

GENERAL OUTLINE OF CODE ACTIVITIES SINCE THE BEGINNING OF  
ADMINISTRATION AND DETAILED SUMMARIZATION OF ACTIVITIES  
SINCE THE ATLANTIC CITY MEETING OF THE CODE COMMITTEE  
JULY 14-15, 1934

I - CODE COMMITTEE:

The organization: The organization as set up comprises the Code Committee and its sub-committees, the Executive, Finance, Interpretations, By-Laws, and a Special Group to consider Code Enforcement, the Treasurer, Counsel, Managing Director and Regional Committees.

On the Code Committee rests the final work of making Interpretative rulings, hearing all cases brought before it from Regional Committees and from other sources, administering discipline to registered dealers and the general direction of all Code Committee affairs.

(Review of Code Activities since Atlantic City Meeting July 14-15, 1934)

I - CODE COMMITTEE:

Matters presented to such meeting and referred to Committees or otherwise undisposed of at that time.

(a) Different basis of assessment for banks and stock exchange houses. Suggested by California group and referred to Finance Committee.

(b) Co-operation with State Securities Commissions. A Special Committee composed of Messrs. Bonner, Keyser, and Wilbur was appointed. The subject has been studied and a report will be made.

(c) Conference with Securities Exchange Commission to offer co-operation with regard to rules to be promulgated by the Commission regarding Over-the-Counter trading. The Chairman to appoint a Special Committee.

The Committee was appointed and had a meeting with all of the members of the Securities and Exchange Commission present, following which recommendations were made that the Rules of the Code as to Over-the-Counter trading should be adopted by the Securities and Exchange Commission as its regulations on the subject.

(d) State Securities Commissions and Better Business Bureaus to be put on mailing list. This has been done.

(e) New York Regional Committee to submit budget to Finance Committee involving employment of paid Secretary and whatever additional expenditure is necessary to efficiently operate. Finance Committee authorized to act.

(f) Concessions to registered banks. Resolution passed restricting concessions to such securities as they can lawfully underwrite. This was submitted to N.R.A. for its approval and action withheld with the request that the Executive Committee further consider the problem. Such consideration to be given and recommendations of the Interpretations Committee will be presented at the next Code Committee meeting.

(g) Concessions and price discrimination on sales to public by registered investment bankers. Referred back to Interpretations Committee, such Committee will make its report at the next Code Committee meeting.

(h) Resolution covering interpretative ruling on taking up as income cash proceeds from the sale of stock holdings under certain conditions. To be presented to N.R.A. for its approval. This is embodied in an amendment to the Code to be presented at the next Code Committee meeting.

(i) Interpretative ruling covered by resolution relating to Code provisions concerning stock exchange houses. This ruling was submitted to the N.R.A. and is now pending before it.

(j) By-Laws and procedure for handling trade practice complaints. Resolution approving with power on the part of the By-Laws Committee to make any changes in form or substance requested by N.R.A. The By-Laws have been approved by the N.R.A. without change.

The procedure for handling trade practice complaints with modifications by the By-Laws Committee were approved October 20, 1934.

(k) "Gun-beating" ruling. This approved by Code Committee and ordered sent to all registered investment bankers which has been done. N.R.A. has raised questions with respect to the correctness of this ruling. A proposed amendment concerning this matter will be presented by the Interpretations Committee at the next Code Committee meeting.

(l) Ruling on the phrase on Article V, Section 2: "The date on which it shall be proposed to make the public offering of such securities". This ruling has been presented to the N.R.A. and is now pending and is involved in the proposed amendment referred to in (k) above.

## II - EXECUTIVE COMMITTEE:

All of the problems of all the sub-committees have been likewise the problems of the Executive Committee. Furthermore they have transacted necessary Code Committee business in the interim between Code Committee meetings. They are naturally concerned very largely in the consideration of broad questions of policy for recommendation to the Code Committee to effectuate such an administration of the Code as will carry out its intended purposes.

(Review of Code Activities since Atlantic City Meeting  
July 14-15, 1934)

II - EXECUTIVE COMMITTEE:

Meetings have been held on August 2, August 17, September 21 and October 16.

Meeting on August 2:

This meeting, excepting matters of a routine nature, was devoted to a long discussion on the subject of concessions to registered banks at which representatives of the banks and others were present.

Meeting on August 17:

(a) Re-organization of the New York Regional Committee was effected. Mr. Scheffey was elected by the Executive Committee, Deputy Managing Director and his compensation fixed. He had previously been elected by the New York Regional Committee Executive Secretary of such Committee. His compensation as recommended by that Committee was authorized by the Executive Committee.

(b) The Finance Committee was ordered to send out a request for Personnel Reports as of August 1, 1934 for the purpose of the second assessment.

(c) The Finance Committee was ordered to prepare a budget for the period beginning August 1, 1934 and ending December 31, 1934 and also to prepare a statement of the actual expenditures of the Code Committee for the period beginning November 27, 1933 and ending, July 31, 1934.

(d) New York Regional Committee was directed to investigate the guaranteed investment market in connection with the recent B & O issue. A preliminary report has been received.

(e) Approval of list of registrants to date of meeting. Managing Director ordered to issue supplemental lists on the first of each month and mail to all registered investment bankers, effective September 1, 1934.

(f) Discussion of concessions to registered investment bankers and concessions on old issues.

Meeting on September 21, 1934:

(a) Approval of registrations received since the last meeting.

(b) Request considered for interpretation of Section 1 of Article IV of Amendment No. 2 to the Code by counsel for Chesapeake & Ohio Corporation. Interpretation approved and counsel directed to submit the matter to the N.R.A. This was done. N.R.A. informally expressed the opinion that the matter should be covered by amendment to the Code. Amendment to be presented at the next Code Committee meeting covering this point.

(c) Consideration of a letter received from N.R.A. which in effect interpreted Article V Section 2 of Amendment No. 2 to the Code as containing "gun-beating" provisions contrary to the ruling of the Code Committee at its Atlantic City meeting which ruling was sent to the entire registered list. After a very full discussion the matter was ordered submitted to the members of the Code Committee and the original drafting Committee with a request for comments and suggestions. This will be presented to the next Code Committee meeting in the way of a proposed amendment.

(d) Meeting of the Code Committee ordered for Thursday, November 1, 1934, at 10:00 A.M. at Washington.

(e) Informal report of Mr. Clark, Treasurer, and the Managing Director outlining the current financial position of the Code Committee and discussing the matter of a further assessment. Ordered that a further assessment be referred to the Finance Committee with power to act.

(f) Concessions to registered banks and concessions on old issues. Interpretations Committee requested to make a recommendation as soon as possible and Managing Director instructed to distribute copies to all members of the Code Committee in advance of the next meeting of the Code Committee.

(g) Managing Director ordered to send out periodically letters or bulletins informing Regional Committees regarding matters of general interest.

(h) Case of Feldman & Co., Boston, Massachusetts, presented. Mr. Wood of Boston authorized on behalf of the Code Committee to conduct hearing on behalf of the Code Committee and to make a report to the next Code Committee meeting.

(i) Case of bonds of towns of Idaho as reported by the Chairman of the Rocky Mountain District considered and the reply of the Managing Director approved.

Meeting on October 16:

(a) Suspension or cancellation of registrations. This meeting was called to hear any registered dealers desiring to be heard who were subject to suspension or cancellation of registrations for non-payment of assessments, and to make recommendations to the Code Committee for its action at the next Code Committee meeting. Three registered dealers appeared out of a total of 115 so subject to suspension or cancellation. Recommendations of the Executive Committee on this subject will be presented to the next Code Committee meeting.

(b) Mr. Wood of the Interpretations Committee presented to the Executive Committee tentative recommendations of the Interpretations Committee affecting:

Question of concessions to registered banks

Concessions on old issues

Gun beating

Confirmations to investors at net prices only

Redefining the terms "interim certificate" and "interim receipt"

Taking up as income cash proceeds from the sale of stock dividends in certain cases

There was a very full discussion. Tentative drafts of proposed amendments ordered to be prepared by Mr. Keyser and sent out to the Code Committee members before the next Code meeting for their consideration.

(c) Registered dealers who had not furnished Personnel Reports. Managing Director instructed to advise such registered dealers that they will be subject to suspension or cancellation of registration under certain conditions if personnel report not promptly furnished and check for assessment based on such personnel reports sent to the Managing Director before November 1.

(d) Non-Registered assentors who have not paid their first assessment. The Managing Director ordered to turn over these claims to National Recovery Administration in pursuance of Mr. Ratcliffe's suggestion at the meeting of the Executive Committee held on August 17.

(e) Stock exchange houses reporting no one of their personnel giving 50% or more of their time to the investment banking business. Managing Director instructed to give to Regional Committeemen list of names with the request that they informally communicate with such houses and endeavor to obtain assessment for some proper amount. No legal liability on the part of such houses to contribute to Assessment No. 1.

(f) Committee to consider matter of preparing statistics as provided under Article X Section 1 of the Code. Chairman authorized to appoint such a Committee.

The Chairman appointed Messrs. Swan, Weinberg and Crane as such Committee.

(g) Filling of vacancies in Regional Districts 15 and 14. This to be made subject to Code Committee action at its next meeting.

(h) Application of Harris & Leftwich with reference to being furnished a list of all registrants, the amounts assessed against each and showing those who have paid and those who have not paid. Referred to Keyser and Wilbur who are instructed to confer with Ratcliffe with regard to N.R.A. policy and make recommendation at the next Code Committee meeting.

(i) Approval of registrations received since last meeting.

(j) Report of the Managing Director on Code Compliance program.

III. - FINANCE COMMITTEE:

The first necessary job was obviously to finance the administration of the Code. This involved (1) the preparation of a budget to cover all the expenses of the drafting of the Code of Fair Competition and our operations to July 31, 1934 and the preparation of the basis of assessment. (2) The approval of such budget and basis of assessment by the National Recovery Administration. (3) The obtaining of personnel reports from assentors and registrants. (4) The billing based on such personnel reports and the making of collections.

The net result as of today is a cash realization of approximately 90% of our total billings which with economies in budget expenses has financed our operations from November 1933 to a period of two months or more beyond the period of our first budget.

The Committee has had constantly in mind the profoundly depressed condition of the investment banking business and the consequent wisdom and necessity of keeping all expenses at an absolute minimum consistent with satisfactory administration. If we have erred it has been in trying to be too economical to adequately cover our program. In considering the amount of our budget your attention is called to the fact that the Code is nationwide in its scope; that the normal annual new issue business averaged over the last five years approximates \$5,000,000,000 to \$6,000,000,000 with Over-the Counter transactions probably equalling that amount; that the twenty-one members of the National Code Committee and some eighty-five members of the Regional Code Committees serve without compensation; that the Managing Director, his assistant and the Comptroller constitute the only executives of the central office, the balance of the central office organization being clerical; that the entire finances are handled by the Treasurer, Mr. Sydney P. Clark (without salary), a Comptroller and one clerk in Philadelphia.

(Review of Code Activities since Atlantic City meeting July 14-15, 1934)

III - FINANCE COMMITTEE:

Meetings have been held August 17, September 21, September 24 and October 10.

Meeting of August 17:

- (a) Approval of refunds of assessments in two cases amounting to \$175.
- (b) Approval for payment of various bills of Regional Committees or their members.
- (c) Approval of payment of \$15,000 on account of monies advanced by Investment Bankers Association of America.
- (d) Approval of bills for supplies.

(e) Approval of Dillon Read & Co. bill for advances made by them for the account of Bob Christie, Jr.

(f) Approval of bill of Price, Waterhouse & Co.

etc.

(g) Bill of Mr. Hostetler's firm for services for \$35,000 and bill of Mr. Ivy Lee and Mr. Ross for \$7,500 for services incurred in drafting the Code approved for \$25,000 and \$4,000, respectively. These bills had been approved for \$35,000 and \$7,500, respectively, by the Code Committee and the N.R.A. and the reductions, therefore, represented a voluntary contribution on the part of these firms to the Code work. The thanks of the Committee for these generous contributions were made by the Treasurer in transmitting the checks for the reduced amounts.

(h) \$100.00 approved for necessary clerical help in the Treasurer's office beginning August 1, 1934, covering actual expenses.

(i) Method of reporting personnel by employers also subject to provisions of other Codes. Change to include not only an employee who devoted more than 50% of his time to the business but to count as 1/2 any personnel who devoted less than 1/2 of his time to the business.

(j) Provision made for reviewing list of registrants and assentors for the purpose of re-classifying originating houses as "originators of substantial issues".

(k) New York Regional District to pay Frank Scheffey at the rate of \$10,000 per year and Code Committee to pay him as Deputy Managing Director the sum of \$5,000 per year.

(l) Provisions agreed upon for aiding in collection of overdue assessments, included in which was a request for the co-operation of the Regional Code Committees.

(m) Managing Director instructed to send out requests for Personnel Reports.

(n) Approval of certain additional clerical force in central office, the total being approximately \$152.00 per month.

(o) Treasurer authorized to pay \$8,499.02 to the Investment Bankers Association of America for expenses incurred by them in the preparation of the Fair Practice Provisions of the Code, the item having been approved by the N.R.A.

Meeting of September 21, 1934.

- (a) Preparation of budget No. 2 and approval by Committee.
- (b) Direction that copy of budget as approved be submitted to the N.R.A. for its approval.
- (c) Approval of letter transmitting the budget to the N.R.A.
- (d) Approval of basis of assessment in accordance with the plan already approved by the N.R.A. in connection with budget No. 1, and ordering of assessment to be levied subject to the approval of the N.R.A.
- (e) Fixing of the basic assessment of \$10.00 for the period ending December 31, 1934.
- (f) Approval for payment of the balance due Paul V. Keyser as counsel for the Code Committee for the period ending July 31, 1934, and his future compensation.

Meeting of September 24:

- (a) Approval of procedure in connection with assessment No. 2 for handling unpaid bills and originators of substantial issues, as follows:

1. Managing Director to submit to the next Code Committee meeting list of registered investment bankers who are subject to suspension and take all necessary steps to enable the Code Committee at its next meeting to suspend or cancel registration of such investment bankers.

2. Bills for assessment No. 2 shall also cover amounts unpaid under assessment No. 1, any payment received on such bills should be credited first against assessment No. 1.

3. The same procedure to be followed with respect to originators of substantial issues who have been recently billed for additional amounts under that classification.

- (b) Finance Committee to pass upon the names of those adjudged to be "originators of substantial issues". Any protests received by the Managing Director to be referred to the Finance Committee for decision.

- (c) Managing Director to obtain prior approval of Finance Committee before asking any adjustment in the list of "originators of substantial issues".

Meeting of October 10, 1934.

(a) This meeting was largely devoted to consideration of the question of who should be billed as "originators of substantial issues". From the list submitted definite decision was reached as to Group "A". As to Group "B" additional information was ordered to be obtained. Group "C" was definitely considered as not being in the class of "originators of substantial issues".

(b) Methods of billing were considered and passed upon.

(c) New York Regional District was allowed an amount not exceeding \$300.00 per month additional to its budget as approved. This was done because of necessary investigations under the Fair Trade Practice Provisions.

(d) Managing Director and Deputy Managing Director instructed to attend meeting of the Investment Bankers Association at White Sulphur.

(e) Treasurer instructed to arrange for an audit to be made by Price Waterhouse as of December 31, 1934.

IV. - INTERPRETATIONS COMMITTEE.

Meetings have been held August 2, August 17 and September 12.

Interpretations and Explanations. From time to time requests have been made to the office of the Managing Director for explanations and interpretations. In order to furnish prompt service requests have been promptly answered by the Managing Director or Counsel, such answers being submitted to the Interpretations Committee at its next following meeting for approval. In cases of interpretation the matters have been submitted to the Interpretations Committee and by it to the Code Committee if the Interpretation Committee agreed that it was a matter involving an interpretation. There has been no report to registered dealers for several reasons; first, with respect to explanations the requests have been almost uniformly of such a character as presented no difficulties to those who had carefully read the Code.

Second, in cases of interpretation, we are not permitted to release interpretations made by the Code Committee until approved by the National Recovery Administration and there has been no such approval except in one instance.

Third. N.R.A. until recently has not been in agreement with the Code Committee with respect to the broad interpretative authority granted to the Code Committee by the Code with respect to registered dealers.

Fourth. Regional Committees under their authority to give explanations have done so as occasion presented and this has been increasingly important in cases where quick answers over the telephone were necessary. My general impression has been that the provisions of the Code, with some important exceptions hereafter noted, have been very generally understood - a high tribute to those who drafted its provisions.

Of overshadowing importance, however, are these exceptions. They are the highly important controversial questions relating to concessions to registered banks, concessions on old issues and "gun-beating". These subjects have had the careful consideration of the Interpretations Committee and the Executive Committee and the Code Committee. They will be the subject of further discussion and I hope definite decision by the Code Committee at its meeting on November 1st. After the action of the Code Committee, which may involve amendments to the Code, no release can be given to such action until the matter shall have been submitted to the National Recovery Administration for its approval or disapproval.

Fifth. Relations with the N.R.A.

I have before said that N.R.A. until recently has not been in agreement with the Code Committee with respect to the extent of the broad interpretive authority granted to the Code Committee by the Code with respect to registered dealers. This resulted from the application of a special ruling by N.R.A. relating to the powers of Code Committees generally to interpret their Codes. The basis of the ruling was that since Codes are penal or quasi-penal laws by force of the Industrial Recovery Act, they must be interpreted by the same rules of law as a criminal court would apply in the interpretation of a criminal statute, i.e., strictly in favor of the accused. It was overlooked that in the case of our Code registered dealers had agreed that the Code Committee might construe our Code provisions liberally and in accordance with the spirit of the rules and has further agreed that for violations they should be subject to suspension or cancellation of registration or a fine by the action of the Code Committee subject only to the right of the N.R.A. to determine whether the action of the Code Committee had been arbitrary or unreasonable. This matter of vital importance to us was finally disposed of in accordance with our contentions.

A further question arose as to the scope of the powers of the Code Committee in making interpretative rulings relating to concessions to registered banks. The Code Committee had ruled that concessions could only be allowed to Registered Banks on securities which they might lawfully underwrite. N.R.A. took the position that since there were no provisions in the Code to this effect the Code Committee could not make a ruling which would really write those words into the Code. We conceded the justice of this contention. The ruling of the Code Committee relating to releases of offerings is now before N.R.A. and a question has been raised as to whether that ruling is justified by the language of the Code. Our relations with N.R.A. have been friendly and our conferences have invariably been characterized by a willingness and desire on both sides to consider the other's contentions and arguments.

V. - BY-LAWS COMMITTEE.

The By-Laws Committee in addition to drafting the By-Laws which have been approved by the Code Committee and the N.R.A. had in charge the drafting of the Procedure for handling Trade Practice Complaints required by the N.R.A. which has just approved it. The detail of handling complaints as covered by this document will be released to the Regional Committees shortly.

VI. -- CODE ENFORCEMENT.

While no Committee has been formally appointed by the Code Committee to consider the matter of Code Enforcement and compliance a group has been formed composed of Messrs. Bonner, Scheffey, Patton, Davis and Rice and the Managing Director at the request of the Chairman of the Code Committee to cover this subject and report to the Code Committee.

This general problem, perhaps the most important now before us, has been given and is being given careful study. It is primarily a Regional District problem, supervised and co-ordinated by the Code Committee through the office of the Managing Director. Generally speaking the problem breaks down to three important phases:

1. Maintaining the interest of dealers in the Code and securing their voluntary compliance, which is educational.
2. Discovery of non-compliance which raises the question of to what extent that can be done through the voluntary efforts of the Regional Committee and to what extent any paid investigators may become necessary, and the cost.
3. Method of dealing with non-compliance. This has been broadly outlined in my letter to Regional Committee Chairman, a copy of which is attached hereto.

The work of the above Group has consisted in studies and reports on the important matters of co-operation with State Securities Commissioners and Better Business Bureaus, the handling of compliance cases by other industries, the experiences of Regional Code Committees in handling compliance matters and reports on a concrete plan to be presented to the next Code Committee meeting.

VII. - SUB-COMMITTEE ACTIVITIES.

Since the Atlantic City meeting of the Code Committee there have been 11 meetings of sub-committees. In addition the Committee members have given a great deal of time to the consideration of the various problems confronting them and have exchanged views with one another from time to time.

VIII. - WORK OF THE REGIONAL COMMITTEES:

Briefly this is covered by their organization, handling of registration, giving of explanations, making of their budgets, meetings to discuss the Code and their duties with respect to securing compliance with it. A wide field of activity presents itself in this last named matter. The success of the Code depends upon such activities.

Twenty seven communications with respect to the above matters have been transmitted to the various Regional Committees at approximately weekly intervals, from the beginning of the period of administration to this date

and there has been a very substantial amount of correspondence on these and other subjects between Regional Committees and the office of the Managing Director over the period.

In the matter of securing compliance with the Code the actual policing of 800 odd registered dealers alone in the New York industry by a group of 7 men giving voluntarily of their time to the job seems anything but adequate. And yet the policing of all is not necessary. The punishment of a few, if such punishment be known to all, will have the very greatest effect of securing compliance from the class who would otherwise be offenders. And the amount of effective work which can be accomplished by Mr. Scheffey alone, giving all his time to Code work and principally to securing compliance with the Code, will, I know, surprise you all. A similar plan may have to be worked out for the Central States District and other large areas.

The problems of Regional Districts vary in character of non-compliance cases and in the number of dealers to be covered by each district. The New York territory embraces three States with a total of 896 registered dealers. The Central States District embraces five states with a total of 377 registered dealers. Compare these situations with Eastern Pennsylvania covering approximately one-half of the State of Pennsylvania and Delaware with 149 registered dealers; Western Pennsylvania covering the Western half of Pennsylvania with 59 registered dealers; also the single State of Ohio divided into two districts each having approximately 70 registered dealers. An analysis of the remaining territories will show a very wide divergence in the number of registered dealers in each territory and the extent of the territory. The territories large in area and relatively small as to the number of registered dealers have to take into consideration the time element necessary in Code compliance work, especially with reference to hearing cases, the long distances to be traveled and the very considerable expenses involved. These also present practical difficulties to a policing organization. And it should be borne in mind that the Investment Bankers Code is perhaps the only Code which has the power and the duty of discipline with respect to a very large part of its membership; namely, the registered investment bankers. The efforts of the other Codes direct themselves largely to discovery only of non-compliance with the burden on the National Recovery Administration with respect to enforcement in cases where it is fitting that penalties should be imposed. However, the duties of hearing cases by Regional Committees may in large measure be delegated to one or more of their respective committee members and it is not to be assumed that after punishment is meted out to a few there will be many who will run a chance. Furthermore, the greatest possible field for Regional work lies, in my opinion, in those non-willful cases which will require friendly helpfulness and not punitive measures.

#### CONCLUSION:

In appraising the results of six months' experience in the operation of the Code, it is of the utmost importance that we view it in the broadest way and in its proper perspective. It is so easy to point out one defect in the

Code and one or even many cases of non-compliance and reason that this is typical--and the Code is all wrong and that no one is observing it. Such is not the fact.

Finance, interpretations, registrations, enforcement, relations with the National Recovery Administration, education and co-ordination of Regional Committees, the routine of general work, have altogether constituted a tremendous job which cannot be expected to work smoothly and satisfactorily in a short time. The diligent, intelligent, continuous effort -- and, above all, patience--is required. In order that the administration of the Code may be made an outstanding success it is absolutely necessary that the business stay with it and support it and not be discouraged by the many obstacles of indifference and misunderstanding. And it requires the same unflagging spirit and enthusiasm and patience in administration as in its conception and adoption.

(Signed) ROLLIN A. WILBUR

Managing Director