

# Investment Bankers Code Committee

1010 Vermont Avenue  
Washington, D. C.

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16 January 1935

To All Code Committee Members:

I enclose a resolution adopted at a meeting of Regional Chairmen held at Washington on January 14-15, together with a memorandum signed or initialed by all present at such meeting, (Exhibit "A"). There were present thirteen Regional Chairmen and four alternates selected by those Regional Chairmen who were unable to be present.

In order to facilitate discussion on this subject at our coming meeting on January 22 I give you briefly an outline of the history of this much discussed "old issue" problem:

During the latter part of April, almost immediately after our office was opened in Washington, an opinion was requested with respect to this matter. After considerable discussion it was referred to counsel who on July 5, in connection with the subject of concessions to banks, gave an opinion with respect to the interpretations of Article V Section 4 and Article IX Section 7 relating to concessions on old issues. I enclose that portion of the opinion which relates to this particular subject. It is marked Exhibit "B" for identification.

At the Atlantic City meeting on July 14 - 15 there was presented to the Code Committee by the Interpretations Committee a proposed interpretation of Article IX Section 7 (a). The record of the Code Committee meeting with respect to this matter, including the proposed interpretation, is enclosed marked for identification Exhibit "C". It will be noted the subject was referred back to the Interpretations Committee. My recollection of the reason for referring it back to the Committee was that while the Code Committee was agreed in principle to the proposed interpretation, as a proper extension of the one-price principle to old issues, practical difficulties were found in applying the interpretation as drafted to the cases of trading operations. Subsequent discussions have

developed the further objection that such a restriction might constitute an improper interference with the right of an investment banker to make his own price in any individual transaction where the security involved was not subject to any group or joint account.

Thereafter the Interpretations Committee again considered the matter and authorized the Managing Director to give an office opinion in a form approved by the Interpretations Committee but directed the Managing Director to release the opinion to members of Regional Committees only. This opinion is herewith enclosed marked Exhibit "D" for identification. It is my understanding that this office opinion has been quite generally observed over the country as would seem to be indicated in the memorandum attached to the Regional Chairmen resolution. However, there are some districts in which it is not being observed.

Since August 8 the matter has been in the hands of the Interpretations Committee who have found difficulties in drafting an appropriate interpretation or amendment.

This subject involving the one-price principle insofar as it relates to old issues is in my opinion one of the most important subjects, if not the most important subject, before the Code Committee and I earnestly hope that it may be disposed of at the coming meeting in the Code Committee on January 22.

This letter, with the enclosures, is sent to you in order to give you information which will facilitate discussion and, if possible lead to a disposition of the matter at our coming Code Committee meeting.

Rollin A. Wilbur  
Managing Director

RAW:S

Exhibit A

January 15, 1935

The Regional Code Committees of the Investment Bankers Code, as represented by thirteen Chairmen and by four Regional Committeemen, representing Chairmen, respectfully submit to the Investment Bankers Code Committee the following statement. It is the unanimous opinion of the Committeemen assembled that the principle and spirit of the following statement be adopted as an amendment to the Code or as an interpretation, whichever, as a matter of practical administration, can be put into practice most promptly.

"It is the spirit and intent of the Fair Trade Practice Amendment to the Investment Bankers Code that all registered investment bankers make all their sales (other than on regularly organized exchanges) of old or new issues of municipal and corporation bonds and/or stocks or other securities as defined in the Code at dollar or basis prices, and that no discounts, concessions, or rebates be allowed to any person, as defined in the Code, except where such person, as defined in the Code, is a registered investment banker."

There is attached to this memorandum a statement bearing the signatures or initials of the Regional Committeemen present, which statement is for the information of the Code Committee and which indicates the practice that is now being followed by the Districts in regard to the matter of concessions and discounts.

Laying aside interpretations of the existing Code,  
 (1) Do you favor a rule forbidding all concessions to other persons than registered dealers? (2) Is your district working under the idea that they are now forbidden?

MEMBERS OF REGIONAL COMMITTEES PRESENT	QUESTION (1)		QUESTION (2)	
	YES	NO	YES	NO
Mr. George W. Davis, #1	x		x	
Mr. Francis F. Patton, #2	x		x	
Mr. Devereux C. Josephs, #3	x			x
Mr. E. F. Connley, #4	x		x	
Mr. David R. West, #5	x		x	
Mr. Royal D. Kercheval, #6	x			x
Mr. James J. Minot, Jr., #7	x		x*	
Mr. George N. Lindsay, #8	x		Don't know	
Mr. William R. Daley, #9	x		x	
Mr. James M. Hutton, Jr., #10	x		x	
Mr. Charles A. Smith, #11	x		x	
Mr. Charles T. Sidlo, #12	x		x	
Mr. Y. E. Booker, #13	x		x	
Mr. John Dane, #14	x			x
Mr. John A. Prescott, #15	x		x	
Mr. J. Howard Arthur, #16	x		x	
Mr. George V. Rotan, #17	x		x	

17

0

13 Yes

3 No

1 Don't know

\* (Technically yes)

Round Robin initiated by  
 and certified correct by  
 George V. Rotan - 1/15/35

EXHIBIT "B"

MAY A REGISTERED INVESTMENT BANKER GIVE A CONCESSION  
TO A BANK THAT IS NOT A REGISTERED INVESTMENT BANKER  
ON SALES MADE BY SUCH REGISTERED INVESTMENT BANKER  
TO SUCH BANK?

The answer to this question is, No.

So far as such registered investment banker would be concerned the position of such bank under Article IX, section 7, would be that of any "member of the public not engaged in the investment banking business."

With respect to a new issue of securities the transaction would be subject to Article V, section 4, and the price to the bank could not be lower than the public offering price, without any deduction, abatement, concession or commission whatsoever.

With respect to existing securities, such transaction would be subject to Article IX, section 7.

The cardinal rule of interpretation prescribed in Article 1 of the basic Code, is that "all practices in connection with the investment banking business shall be just, reasonable, and non-discriminatory". The spirit and intention of the Code is to make a one-price business, without unfair preferences or discriminations of any form, manner, or description. Article IX, section 7, makes the price basis in any transaction between a registered investment banker and any person not another registered investment banker the "same price" at which at the time of such transaction such registered investment banker would buy or sell such security, as the case may be, from or to a person who is a member of the public not engaged in the investment banking business.

This language fairly implies, I believe, the same price to every person not another registered investment banker, and while, in the case of old securities, any investment banker who is not a party to any syndicate, joint account, or selling group agreement clearly has the inherent right of ownership to fix his own price and to change it at any time, nevertheless, his price when made must be the same price to all persons not other registered investment bankers, and I think this necessarily precludes and forbids any discrimination or preference, and a concession would amount to such a discrimination or preference.

Respectfully submitted,

(signed)

Paul V. Keyser

Counsel for the Committee.

EXHIBIT "C"

After discussion, the Committee referred back to the Interpretation Committee for further study and report the question of concessions and price discriminations on sales to the general public by registered investment bankers. The suggestion submitted by the Interpretations Committee was in the form of a proposed interpretation of Article IX, Section 7 (a), as follows:

"Article IX, Section 7 (a), shall be interpreted so that no registered investment banker shall, in the course of his investment banking business, either directly or indirectly, discriminate in price between different purchasers of the same security where such purchasers are not registered investment bankers and where the effect of such discrimination may be to make the price of such security to any such purchaser a price other than the same price at which at the time of such purchase such registered investment banker would sell such security to any person who is a member of the public not engaged in the investment banking business, but nothing herein contained shall prevent registered investment bankers from selecting their own customers in bona fide transactions."

EXHIBIT "D"

August 8, 1934

To Chairmen of Regional Committees:

Questions have come before this office regarding the granting of concessions under the Code.

The opinion of this office on this subject is as follows:

1. No Registered Investment Banker may allow concessions, commissions or discounts on old or new issues to any one other than another Registered Investment Banker.

Exception: An allowance may be made when such allowance is a method of changing the price and is open to all purchasers at the time such allowance is made.

2. No Investment Banker Whether or not Registered may allow concessions, commissions or discounts on old or new issues to any one other than another Investment Banker.

Exception: An allowance may be made when such allowance is a method of changing the price and is open to all purchasers at the time such allowance is made.

The purpose of the Exceptions, as given in 1 and 2 above, is to allow trading houses and those dealing in municipals to continue their usual practices although it is urged that steps be taken to have all quotations on a net price basis.

Copies of this letter have been forwarded to all members of your Regional Committee.

Very truly yours,

Rollin A. Wilbur

Managing Director