

MEMORANDUM OF CONFERENCE
AT BUREAU OF THE BUDGET

RE: The Commission's Proposed Legislative Program

DATE: April 30, 1963

At the request of Mr. Wilfred H. Rommel, who is Deputy to Phillip Hughes, Assistant Director for Legislative Reference of the Bureau of the Budget, a conference was held at the Bureau at which Mr. Rommel presided and was accompanied by three other members of the staff of the Bureau of the Budget, including Joseph Reeve, who is apparently the staff member in immediate charge of reviewing our legislative program.

The conference was also attended by representatives of the Federal Deposit Insurance Corporation, Federal Reserve Board, Department of Commerce, Department of Justice and the Comptroller of the Currency, as well as by Peter Dammann, Phillip Loomis, Arthur Fleischer and myself, representing the Commission.

Mr. Rommel advised that he had word from the Federal Home Loan Bank Board, the Small Business Administration and the Department of Commerce to the effect that they had no comment or objection to the Commission's proposed program, and in the case of the Home Loan Bank Board, this included the fact that the Commission would administer Frear-Fulbright provisions in relation to savings and loan associations of the capital stock variety. Notwithstanding the fact that the Department of Commerce takes a no-comment position, a representative of that Department attended the conference indicating that he did so largely as an observer and that it was his personal view that the only circumstances under which the Department might raise any question would be if it appeared that the Commission's proposals were going to unduly burden business and industry, particularly segments thereof which were perhaps not large enough to stand the kind of expense imposed upon big business and industry.

At Mr. Rommel's suggestion, attention was first directed to the problem of how the bank aspect of Frear-Fulbright should be handled. Representatives of the Federal Reserve Board indicated that their Board had discussed the matter and tentatively concluded that banks should come under the Frear-Fulbright concept and that the SEC was in a better position to administer the Act with reference to the banks than any of the banking agencies. Representatives of the FDIC said that their agency took no view of the matter as it was not regarded as being of concern to them and it would be entirely up to Congress. They further indicated that in any event without material amendment to their own statute, their agency could not take on a function of this kind. It is an agency designed solely to provide insurance for bank deposits and its sources of income are such that they could not be used on a program designed to protect investors in bank stock. Representatives of the Comptroller of the Currency reported that he is

strongly opposed to the Frear-Fulbright provisions applying to banks, asserting that they should be exempt for the same reasons as those underlying the exemption of banks from the 1933 Act. The view was expressed that the Comptroller already has sufficient authority to compel banks to supply adequate proxies and insider reporting. When asked specifically who should administer it if Frear-Fulbright did apply to banks, the representatives of the Comptroller said that he refused to take any position on the mechanics of such proposal in view of his outright opposition to the banks being included in any way.

Turning to some of the other proposals, the principal comments came very largely from representatives of the Department of Justice, particularly Mr. Melvin Spaeth, who appeared to be principal spokesman and who was one of the attorneys in the Department who worked on the brief in the case of Silver v. New York Stock Exchange.

The first doubt which was expressed by the Department of Justice concerned the portion of the qualification statute which required broker-dealers to register and thereafter made them subject to the Act merely on the ground that they were registered and without any proof that the mails or any other interstate facilities were used in connection with the particular transaction which might be relied upon as a violation of the Act. Those of us from the SEC reminded Mr. Spaeth that this is exactly the concept on which the whole 1935 and 1940 Acts are based, in each instance a corporation subject to the Act being compelled to register before it may use interstate facilities and being thereafter subject to suit for violation of the Act merely on the basis of its registration and without regard to use of interstate facilities in any particular transaction.

The Department of Justice next raised questions about whether or not the authority of a registered quotations bureau to deny use of its quotations system to a particular person might not be an unconstitutional restriction in violation of the First Amendment. We in turn indicated that one of the basic concepts of the federal securities laws is by its very nature a restriction on the freedom to speak and write and publicize things other than those permitted incident to registration, proxy statements, etc. The question was also raised as to whether the quotations bureau really needed any antitrust immunity and whether there shouldn't at least be some standards on the basis of which a bureau could cut off a broker-dealer and whether a broker-dealer shouldn't at least have a right to bring an injunctive action under the antitrust laws even if treble damages were not applicable.

The Department of Justice also raised the question of whether it was constitutional or at least whether it was sound policy to compel all broker-dealers to join a "private trade association." We, of course, took the position that the NASD or any other association which might be formed under the Maloney Act is far from a private trade association

and also indicated that the whole concept of self-regulation in the field of qualifications of broker-dealers is pretty much contingent upon broker-dealers having to belong to an organization so that the organization can perform the self-regulating functions.

Walter P. North
Associate General Counsel

cc: Chairman Cary
Peter Dammann
Phillip Loomis
Arthur Fleischer

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