

Statement and Resolution

on the

MALONEY BILL

by the

Board of Governors, Investment Bankers Association of America

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At the regular meeting of the Board of Governors of the Investment Bankers Association of America at White Sulphur Springs, W. Va. May 14-18, 1938, there was a full discussion of the Maloney Bill for the regulation of the over-the-counter securities markets. It was evident that securities dealers in all sections of the country, having had an opportunity to study the Bill, have become increasingly concerned about the unfavorable results that would occur if certain sections of the Bill were not amended as specifically recommended in the resolutions passed by the Board of Governors at a special meeting in Chicago on March 10, 1938.

As a result of this discussion, the following resolution was passed:

RESOLVED: That in the opinion of the Board of Governors of the Investment Bankers Association of America, the failure to make the amendments to the Maloney Bill recommended at the meeting of March 10, 1938, will have the effect, if the Bill becomes law, of further seriously curtailing the activities of the capital markets for new as well as for presently outstanding issues, and of hindering the flow of capital into industry; and,

That the Board of Governors again most strongly urge the Congress to amend the proposed Bill, as previously recommended by this Association, by making the following changes in the draft dated May 6, 1938, which is now before the House of Representatives:

- (1) The insertion of the word "willfully" before the word "violated" in Section 1 (lower case L) (2) (A) in line 7 on page 15. This section now provides that members of an association formed under the Maloney Bill may be suspended or expelled by the Securities and Exchange Commission for any violation of the Securities Exchange Act of 1934. The proposed change would provide this penalty only for willful violations, and would make this section similar to the section of this same draft which has to do with violations of the Securities Act of 1933.
- (2) The change in the wording of Section 2(c)(2) on page 17, line 18, to conform to the present wording of Section 15-C of the Securities Exchange Act of 1934 to read as follows: "engages in any manipulative, deceptive, or other fraudulent device or contrivance, or makes any fictitious quotation. The Commission shall for the purposes of this paragraph define such devices or contrivances as are manipulative, deceptive, or otherwise fraudulent,

and such quotations as are fictitious." This change will make necessary proof of fraud or fraudulent intent in connection with such violations before penalties may be imposed.

(In the event the above change (2) is made, the following change (3) recommended at the Chicago meeting, might be omitted.)

- (3) The elimination of all of that part of Section 3 of the Bill beginning after the word "title" in line 4 on page 19, and the change of line 4 on page 19 to read "paragraphs (2) and (3) of subsection (c) of Section 15 of this title." This section now provides the penalty of rescission for violations of the above referred to section 2 (c) (2) and the effect of these changes will be to eliminate this penalty.

(In case recommendation (2) above should not be adopted, it becomes most important that recommendation (3) be adopted, as otherwise dealers may be unjustly liable for rescission because of innocent violations of the manipulative provision of section 2 (c) (2).)

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The enactment of the Maloney over-the-counter market bill in the form in which it is now pending in the House would be a further impediment to the flow of capital into industry, the Board of Governors of the Investment Bankers Association of America declared in a statement at the conclusion of its five-day regular spring meeting here. The Board of 40 members, representing all parts of the country, declared that dealers in all sections have become "increasingly concerned about the unfavorable results that would occur if certain provisions of the bill were not amended according to specific recommendations made previously to the S.E.C. and to committees of both houses of Congress."

Investment Bankers Association of America, the failure to make the amendments to the Maloney Bill recommended at the meeting of March 10, 1938, will have the effect, if the bill becomes law, of further seriously curtailing the activities of the capital markets for new as well as for presently outstanding issues, and of hindering the flow of capital into industry; and,

"That the Board of Governors again most strongly urges the Congress to amend the proposed bill, as previously recommended by this Association, by making the following changes in the draft dated May 6, 1938, which is now before the House of Representatives:

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(2) "The change in the wording of Section 2(c)(2) on page 17, line 18, to conform to the present wording of Section 15(c) of the Securities Exchange Act of 1934 to read as follows: 'engages in any manipulative, deceptive, or other fraudulent device or contrivance, or makes any fictitious quotation. The Commission shall for the purposes of this paragraph define such devices or contrivances as are manipulative, deceptive, or otherwise fraudulent, and such quotations as are fictitious.' This change will make necessary proof of fraud or fraudulent intent in connection with such violations before penalties may be imposed."

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(In case recommendation (2) above should not be adopted, it becomes most important that recommendation (3) be adopted, as otherwise dealers may be unjustly liable for rescission because of innocent violations of the manipulative provision of Section 2(c)(2).)

In the period between March 31 and June , Messrs. Griswold, Fulton and Hanson had numerous meetings with members of the Commission and its staff, at which times they <sup>informally</sup> urged the acceptance by the Commission of the additional changes proposed by the New England Group and by the I.B.A.