't prevent the handling of a very large financial operation.

So far as capital is concerned, I can say for Cleveland, and for that district, that there is an unlimited amount of it available for the underwriting and investment business, provided we can be assured that we can get a fair chance at it.

It has been suggested that you ought not act while there is a national emergency, that you ought to defer it to some more convenient time. If the Commission feels that this is a sound thing to do, I am sure that you would make a contribution to business and to all sides if you acted promptly and definitely. The suspense and uncertainty and delay is unsettling, and while such a controversy as this is pending, and the pros and cons are putting out releases and speeches, the country is disturbed. The investment banker says, "We are

faced with ruin if you take this action," and some people believe it.

So that delay and temporizing has an element that is in itself far more harmful than reaching a decision.

I believe that the recommendation of the Division is a sound one, I think it is sound with respect to common, preferred and bonds. I believe it will be very helpful to the investment banking business. I think it will open the capital markets and I very much hope that the Commission will adopt it.

Chairman Frank: Mr. Stewart, do you want Mr. Newhard to speak for a moment?

Mr. Stewart: Yes, sir, Mr. Newhard.

STATEMENT OF MR. CHAPIN S. NEWHARD

of Newhard, Cook & Co., St. Louis, Mo.

Mr. Newhard: My name is Chapin S. Newhard. I am a partner of Newhard, Cook & Company, of St. Louis.

You perhaps have had a belly full of the small dealers, but I am a small dealer. I come here representing the dealers of St. Louis. I come here at their request, not at the request of anyone from New York.

St. Louis in some respects is a unique city in our business. In the first place, there are 82 dealers there. You will find that that is a large number for a city of our size. These dealers own their own shops. Of the ten New York Stock Exchange houses there only one is an out-of-town shop. The rest of them

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are locally owned. They think independently, they act independently.

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Mr. Eaton said a moment ago that someone recently made the statement to him that there wasn't a house in St. Louis capable of handling a large piece of underwriting --

Chairman Frank: (Interposing) That statement was made here yesterday by a St. Louis investment banker.

Mr. Newhard: Well, I would make the same statement, - that is the point I want to bring out.

Mr. James S. Bush (of G. H. Walker & Co., St. Louis): Mr. Chairman, may I say this in support of what Mr. Behrens said? What Mr. Behrens meant was that if we originated a piece of business in New York, say \$40,000,000 or \$50,000,000, probably we would only retail in St. Louis \$10,000,000, just as if we were in Cleveland or New York, and originated \$50,000,000 we would retail it throughout the country. He did not mean that we did not have the financial strength to underwrite it and originate it. I am sure he did not mean it because I know him extremely well. In fact two of my partners are on his board of directors.

Mr. Newhard: I agree with Mr. Bush on the matter of financial strength, but on the other hand, to do a broad distributing job there is no house in St. Louis set up to form a large selling group all over the country, and through a large selling group give an opportunity to investors all over

the country to participate in an issue.

When I arrived here I wanted to be sure that I represented the views of our dealers, and so a canvass was made only Monday morning as to their opinion on what has been proposed. Of the 82 dealers - and I got this information only Monday noon - 70 of them are opposed to competitive bidding; 2 are not; one was undecided; and in the shortness of time 9 could not be contacted.

Those figures are fresh, they weren't put out last August, and I am confident that those figures would represent, those percentages would represent, the thought of the independent dealer throughout this country.

I prepared a short statement Sunday night, bringing out the points of why we felt that it was unsound. Those points have, of course, all been covered in the two days' hearings, and I am not going to take the time to go over them, but I want to say this, that the principal point is that we believe certain large underwriting firms in New York have well earned the sponsorship of a number of companies.

I know that that sponsorship is very important to the independent dealer. We have confidence that it is. And I know likewise that it is very important to the investor.

What puzzles us is that when corporations or public utilities may have the privilege of going to any banker they care to select, or putting forth their securities on a competitive

bid basis, we can't understand, with that privilege, why you have to force them to leave someone who has done a good job over a period of years; just as Mr. Battenweiser yesterday afternoon said, I believe, if you are sick you don't dare get bids from doctors to see who is going to handle your case for the least amount of money.

Thank you, very much.

Mr. Dean: May I ask one question?

Chairman Frank: Yes.

Mr. Dean: Mr. Newhard, when you are offered bonds or securities on a negotiated issue, are you offered those bonds firm up to a certain hour, in your city?

Mr. Newhard: Yes.

Mr. Dean: Is that the customary practice on municipal issues?

Mr. Newhard: We handle very few municipals.

I am glad you brought that point up. I think that competitive bidding would lead to a situation such as in the municipal field today where you would have a further concentration of so-called undesirable power that would lead to a smaller distribution.

Take our position in municipals. We haven't any historic interest in any municipal accounts, and as the result we aren't in any municipal business.

Mr. Dean: Have you been offered a position in any of these

public utility issues that have been let on competitive bidding?

Mr. Newhard: We haven't participated in any of them.

Mr. Dean: Have you been offered a position in any of these equipment trusts that have been let on competitive bidding?

Mr. Newhard: No.

Mr. Stewart: I would like to ask Mr. Newhard if it is not a fact that when he is offered bonds firm in the ordinary negotiated issue, is it not true that those bonds are firm in your hands, let us say, until 1 o'clock or 3 o'clock your time, on the day of offering?

Mr. Newhard: That is right.

Mr. Stewart: So that without risking any of your capital, you know that those bonds are there, and you can develop business in them; if you get an order, you know that the bonds are there for you?

Mr. Newhard: That is well known.

Mr. Stewart: Whereas, in the case where bonds are offered on a "first come, first served" basis, if you work on the issue and develop the order, you have no assurance that the bonds will be there when you bring your order in?

Mr. Newhard: Correct.

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Mr. Stewart: Thank you.

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Mr. Dean: Do you have any hesitation in turning down a participation in a selling group, if you don't like the securities?

Mr. Newhard: No, we do it all the time.

Mr. Dean: Do you feel that there is any pressure put upon you by the larger underwriters to stay on their lists?

Mr. Newhard: None whatever. As a matter of fact, I don't know of any underwriter who has ever solicited the business of a dealer such as ourselves. We generally go to New York and go around and seek people that we would like to do business with, and I think that we earn our position on their selling group list by our performance, just as an underwriting house earns its position as banker for a utility or other corporation by their performance.

Mr. Dean: Thank you very much.

Mr. Fournier: Mr. Newhard, do you recall the Boston Edison situation in 1935?

Mr. Newhard: No, I don't.

Mr. Weiner: In your judgment, is there enough capital in Missouri to finance Missouri industries?

Mr. Newhard: Of course there is; if you know anything about Missouri, it is one of the oldest and wealthiest states in the country.

Mr. Dean: Were you offered any bonds of the Boston Edison

issue in 1935?

Mr. Newhard: I don't remember.

Mr. Foster: I would like to know just what you mean by earning your position on an underwriting syndicate by your performance. Doesn't that mean that in the ordinary course you are usually able to accept and dispose of most of the bonds that are offered to you, firm?

Mr. Newhard: Have you ever been in this business?

Mr. Foster: No, I know nothing about it.

Mr. Newhard: Well, when you get an underwriting position-- apparently there is some feeling around here that that is just a little gravy passed out if you get a selling position, if the bonds move out. That isn't true.

Mr. Weiner: May I say that you are mistaken as there being any such feeling around here.

Mr. Newhard: Well, the question suggested that.

Chairman Frank: I don't think the question was intended to suggest it. Mr. Foster was asking for information.

Mr. Newhard: We have in our organization about 50 people. We cover southern Illinois and eastern Missouri, and when a piece of business is offered to us, and we have a selling group participation, what the underwriter wants and I think what this Commission wants, is an opportunity given to a broad number of people to participate. That is our job. If we sell that block to a number of individual investors, banks and so forth, over a

certain area, that is a good job.

Commissioner Pike: I should like to ask you if your experience isn't a little unusual in not feeling any pressure on yourself not to refuse positions offered to you on deals or with syndicates where you have been accustomed to have the position?

I say this because I have been associated with the business in one way or another, usually as a buyer, for some 15 years or more, and I have a good many friends in the business and their testimony--not in hearing--but fairly personal, is a little bit different from yours, but it has been considered a sort of rise in the world when you get a recognized position on somebody's syndicate list.

I think it is fairly well recognized that some houses at times will take bonds that don't sell very well in that territory, and they stick with them a little bit, rather than say no to the underwriter. I don't mean to say that it is illegitimate pressure at all, but in recent conversations with dealers and people who might be sub-underwriters and dealers, but who I would say are primarily dealers--we haven't had a great deal of that in the last year or two in these refundings, it has been in most cases a rush to get on the boat, and things have gone out right away. But I should be surprised to think that that was the universal experience.

Mr. Newhard: I don't know quite what you mean by "pressure", I mean the definition of it. I can only speak from our experience.

We have never had any pressure put on us. Now, I don't mean that we don't take bonds in an issue that might be slow in our community.

Commissioner Pike: You value your position on the syndicate list, do you not?

Mr. Newhard: Yes indeed. There are a few syndicate lists that we value very highly.

Commissioner Pike: And you would think it over very carefully before you turned down a position, even though it might be tough going in your area?

Mr. Newhard: Yes, but there is no pressure. That is up to us.

Mr. Dean: Mr. Commissioner, would you mind asking the other dealers present in the room that question?

Commissioner Pike: I think perhaps, Mr. Dean, that the word "pressure" covers a great area. I don't mean pressure in an illegitimate way at all. I think frequently it may be pressure that a person puts on himself.

Mr. Dean: I think the practice since the advent of the Securities Act is quite different, and I think it would be interesting, if there are any dealers present who feel they are under any compulsion to take bonds offered to them by the underwriters--to hear their remarks.

Commissioner Pike: There are quite a lot of dealers here and I feel that would prolong the hearing unnecessarily.

Mr. Connely: May I put in one word? As a small dealer I believe that the dealers that have been in this business for a long time make up their minds when they are offered a participation: (a) whether they want it or not on the basis of whether it is fitted and suited to their customers; and (b) is the amount more than they should have for their particular demands?

Now, when we get a participation from Morgan Stanley, say, we make up our mind on that. When we get it from Mr. Stewart, we make up our mind on that. But we think we have got a job to do in selling securities, and the fact that we haven't got them sold at 10:00 o'clock in the morning doesn't interest us at all. We are old-fashioned sellers that can have a few bonds on our shelves for a week.

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STATEMENT OF JOSEPH M. SCRIBNER
of
Singer, Deane & Scribner, Pittsburgh

Mr. Scribner: I have been in this business since 1919. I am a partner in the firm of Singer, Deane & Scribner. I think that what you are trying to get at, if I understand you correctly, is to ask Mr. Newhard, and through him the small dealers, whether, if at 9 o'clock in the morning we receive a telegram from a certain underwriting house in New York, offering us 100 bonds firm, whether there is any effort exerted to get us to take the bonds. Is that your question?

Commissioner Pike: I think it covers a wider field than that. You and I both know that in a good many issues there is no trouble at all in getting the people to take them, that there is a scramble for them, and every now and then there comes along a sticky one. I would take it that the man who is doing the selling, and I presume the underwriter - let's say he is in his wholesale function - he might very well push a little harder than if everybody was in there jumping. That is a function of the business man, to push a slow-moving stock, it seems to me.

Mr. Scribner: I will tell you what happens in our business with respect to my firm.

We have found, over a period of years, that we think along the same general lines with respect to investments, as certain larger underwriting houses do, and we do not think along the

same general lines as certain others do with respect to the types of securities they have for sale.

For instance, there are a number of larger underwriting houses in New York from whom we secure very few securities. I can't recall a single instance at any time that they have tried to get us to take them. Now with respect to the houses that we work closely with, we do so with complete freedom. It so happens that we have the type of clientele who, generally speaking, their securities fit in with.

Therefore, when they have a security and offer it to us, it generally is the kind of security we want.

Now all securities do not move as freely as others, but we feel no compunction in turning them down completely, or refusing our participation in any deal that they may offer to us.

Generally speaking, however, they do not offer us many deals that we need pressure on, or that we do not accept. But that is not due to the pressure put on us by the underwriters, it is due to the type of securities, over a period of time, that they have.

Commissioner Pike: If I inferred that any pressure put on in selling was at all illegitimate, I haven't made myself clear.

Mr. Scribner: I don't think it is a question of that, I think it is a question of the type of securities that the

underwriter produces.

Commissioner Pike: It is wider than that. During the last several months I have talked with groups of dealers, not in hearings, but I think they have spoken quite frankly. And their testimony, I think it is fair to say, which is testimony by conversation, doesn't quite fit in with the testimony this morning at this hearing.

Naturally a person has his interest in his business to protect, and he will speak perhaps more freely in a conversation not of record than he will on the record, and naturally it is true, I expect, that the people I spoke to may have had very different interests in the business than the ones who are speaking here this morning.

But there is a certain unreality apparent to me from this testimony, and it is only my own personal impression, and I am not at all surprised, a certain unreality in that particular part of the aura of "sweetness and light" that envelops a good part of the business. We know it is a competitive business in a great many areas. We also know that where a person has got a place of advantage, he is reluctant to give it up, and in a good many cases he has tried to make sure through entirely proper measures, friendship or otherwise, or one or two ill-advised instances of contracts, let us say, and he is going to make it as tough as possible for the outside man or the other dealer to break in.

I don't think that that is necessarily illegitimate or, in most cases, illegitimate at all.

Also, that goes down with the dealer. I say that in conversation, and as a result of rather long and not too good experience, dealers have very frequently said, "Well, I can't do that, it might mean my position on the syndicate list."

They may be wrong in thinking so, but a good many dealers have thought so. Now you don't, and I respect your difference of opinion.

Mr. Scribner: No. I take this view. I think that if an underwriting house in New York has a general pattern of business which, over a period of years, has developed a series of, let us say, industrial and utility high-grade bonds - I don't think that I, as a dealer, have any right to take a position on their list unless my pattern of distribution corresponds to that.

Now I think the dealers who have expressed this feeling to you have improperly analyzed their position.

Commissioner Pike: That may be true.

Mr. Scribner: I would be very glad to discuss it with them some time, because I haven't heard anyone who I think approached this business intelligently, express that conviction and maintain it in the face of rational argument.

Mr. Edward Hilliard: May I very briefly give a little personal history, because I think, with the exception of

two other old fellows here, that I am the oldest one here in this business.

Back in 1917, Buck Ewing came out to Louisville and talked about syndicate participation with my firm.

WLC

I explained to him that we had done business with J. P. Morgan & Company for probably 30 years prior to that time, and if the inclusion of our name on that syndicate list meant that once we were on we would have to go on all the time, I would not like to get married.

He said he had no intention of making that arrangement. I may say that personally -- that is over 20 years now -- we have, and we have had, no hesitation in telling our good friend Morgan, of Morgan Stanley, that certain issues were unsuitable to us and that the size of an offering was too large for us.

I recall in one specific instance that we had no market for the security, and we declined any participation, and I believe the bonds were up 7 points when the telegram came.

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STATEMENT OF JAMES S. BUSH,

G.H. Walker & Co., St. Louis, Mo.

Mr. Bush: My name is James S. Bush, and I am a general partner in G.H. Walker & Company of St. Louis, Missouri that was founded in St. Louis in 1900. Since that time, we have conducted a general brokerage and dealer business. We are members of the St. Louis Exchange, Chicago Exchange and New York Exchange. Our principal business consists of executing orders, mainly on a cash basis today in odd lots for stocks and bonds, and distributing and selling over-the-counter securities and syndicate issues, and so forth. We have had a long and very pleasant experience with Mr. Stuart's firm, and we have also had similar experience with New York firms. I do not say that to try to carry water on both shoulders between the opponents or proponents of compulsory competitive bidding; I say it because we are absolutely unprejudiced in any way by anybody. We represent ourselves, St. Louis, and Missouri only. We have no obligation to anybody, and I hope we never will have.

Mr. Behrens testified here on Monday concerning the ability of St. Louis to dealers, to underwrite and distribute local securities. Mr. Eaton brought it into the testimony today. I do not know Mr. Eaton and he does not know me, but he did bring in St. Louis and I want to say this, as far as our firm is concerned, I would match our last auditing statement with anybody in Cleveland or any place else aside from a few very large firms. We

consider that we have very adequate capital in our business, and our underwriting commitments, which have been many, and never endangered any customer of our firm, either.

We have a peculiar situation, Mr. Chairman, in St. Louis in that all of our public utility companies are owned by foreign corporations. That is why the subject is of great interest to us. We believe that just as Anheuser Busch, Monsanto Chemical, International Shoe and our other businesses are managed by people that live in St. Louis, Missouri, we also believe that the healthiest situation that could exist would be if our utilities were also managed the same way, I hope they will be, and I will tell you that we will do everything in our power to try to make it that way. That does not mean for a minute that we think that we could take an issue of 70 or 80 million dollars of 30-year 3 per cent bonds and sell them around the country, because we recognize fully that that technique and that ability have been developed over a long period of years by large firms, which we respect, and I think that they have done, just as I think Mr. Stuart's firm has done simply a marvelous job in Commonwealth Edison which involved not only mortgage bonds, but convertible debentures which provided a great base to that company's capital structure.

We also feel that some of the large New York firms have done a simply magnificent job and we have no delusions of grandeur that we could do the same thing. We do think that we

can handle issues in Missouri without having any preferred stock from the RFC injected into our capital structure. We think that we can handle, and when I say "we" I mean G.H. Walker & Company and other firms there with very substantial capital, could handle issues ranging as high as 40 or 50 million dollars. That doesn't mean that we could sell that in our particular area, because none of these things are sold in a particular area where the underwriters live.

Chairman Frank: Could you handle a sizable issue of the Union Electric Company of Missouri?

Mr. Bush: Of what type?

Chairman Frank: First mortgage bonds.

Mr. Bush: I do not think we could handle 105 million. I do not think we are at all qualified to handle 105 million of those bonds.

Mr. Weiner: Might I ask a question?

Mr. Bush: Yes.

Mr. Weiner: \$20,000,000?

Mr. Bush: \$20,000,000? Do you ask whether we could get a group together including ourselves?

Mr. Weiner: Could St. Louis handle it?

Mr. Bush: Yes, I do think so, \$20,000,000.

Chairman Frank: I am somewhat interested, because we have received some letters from Missouri houses indicating some such point of view and suggesting that they have not been given an

opportunity to do that business in St. Louis.

Mr. Bush: I see. That was not from us, was it?

Chairman Frank: No.

Mr. Bush: I think that a strong St. Louis group into which we would invite friends of ours around the country -- and when I say "friends" I mean people whom we have confidence in to do a good job who would help with the underwriting.

Chairman Frank: Would you think -- I gathered that you do -- that it would be desirable for^s St. Louis utility to have its financing within sizable limits such as you have indicated done through St. Louis houses?

Mr. Bush: Yes, I do think so.

Chairman Frank: Rather than done through New York houses?

Mr. Bush: In so far as we can do a good job on it, I think so. That does not mean, Mr. Chairman, that I think that we could do \$105 million of bonds and debentures or serial notes half as well as some firms.

Chairman Frank: I think you have made your point^s clear.

Mr. Bush: The point I want to make is this, and I think it is a point that you were trying to make yesterday on the point of competition. With us, competition very definitely exists. Of course, we are a very small underwriter, but to my knowledge I don't know of anything more competitive than what we have to do to maintain our position in these underwriting accounts. That is true regardless of who the originator of that business is.

For instance, let us take the Middle West, and we have been in on that. Whether it has been Mr. Stuart's firm or whoever it was, we have not gotten a position by going to them but because they have asked us to come in. We have gotten it because of our ability to underwrite and distribute with the issuing company, and we have had to work awfully hard to get it and we are going to continue to. I do not mean to say that there has been any pressure to keep us out. There certainly has not been, by anybody in this room, but I do say that it is not any bed of roses, and certainly there is the strongest kind of competition I know of to maintain those positions.

We feel personally that any kind of compulsion of competitive bidding on these classes of securities would be ruinous to our business as a whole. I know it would be ruinous to us in St. Louis and Missouri. We have tried, Mr. Chairman -- a year ago last August I remember going ahead and submitting a bid on equipment trusts in which we were successful, and joined with the First National Bank in St. Louis. That was my first experience and my only experience, but I think the way that that type of business is conducted is about as unsound fundamentally as anything I have ever seen in the security business and I have been in it ever since I have been old enough to work anywhere. You get a regular three-ring circus after the competitive bid, and I would like some of you commissioners if you have never seen what happened, go and see what happens. The minute

the bid is awarded, the telephones are rushed to, and if the issue is good, it goes out of the window to the big buyers and we never see any of it nor do our customers. If it is slow and sticky or hard to sell, they will come around and sell it to us and try to get us to sell it to our customers, which we do not do.

It is not a sound way to distribute securities. I am talking to small investors throughout the country -- I don't mean a sound way with the large insurance companies because I don't know anything about that -- that is not a part of my business, but I do say very strongly that I think if that were applied to other types of securities besides equipment trusts that it would be a very unsound fundamental way of distributing securities.

If we go into Central Power & Light, what do we do? We go down to Corpus Christi and spend considerable money investigating that territory, taking our salesmen down and go over to learn the Central Power & Light properties, and we come back to St. Louis and when the issue becomes effective, we go out and sell it. In that particular case, we did not sell it in a few hours' time or a few days' time; it was hard to sell but it was a fine security and everybody sold it finally and it was a great success.

I think that is a sound way to sell securities. I do not think it is a sound way to sit down at the telephone and just call up two or three tremendously large institutions and just

call it a day; I don't think that is the securities business, and I don't think it should be.

Commissioner Healy: Isn't that done sometimes with respect to issues that are not sold competitively but are sold by negotiation?

Mr. Bush: You mean on the telephone?

Commissioner Healy: This type of merchandising that you are criticizing -- is that confined to securities sold competitively?

Mr. Bush: No, I think it is done in municipal bonds too, very much so.

Commissioner Healy: Isn't it done with respect to negotiated issues, that is issues not sold at competitive bidding?

Mr. Bush: I think in a setup where we have firm allotments to work on, we know that we can afford to spend so much money investigating it and acquainting our market with what the issue is; I really think that.

Commissioner Healy: I don't think you have quite answered my question. I don't care what your answer is, but I would like you to tell me whether the practice that you have described does not happen sometimes with respect to associated issues? Is it a thing that is confined exclusively to issues sold by competitive bidding?

Mr. Bush: I have never seen it in our experience -- I don't think it is on anything like the basis I did in my particular experience on the Missouri-Illinois equipments which

happened to be the issue that I purchased and had an insight into it.

Commissioner Healy: Have you seen it at all with respect to negotiated issues?

Mr. Bush: Seen what?

Commissioner Healy: The practice which you are criticizing. You are criticizing a practice with respect to the distribution of issues, and the implication is that that happens and is something that is peculiar to competitive bidding.

Mr. Bush: I think it is, because your spread is so narrow, because the idea is to get in and get out, and that is the idea.

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Mr. Dean: Isn't that because these competitive bid issues are sood on a first-come and first-served basis, whereas on negotiated bases the dealer has time to sell yp to one o'clock?

Mr. Healy: I don't think Mr. Bush understood my question.

Mr. Bush: I don't think it does in our particular area.

Mr. Weiner: May I ask a question? Were you an underwriter in that or a member of the selling group?

Mr. Bush: Which?

Mr. Weiner: Central Power and Light.

Mr. Bush: To the extent of three or four hundred thousand dollars.

Mr. Weiner: Do you know who headed that syndicate?

Mr. Bush: Central Power and Light?

Mr. Weiner: Yes.

Mr. Bush: It was a Chicago firm; I don't know which it was.

Mr. Weiner: Probably Halsey Stuart, or was it A. G. Becker & Company?

Mr. Bush: I don't remember which it was; it may well have been one of those, or Harris Forbes.

Mr. Weiner: We will check it. I thought you might know off hand.

Mr. Dean: Mr. Bush, ^{if} you knew that a company in your territory were about to put out a ten or twenty million dollar issue and you also knew that a New York investment house was after it, would you also try to go out and get it?

Mr. Bush: What type of issue?

Mr. Deah: Any type of issue, say a public utility or an industrial issue.

Mr. Bush: An industrial issue?

Mr. Dean: Yes.

Mr. Bush: Yes indeed. And utilities, too.

Mr. Dean: You would do your best to try to get it?

Mr. Bush: If we thought we could do it, we certainly would and if we tried and were unsuccessful, we would continue and hope not always to be unsuccessful in that respect.

Mr. Dean: I hope you won't either.

Chairman Frank: Thank you.

STATEMENT OF J. C. FOLGER

Folger, Nolan & Co.

Washington, D. C.

Mr. Folger: My name is J. C. Folger. I am a member of Folger, Nolan & Company, Washington firm, organized late in 1931, to do a local investment business. Our distribution is almost exclusively in bonds and we do no margin business. Our personnel was largely drawn from individuals who had worked for branches of out of town firms. We can be correctly described as small country dealers. When we started in business late in 1931, nearly all the securities business in Washington was done by branches of out of town houses. Today the situation is reversed and nearly all of the securities business is done by local firms. Opportunities

for making money are not great, but we have a chance to make a living and reasonable progress, and what is more important, we have an opportunity to exercise independence of judgment with respect to the securities which we sell.

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All of my own personal experience in the securities business dates from the fall of 1929. I grew up in a small town of about 5,000 people in the State of Washington. Since most of my life was spent in that community I naturally relate my experience to small town merchandising. My family owned and operated a country store for a generation, and I have always been interested in the life and future of the small merchant. I think the trend away from the country merchant generally is most unfortunate. One of the few trends in the opposite direction is in the securities business, where during the last nine or ten years the small dealer has come into his own. This system of security distribution I think is wholesome and sound. The principle of having a securities salesman live with and be responsible primarily to his customers is good. Formerly the allegiance was to out-of-town employers. The local dealer realizes his best friends are his customers. They are the ones we have to live with and face every day, if a deal goes sour.

Let me stress again the significance of this trend away from big city distributing houses. Any system of merchandising should rise or fall on the soundness of the system and the manner in which it serves the public interest. The local dealer cannot claim protection simply to help him make a living. On the other hand, I feel that the success of the local dealer goes hand in hand with public interest. I should greatly deplore it if those in the securities business in Washington and other cities should

be obliged to return to the employ of big city houses and big city bosses. As it now stands, the trend has been all toward our independence.

I have read the report of the Public Utilities Division on competitive bidding. This is the first time I have ever asked for an opportunity to be heard on any such matter since the S.E.C. was established. Fortunately, we have not been required to appear. As one living in Washington, I have acquired a general feeling that the fear of regulation on the part of business men is usually greater than the hardships that may follow regulation.

Commissioner Healy: You are not confining that to this present proposal, are you?

Mr. Folger: I said that this is the only time that I have come over here. But I have two things that I want to talk about. When you have the hearing on private placements I would like to come and debate it with this fellow from the Metropolitan Life if he is around here. (Laughter.)

They have come to town and taken some of our best issues, and they have taken them away from the little fellows that did not have a big statistical force to analyze them and needed registration statements. But I am getting far afield.

In the case of competitive bidding, however, the principle runs counter to all of my early training and merchandising experience. My father and grandfather were pioneer livestock men, first in Iowa and later in Washington State.

I don't know how many of you ever grew up on a farm or lived on a farm, but in the rural communities, it is customary for the farmers to have livestock sales in the fall. Everybody attended these sales, partly to see their neighbors, partly to get a free lunch, and sometimes to bid on livestock. I learned later on, Mr. Chairman, that there was sometimes a bottle in the barn, but I was too young in those days to realize what it was. That was to stimulate the bidding. (Laughter.)

My father and grandfather never bought livestock at these auctions, and one of my first lessons was that such purchases were unsound, since a man would become so interested in beating out his neighbor and showing everybody that he had as much money and could bid as well as the next one that he would find himself paying \$60 or \$70 for a horse that was probably worth \$60. When he got the horse home he might find it had a spavin. Under the auction method stress is on the top dollar rather than on quality merchandising. There may be some exceptions, but I don't think the securities business is one of them, especially if we consider country distribution. The reason so many country merchants are going under is their inability to buy on the same basis as the chains. In the bond business, as it now exists, the country dealer knows what the spread is on new issues and he can buy as cheaply as his competitors. It is true that under the selling group he doesn't get all of the spread, but the speculative risk is not so great since he has an option for

several hours within which to do his merchandising. It is more important for a small business to make a small sure profit than it is to take large risks for larger profits.

Mr. Commissioner, there has never been a man in this town that has ever rounded out a successful career in the investment business, and that is an alarming thing. I did not know it when I started in on this business (laughter). That is the thing I say to myself every morning when I go down to work: "Is this the day that I am going to go busted?" (Laughter) The country storekeeper generally never knows just what his competitors are paying for goods. There are several price levels. In our country store, we were in the smallest. We bought out of Spokane, and I suppose that he bought from some wholesaler in Chicago or some place like that.

In the selling group, we do not take the risk of the underwriter. We can stand by and sell our bonds and do the merchandising job during the few hours when we have those bonds firm. With our business the local dealer knows exactly what his competitors pay and he competes on the same basis.

I believe that under compulsory competitive bidding underwriting would resolve itself into a few large bidders, who would not be selling their services and who would not be performing the merchandising job now done by the local dealer. They would simply be speculating in a large block of securities which they would distribute as quickly as possible without great regard for

geographical or other considerations except to sell to the buyer who moved most quickly. Our clients do not act as rapidly as the retail buyers in the large city. The present system of distribution tends to protect the country buyer and to insure that he will have an opportunity to buy first grade securities. I believe under competitive bidding there would be an inevitable enlargement of the selling forces of large distributors. Securities salesmen would then work for large city bosses.

And in reply to Commissioner Pike's question, I don't think that the pressure that there is on the country dealer with respect to his syndicate participations is one fraction of what it was on a fellow that worked for a city boss. If he did not succeed, he would look for another job. But with us as dealers, we turn the things down because we realize that these fellows may be here today and gone tomorrow, but if we can satisfy our customers, they will live with us and trade with us. We did not take the Pure Oil or the Bethelhem Steel deal. I had a good friend down in Tennessee called up and said that he would take five bonds, but I said to my partner, "This don't look good; what do you think we ought to do?" And he said, "Stick to your friend in Tennessee." That is the principle on which we have founded our business.

Chairman Frank: It sounds to me as if you are going to break the record in Washington's investment business.

Mr. Folger: If I died today, I would still be alive and out of jail, and that is my minimum claim. If our legs and lungs give out in the investment business, well then we are out of it.

When you get up to the large selling organizations, the rewards and promotions come through pleasing those employers rather than pleasing the clients. That is an unfortunate situation -- this may run counter to my friends here who have large organizations, but if it is treason, well it just is. A large selling force brings the temptation to set up deals to pay overhead and keep the selling force employed. The local dealer is more resourceful, more versatile and can keep his overhead within bounds. He is more like the country doctor. All he has is his horse and wagon and his time, and if things get tough, what he does then is to just tighten up his belt.

Under the present setup, we are all for the big city houses if they have a good deal and we are critical of them if they have a poor deal, and we don't hesitate to show our feelings. The local dealer is a wholesome brake on the underwriter; he is a valuable buffer between a remote seller and a local buyer.

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He has to make the decisions with respect to the securities he sells, and he has got to live with that fellow, play golf with him and see him every day at lunch around town, and the fellow in New York or Chicago is concerned whether the deal goes pretty well in Albany or Los Angeles or anywhere else. It is a sort of a general dealing. He is not in the front line trenches and living with the fellow that he trades with. The independence of the local dealer, I think, is the most important in the securities distribution of business. If my philosophy about the horse is right, maybe this competitive bidding will get the prices higher and would probably speed up the distribution, and might also help the stockholders in these holding companies, but I don't think it would afford the protection that exists in the present system against overpricing and against imperfectly set up securities. The present trend toward the local dealer is the evidence of the satisfaction on the part of the buyer.

It is remarkable, Mr. Chairman, in just these few years all the business was done by big dealers here previously, but now they are all gone, and in mentioning that fact recently the remark was made, "Well, you did not drive them out, they just left." And I said, "I don't care, as long as they stay away."

And I will tell you this, that we would compete with a New York house. We would come out with our pitchforks and our

hoes and scythes and go for them on any kind of a deal. I probably should be embarrassed to bring in these homely comparisons--

Chairman Frank: No indeed.

Mr. Folger: But if I won't go to an auction sale and buy a horse, I won't give what few dollars I have got to any of these gentlemen over here to go an auction sale and buy a horse for me. I would be afraid they might get to the barn and get a little nip and go off on a competitive bidding spree. (Laughter)

I just have one more word and then I will stop right here. It is inherited, and I have a deep and a sincere and an abiding conviction that except for standardized products--I might talk a little while on equipment trusts although I have taken too much time--except for standardized commodities, this auction block method in merchandising puts price above quality, it puts speculation above merchandising, and it puts in the big city distributors over the local dealers, and I am against it with all the emphasis at my command.

Chairman Frank: Thank you, sir. Mr. Hilliard, do you want to make any further remarks?

Mr. Hilliard: Yes.

Chairman Frank: And Mr. Scribner, do you want to make any further remarks before we finish today?

Mr. Scribner: I would like to, but I don't know whether

you want to wait here to hear them.

Chairman Frank: Your name was on the list and it was given to me as one who wanted to be heard.

Mr. Scribner: Just one word which will only take one minute.

Chairman Frank: All right. Next is Mr. Woods.

STATEMENT OF GEORGE D. WOODS

First P n Corporation

Bost Massachusetts

Mr. Woods: I am just going to give the point of view of my firm, which is the First Boston Corporation, and of myself, and my experience has been entirely in the buying end of our business, particularly with reference to public utility securities.

I want to say first that I find myself in complete disagreement with Mr. Heaton at that point in his remarks when he says that the creation, underwriting and sale of preferred and common stocks of utilities, by and large, could be satisfactorily and soundly carried out under the system of competitive bidding. I won't enlarge on that any more than Mr. Eaton did. It is his opinion that it could be done, but I must say that it is my opinion that there would be a very considerable difficulty. I am not one of those, and the majority of those in my firm I think are in agreement and feel that investment bankers are going out of business in the event