



OFFICE OF
THE CHAIRMAN

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON 25, D. C.

January 25, 1954

The Honorable
Homer E. Capehart, Chairman
Committee on Banking and Currency
United States Senate
Washington, D. C.

Dear Mr. Chairman:

There is enclosed a draft bill proposing limited amendments to the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, and the Investment Company Act of 1940. There are also enclosed two memoranda which describe the nature and purpose of the proposed amendments and certain related documents described below.

You will recall that during our conference in July, 1953, at which Commissioners Rowen and Adams were present, we advised you that various groups wished to submit proposals for amendment of the statutes administered by the Commission. At that time I suggested that the Commission's responsibility is to administer the law, not to write it, but that the Commission could fulfil a valuable function by cooperating with Committees of the Congress and in studying legislation proposed by organizations or groups of citizens. At the time of our interview you referred to the continuing responsibility of the Committees of the Congress under Section 136 of the Legislative Reorganization Act of 1946, for appraisal of the Commission's administration of the laws subject to its jurisdiction and in the development of amendments or related legislation. You suggested that we might well work out a program under the guidance of Senator Bush, Chairman of the Subcommittee on Securities, Insurance and Banking of the Senate Committee on Banking and Currency.

The Honorable
Homer E. Capehart

-2-

The Honorable Charles A. Wolverton, Chairman of the Interstate and Foreign Commerce Committee of the House of Representatives, advised us, under date of August 21, 1953, as follows:

"Dr. Stevenson, however, has discussed with me your thought, as well as your letter to him of July 30, concerning your proceeding on a consideration of an amendment program with the Stock Exchanges and others who may be interested. It seems to me that no harm, and, indeed, much good might arise from a continuation of the discussions which you have had with industry and affected persons over the years in the development of technical changes which might be made to the Acts and which you would propose to bring to our attention for consideration.

"On the other hand, you will appreciate, I am sure, that I am most zealous in preserving for the investing public the protection which was envisaged in the statutes when they were passed, both as they apply to investors in new securities and as they apply to purchasers on the Exchanges and over-the-counter markets. I certainly would feel that it was unincumbent upon any agency charged with administering these Acts on behalf of the Congress for the protection of the general public, to initiate or sponsor any program which would weaken such protection, though conversely, it might well give thought to areas in which it could be strengthened.

"In accordance with your suggestion, I have requested Dr. Stevenson to continue to keep informed of your progress in this matter."

Because of the large number of inquiries coming in from interested groups and individuals, on August 26, 1953 the Commission issued a press release reading in part as follows:

The Honorable
Homer E. Capehart

-3-

"Industry representatives from time to time have advised the Commissioners that they intend to make suggestions for revision of various rules and forms of the Commission, as well as for amendment of the laws which it administers.

"The Commission will hold itself ready to receive and discuss suggestions by any group of citizens with respect to its rules and forms. Similarly, if proposals are presented for amendment of the laws which it administers, the Commission will hold itself in readiness to render such assistance as the appropriate Committees of the Congress may request of it."

During September, October and November, 1953, the Commission received numerous legislative proposals of the American Stock Exchange, the Association of Stock Exchange Firms, the Investment Bankers Association, the National Association of Investment Companies, the National Association of Securities Dealers, Inc., and the New York Stock Exchange. Considered in the aggregate the major proposals of these organizations related to the following subjects:

Amendments of the Securities Act of 1933 to:

1. Permit the making of offers, but not the making of sales, during the waiting period between the filing of a registration statement and its effective date.
2. Reduce from one year to 30 days the period during which all dealers, whether or not participants in the initial distribution of a new issue, are required to deliver prospectuses in connection with trading transactions in the new issue.
3. Permit continuous and simplified registration of shares by investment companies which continuously offer shares to the public and require prospectuses to be delivered in trading transactions in outstanding open-end investment company securities so long as securities of the same class are being offered to the public.

The Honorable
Homer E. Capehart

-4-

4. Simplify the registration and prospectus requirements for the public offering of high grade bonds.

5. Restore the "broker's exemption" as provided in section 4(2) of the Act, so as to give relief from the popular interpretation of the opinion of the Commission in the case of Ira Haupt & Co., 23 SEC 589 (1946).

6. Exempt from registration outstanding shares of a listed stock being offered in connection with an employee stock purchase plan and to simplify further the registration requirements for unissued shares of a listed stock being so offered.

7. Exempt from registration all securities which have been registered under the Securities Exchange Act of 1934 and dealt in for more than 3 years on a registered national securities exchange, and exempt additional issues of such securities.

8. Exempt from the prospectus requirements of the Act brokerage transactions in listed securities when the sale is made on an agency basis and the agent's compensation is disclosed to and paid by the buyer.

Amendments of the Securities Exchange Act of 1934 to:

9. Prohibit the extension of credit by a broker-dealer to a customer on a new issue of securities only if the broker-dealer sold the securities to the customer or purchased the securities for the customer on a solicited order, and only while the broker-dealer was engaged in the distribution of the securities and for four days thereafter.

10. Reduce the waiting period from 30 days to 10 days between the filing and effectiveness of applications for registration of additional issues of listed securities and remove restrictions on registration for "when-issued" trading and with respect to securities to be issued or sold in connection with a reorganization under the Public Utility Holding Company Act or the Railroad Reorganization Act.

11. Amend section 16(b) to limit profits recoverable on behalf of a corporation from officers, directors and 10% stockholders in short swing trading in the corporation's stock. The effect of the proposal would be to provide a statutory limit upon liability smaller in amount than now permitted by the courts in construing the statutory term "profits realized."

12. Require the Commission to proceed by an order rather than by a rule or regulation if the Commission changes a rule of a national securities exchange to afford the exchange the right to a court appeal.

Amendment of the Investment Advisers Act of 1940 to:

13. Permit general use of the title "Investment Counsel" by persons registered as investment advisers even though not primarily engaged in the rendering of investment supervisory services.

In addition three proposals were received from persons other than the organizations mentioned above. A memorandum describing these proposals and indicating the views of the Commission is enclosed.

Following the receipt of these suggestions and proposals, in October and November, 1953, Senator Bush conducted a number of conferences attended by the Commission some of which were also attended by representatives of the proponent organizations. These conferences have been described in memoranda prepared by Mr. McMurray of the staff of the Senate Banking and Currency Committee, copies of which have been sent to you. As a result of these conferences and other discussions held in December, 1953, and January, 1954, between representatives of the organizations named above and of the Boston and the Midwest stock exchanges and the Commission, a number of suggested amendments were incorporated in the draft bill prepared by our staff with extensive participation by members of the Commission.

A comparison of the bill with the proposals submitted to the Commission as listed above will indicate that the bill gives effect in whole or in part to the substance of the suggestions listed.

The Honorable
Homer E. Capehart

-6-

in Items 1, 2, 3 and 9. The Commission has under consideration the adoption of rules with respect to the suggestions contained in Items 4, 5 and 10.

The recommended increase of the maximum exemption under Section 3(b) of the Act from \$300,000 to \$500,000 is already reflected in H. R. 404, now pending in the House of Representatives. We believe the increase in the exemption would facilitate the financing of small business. Because of the Commission's Regulation A which requires the use of a processed offering circular in the sale of such issues, we believe the increase in the exemption would not materially affect the protection presently afforded investors.

The Commission at the present time is not willing to recommend legislation which would embody the suggestions listed in Items 6, 7, 8 and 11. The Commission feels that the suggestion listed in Item 12 is unnecessary in view of certain court decisions. The Commission also would not recommend the suggestion listed in Item 13 in view of the apparent divergence of opinion about it among various industry groups. The Commission's position with respect to the suggestion listed in Item 3 is favorable to the continuous and simplified registration of investment company shares.

The National Association of Investment Companies strongly favors in respect of open-end investment company shares the continuous prospectus delivery requirement embodied in the proposed bill and, as presently advised, the Commission recommends the enactment of this provision. However, in the accompanying summary of the bill, we have included an alternative which would leave the one year requirement in respect of the delivery of prospectuses in trading transactions just as it now is. The above recommendation is subject to the reservation that the alternative provision be substituted in case the testimony adduced at the hearings on the bill should persuade the Committee of the desirability of maintaining the present one year requirement as to the delivery of a prospectus for such securities.

Therefore, after all of the negotiations and discussions outlined above, subject to the last mentioned point, all of the members of the Commission concur in recommending at this time the introduction and enactment of the bill.

The Honorable
Homer E. Capehart

-7-

For your information, we are enclosing copies of communications recently received from the Investment Bankers Association of America, the National Association of Investment Companies, the National Association of Securities Dealers, Inc., and the New York Stock Exchange, commenting on the proposed bill, and also a letter of the Investment Counsel Association of America. There are also enclosed copies of the proposals and drafts of amendments to the Acts submitted to the Commission by various proponent organizations.

Should you wish any further assistance from the Commission, please call upon me.

Sincerely yours,



Ralph H. Demmler
Chairman

Enclosures:

Comparative Draft Bill

(Deletions from statutes in brackets, additions underlined)

Introductory Statement to Summary of Proposed Bill to
amend Securities Legislation

Summary of Proposed Bill to Amend Securities Legislation

Memorandum Regarding Certain Amendment Proposals

Communications:

Investment Bankers Association of America, January 7, 1954

National Association of Investment Companies, January 25, 1954

National Association of Securities Dealers, Inc., January 5, 1954

New York Stock Exchange, January 5, 1954

Investment Counsel Association of America, November 27, 1953