

IBA**WASHINGTON BULLETIN***Investment Bankers Association of America**1625 K Street N.W., Washington 6, D.C.*Number 1-54
February 12, 1954TO THE MEMBERS:

IBA PRESIDENT BRYCE TESTIFIES IN SUPPORT OF SENATE BILL WHICH WOULD AMEND CERTAIN OF THE FEDERAL SECURITIES ACTS. On January 27, 1954, Senator Capehart and Congressman Wolverton introduced identical bills (S. 2846 and H.R. 7550) in the Senate and House, respectively, to amend certain provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, and the Investment Company Act of 1940. These bills were referred to the committees of the Senate and House of which Senator Capehart and Congressman Wolverton are chairmen. Hearings were held before Senator Prescott Bush's subcommittee of the Banking and Currency Committee of the Senate on S. 2846 on February 3rd and 4th, and IBA President Bryce appeared on February 3 on behalf of the IBA. H. Warren Wilson, Chairman of the Federal Legislation Committee, was also in attendance to answer questions. In his testimony Mr. Bryce pointed out that the Bill does not resolve all of the problems under these Acts or, indeed, go as far in some respects as we would have liked, but he stated that it was certainly a large step in the right direction, and therefore gave full support to this measure. He also submitted a more formal statement for the record. This bill was sponsored by and has the unanimous support of the members of the SEC. It was also supported by representatives of other industry organizations. No one appeared in opposition to the bill. It reflects the results of the conferences which took place last Fall between representatives of the IBA and other industry organizations, the SEC, and Senator Bush, looking toward an amendment program. Hearings on H.R. 7550 have not as yet been scheduled in the House.

The following is the substantive scheme contemplated by Senate Bill 2846 and H.R. 7550 for regulating the selling process with respect to securities subject to the registration and prospectus requirements of the 1933 Act.

The Pre-filing Period

There may be no sales, offers to sell, solicitation of offers to buy, or offers to buy by any person subject to the provisions of the Act prior to the filing date of a registration statement, other than between issuers (or controlling persons) and underwriters, and among underwriters who are or are to be in privity of contract with an issuer.

The Waiting Period

(1) During the waiting period (after the filing date of a registration statement and before its effective date) there may be oral offers, solicitations of offers to buy, or offers to buy made over long-distance telephones or where other interstate facilities are involved, but no sale or contract to sell may be consummated until after the effective date. To avoid violating this provision it will be important for underwriters and dealers to so word their offers, solicitations, etc., as to be able to control the timing of the actual consummation of any sale.

(2) The only written offers or solicitations of offers to buy to be permitted during the waiting period, where the mails or interstate facilities are involved, are as follows:

(a) The preliminary or "red herring" prospectus would be permitted to be used to make an offering.

(b) A substantially expanded "identifying statement" or summary of the prospectus, the name and contents of which will be prescribed by Commission rule under authority specifically granted in the bill. It is contemplated that this document may vary in content and form, depending upon the type of security, issuer, etc., and that it may include such items as financials, earnings, dividend record, etc. The document will not be subject to Section 11 liabilities, but the Commission is empowered by order to prevent or suspend the use of such document if it has not been filed as required or includes untrue or misleading statements or makes material omissions.

(c) An expanded "tombstone," the permissible contents of which will be prescribed by Commission rule, authority for which is expressly given in the bill. It is contemplated that such rules will endeavor to give underwriters and dealers a limited latitude in answering correspondence and in writing "non-selling" letters during the waiting period, and that it will permit the offering in writing or by telegraph of a specific number of securities to a dealer or customer if it is made clear that no contract can be made with respect to such securities until after the effective date.

(d) Blue cards and summaries prepared and used pursuant to the provisions of Securities Act Releases #464 and #802 will continue to be permitted during the waiting period.

(3) All other written offers or solicitations of offers to buy during the waiting period, where the mails or interstate facilities are involved, would be unlawful.

(4) All oral or written offerings or solicitations of offers to buy, authorized during the waiting period and described above, will be subject to Sections 12 and 17 liabilities of the 1933 Act.

The Post-effective Period

Provisions and requirements of the present law with respect to offerings, sales, delivery of prospectuses, etc., are to continue substantially the same as at present except that the expanded tombstone and the expanded identifying statement or summary prospectus may be used in the selling process, even though unaccompanied by a Section 10 or final prospectus.

(1) No lawful sales or contracts to sell may be made until after effectiveness.

(2) Confirmations of sale must be accompanied or preceded by a final Section 10 prospectus. Compliance with this provision contemplates the use of the so-called two-step prospectus (the final "red herring" plus a document containing price and related data and any other material omitted in the "red herring") if a complete Section 10 prospectus is not available.

(3) In the event no confirmation of sale is sent, then a Section 10 prospectus must accompany or precede delivery of the securities if the mails or interstate facilities are involved in such delivery.

(4) Underwriters and dealers may send other written material or selling literature with respect to such securities through the mails, etc. (all such material being subject to Sections 12 and 17 liabilities), if such material is accompanied or preceded by a statutory prospectus.

(5) As indicated above, the expanded "tombstone" and the expanded identifying statement may be sent through the mails, even though not accompanied or preceded by a final Section 10 prospectus.

(6) The bill would cut down the period after effectiveness during which prospectuses must be delivered with all sales from one year to forty days, except that underwriters and dealers would continue to be required to deliver a prospectus so long as they are selling so-called syndicate securities. This provision would not apply to certain securities subject to the Investment Company Act of 1940 by virtue of an amendment to be made to Section 24 of that Act which would require all dealers to deliver prospectuses in connection with sales of such securities so long as an offering of such securities is being made by the issuer thereof.

Other Provisions

(1) In addition to the foregoing, the bill, insofar as it would amend the 1933 Act, would increase the Regulation A exemption from \$300,000 to \$500,000.

(2) The bill makes two amendments to the Securities Exchange Act of 1934:

(a) Section 11(d)(1) of the Securities Exchange Act prohibits a person who is both a broker and a dealer from "taking into margin accounts new securities in the distribution of which he participated during the preceding six months." The bill would reduce the six-months period under existing law to thirty days.

(b) The bill would repeal the last sentence of Section 12(d) of the Securities Exchange Act, which represents an attempt to limit the authority of the SEC thereinbefore granted to regulate "when-issued" trading on exchanges, thereby permitting "when-issued" trading to be regulated under the more general provisions of the preceding sentence and the Commission's over-all rule making authority.

(3) The bill makes a number of amendments to the Trust Indenture Act of 1939 which are two-fold in purpose:

(a) to make its interrelated provisions conform with those of the 1933 Act in view of changes being made in that Act, and

(b) to give the Commission certain discretionary authority which it thinks desirable in the interest of working out shorter prospectuses and streamlined registration for institutional type bonds.

(4) The bill also proposes certain amendments to the Investment Company Act of 1940, one of which is referred to in paragraph (6) above, and the others are designed to provide for so-called "continuous registration."

If you think well of the proposed changes in existing law as described above, or otherwise, it would be very helpful if you would bring your views thereon to the attention of your Senators and Congressmen.

SEC TO HOLD PUBLIC HEARINGS ON ITS PROPOSAL TO AMEND COMPETITIVE BIDDING

RULE. On January 21, 1954, the Commission announced that it will hold public hearings, commencing at 9:30 a.m. on Thursday, February 18, 1954, on its proposal made November 25, 1953 (Holding Company Act of 1935 Release No. 12217-X), which in general would provide an exception from the requirement of competitive bidding with respect to certain security issues of utility subsidiaries of holding companies where such issues are expressly authorized by the regulatory commission of the State in which the issuer is incorporated and does business. The IBA plans to submit a statement in support of this proposal. Any member desiring to comment on this proposal in writing should send such comment to the Commission prior to February 18.

HOUSE WAYS AND MEANS COMMITTEE RECOMMENDS CHANGES IN TAX LAWS
AFFECTING MUNICIPAL INDUSTRIAL DEVELOPMENT REVENUE BONDS AND TAXATION

OF DIVIDENDS: The House Ways and Means Committee, presently engaged in preparing a general tax revision bill, has already announced its recommendations with respect to several provisions of the tax laws which are of particular interest to the investment banking industry.

After announcing on January 20th its decision to deny tax exemption to interest on certain municipal industrial development revenue bonds and on certain obligations of local housing agencies, the Committee on February 8th announced its decision (1) to withdraw the proposal to tax interest on certain local housing bonds and (2) to change the proposal relating to certain municipal industrial development revenue bonds so as, instead of taxing the interest on such bonds, simply to disallow the deduction from gross income of amounts (such as rent) paid or accrued by the industrial lessee for the use of property financed by such bonds to the municipality which issues such bonds.

On January 14th the Committee announced its recommendations (1) to exclude from taxable income the first \$50 of income from dividends received in a taxable year ending after July 31, 1954, and before August 1, 1955, and the first \$100 of income received from dividends in subsequent years and (2) to permit a taxpayer to subtract from his final federal income tax 5% of the amount of his dividend income (in excess of the exclusion) received after July 31, 1954, and before August 1, 1955, 10% of his dividend income received after July 31, 1955, and before August 1, 1956, and 15% of his dividend income received thereafter.

The Committee has not yet announced any recommendations with respect to either the holding period or the rate of tax on capital gains.

Although the President in his budget message suggested that the tax laws should be changed to give certain partnerships the option to be treated like corporations and certain corporations the option to be treated like partnerships, the Committee has not yet announced any recommendations with respect to that proposal.

JUDGE MEDINA RENDERS FINAL JUDGMENT FOR DEFENDANTS IN ANTITRUST CASE:

On February 4, 1954, Judge Medina rendered final judgment in the anti-trust case in favor of the seventeen defendant investment banking firms.

When Judge Medina filed his opinion on October 14, 1953, stating therein his findings of fact and conclusions of law and that we would subsequently render judgment for the defendants, he afforded the parties an opportunity to submit further proposed findings of fact and conclusions of law in accordance with his opinion. Proposed additional findings of fact were submitted to him by both the Government and the defendants. In a memorandum accompanying the judgment Judge Medina noted that after checking the opinion against the transcript and the exhibits about 75 changes ("all of a minor and unsubstantial character") were made in the opinion but that, after further study and consideration, he had concluded that no further findings of fact or conclusions of law were necessary. The Government has 60 days from the date of judgment to appeal to the Supreme Court if it concludes to do so.

BILL INTRODUCED IN SENATE TO AMEND SMALL BUSINESS ACT OF 1953:

S. 2871, introduced in the Senate on February 2nd by Senator Sparkman (for himself and Senators Long, Gillette, Humphrey, Hunt and Smathers) and referred to the Committee on Banking and Currency, would amend the Small Business Act of 1953 to increase from \$150,000 to \$500,000 the maximum amount of a loan which may be made to a small business concern and to insert a new section to authorize the Small Business Administration:

"(c) in order to aid in financing projects under Federal, State, or municipal law, to make loans to, and purchase the securities and obligations of, (1) States, municipalities, and political subdivisions of States, (2) public agencies and instrumentalities of one or more States, municipalities, and political subdivisions of States, and (3) public corporations, boards, and commissions: Provided, That no such purchase or loan shall be made for payment of ordinary governmental or nonproject operating expenses as distinguished from purchases and loans to aid in financing specific public projects: Provided, however, That the foregoing powers shall be subject to the following restrictions and limitations:

"(A) No financial assistance shall be extended pursuant to this section unless the financial assistance applied for is not otherwise available on reasonable terms and all securities and obligations purchased and all loans made under this section shall be of such sound value or so secured as reasonably to assure retirement or repayment, and such loans may be made either directly or in cooperation with banks or other lending institutions through agreements to participate or by the purchase of participations or otherwise;

"(B) No securities or obligations shall be purchased, and no loans shall be made, including renewals or extensions thereof, which have maturity dates in excess of 40 years."

Other provisions of the bill would (1) abolish the Loan Policy Board of the Small Business Administration (consisting of the Administrator, the Secretary of the Treasury and the Secretary of Commerce) which establishes general policies governing the granting and denial of applications for financial assistance by the Administration; (2) repeal the termination date of the Act (June 30, 1955), thereby establishing it on a permanent basis; and (3) provide that whenever a loan to a small business concern is effected in cooperation with any bank or other lending institution the interest rate on that part of the loan made by the Administration shall not exceed that which would be charged on a comparable loan effected directly by the Administration.

No action has been taken on this bill by the committee to which it was referred.

For additional information on the above or related matters, write or call IBA WASHINGTON BULLETIN, 1625 K Street, N.W., Washington 6, D. C. Phone NATIONAL 8-0188.

WASHINGTON BULLETIN

Investment Bankers Association of America

1625 K Street N.W., Washington 6, D.C.

February 12, 1954

REGULATORY DEVELOPMENTS

SECURITIES ACTS AMENDMENTS IN LIGHT OF RECENT BILL WHICH WOULD
REPEAL INVESTMENT COMPANY REGULATION ACT. On January 27, 1954, the Securities Act of 1933 and Securities Exchange Act of 1934 were amended by Public Law 85-5, 85 Stat. 10, which amended the Securities Act of 1933 and the Securities Exchange Act of 1934. These bills were referred to the Committee on Banking and Finance of which Senator Capwell and Senator McClellan are members. Hearings were held before the Senate Banking and Finance Committee on the bills on February 3 and 4, 1954, and the bills were reported on February 5 on behalf of the IBA. H. Warren Wilson, Chairman of the Federal Legislation Committee, was also in attendance at the hearings. In his testimony Mr. Wilson pointed out that the bills would not repeal all of the provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934, but would repeal the provisions which relate to the registration of securities. He also pointed out that the bills would amend the Securities Act of 1933 and the Securities Exchange Act of 1934 in order to conform them to the Securities Act of 1933 and the Securities Exchange Act of 1934 as amended by Public Law 85-5. He also pointed out that the bills would amend the Securities Act of 1933 and the Securities Exchange Act of 1934 in order to conform them to the Securities Act of 1933 and the Securities Exchange Act of 1934 as amended by Public Law 85-5. He also pointed out that the bills would amend the Securities Act of 1933 and the Securities Exchange Act of 1934 in order to conform them to the Securities Act of 1933 and the Securities Exchange Act of 1934 as amended by Public Law 85-5.

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The Securities Act

There may be no sale, offer, or solicitation of offers to buy, or offer to buy, by any person subject to the provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934, unless the securities are registered under the Securities Act of 1933 and the Securities Exchange Act of 1934, or unless the securities are exempt from the registration requirements of the Securities Act of 1933 and the Securities Exchange Act of 1934.