

INVESTMENT BANKERS CONFERENCE COMMITTEE
1010 Vermont Avenue
Washington, D. C.

January 10, 1936

CONFIDENTIAL

To Members of the Conference Committees

The special committee on drafting a permanent plan of organization for the present Investment Bankers Conference Committee has asked me to send you for your consideration and comment the enclosed draft of a Constitution which embodies the plan upon which it has tentatively agreed. It has also asked me to explain briefly the reasons for its various provisions. I do not know how familiar you are with the activities of this committee to date, so perhaps I should say just a word first by way of background.

Soon after its appointment this committee had a conference with Mr. Landis and other members of the staff of the S.E.C. to discuss the problems involved in setting up a permanent organization to carry out the purposes of the so-called Conference Plan, as set forth in Mr. Griswold's letter of October 12 to all investment bankers and securities dealers (copy enclosed herewith). At that meeting Mr. Whitney reviewed briefly the experience of the industry at self-regulation both prior to and under the Code, and expressed for the committee its belief that without the possibility of employing sanctions similar to those permitted under the N.I.R.A. and the Code, no voluntary organization could achieve the effective self-discipline desired. It was of course recognized by everyone present that under the present state of the law, enabling legislation would have to be had to permit sanctions of that sort, so the possibility of securing such legislation was also discussed. The net result of the meeting was that Mr. Landis asked the committee to draw up in detail an "idealistic plan" of organization, one which the committee thought desirable and which could really do the job of effectively self-regulating the business. He suggested that this be done "without regard to existing law or political expediency", and that the problem of making it fit the law or the law fit it could then best be met. This the committee agreed to do, and it is to this end that the enclosed draft is addressed.

Before commenting on the specific provisions of the Constitution, it may be well first to make one or two general observations. As you will see, the Constitution, as presently drawn, contemplates the organization's taking the legal form of a voluntary association. The question, however, of whether it should take this form or that of a non-profit corporation is still being considered, by counsel.

So that the basic plan as embodied in the Constitution would read more consecutively, the provisions have not been separated into Constitution and By-Laws. This will be done later when the question as to legal form is finally decided. At that time other by-laws, having to do with purely administrative details, will be added. It perhaps should be mentioned here too that as yet there has been no considered attempt to put the final polish on any of the language used.

As to the specific provisions of the Constitution, it will perhaps be best to deal with them Article by Article:

Article I. Considerable thought was given to the matter of a name. After considering the implications of a great many possible combinations the one used in the present draft was decided upon as being most accurately descriptive of the proposed organization.

Article II. This Article merely sets forth the purposes of the Institute and requires no comment.

Article III. You will see that Section 1 of this Article makes almost everyone actually engaged in the investment banking or securities business eligible to membership. The committee felt, however, in view of the responsibility which the Institute proposes taking upon itself and the privileges and other implications of membership, that the District Committees, in passing upon applicants, should be given some authority to keep out at least the generally recognized undesirables at present in the business. The provision as drawn, therefore, goes as far toward throwing the door wide open as the committee thought wise.

You will recognize Section 1 (c) of this Article as substantially identical to Section 7 of Article IX of the rules in effect under the Code. This provision of course provides the teeth which the committee thinks essential to the Institute's being effective and is the section of course which necessitates the enabling legislation referred to above.

Section 2 is included to provide for banks and municipal dealers should they be unwilling, for any reason, to subscribe to regular membership.

The remaining Sections of this Article need no special comment and Sections 3 and 4 will doubtless eventually go into the By-Laws.

Article IV. The provisions of this Article have to do solely with branch offices. Sections 1 and 2 will, of course, eventually be included in the By-Laws.

Article V. This Article, as you will see, gives the Governing Committee complete discretion in the matter of dues, assessments and other charges.

Article VI. Sections 1, 2 and 3 of this Article set forth the circumstances and conditions under which membership in the Institute may be forfeited, and Section 4 provides for reinstatement. All of these provisions speak pretty clearly for themselves.

Article VII. This Article deals with the two questions which gave the Committee more concern than any others; namely, (1) the powers to be vested in the Governing Committee and (2) the method of selecting the members of that Committee. On the one hand, the committee felt that to be effective and to avoid the cumbersome and delay which characterized the Code and proceedings thereunder, the Institute had to have a governing body which could act forcefully and swiftly, which could make rules expeditiously and abolish them just as quickly if they proved unwise, and which could act generally with precision and dispatch. This, the committee felt, necessitated giving the governing body very broad, general and flexible powers. On the other hand, as the Institute was to be based on voluntary agreement, it was perfectly obvious that every assenting member, no matter how large or how small, would want some word in the selection of the body to which it was turning over so much power. Since practically anyone in the business was eligible to membership, there were obvious dangers in pure democracy, and on the other hand popular support manifestly could not be attained if the Governing Committee was appointed and self-perpetuating. The problem, therefore, was to strike a balance somewhere between appointment and pure democratic representation which would be satisfactory to all parties and all interests concerned, and the committee feels that the method of election herein provided goes about as far toward so-called pure democracy as is practicable in view of all the considerations involved.

Section 1 provides for dividing the country into thirteen local districts rather than seventeen as under the Code. By so doing, the committee here has attempted to make the districts conform more nearly to natural trade areas than did the districts provided for under the Code.

Section 2 vests the government and administration of the Institute in the Governing Committee of twenty-one members. It gives the Governing Committee the broad general powers which the committee thinks essential to its effective administration of the objects and purposes of the Institute.

Section 3 provides that the Governing Committee shall appoint the District Committees.

Section 4 provides for representation of the several districts on the Governing Committee. One criticism of the Code Committee was that it was not geographically representative or indeed representative of the various types of business which go to make up the industry. The provisions of this Section are designed to give each district, at least one representative on the Governing Committee and at the same time to provide for appropriate additional representation of the more important financial areas.

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Section 5 deals with the term of office of the members of the Governing Committee and for the transition from the Investment Bankers Conference Committee to the new organization.

Section 6 contains merely supplemental provisions to Sections 4 and 5.

Section 7 has to do with the manner of election of members of the Governing Committee. As has been indicated above, this matter has been given a great deal of thought, the provisions have been drawn with great care, and the scheme devised goes as far toward pure democracy as the committee has thought practicable in view of the obvious considerations and interests involved.

Section 8 has to do with vacancies and needs no comment.

Sections 9 and 10 are self-explanatory and, of course, will eventually be in the By-Laws.

Article VIII. The provisions of this Article have to do with the election of officers and the employment of counsel and an administrative staff, and require no special comment.

Article IX vests in the Governing Committee power to appoint committees in addition to the District Committees, and in the District Committees, subject to the approval of the Governing Committee, power to appoint such sub-committees as they deem necessary.

Article X. Section 1 gives the Governing Committee specific power to adopt, interpret, administer and enforce rules of fair practice. As yet, no rules have been drawn but the plan of the committee is to start off with a set of rules substantially similar to those in effect under the Code and with which the industry is already familiar. The committee plans to omit such rules as the Code experience proved unwise or unworkable.

So that the Governing Committee will not be required to promulgate national rules to meet purely local situations, District Committees, by Section 2 of this Article, are given power to adopt such local rules of fair practice, subject to the approval of the Governing Committee, as they deem necessary. The committee's thought here is that this will provide decentralization, greater flexibility, and more efficient administration.

Section 3 provides penalties for infractions of the rules in addition to those provided by Article VI, Section 2.

Sections 4 and 5 of this Article are self-explanatory.

Article XI. All of the Sections of this Article speak pretty well for themselves.

Article XII. The provisions of this Article have to do with additions, alterations or amendments to the Constitution. Since no annual or other meeting of all the members of the Institute is planned, the scheme of amendment as here provided was thought wise and expeditious.

You will note that I have enclosed also for your consideration a tentative schedule of procedure for handling complaints. This will have to be tied in with the Rules of fair practice when they are promulgated.

The S.E.C. is very anxious to get our plan of organization at the earliest possible moment. The drafting committee, of course, feels that it is important to hear from all members of the Conference Committee before discussing the plan with the S.E.C., so it has asked me to express the hope that it may have any comments or suggestions which you may care to make as soon as possible. If you will address your reply to me, I shall see that it is circulated among the committee.

Cordially yours,

Murray Hanson