

88L  
76<sup>TH</sup> CONGRESS : : : : 2<sup>D</sup> SESSION

SEPTEMBER 21—NOVEMBER 3, 1939

---

---

# HOUSE DOCUMENTS

---

---

LIBRARY OF CONGRESS  
JAN 21 1941  
DIVISION OF DOCUMENTS

VOL. 2

---

UNITED STATES  
GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1939



J66

SERIAL 10402

COPY 2

HOUSE DOCUMENTS

LIBRARY OF CONGRESS  
JUN 21 1941  
DIVISION OF DOCUMENTS

VOL. 5

7777\*



# INVESTMENT TRUSTS AND INVESTMENT COMPANIES

## REPORT OF THE SECURITIES AND EXCHANGE COMMISSION

---

PURSUANT TO SECTION 30 OF  
THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

---

Investment Counsel, Investment Management,  
Investment Supervisory, and Invest-  
ment Advisory Services



UNITED STATES  
GOVERNMENT PRINTING OFFICE  
WASHINGTON: 1939

INVESTMENT TRUSTS  
AND INVESTMENT COMPANIES

REPORT  
OF THE  
SECURITIES AND EXCHANGE  
COMMISSION

COMMISSIONERS

- JEROME N. FRANK, *Chairman*
- GEORGE C. MATHEWS
- ROBERT E. HEALY
- EDWARD C. EICHER
- LEON HENDERSON
- FRANCIS P. BRASSOR, *Secretary*



## LETTER OF TRANSMITTAL

SECURITIES AND EXCHANGE COMMISSION,  
*Washington, D. C., August 17, 1939.*

SIR: I have the honor to transmit herewith a report on investment counsel, investment management, investment supervisory, and investment advisory services, which supplements the Commission's over-all report on its study of investment trusts and investment companies made pursuant to Section 30 of the Public Utility Holding Company Act of 1935. The Commission's survey of investment counsel services was not of the same nature as its study and investigation of investment trusts and investment companies, and this report merely indicates the nature, development, magnitude and some of the more important problems of these investment counsel organizations. The Commission's conclusions and recommendations with respect to investment counselors will be included in that part of its over-all report which will contain the Commission's conclusions and recommendations on investment trusts and investment companies.

Part One, Part Two, and Chapters I and II of Part Three of its over-all report and a supplemental report on Investment Trusts in Great Britain have heretofore been transmitted by the Commission to the Congress. Part One, transmitted on June 10, 1938, discusses the nature, classification and origins of investment trusts and investment companies, and has been printed as House Document No. 707, 75th Congress. Part Two, the transmission of which was completed on March 10, 1939, consists of a statistical survey of investment trusts and investment companies, and has been ordered printed as House Document No. 70, 76th Congress. Part Three, of which the most recent section was transmitted on August 7, 1939, deals with the abuses and deficiencies in the organization and operation of investment trusts and investment companies, and has been ordered printed as House Document No. 279, 76th Congress. The supplemental report on Investment Trusts in Great Britain was transmitted on June 26, 1939, and has been ordered printed as House Document No. 380, 76th Congress.

The study was under the general supervision of Commissioner Robert E. Healy, with Paul P. Gourrich, former technical advisor to the Commission, as director of the study, the late William R. Spratt, Jr., as chief of the study, David Schenker as counsel, and L. M. C. Smith as associate counsel, in collaboration with members of the staff. This report was prepared under the supervision of Rella Resnick Shwartz. Paul P. Gourrich, former director of the study, whose resignation from the Commission was submitted on March 31, 1939, did not participate in the preparation or consideration of this section of the report.

By direction of the Commission:

ROBERT E. HEALY,  
*Acting Chairman.*

The PRESIDENT OF THE SENATE  
The SPEAKER OF THE HOUSE OF REPRESENTATIVES,  
*Washington, D. C.*



## TABLE OF CONTENTS

---

### Chapter I

#### ORIGIN, SCOPE, AND CONDUCT OF STUDY

	Page
A. Introduction—Origin and limited scope of study.....	1
B. Conduct of study.....	1
1. Investment counsel questionnaire.....	1
2. Public conference with investment counsel firms.....	2

### Chapter II

#### HISTORY AND GROWTH OF INVESTMENT COUNCIL

A. Period of organization in this country.....	3
B. Geographic distribution of investment counsel firms.....	6
1. State of organization.....	6
2. Location of main and branch offices.....	6
C. Form of organization.....	7
D. Size of investment counsel firms.....	7
1. Size of funds administered by investment counsel firms.....	8
2. Number of employees.....	9

### Chapter III

#### AFFILIATIONS OF INVESTMENT COUNSEL FIRMS

A. Introduction—Affiliation with business other than investment trusts and investment companies.....	11
B. Affiliation with investment trusts and investment companies.....	12

### Chapter IV

#### NATURE OF SERVICE TO INVESTMENT COMPANY CLIENTS

A. Discretionary or advisory powers.....	13
B. Execution of orders.....	15
C. Custody of securities of clients.....	15

### Chapter V

#### ADMINISTRATION OF INVESTMENT COUNSEL FIRMS

A. Composition of personnel.....	16
B. Fees.....	16
C. Limitations on number and size of accounts.....	17
1. Problem of priority in advising more than one client.....	17
2. Limitation on number of clients.....	18
3. Minimum size of accounts.....	18
D. Solicitation of accounts.....	19
1. Solicitation by salesmen.....	19
2. Solicitation by advertisements.....	20

## Chapter V—Continued

	Page
E. Turnover of number of clients.....	21
F. Audit of books of investment counsel firms.....	22
G. Financial statements of investment counsel firms.....	22

## Chapter VI

## FUNCTIONS AND PROBLEMS OF INVESTMENT COUNSEL

A. Functions of investment counsel.....	23
1. Continuous, disinterested, personalized, investment advice.....	23
2. Limited economic strata served by investment counsel.....	25
3. Difference in function between investment counselors and investment companies.....	26
4. Relation to the national economy.....	27
B. Problems of investment counsel.....	27

## Chapter VII

## REGULATION OF INVESTMENT COUNSELORS

A. State regulation of investment counsel firms.....	31
1. California.....	31
2. Connecticut.....	32
3. Illinois.....	32
4. Michigan.....	32
5. New Hampshire.....	33
6. Oklahoma.....	33
7. Rhode Island.....	33
B. Private investment counsel associations.....	33

## Appendixes

Appendix A—List of investment counsel firms which replied to investment counsel questionnaire.....	37
Appendix B—List of investment trusts and investment companies with which investment counsel firms were affiliated at some time from January 1, 1933 to June 30, 1936.....	45
Appendix C—Employees of 362 firms replying to the investment counsel questionnaire, classified by type of organization, June 30, 1936.....	48
Appendix D—Powers and affiliations of 56 investment counsel firms with investment company clients.....	49
Appendix E—Advertisements of investment service in six selected newspapers, Sunday, January 31, 1936.....	54
Appendix F—State statutes with respect to investment counselors.....	57
California.....	57
Connecticut.....	58
Michigan.....	60
New Hampshire.....	61
Oklahoma.....	62
Rhode Island.....	63
Appendix G—Purpose and objectives, Investment Counsel Association of America and Investment Counsel Association of Southern California.....	65

Table	LIST OF TABLES	Page
1. Dates of organization of 394 firms replying to the investment counsel questionnaire.....		5
2. States of organization of 394 firms replying to the investment counsel questionnaire.....		6
3. Number of branch offices of 394 firms replying to the investment counsel questionnaire.....		7
4. Form of organization of 394 firms replying to the investment counsel questionnaire.....		7
5. 51 investment counsel firms, classified by the size of funds administered..		8
6. Accounts of 49 investment counsel services classified according to type of client.....		8
7. 362 firms replying to the investment counsel questionnaire, classified by number of employees at the end of 1936.....		10
8. Affiliations of 394 investment counsel firms at the end of 1936.....		11
9. Rate of fees charged investment companies by 37 investment counsel firms.....		16
10. Minimum annual fees charged by investment counsel firms to investment company clients.....		17
11. Percentage of accounts at each year end, from 1932 to 1937, retained by 10 investment counsel firms at the end of 1937.....		21
12. Analysis of operating expenses of 11 investment counsel firms, 1933-35..		22



## Chapter I

### ORIGIN, SCOPE, AND CONDUCT OF STUDY

#### A. INTRODUCTION—ORIGIN AND LIMITED SCOPE OF STUDY

In connection with its study of investment trusts and investment companies, conducted pursuant to Section 30 of the Public Utility Holding Company Act of 1935, the Commission made a survey of investment counsel, management, supervisory, and advisory services. The Commission's jurisdiction to make the investigation into these organizations was incidental to its main study. As a consequence, the Commission did not make the same type of study and investigation of investment counsel services as it did of investment trusts and investment companies. Detailed studies were not made, either through questionnaires or field investigations of individual investment counsel organizations, to ascertain the economic functions performed by or possible defects and abuses existing in these organizations. This report, therefore, is of limited coverage and comprehensiveness since it does not include all investment counselors and does not analyze in detail their basic problems. The report merely indicates the growth, development, and magnitude of the investment counsel business and points out some of the problems which appear to be present or inherent therein.

The survey was intended to exclude any person or organization which was engaged in the business of furnishing investment analysis, opinion, or advice solely through publications distributed to a list of subscribers and did not furnish specific advice to any client with respect to securities,<sup>1</sup> and also accounts with respect to which the organization furnished only economic advice and not advice relating to the purchase or sale of securities. Where the investment counsel, investment management, investment advisory, or investment supervisory service did not constitute the sole activity of an organization, the study dealt only with the department of the organization engaged in the business of furnishing such service.

#### B. CONDUCT OF STUDY

##### 1. Investment Counsel Questionnaire

The Commission sent to investment counselors a questionnaire<sup>2</sup> consisting of two parts. Part I, to be answered by all investment counselors, was general in scope and asked for data relating to the

<sup>1</sup> The survey included only those persons or organizations who were engaged primarily in the business of furnishing investment counsel or advice and therefore did not include lawyers, accountants, trustees, customers' men in brokerage offices, security brokers and dealers, and other similar persons who may give investment advice in similar capacities.

<sup>2</sup> The Commission does not consider that its mailing list constituted a complete coverage of the names of all investment counsel firms in the United States. In preparing this list the Commission had to resort to various sources, including the classified directories of each city in the United States, the Regional Administrators of the Securities and Exchange Commission, Securities Commissioners of all the States, and the registration statements of brokers and dealers filed with the Commission.

date, State, and form of organization of investment counsel firms, the number of their employees, the nature of their affiliations, and whether they numbered among their clients investment trusts and investment companies and/or commingled or common trust funds clients.<sup>3</sup> Part II, to be answered by investment counsel firms which had investment trust and investment company clients during the period from January 1, 1933 to June 30, 1936, called for information with respect to their organization and activities; their method of solicitation of accounts; the nature and extent of their services; the basis of their compensation; the extent of their affiliation with investment trusts and investment companies; their activities other than that of furnishing investment advice; their security transactions with their investment trust and company clients; their control over the accounts of such clients; their investment policies; the type, number, and size of their accounts; the custody of securities and funds of their investment company clients; and the affiliations and business experience of their officers and directors.<sup>4</sup>

The Commission received 394 replies to the questionnaire.<sup>5</sup> Those persons and firms replying include, in all probability, all the larger and more important investment counsel firms in the country.<sup>6</sup>

Of the 394 replies received, 56 were submitted by investment counsel organizations which had investment trust and investment company clients at some time during the period January 1, 1933 to June 30, 1936.

## 2. Public Conference With Investment Counsel Firms

The Commission held a public conference on February 11, 1938, with representatives of some of the larger investment counsel firms who testified with respect to the status, functions, general problems, and possible regulations of investment counsel organizations.<sup>7</sup>

<sup>3</sup> Hereinafter in the report reference to investment trust and investment company clients will include commingled or common trust funds. See Commission's Report on Commingled or Common Trust Funds Administered by Banks and Trust Companies.

<sup>4</sup> In connection with the preparation of the investment counsel questionnaire the Commission conferred with a committee composed of: Mr. Axe of E. W. Axe & Co., Inc.; Mr. Stevens of Brookmire Corporation; Mr. Bush of Brown Bros. & Harriman; Mr. Story of Brundage, Story & Rose; Mr. Chapin of Clarke, Sinsabaugh & Co., Inc.; Dr. Shaw of Edie & Davidson, Inc.; Mr. Blackett of Fitch Investors' Service; Mr. Langmuir of Dean Langmuir, Incorporated; Mr. Sedgwick of Loomis, Sayles & Co.; Mr. Leavitt of Moody's Investors Service; Mr. Bolles of Poor's Publishing Co.; Mr. D. B. Smith of Scudder, Stevens & Clark; Mr. Shaw of A. Vere Shaw & Co.; Mr. Zoller of Standard Statistics Co.; Mr. Brady of Van Strum & Towne; Mr. Flynn of Young Management Corp.; and Mr. Ottley and Mr. Newbold of Young & Ottley.

<sup>5</sup> See Appendix A, which gives a list of the firms which replied to the questionnaire, showing location by city, or main place of business and date of organization.

<sup>6</sup> The Twentieth Century Fund, Inc. estimated that there were from 3,000 to 4,000 investment counsel firms doing business in the United States (The Security Markets, 1935, p. 648). Business Week, in an article in its issue of September 19, 1936 (p. 42), concurred with the Twentieth Century Fund, Inc. Mr. James N. White, of Scudder, Stevens & Clark, also indicated that the figure 394 would not account for all the investment counsel firms in the United States. (Public Examination, Investment Counsel Firms, at 21563.)

<sup>7</sup> The representatives who testified were: James N. White of Scudder, Stevens & Clark; Dwight C. Rose of Brundage, Story & Rose; Robert H. Loomis of Loomis, Sayles & Co.; Douglas T. Johnston of Johnston & Lagerquist; John H. G. Pell of Pell-Kip & Skinner, Inc.; Rudolf P. Berle, counsel to Investment Counsel Association of America, also testified. This public conference did not cover specific investment counsel organizations, but dealt with investment counsel problems generally.

## Chapter II

### HISTORY AND GROWTH OF INVESTMENT COUNSEL

#### A. PERIOD OF ORGANIZATION IN THIS COUNTRY

The emergence of investment counselors as an important independent occupation, or profession, did not occur until after the close of the World War. Of the 394 firms covered in the study, only 10 firms were organized prior to 1919.<sup>8</sup> For the most part investment advice had been furnished, prior to 1919, by individuals and firms, not as part of a business of servicing the investments of clients for a consideration but as ancillary to their regular business or profession. Lawyers, banks and trust companies, brokers and dealers in securities, in the course of their business furnished investment advice to their clients, depositors and customers.<sup>9</sup> The extent to which such investment advice was furnished was described by Mr. White of Scudder, Stevens & Clark as follows:<sup>10</sup>

Q. Prior to the establishment of these investment counsel organizations, what was the situation with respect to the class of individual to whom the purchaser or the investor could look for information?

A. Well, the chief sources of information—do you mind if I speak about Boston, being the place with which I am most familiar?

Q. That is all right.

A. In Boston where investment banking houses, brokerage houses are usually found in combination, banks, professional trustee, which was quite an institution in Boston, and lawyers.

The statistical services were much more a compilation of facts than they are today. There was much more attention to statistical facts and not so much to opinions, or interpretations of those facts.

The investment banking houses, large investment banking houses in Boston, occupied a very entrenched and a very respected position. It was not at all uncommon for individuals to have their lists of securities on file at investment banking houses and brokers of the larger and older, more established type, and to go down quarterly say, for a review.

A large number of people whom I approached in soliciting business for the firm in the early years were completely satisfied with the fact that they were being given competent and sound advice by the investment banking houses.

The brokers were more of a secondary source of advice, while the banking houses knew quite a bit about bonds and not so much as a rule about stocks, the brokers knew more about stocks and very little about bonds insofar as their function was concerned. Their attention was centered on the more active stocks, per se, to some extent.

<sup>8</sup> See Appendix A for dates of organization of these investment counsel firms.

<sup>9</sup> For example, Scudder, Stevens & Clark had been first organized, in 1919, as an investment banking firm, but soon was transformed into an investment counsel organization. (Public Examination, Investment Counsel Firms, at 21638.)

<sup>10</sup> Public Examination, Investment Counsel Firms, at 21640-2.

Professional trustees were not a general source of information except for their beneficiaries, but their advice was disseminated pretty broadly. They considered it a real part of their business to be as familiar as they could with securities and particularly to exercise a general overriding common sense, which is a definite part of an investment program, without so much technical knowledge, but an element of sophistication about what could and could not be accomplished in the investment.

The availability of such service to investors created an additional incentive to a purchaser or trader in securities to patronize particular brokers or investment bankers with the resultant increase in their brokerage or securities business.<sup>11</sup>

However, after the World War a marked tendency developed in the growth of a class of investment counselors unaffiliated with any other form of financial organization. When examined on the causes of this development, Mr. White testified:<sup>12</sup>

Q. Will you, in your own words, in as great detail as you can, tell us what, in your opinion, occasioned the initial formation of investment counsel organizations in this country, against what background did they come into being, what was their genesis, what reasons prompted the formation of investment counsel organizations, and what did you hope to accomplish that was not being accomplished before those organizations were started?

\* \* \* \* \*

A. Prior to the War there was a much smaller number of securities in which there was a general public interest; of course, a much smaller number than there are today, and a smaller number than there were even in 1919 after the War.

The principal buyers of general securities were professional buyers, banks, insurance companies, trustees—that is, for investment purposes.

The flotation of the Liberty Bonds created a much larger public interest in general securities than there had been before. That created a tremendous market for the borrowing of capital by industry.

The post-war boom in stocks also attracted, for somewhat the same reasons, the attention of private individuals who up to that time had been more likely to put their funds in savings banks, mortgages, local investments, the managers of which they knew personally, or which were such a factor in their surroundings, their neighborhood, that they felt some confidence in them.

In 1919 the original partners of the firm looked around the field and saw what they considered to be a gap in the financial picture, which was that there was no agency which was solely representing the private buyer of securities.

There were many sources of advice, but no one to whom he could turn and retain professionally the way he would retain a lawyer on a technical problem

<sup>11</sup> Some brokers continue to furnish investment advisory services to their customers gratis. Mr. Paul Shields of Shields & Company, members of the New York Stock Exchange, testified (Public Examination, Chain Store Stocks, Inc., at 15643-4):

Q. You say that there is a tendency in the Street for the larger commission houses to organize substantial research organizations to supervise the accounts of the more substantial customers and offer them an investment advice as part of the brokerage service?

A. Well, I don't know how general it is; I certainly think that is the trend—a number of houses started it, charging a fee for it, and following the lead of the investment counsel sort of thing, and I think that that is gradually dropping out, and the service is being provided for no additional charge, and that is what I am doing.

<sup>12</sup> Op. cit. supra, note 10, at 21637-40.

where he was up against technical men on the other side who knew more than he did. \* \* \*

Not only did several firms, which had for many years included an investment advisory department in their organization, segregate their investment counsel activity from their brokerage activity and create separate independent investment organizations, but there developed, since 1920, a distinct class of persons who held themselves out as giving only personalized investment advisory service.

Table 1 classifies the 394 individuals and firms replying to the questionnaire according to the year of their organization.

TABLE 1.—*Dates of organization of 394 firms replying to the investment counsel questionnaire*

Year of organization	Annual number	Cumulative total	Year of organization	Annual number	Cumulative total
1887.....	1	1	1927.....	8	38
1889.....	1	2	1928.....	9	47
1907.....	1	3	1929.....	20	67
1912.....	1	4	1930.....	23	90
1916.....	2	6	1931.....	44	134
1917.....	2	8	1932.....	55	189
1918.....	1	9	1933.....	41	230
1919.....	2	11	1934.....	44	274
1920.....			1935.....	40	314
1921.....			1936.....	54	368
1922.....			1937.....	13	381
1923.....	3	14	Unknown.....	13	394
1924.....	5	19			
1925.....	6	25	Total.....	394	394
1926.....	5	30			

From 1920 to 1929, only 36 of the 394 investment counsel firms studied were formed.<sup>13</sup> Commencing in 1929, however, the number of new investment counsel firms increased rapidly. During the two years 1929 and 1930, 43 investment counsel firms were organized, or approximately the number organized from 1889 through 1928. The number of firms organized annually averaged approximately 46 for the period 1931-36. This marked increase in the number of firms organized was, according to Mr. Shields, attributable to the demands of the investing public, which required supervision of its security investments after its experience during the depression years.<sup>14</sup>

A. \* \* \* I am spending a very substantial amount of money to do that, as a part of the brokerage service, that is, supervision of accounts and advice. Those people have found out through the depression that it is not a question of buying one security and keeping it but that it is constant supervision of the securities that they own, and the average person with a moderate amount of money isn't able to do that. They haven't the facilities for it.

<sup>13</sup> This number included 6 of the 49 firms which have investment companies among their clients.

<sup>14</sup> Public Examination, Chain Store Stocks, Inc., at 15643.

## B. GEOGRAPHIC DISTRIBUTION OF INVESTMENT COUNSEL FIRMS

## 1. State of Organization

Investment counsel firms have been organized in at least 30 states (Table 2). The majority of the investment counsel firms were organized in the chief financial and commercial centers: New York with an aggregate of 128; California with 83;<sup>15</sup> Massachusetts with 38; Illinois with 30.

TABLE 2.—States of organization of 394 firms replying to the investment counsel questionnaire

State	Number of firms	State	Number of firms
Alabama		Nevada	
Arizona		New Hampshire	
Arkansas	1	New Jersey	5
California	83	New Mexico	1
Canada	1	New York	128
Colorado	3	North Carolina	
Connecticut	2	North Dakota	
Delaware	13	Ohio	8
Florida	2	Oklahoma	2
Georgia	4	Oregon	1
Idaho	1	Pennsylvania	5
Illinois	30	Rhode Island	1
Indiana	1	South Carolina	
Iowa		South Dakota	1
Kansas	1	Tennessee	
Kentucky	1	Texas	4
Louisiana		Utah	
Maine		Vermont	
Maryland	2	Virginia	
Massachusetts	38	Washington	3
Michigan	16	West Virginia	
Minnesota	4	Wisconsin	5
Mississippi		Wyoming	
Missouri	9	Washington, D. C.	
Montana		Unknown	18
Nebraska			
		Total	394

## 2. Location of Main and Branch Offices

Only 33 of the 394 firms replying to the questionnaire maintained branch offices throughout the United States. The aggregate number of such branch offices was 86 (Table 3). The majority of these firms with branch offices were the larger organizations which had investment trust or investment company clients.

<sup>15</sup> California is one of the few States which has had a statute requiring investment counselors to register with the State Securities Commissioner. The California Commission was therefore probably able to obtain a better coverage of the investment counsel firms organized and/or doing business in California than most of the other States, because of this registration. See Appendix F for California Statute relating to the investment counsel. This statute will be considered briefly in Chapter VII, *infra*, "Regulation of Investment Counsel Firms."

TABLE 3.—Number of branch offices of 394 firms replying to the investment counsel questionnaire

Number of branch offices	Number of firms	Number of branches	Number of branch offices	Number of firms	Number of branches
1.....	13	13	8.....	0	0
2.....	8	16	9.....	0	0
3.....	7	21	10.....	0	0
4.....	1	4	Over 10.....	1	17
5.....	3	15			
6.....	0	0	Total.....	33	86
7.....	0	0			

The small number of branch offices established by investment counsel firms may be attributed to two factors. Most of the investment counsel firms have been organized as sole proprietorships and have remained "one-man investment counsel firms."<sup>16</sup> Furthermore, in view of the comparatively recent development of investment counsel firms, they apparently have not, as yet, achieved the degree of popularity with the investing public sufficient to warrant their expansion through the medium of branch offices.

### C. FORM OF ORGANIZATION

The largest number of investment counselors included in this survey were individuals or sole proprietors. Relatively few of them had investment company clients. On the other hand, the majority of those investment counselors which had investment companies among their clients were organized as corporations (Table 4).

TABLE 4.—Form of organization of 394 firms replying to the investment counsel questionnaire

Form of organization	Firms without investment company clients	Firms with investment company clients at end of 1936	Total
Sole proprietorship.....	163	8	171
Corporation.....	114	32	146
Partnership.....	44	6	50
Department.....	21	3	24
Foundation.....	1		1
Voluntary association.....	1	1	2
Total.....	344	50	394

### D. SIZE OF INVESTMENT COUNSEL FIRMS

The size of investment counsel firms may be measured in two ways, by the amount of funds they supervise and by the number of their employees.

<sup>16</sup> See Table 4 for form of organization of investment counsel firms.

## 1. Size of Funds Administered by Investment Counsel Firms

Detailed figures as to the amount of funds administered were received from 51 of the 394 investment counsel services. These 51 firms managed, supervised, and gave investment advice with respect to funds aggregating over \$3,900,000,000.<sup>17</sup>

Of these 51 firms, six organizations managed, supervised or gave investment advice with respect to approximately 78% of the total amount of funds administered by these investment counsel firms.

The variation in the size of the funds administered by these 51 investment counsel firms, as of June 30, 1936, is shown in Table 5.

TABLE 5.—51 investment counsel firms, classified by the size of funds administered

Funds administered (thousands of dollars)	Number of firms	Amount of funds (millions of dollars)
Less than 10.....	1	7
10-100.....	5	306
100-500.....	6	1,180
500-1,000.....	3	1,634
1,000-10,000.....	7	34,406
10,000-25,000.....	9	129,419
25,000-50,000.....	6	174,970
50,000-75,000.....	6	350,415
75,000-100,000.....	2	181,704
100,000-1,000,000.....	4	923,465
Over 1,000,000.....	2	2,143,198
Total.....	51	3,940,502

Table 6 classifies the total funds administered by 49 of the 51 investment counsel organizations according to the type of the client.

TABLE 6.—Accounts of 49 investment counsel services, classified according to type of client, June 30, 1936

Type of client	Number of accounts	Amount of total funds in accounts (in millions of dollars)	Percent of total	Average funds per account (in thousands of dollars)
Investment trust or company.....	90	311	17.3	3,455
Common or commingled fund.....	7	4	0.2	589
Banks.....	59	189	10.5	3,195
Life insurance companies.....	3	10	0.6	3,392
Other insurance companies.....	24	117	6.5	4,870
Nonprofit organizations.....	60	35	1.9	576
Other corporations.....	431	206	11.5	478
Other clients.....	3,301	926	51.5	281
Total.....	3,965	1,800	100.0	452

<sup>17</sup> All but 2 organizations (the largest 2) reported as of June 30, 1936. The 2 largest investment counsel organizations reported as of the middle of 1937 and the end of 1937, respectively.

The importance of private or individual clients is indicated by the fact that, measured by the number of accounts of "other clients" administered (most of whom are individuals), these individual or personal accounts represented about 83% of all the accounts administered. However, the average amount of funds per account was \$281,000 for this group of "other clients" and was thus smaller than the average for any other group of clients separately reported.

The remaining 2 of the 51 firms showed the following distribution of their accounts:

	Amount of funds	Percent of total
	(\$000,000)	
Banks.....	1,374	64.1
Institutions.....	419	19.6
Individuals.....	350	16.3
Total.....	2,143	100.0

Only about \$311,000,000, or 17%, of the total funds administered by these 49 investment counsel firms represented investment company funds. The average size of the investment company account supervised by investment counsel firms was much larger than the average size of the accounts of the other types of clients. In comparison with other clients of these investment counsel firms, however, investment companies were relatively few in number. A majority of the investment companies covered in the Commission's study of investment trusts and investment companies which were managed by persons or organizations other than the officers and directors of the investment companies, were managed or supervised either by ancillary management companies or pursuant to management contracts between the investment company and the sponsors of the investment company. Investment counsel firms supervised the portfolios of about 20% of all management investment companies proper, with assets amounting to about 11% of the assets of all investment companies in this group.

## 2. Number of Employees

The size of investment counsel firms may be further measured by the number of persons employed. Of the 394 firms replying to the Commission's questionnaire 362 gave information on the number of persons employed and reported a total of 3,928 persons (Table 7).<sup>18</sup> Over three-tenths of the total were employed by the 50 investment counsel firms which had investment company clients, with an average of about 25 persons per firm. The 312 reporting firms without investment company clients, which represented about 86% of the total number of firms included in this survey, employed 2,672 persons, or an average of over 8 persons per firm—another indication of the fact that the average size of the investment counsel firms with investment

<sup>18</sup> The number of persons employed includes sole proprietors, partners, and officers. All the data refer only to those employees occupied in investment counsel activities.

company clients was much larger than the firms without such clients.

Appendix C classifies the number of persons employed according to the form of organization of the investment counsel firm. The table shows that investment counsel firms in corporate form employed about 53% of all employees or 16 persons per firm, partnerships 14% of all employees or 12 persons per firm, and sole proprietorships only 9% of all employees or 2 persons per firm.

TABLE 7.—362 firms replying to the investment counsel questionnaire, classified by number of employees at the end of 1936<sup>a</sup>

Number of employees	Firms without investment company clients		Firms with investment company clients		Total	
	Number of firms	Number of persons employed	Number of firms	Number of persons employed	Number of firms	Number of persons employed
1-4.....	194	398	12	28	206	426
5-9.....	59	368	15	88	74	456
10-19.....	33	463	8	129	41	592
20-29.....	7	159	4	96	11	255
30-39.....	7	220	4	135	11	355
40-49.....	1	47	1	42	2	89
50-59.....	2	109	2	113	4	222
60-69.....	1	60			1	60
70-79.....	2	140			2	140
80-89.....	1	88			1	88
90-99.....	2	183	1	91	3	274
100-149.....	2	229	1	122	3	351
150-199.....			1	186	1	186
200-299.....	1	208	1	226	2	434
Total.....	312	2,672	50	1,256	362	3,928

<sup>a</sup> The number of employees includes sole proprietors, partners, and officers; 32 firms replying to the questionnaire did not give information on the number of persons employed.

## Chapter III

### AFFILIATIONS OF INVESTMENT COUNSEL FIRMS

#### A. INTRODUCTION—AFFILIATION WITH BUSINESS OTHER THAN GIVING OF INVESTMENT ADVISORY SERVICE

All investment counsel firms have not restricted their business interests or activities to the supervision of the accounts of their investment clients. There were 136 investment counsel firms, or 35% of the 394 investment counsel firms included in this survey, which, in addition to furnishing investment counsel advice, carried on other activities, or were affiliated with other businesses. Forty-six percent of the 50 firms with investment company clients, and 33% of the firms without investment company clients, were affiliated with other businesses. These affiliated interests were for the most part related to some branch of finance.

TABLE 8.—*Affiliations of 394 investment counsel firms at the end of 1936*

Other business of affiliated organizations *	Firms without investment company clients	Firms with investment company clients	Total
Brokers or dealers in securities.....	45	8	53
Publication of investment manuals and periodicals.....	16	4	20
Financial counsel.....	6	3	9
General business counsel.....	7	1	8
Trust work.....	7	—	7
Underwriting.....	4	3	7
Business management.....	5	1	6
Real estate management.....	4	—	4
Real estate dealers.....	4	—	4
Evaluation of securities.....	3	—	3
Training analysts.....	3	—	3
Holding company.....	2	—	2
Insurance broker.....	2	—	2
Estate planning.....	1	—	1
Estate and tax counsel.....	1	—	1
Import and export merchandise.....	1	—	1
Industrial management and reorganization.....	—	1	1
Investment bankers.....	—	1	1
Mining.....	1	—	1
Public utility.....	1	—	1
Sponsors.....	—	1	1
Subtotal.....	113	23	136
No affiliations.....	231	27	258
Total.....	344	50	394

\* This table lists the designations of other affiliations precisely as furnished by the firm replying to the questionnaire.

The largest number of investment counsel organizations associated with other businesses were connected with brokers or dealers (53 firms) and publishers of investment manuals and periodicals (20 firms). This marked association of investment counsel organizations with these two types of activities may be attributable to the fact that research and statistical organizations are not uncommon with these businesses.

#### B. AFFILIATION WITH INVESTMENT TRUSTS OR INVESTMENT COMPANIES

Altogether, there were 56 investment counsel firms replying to the questionnaire which furnished investment counsel advice to investment trusts and investment companies during the period 1933-36. The majority of these firms were directly affiliated with their investment company clients.<sup>19</sup> The nature of the affiliation varied. In some instances, the officers of the investment counsel firm were officers of the investment company. In other cases, the officers and directors of the investment counsel firm owned shares of these investment companies; some investment counsel organizations held a controlling stock interest in the investment company, while others merely held smaller blocks, apparently for investment purposes only. Some investment counsel firms themselves owned shares in the investment company to which they furnished supervisory or management services, although the amount of the stock held by the investment counsel firm in their investment company client was not always sufficient to give the investment counsel direct control over the client. Furthermore, in one case, not only did the investment counsel firm own shares of the investment company client, but the company in turn owned shares in the investment counsel organization. Finally, some investment counsel firms were the organizers and sponsors of their investment company clients.

The effect of the relationships between these investment counsel firms and their investment company clients is reflected in the nature of the service and the degree of supervision which these firms provided with respect to the funds of their investment company clients. In those cases where the investment counsel firm, either directly, or indirectly through its officers or directors, held a controlling interest of the stock of its investment company client, the firm of course had a greater control over the funds of its investment counsel client than in those cases where there was no affiliation between the investment company firm and its investment company client. However, even in instances where the investment counsel firm did not have a controlling stock interest in its investment company client, the fact that the firm owned some stock of its client seems to have been reflected in the nature of the services which such firm gave to its client.

<sup>19</sup> Appendix D lists these investment counsel firms and their investment company clients, showing (1) existence of affiliations, and (2) nature of power they have with respect to the management of their client's funds.

## Chapter IV

### NATURE OF SERVICE TO INVESTMENT COMPANY CLIENTS

#### A. DISCRETIONARY OR ADVISORY POWERS

The powers of investment counsel firms with respect to the management of the funds of their investment company clients were either discretionary or advisory. Discretionary powers imply the vesting with an investment counsel firm control over the client's funds, with the power to make the ultimate determination with respect to the sale and purchase of securities for the client's portfolio. In contrast, vesting advisory powers with an investment counsel firm merely means that the firm may make recommendations to its client, with whom rests the ultimate power to accept or reject such recommendations.

Seventeen of the 56 investment counsel firms studied had such discretionary powers with respect to the funds of their investment company clients. These investment counsel firms were practically all included in the group which were associated with their investment company clients, either through stock ownership in the investment company, through a membership on the board of directors of the investment company, or through sponsorship of the investment company. Two additional investment counsel firms apparently also possessed discretionary powers with respect to the management of their clients' funds through a power of attorney given them to manage the funds of their clients. In some instances, although the terms of the management contract between the investment counsel firm and its investment company client did not expressly vest discretionary powers with the firm, such powers can be inferred from the relationship between the firm and its investment company client.<sup>20</sup>

No consistent practice has been adopted by investment counsel firms with respect to discretionary or advisory powers. Apparently the investment counselors are not in agreement on the feasibility of adhering to one or the other type of account. For example, Mr. Shields testified that his brokerage firm did not accept discretionary accounts:<sup>21</sup>

Q. Now, in those instances where you give investment supervision, that is, advice to the brokerage accounts that you have, of course the ultimate decision rests with the customer, isn't that so?

A. In all cases.

---

<sup>20</sup> For example, Dominick & Dominick organized, sponsored, and had a majority representation on the board of directors of National Bond and Share Corporation; and Scudder, Stevens & Clark organized, sponsored, and had a majority representation on First Investment Counsel Corporation, Second Investment Counsel Corporation, and Third Investment Counsel Corporation.

<sup>21</sup> Op. cit. supra, note 14, at 15647.

Q. Those are not discretionary accounts?

A. We don't accept any discretionary accounts.

In contrast, Mr. White of Scudder, Stevens & Clark indicated some advantage might exist in allowing investment counselors to have discretionary powers over their client's fund:<sup>22</sup>

Q. Do you know of situations of discretionary accounts operated by the investment counsel organization other than those which were created by the exigencies or contingencies of a person having to leave the country or being away? Is it unusual or rare in an investment counsel organization to have a discretionary account, even though the individual is physically present?

A. No, and just from hearsay, I understand that some firms strongly recommend them, and I can well see why, because it is more efficient, and should in the long run give better investment results.

Mr. Theodore T. Scudder, of Scudder, Stevens & Clark, testifying at the public examination of Sterling Securities Corporation, implied that some advantages may exist in vesting with the investment counselor discretionary power over the management of the investment company portfolio:<sup>23</sup>

Q. Which brings me to a fairly important point. Based on your experience with the Sterling Securities Finance Committee, what is your opinion with respect to the management of investment trust portfolios where you have a finance committee or an executive committee? As a result of your experience what conclusion did you reach?

A. Well, the conclusion that I think we reached,—was this: we had experience with the Investment Managers Company where there were three or four investment experts. Our experience was that the policy of investment was not satisfactory. That was one reason why that company was sold, so that we wouldn't be in that situation. The same thing was true in Sterling. I say Sterling, but it would have been true in any other companies where there were several cooks. That is the reason that we never after that period were willing to advise any other investment trust and we have maintained that policy up to date. In the case of our own trust the situation is different, because there is only one cook and that cook lives or dies on its own belief. They may be wrong, but at least they are their own beliefs and not a compromise of several beliefs \* \* \*.

A. \* \* \* I believe that the result will reflect some definite policy rather than a compromise on policies. Whether the compromise of policies would be more successful over a period of time, I think it is too soon to say.

Q. Don't you think you can successfully advise an investment trust or [does] the existence of the board of directors and finance committees make it impossible to successfully advise that type of institution?

A. I find we would rather be 100 percent responsible for results rather than that.

We had come to the conclusion too many cooks spoiled the broth. In other words, you had better have one management and not two or three.

<sup>22</sup> Op. cit. supra, note 10, at 21664-5.

<sup>23</sup> Public Examination, Sterling Securities Corporation, at 14769-70.

## B. EXECUTION OF ORDERS

It appears that the vesting of discretionary powers with the investment counselor to administer the funds of the investment trust carried not only complete power with respect to the selection of securities for the portfolio of the investment company, but, in the majority of cases, gave the investment counselor the power to place with brokers the orders to buy and sell the portfolio securities for the trust. Of the 17 firms which had discretionary powers with respect to the administration of the funds of their investment company clients, 12 firms were given the power to place the orders for their clients.

In most of the cases where the investment counsel firms had the power of placing the orders for investment company clients, the confirmations of such orders were sent either to the investment counsel or to the "investment counsel service" and the client. On the other hand, where the investment counsel firm had only advisory powers with respect to the supervision of its investment company client's funds, the orders were usually placed by the client, and the confirmations of such orders were sent by the brokers only to the client.

Almost uniformly the investment counsel firms which had been vested with the power by their client of placing the orders also had the power of selecting the brokers to execute the orders.

## C. CUSTODY OF SECURITIES OF CLIENTS

Investment counsel organizations almost never assume the custody of the portfolio securities of their investment company clients. This is probably due to the fact that these firms do not want to have the added responsibility incident to this function.<sup>24</sup>

---

<sup>24</sup> Only one investment counsel firm in this group had custody of its clients' securities. Another firm indicated that it had custody of the funds of its clients but not of the securities purchased for the fund.

The Commission has no detailed data with respect to the custody of the securities of clients other than investment company clients. However, the representatives of the investment counsel firms who attended the public conference stated that their firms did not assume custody of any of their clients' securities.

Young & Ottley, Inc., in their monograph, *What Young & Ottley, Inc. offer to the Holders of Invested Capital*, state:

"Their methods of doing business do not contemplate, nor will they accept, the physical possession of clients' securities or funds at any time. Their advice and action, therefore, are for the exclusive benefit of their clients, who make such arrangements as are best suited to their needs, either retaining their own securities, or having these in the custody of their bank or broker."

## Chapter V

### ADMINISTRATION OF INVESTMENT COUNSEL FIRMS

#### A. COMPOSITION OF PERSONNEL

Apparently no uniformity of standards prevails in the selection of the personnel of investment counsel organizations. Although in the majority of cases the personnel of investment counsel firms had had some experience in the security brokerage business or in the financial field, definite or uniform standards of training for employees were almost never laid down. Many of the officers and directors of these firms had been or were closely affiliated with investment companies; many were affiliated with various types of industrial organizations; others had been teachers of finance and economics or editors of financial magazines and periodicals. But in other cases, some of the personnel of the investment counsel firms had no previous business experience prior to their affiliation with the investment counsel firms.

#### B. FEES

The majority of the investment counsel firms which had investment company clients based their compensation on a percentage of the assets of the funds of the investment company which they supervised (Table 9). The amount of the compensation in most cases was from  $\frac{1}{4}$  of 1% to  $\frac{3}{4}$  of 1% of the assets.

TABLE 9.—Rate of fees charged investment companies by 37 investment counsel firms

Percent of assets	Number of firms	Percent of assets	Number of firms
Less than 0.25 .....	1	1.50-1.99 .....	1
0.25-0.49 .....	2	2.00 and over .....	3
0.50-0.74 .....	23		
0.75-0.99 .....		Total .....	37
1.00-1.49 .....	7		

The rate of compensation was either fixed or on a sliding basis, varying with the amount of the client's funds. For example, one firm used the following sliding rate scale: for accounts under \$100,000, a fee of \$500; for accounts between \$100,000 to \$2,000,000,  $\frac{1}{2}$  of 1% of the principal; for accounts from \$2,000,000 to \$4,000,000,  $\frac{1}{2}$  of 1% on the first \$2,000,000 and  $\frac{3}{8}$  of 1% on the remainder; and for accounts over \$4,000,000,  $\frac{1}{2}$  of 1% on the first \$2,000,000,  $\frac{3}{8}$  of 1% on the next \$2,000,000 and  $\frac{1}{4}$  of 1% on the remainder.

Some investment counsel firms based their fees on a percentage of the value of the securities bought and sold for their investment company clients. Other firms based their fees on the profits earned by their investment company clients, the percentage being almost uniformly  $\frac{1}{4}$  or 25% of these profits. However, in determining the profits for this purpose, investment counsel firms have used various standards. Some firms applied the percentage annually to all the profits earned by the client, without regard to the losses which may have occurred during their management; others applied the percentage to the profits which accrued to their client after the payment of dividends to the shareholders of the investment company; others indicated that their participation in the profits of their client was contingent on the maintenance of the capital fund of the client; and one investment counsel firm indicated that it based its fee both on a percentage of the assets of its client and on a percentage of the profits earned by the client.

One investment counsel was compensated for its services solely by receiving the brokerage commissions on security transactions effected for the investment company client.

Some investment counsel firms, on the other hand, charged a flat retainer fee, without any provision for a percentage based on either the assets or profits of the client. This flat retainer fee was based either on the number of securities with respect to which the investment counsel firm gave investment advice, or on the number of reports which the investment counsel firm prepared for its client. Some of these firms, however, charged, in addition, a minimum flat fee. Table 10 gives a schedule of minimum annual fees charged by firms with investment company clients.

TABLE 10.—*Minimum annual fees charged by investment counsel firms to investment company clients*

	Amount of fee							Total
	Less than \$250	\$250	\$300	\$500	\$600	\$1,000	Over \$1,000	
Number of firms.....	1	4	2	8	1	4	1	21

## C. LIMITATIONS ON NUMBER AND SIZE OF ACCOUNTS

### 1. Problem of Priority in Advising More Than One Client

In those cases where investment counsel firms had more than one client, a possible conflict of interest exists with respect to the priority of security transactions for these clients. Of the 56 investment counsel firms which had investment company clients, 23 had more than one investment company as a client.<sup>25</sup> When the counsel recommends either liquidation of a particular security which is in the portfolio of more than one investment company or the accumulation of a block of a particular security for more than one investment company

<sup>25</sup> See Appendix B.

client, the problem arises as to which company shall liquidate first (and therefore probably receive the highest sales price), or which company shall accumulate first (and thereby acquire the security at probably the lowest purchase price). Several investment counsel firms indicated that, although they had more than one investment company client, the problem of priority of transactions was not a particularly acute one. One investment counsel firm indicated that it had adopted a definite procedure of making recommendations to its clients to sell or buy securities in proportion to the amount of the individual client's funds under its supervision. In another instance, the investment counsel firm, in order to avoid priority of treatment among clients, adopted the practice of allocating to the investment company blocks of shares in accordance with their general activity in buying or selling securities for their portfolio. Presumably, if an investment company made frequent changes in the portfolio it would be given preference in instances where a problem of priority was involved.

## 2. Limitation on Number of Clients

Some of the investment counsel firms limited the number of their clients. This policy was stated to be based on several grounds, including the desire for more direct and concentrated supervision of accounts, and the desire for liquidity of holdings of clients.<sup>26</sup>

## 3. Minimum Size of Accounts

Comparatively few investment counsel firms adopted the indirect method of limiting the number of their accounts or clients by establishing a minimum size of the accounts which they would supervise.<sup>27</sup> Some investment counsel firms required at least \$100,000; others required at least \$50,000; and still others set \$25,000 as the minimum amount which they would administer.

As a result of the practice or policy of fixing a minimum on the size of an individual account, some investment counsel firms have organized and managed investment trusts and investment companies, which they recommend to persons whose accounts to be managed are below the minimum size. For example, Mr. Scudder testified that the investment counsel firm of Scudder, Stevens & Clark was impelled to organize its three investment companies<sup>28</sup> in order to make their management available to the smaller accounts:<sup>29</sup>

Q. Did you make any attempt to have limitations or restrictions as to who should participate in your trust? By that, I mean do you attempt to cater to people who have to your knowledge resources over a certain amount?

A. No, it was designed by us—to take care of the individual who came in for our advice but had too small an amount of money to be economical for him

<sup>26</sup> For example, it was stated by one investment counsel that by restricting the number of its accounts, it was possible to dispose of the holdings of a limited number of clients "within a week" without their becoming an important factor in the market for the particular securities.

<sup>27</sup> The practice of charging minimum fees is practically equivalent to establishing a minimum size of account which the firm is willing to administer.

<sup>28</sup> First Investment Counsel Corporation, Second Investment Counsel Corporation, and Third Investment Counsel Corporation.

<sup>29</sup> Op. cit. supra, note 23, at 14781.

to employ us or deal with him as an individual, and we say, "All right, if you want our advice, you can buy for 50 cents per annum in conjunction with others."

#### D. SOLICITATION OF ACCOUNTS

##### 1. Solicitation by Salesmen

The majority of the investment counsel firms studied employed salesmen at the inception of their business to solicit accounts, and many firms still do so. James N. White of Scudder, Stevens & Clark testified:<sup>30</sup>

A. We have used, particularly during our early stages, the method of direct solicitation of a rather intensive sort. We have, in a few instances, paid commissions to individuals who were not regularly employed. That has been very exceptional, and we have not favored it as a general practice.

Q. Now, when you say "solicitation," you had the regular staff who used to contact people either of means or who you thought might be interested in the service you were prepared to give, to interview these people, and tell them about your service?

A. Yes.

Q. In addition to that, you had the other situation where a person may have brought you a client although he was not a regular member of the staff and he was paid a commission for bringing the client?

A. Yes.

Q. That is under the general category of solicitation?

A. Yes. Do you want me to go into that solicitation?

Q. Yes.

A. Well, we consider ourselves—it seems odd for a professional person who considers himself professional to solicit business, but we not only had to get business if we were going to support any kind of work, or staff, but we considered that if a person who thought up a profession, such as a doctor, should hang out a sign saying "Dr. so-and-so," he would not get many patients unless he explained to them what a doctor's work was.

We found a number of people who said very shortly after an outline of our activities, "I have been wondering for years why somebody did not do this. I am glad to know about you."

We never resorted to direct advertising in newspapers or magazines. We did send out letters to persons whom we thought might be prospective clients, giving them sometimes long and sometimes short dissertations on what we offered in the way of service and the reasons why we felt we could be of assistance to them.

During our early stages that was by far the largest contributor of business. The amount of business contributed by our clients, talking about us to other people, creating an interest in us and their friends and acquaintances, was small at first, and gradually grew \* \* \*.

\* \* \* \* \*

Q. Were there instances where brokerage firms who had clients with very substantial accounts would suggest that they retain investment counsel to assist them in the management of those accounts?

A. There have been a few instances of that kind.

Q. Recommendations by brokers?

A. Yes.

<sup>30</sup> Op. cit. supra, note 10, at 21655-9.

Q. Investment banking institutions?

A. Yes.

Q. What other types of organization would be a potential institution to recommend that the individual avail himself of investment counsel?

A. We have had individuals come in who were recommended by commercial banks and by law firms.

Q. Insurance companies?

A. Not that I knew of.

Q. Would you consider under those circumstances that the banker or broker or the individual was entitled to a commission? Did you pay commissions under those circumstances?

A. No, we have not in any case, though they perfectly well might be entitled to it.

Q. You did no advertising at all?

A. Not public advertising, only by direct mail to certain specific individuals.

\* \* \* \* \*

Q. What difficulties do you find with it [solicitation]?

\* \* \* \* \*

A. Well, only because people who call themselves professionals of a high degree do not solicit business, at least they don't call it that.

Q. You mean they do not let the lawyers solicit and therefore you feel that you should put yourself under the same disability, is that it?

A. Well, we would like to, if we can afford it.

These salesmen were usually paid on a commission basis, which increased with the length of time during which their accounts remained with the firm. Many of the larger investment counsel firms reduced their sales force, for, in the case of these older firms, the necessary replenishment of accounts which discontinued the service was effected largely by the personal recommendation of clients, brokers, bankers, and other business contacts of these investment counsel firms.

In the case, however, of the newly organized investment counsel firms, solicitation presents some vital problems. It is urged that the bona fide investment counselor must resort to active solicitation of accounts until the amount of funds managed is of such size as to make supervision of these accounts profitable. Vigorous solicitation, however, has been most common where the "investment counselor" is of the "tipster" class. Mr. White conceded that this class of investment counsel firm constituted a serious problem, since by "their prolific advertising and their solicitation they probably could reach a type of individual who requires more protection" than the type of individuals who retain bona fide investment counsel.

## 2. Solicitation by Advertisements

Investment counsel firms, to obtain new business, have, in addition to direct solicitation of accounts by salesmen, employed various forms of direct advertisement. These means of advertisement have been in the form of newspaper advertisements, general surveys on industrial and financial subjects published as monographs by the investment counsel firms, and pamphlets describing their activities and advantages.

The newspaper advertisements of the firms with investment company clients usually took the form of the name of the firm, its ad-

dress, and a brief description of its activities. A more common form of advertisement by investment counsel was the pamphlet usually made available to non-clients as well as clients describing the activities and the advantages of the particular investment counsel firm. The general surveys made by some of the investment counsel firms, which were available to both clients and non-clients, included financial bulletins dealing with such problems as a "study of bonds," "investment procedure," "common stock as long term investments," "financial analyses," "current investments," "gold inflation and the public debt;" industrial surveys dealing with individual industries were prepared by some investment counsel firms; and bulletins of a general nature, describing theoretical investment problems of the individual.<sup>31</sup>

However, the advertisements of all "investment counselors" were not restricted to monographs, brochures or newspaper advertisements which merely briefly described the activities of these organizations. Many of the individuals and firms included in the broad category of "investment counselors" employed advertisements which emphasized "cheap stocks for large profits," "trading advice," "stocks at \$2," and so forth, disclosing the "tipster" character of their services.<sup>32</sup>

#### E. TURNOVER OF NUMBER OF CLIENTS

The Commission received from 10 investment counsel firms information relating to the turnover of their clients' accounts between December 31, 1932 and December 31, 1937.<sup>33</sup> These data, incorporated in Table 11, show the percentage of accounts held by individual firms at the end of each year during the period 1932-1937 which were still held as of December 31, 1937. For example, of the number of accounts which Firm A held as of December 31, 1932, 68% of these accounts were still with the firm as of December 31, 1937. For the entire group of firms only approximately 60% of the accounts on the average which these firms had as of December 31, 1932 remained with the firm as of December 31, 1937. So too, for the year 1936, which would indicate the percentage loss for one year, the average percentage of accounts retained was 86%. One firm (Firm F) lost by De-

TABLE 11.—Percentage of accounts at each year-end, from 1932 to 1937, retained by 10 investment counsel firms at the end of 1937

End of	Firm										Average
	A	B	C	D	E	F	G	H	I	J	
1932.....	68	78	50	79	48	29	-----	59	62	-----	59
1933.....	68	84	77	87	63	32	-----	69	68	39	65
1934.....	73	82	70	82	63	45	86	76	77	64	71
1935.....	80	87	87	88	76	67	70	84	85	88	81
1936.....	91	94	92	94	86	79	66	90	93	79	86
1937.....	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

<sup>31</sup> A few titles of such bulletins will convey their nature—"A Man and His Property," "Challenge to Investments," "Useful Wealth," "Danger of Good Times," "Sale Prospects and Clear Outlooks," "Personal Management Service."

<sup>32</sup> Specimens of these types of advertisements are contained in Appendix E.

<sup>33</sup> One firm reported for the period 1933-37 and another for the period 1934-37.

ember 31, 1937 as many as 70% of the accounts which it held as at December 31, 1932, and that same firm lost as many as approximately 20% of its accounts in the one year 1936.

#### F. AUDIT OF BOOKS OF INVESTMENT COUNSEL FIRMS

Investment counsel firms have not adhered, it appears, to any uniform practice of having their books or their clients' accounts audited. Thirty of the 60 firms did not have their books audited by an independent accountant.

#### G. FINANCIAL STATEMENTS OF INVESTMENT COUNSEL FIRMS

Asset data were available for 15 of the 56 firms which had investment company clients. The largest of these firms had assets of \$681,607 at the end of 1935, with a net worth of \$678,950; the second largest had assets of \$335,643, with a net worth of \$292,601; and the third largest had assets of \$298,861, with a net worth of \$54,983. The smallest firm of the 15 at this year-end had assets of \$3,716, with a net worth of \$616. Seven of the 15 firms had assets less than \$50,000, and 11 had less than \$75,000. Eleven of the firms had a net worth of less than \$50,000, while only two had a net worth of over \$100,000. From the end of 1933 to the end of 1935 the aggregate assets of these 15 firms increased from \$1,252,801 to \$1,853,748, or from an average of \$83,520 to \$123,583.

Operating statistics were reported for only 11 of the 15 firms. In 1933, only one of these 11 firms showed a net loss in operations (after including trading profits and losses and income taxes). In 1934 four firms showed net losses and in 1935, five firms. The aggregate net profits of all 11 firms amounted to \$123,713 in 1933, \$162,167 in 1934, and \$208,715 in 1935. Over half of these profits were accounted for by one firm. In 1935 the aggregate ordinary income for all 11 firms was \$1,920,440 as compared with \$1,397,357 in 1933. The ratio of aggregate net profits to aggregate total assets for all 11 firms was 16.7% in 1933, 19.9% in 1934 and 19.5% in 1935.

The operating expenses of these 11 firms are summarized in Table 12 for the years 1933, 1934, and 1935. The two major items are salaries and wages to officers and clerical employees and commissions to salesmen. Salaries and wages amounted to over \$1,000,000 in 1935, accounting for about 65% of all operating expenses. Commissions to salesmen aggregated \$212,000 in 1935 (\$252,000 in 1933) and represented 13% of all operating expenses (21% in 1933).

TABLE 12.—*Analysis of operating expenses of 11 investment counsel firms, 1933–35*

Item	Amounts expended (\$000)			Percent of total expenses		
	1933	1934	1935	1933	1934	1935
Salaries and wages.....	631	930	1064	51.3	61.2	64.6
Commissions to salesmen for solicitation of new accounts.....	252	216	212	20.5	14.2	12.9
Miscellaneous and unallocated.....	348	373	371	28.2	24.6	22.5
Total.....	1231	1519	1647	100.0	100.0	100.0

## Chapter VI

# FUNCTIONS AND PROBLEMS OF INVESTMENT COUNSEL

### A. FUNCTIONS OF INVESTMENT COUNSEL

#### 1. Continuous, Disinterested, Personalized, Investment Advice

Some of the representatives of investment counsel firms urged that the primary function of investment counselors was "to render to clients, on a personal basis, competent, unbiased, and continuous advice regarding the sound management of their investments." The necessity for and the rapid growth of investment counsel service, according to these representatives, was in no small measure occasioned by the "tremendous overelaboration, or certainly elaboration of the capital structure of the industry, a great increase in the complexity in the numbers and background of securities that were available for investment by investors," and "the result was that the layman became bewildered by the confusion incident to the complexity of structure."<sup>34</sup>

Rudolf P. Berle, counsel to the Investment Counsel Association of America,<sup>35</sup> testified: <sup>36</sup>

A. \* \* \* The result was that the layman did what an intelligent layman does do: he sought the advice of somebody who could advise him expertly on the subject. He had to, exactly as he would seek the advice of an architect or engineer in the connection with building a house or other kind of structure.

The response to that need, as I have suggested, was very rapid, and where you have a mushroom growth, naturally there are many types and kinds of people who undertake to respond to that need.

Rapid growth in almost anything is likely to lead to a possibility of chaos. Now, before this rapid growth, or slightly before it, there were certain established groups which were rendering investment counsel service, such, for example, as Scudder, Stevens & Clark, and it was naturally to the advantage of a variety of people to apply to themselves this term of investment counsel.

In that chaotic growth, a great many people held themselves out, as I understand it, as being investment counsel, when actually they had none of those qualifications and, as you pointed out, Mr. Schenker, earlier, you had the entire range from the fellow without competence and without conscience at one end of the scale, to the capable, well-trained, utterly unbiased man or firm, trying to render a purely professional service, at the other end.

The main sources of investment advice available to the public prior to the inauguration of independent investment counsel organizations—investment banking houses, brokerage houses and banks—were

<sup>34</sup> Op. cit. supra, note 10, at 21672.

<sup>35</sup> The Investment Counsel Association of America is a voluntary association organized by the representatives of a few investment counsel organizations to formulate a standard code of ethics for this industry.

<sup>36</sup> Op. cit. supra, note 10, at 21672-3.

deemed by some of the representatives of the industry undesirable, in that numerous vital conflicts existed between the interest of the individuals or institutions furnishing the advice, and the interest of the investor to whom it was furnished. Mr. James N. White, of Scudder, Stevens & Clark, in describing these conflicts, testified:<sup>37</sup>

Q. Did you envision any problems arising from the fact that the investment banker was acting at least as a quasi-investment counsel with respect to securities?

A. We did not visualize any ethical difficulties, but we could see problems. We could see potential problems to a sufficient extent that we felt justified in charging a fee for being completely and totally on the investor's side, so to speak, giving him our full time and our entire interest.

Q. Now, what problems did you envision?

A. The very simple one of the problem of a merchant whose bread and butter and existence depends on selling his goods.

There was more of a problem than that because that is a perfectly legitimate function. There was the fact that when a banking house told his bond salesmen that they might offer certain bonds, he could not tell them that before selling a given bond to a given person, he must necessarily scrutinize his entire list of securities, familiarize himself with the person's investment objective and decide whether those bonds should be offered to him.

Q. Well, isn't it one of the fundamental problems, which we also have in investment trust and investment company situations, that the investment bankers' pecuniary interest lay in effectuating the sale of the securities, isn't that so?

A. That is so.

Q. And without making any concession by yourself, that advice to a client might in some way be tinged with that pecuniary interest. You could visualize situations, could you not, where investment advice was predicated not so much upon the financial position or the advisability of this particular investor purchasing the securities, but was subconsciously motivated by a desire to sell the merchandise?

A. Well, I would put the emphasis there on subconscious, because we never attempted to build up our business by damning the investment banker who was trying his level best to serve the interest of the investor. It was more a question of the theoretical position he was in, representing both the corporation who was borrowing money and the investor who was lending.

Q. On that aspect there may have existed not a deliberate intent to unload securities that were sour, or were unsound, but at least there existed subconsciously a prejudice on the part of the investment banker in favor of the security, or else he would not have underwritten it, isn't that so?

A. I would say keener, a very much keener interest in it. In other words, he knew a great deal about it, much more than he knew about the general investment field. He made much more of a study of it and knew much more about it and was correspondingly much more interested and enthusiastic about it.

Q. So that the situation as you visualize it was that there did not exist an impartial, disinterested agency to which a person could go to get a disinterested, impartial appraisal of the intrinsic merits of a particular investment he was going to make and also whether that was the type of investment that would fit into his general personal investment program, isn't that so?

<sup>37</sup> Id., at 21642-5.

A. And from which he could at the same time get continuity of supervision; those three things go together.

Q. So it was with the intent, you say, to furnish definite disinterested advice, together with advice which formed part of a cohesive plan, personal to the particular investor, and furnish continuous supervision of that program, which you say actuated the formation of the investment counsel organization in this country?

A. Yes.

However, Mr. White conceded that many investment counsel have "strayed a great distance from that professed function" of furnishing disinterested, personalized, continuous supervision of investments.<sup>38</sup>

Q. The problem of definition, of investment counsel, of course, is a difficult one, isn't that so?

A. Yes.

Q. Usually it is defined in terms of hope and anticipation, what you would like it to be, isn't that so? But as to what the actualities are, what the realities are, you have a gradation from individuals who are professed tipsters and do not make any pretense of being anything else, all the way up the scale to the type of individual, who, as you say, desires to give that impartial scientific professional advice to persons who are trying to plan their economic situation in the light of accomplishing various results, making provision for old age, education, and so forth. However, you can readily see, can you not, Mr. White, that a very significant part of that problem, as far as we are concerned, and possibly the most vital one, is, shall we say, the individuals on the fringes, isn't that so?

A. That is my conception of it.

## 2. Limited Economic Strata Served by Investment Counsel

The function of investment counsel, as conceived by representatives of the industry, is to serve only a limited group of investors—those individuals and institutions with substantial funds who require continuous supervision of their investments and a program of investment to cover their entire economic needs. Dwight C. Rose of Brundage, Story and Rose, president of the Investment Counsel Association of America, testified:<sup>39</sup>

Q. I am just trying to see where the investment counselor fits into the general mosaic of investment advice to the public. The investment counselor, as you conceive his functions to be, is a type of individual who is qualified to give investment advice to individuals who have, shall we say, a moderate estate, and have investment problems, both from the point of view of income, provision for old age, education of children, and so forth; isn't that so?

A. Investment counsel up to the present time has had largely to concern itself with the problems of that group because it has found no satisfactory method of dealing with small funds on a basis that is profitable.

Q. So that the strata of the population served by the investment counselor, as you conceive these services, is not the person who has a few hundred dollars and wants to buy some stocks, or has just a few hundred dollars with which he wants to speculate to see if he can make a quick profit, but it is the individuals who have a moderate estate and who want to plan scientific management of

<sup>38</sup> Id., at 21646.

<sup>39</sup> Id., at 21715-7.

their funds so that they can meet all their financial requirements; I mean that is the ultimate to be expected from that type of organization; isn't that so?

A. I would say that is generally true, with the exception of whatever supervision or management some firms might have over commingled funds, or mutual investment funds.

Q. The extremely wealthy people, of course, usually have their own investment counselors. When they run into the millionaire class, they, of course, have investment advisers who do nothing but devote themselves to the investments of these people; isn't that so?

A. That frequently is the case.

Q. What medium do you say exists to service the really small people who have a few hundred or few thousand dollars to invest?

A. Of course, such an individual has for a number of years had the savings bank, and such things as building and loan associations. So far as common stocks are concerned theoretically, he has had investment trusts which were organized for that purpose.

I, personally, see no reason why investment trusts cannot be so organized and directed that the small investor can get expert, sound management through participation in them and get it at a reasonable cost.

### 3. Difference in Function Between Investment Counselors and Investment Companies

The representatives of the industry emphasized that a marked distinction existed between the function of investment counselors and investment companies, although both types of organization in essence are formed to furnish investment management. Mr. White testified to this effect as follows:<sup>40</sup>

Q. \* \* \* There is a similarity in the nature of the service rendered by the investment trust to its stockholders and an investment counsel to his client, is that so?

A. The investment trust gives a part of the service rendered by investment counsel.

Q. What do you visualize is the vital distinction between the nature of the service you give and the nature of the service the investment trust gives?

A. Well, the ordinary investment trust of the management type gives its holder a diversification, probably beyond the ability of the small investor to obtain on his own capital. It also gives him management. It does not take any cognizance—the distinction is that it takes no cognizance of his total financial position in investing his money for him, and is distinguished from investment counsel, in that it gives him no judgment in the matter whatever. In other words, advice and management are two entirely different things and I should say that the great bulk of our clients consider themselves as the managers of their capital.

Q. Now, you say the true function as you conceive it, of an investment counselor, is to give advice in connection with the specific condition of a particular individual?

A. Yes.

Q. While the investment trust does not have that personal element in it, that it manages the funds more on an impersonal basis?

A. That is right.

Q. "Impersonal" being used in the sense that they may try to get a common denominator, or what they envision their stockholders' condition may be, or

<sup>40</sup> Id., at 21648-51.

what would be best for a cross-section of the American public, but does not give the advice with the peculiar, particular, specific financial condition of the individual and what he hopes to accomplish, or what purpose.

A. Might I also add that in a number of cases at least, as Mr. Dunn said yesterday, the investment trust managers do not consider their funds as a proper repository for all of an individual's capital. It is not that it doesn't consider only his personal peculiarities and needs, but it does not give him a complete financial program.

#### 4. Relation to the National Economy

Aside from the possible service rendered to investors of fairly substantial means who require concentrated investment supervision the contribution of the investment counsel to the national economy "was much less clear." Mr. White, of Scudder, Stevens & Clark, testified:<sup>41</sup>

A. \* \* \* From the point of view of the country, the point is much less clear. Unless you feel that it is of value to place the country's wealth in the most productive channels and to dissipate as little of it as possible in foolish and rash investment, to minimize speculation, to stabilize markets which we believe we tend to do, rather than to exaggerate out of balance.

#### B. PROBLEMS OF INVESTMENT COUNSEL

The problems relating to the investment counsel industry may be subdivided into two broad categories: (a) the problem of distinguishing between bona fide investment counselors and "tipster" organizations; and (b) those problems involving the organization and operation of investment counsel institutions.

Mr. White of Scudder, Stevens & Clark, in discussing this problem of the investment counselors, testified:<sup>42</sup>

Q. You assumed you were the progenitors. Our record indicates that there is one that was organized as far back as 1899, an organization called "Town Topics Financial Advisory Service." I am surprised you have not seen their name because we have some advertisements, one of them in the New York Herald Tribune, which says, "A stock at \$2.00 for those who like to speculate in very low priced stocks, we have chosen a \$2.00 stock representing an industry that is now, et cetera—Town Topics Financial Bureau, Alfred T. Moore." Is that your concept of the function of an investment counsel?

A. Not exactly.

Q. However, it is a condition and not a theory which confronts the Commission. That type of thing exists, does it not?

A. When I say yes, I do not know. I could not put a name to any individuals.

Q. I am not being critical of Town Topics, but that type of organization which gives that type of investment service exists, isn't that so?

A. Yes.

\* \* \* \* \*

Q. The fact is that they may be more significant than the investment counsel as you would envision its function; because of their prolific advertising and their solicitation, they probably can reach a type of individual who requires more pro-

<sup>41</sup> Id., at 21651-3.

<sup>42</sup> Id., at 21647-8, 21667

tection than the type of individual who comes to Scudder, Stevens & Clark, isn't that so?

A. I think so.

\* \* \* \* \*

Q. I just want to discuss, generally, the basic approach to the problem of investment counsel. As I understand it, you feel that the abuses or evils prevalent in the investment counsel organization are more concentrated in instances where individuals do not conform to your standards. They are more prevalent in that type of individual, isn't that so?

A. Yes, I feel that very strongly.

Q. It is the individual who makes exaggerated claims, it is the individual who is essentially a tipster, the individual who may not have the requisite qualifications and training and background and financial resources and financial responsibility that aggravates the problem of investment counselors, isn't that so?

A. Without them I would say it would be a minor problem.

Q. And any cure for the problem of investment counselors in the broad sense you feel must necessarily encompass that type of individual?

A. Largely focus on it.

Although the survey by the Commission did not include a detailed investigation as to the existence of specific abuses and defects of investment counselors, their activities patently present various problems which usually accompany the handling of large liquid funds of the public. In many respects, various of the abuses and defects prevalent among investment companies may very easily arise in the investment counsel field. Like investment companies, investment counsel services have had a largely unregulated and unsupervised mushroom growth. Throughout the history of their existence and up to the present time, no limitations, restrictions, or conditions have been imposed with respect to the qualifications of the individual who may solicit the funds of the public to be controlled, managed, and supervised, the method of solicitation, the custody of these funds, or the character of the investment advice furnished.

At the public conference, some of the representatives of the investment counsel organizations indicated that there existed vital problems in the investment counsel field. It was emphasized that individuals without the requisite qualifications and financial responsibility who indulged in exaggerated claims constituted a menace not only to the investor but to the counselors. One of the major problems as viewed by these representatives was, therefore, the elimination of "tipster" services which were masquerading as bona fide investment counsel organizations.

Broadly stated, the representatives felt that investment counsel organizations could not completely perform their basic function—furnishing to clients on a personal basis competent, unbiased, and continuous advice regarding the sound management of their investments—unless all conflicts of interest between the investment counsel and the client were removed.<sup>43</sup>

<sup>43</sup> Mr. Rose, president of the Investment Counsel Association of America, in discussing the constitution and the code of ethics of that organization, emphasized the necessity for investment advice untainted by any conflict of interest. The code provided:

"It is the function of the profession of investment counsel to render to clients on a personal basis competent, unbiased, and continuous advice regarding the sound management of their investments. An investment counsel firm should devote its time exclusively

Some of the representatives recognized that these conflicting interests prevailed to a marked degree where the investment counsel organization was closely affiliated with investment bankers or brokerage firms. The representatives claimed that, since the investment banker is essentially a "merchant of securities whose income depends primarily on the difference between the price he pays for securities and the price at which he sells them,"<sup>44</sup> he was in no "position to advise impartially with respect to the particular goods he has to sell."<sup>45</sup> In the language of one of these representatives: "It seems \* \* \* fairly obvious that a merchant in securities to be sold at a profit is primarily concerned with moving the wares he has on the shelf that he will make money out of, and therefore is not in a position to give unbiased advice, which we have stated to be the function of the professional investment counsel."<sup>46</sup> Similarly, representatives of investment counsel firms urged that the affiliation of brokerage firms with investment counsel organizations fostered undesirable and irreconcilable conflicts of interest, for "the broker receives his income principally or entirely from the commissions received on transactions—the larger the number of transactions the larger his gross income"<sup>47</sup> and "the broker's interest in turnover might be a temptation to advise clients to trade more than might be to their advantage or than might be necessary in their interest."<sup>48</sup>

So, too, it was asserted that divorcement of investment counselors from the directorships of corporations was essential if the fundamental objective of the complete elimination of conflict of interest was to be attained. Representatives of investment counsel organizations claimed that conflicts of opposing interests might exist. The fiduciary obligation of the director to the corporation and stockholders might dictate one course of conduct which was to the best interests of the corporation but which might be inimical to the interests of investor clients holding securities in the corporation. Stress was placed by some of these representatives upon the fact that any affiliation between the corporation and the investment counsel organization through directorships might be an impediment to a disinterested, objective, or critical attitude toward an investment by clients in that corporation.

According to some investment counsel representatives, trading by investment counselors for their own account in securities in which their clients were interested may adversely affect the interest of these

---

to the performance of this function and services incidental thereto; it should not engage in the business of security merchandising, brokerage, banking, the publication of financial services, or acting as custodian of the securities or funds of clients; and neither the firm nor any partner, executive, or employee thereof should directly or indirectly engage in any activity which may jeopardize the firm's ability to render unbiased investment advice."

Mr. Rose testified (Op. cit. supra, note 10, at 21686) :

"In other words, the reason for the adoption of that general provision was that, in our judgment, experience had pretty clearly indicated that an organization was not in a position to render to clients, on a personal basis, competent, unbiased, and continuous investment counsel services, if it had other interests that might conflict with those services."

<sup>44</sup> Op. cit. supra, note 10, at 21687.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

clients, since a problem of priority of transactions is created—i. e., a question arises as to whether a block of a particular security is to be accumulated (or liquidated) first for the account of the client or the account of the investment counsel.

Arrangements for contingent compensation to investment counselors, such as percentage of profits, was strongly condemned as inimical to the interest of the client, for according to these representations, aside from the “heads I win, tails you lose”<sup>49</sup> aspect of such arrangements, such a basis of compensation “encouraged the advisor to recommend a degree of risk that the investor himself would not knowingly undertake, inasmuch as the advisor has everything to gain if he is successful and nothing to lose if he is wrong”<sup>50</sup> and “may have been a strong temptation to take unusual risks, to speculate or to over-trade.”<sup>51</sup>

Other problems with respect to investment counselors are their solvency and the custody of their clients' securities. Although, as a matter of practice, many investment counsel firms do not assume the custody of their clients' securities, yet investment counsel services are under no disability to accept such custody, and some organizations have physical possession of such securities. At present, investment counsel organizations are under no obligation (except in one State, where a bond of \$5,000 is required)<sup>52</sup> to make any provisions with respect to the protection of their clients' securities or cash balances in their possession. No conditions are imposed by law with respect to the minimum capital or net worth of these organizations; and no provision is made for the auditing of books or checking of clients' securities by any independent authority or agency. The problem of the protection of investment counsel clients may be aggravated by the fact that 146 of the 394 firms replying to the investment counsel questionnaire were corporate in form, with resultant limited liability of their stockholders.

Although, in fact, the contract or relationship between investment counsel and client is a personal one, yet in those instances where the investment counsel is corporate in form, control of the funds of the individual clients may be indirectly transferred merely by disposing of the controlling stock of the investment counsel corporation to other individuals without the knowledge and consent of the client.

---

<sup>49</sup> *Id.*, at 21714.

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*

<sup>52</sup> This is the State of Oklahoma.

## Chapter VII

### REGULATION OF INVESTMENT COUNSELORS

#### A. STATE REGULATION OF INVESTMENT COUNSEL FIRMS

Federal regulation of investment counselors as such does not exist at the present time.<sup>53</sup> Several of the states require that persons who furnish investment counsel advice be registered with the State Securities Commissioners.<sup>54</sup>

##### 1. California

The State of California amended its Corporate Securities Act in 1931 to provide for the registration of investment counselors.<sup>55</sup> The Act broadly defines an "investment counsel" as follows:

Every person or company other than a broker, who in this state, for compensation, engages in the business of advising others either directly or through publications or writings as to the value of securities or as to the advisability of investing in or purchasing of securities, and every person other than a broker or certified public accountant who issues or promulgates analyses or issues reports concerning securities; provided, however, that said term shall not be construed to include any licensed, practicing attorney who renders or performs any of said services in connection with the practice of law.

The registration application of the investment counselors requires the following type of information: (a) the name and residence of the applicant; (b) the business reputation, experience and education to qualify the applicant to act as an investment counsel and the training and background of the applicant who wishes to function as an investment counsel; and (c) the plan, character, and method of business.

The California Commissioner is empowered by the statute to deny the application or revoke registration if either the applicant does not

---

<sup>53</sup> However, Sec. 17 (b) of the Securities Act of 1933 and Sec. 15 of the Securities Exchange Act of 1934 contain provisions which may interdict to a limited extent some of the activities of investment counselors.

<sup>54</sup> Some states which have no statutory regulation with respect to investment counselors do, however, recognize the importance of having such regulation. For example, the Illinois legislature has at present pending before it a bill with respect to the regulation of investment counselors. In Massachusetts, the State Securities Division is apparently attempting to regulate counselors as brokers. In Minnesota, the Securities Division, at the last session of the legislature, attempted to have a law passed giving the division some regulatory powers with respect to investment counselors as exist concerning brokers and security dealers. In Missouri, the State Securities Division has taken the position that investment counselors should register as dealers in securities, since on advising clients they are believed to act in some manner within the scope of the statutory definition of dealer. In Texas, there is a recognition by the Securities Commission that there is need for some regulation to prevent counselors from also acting as dealers in securities, in order to afford unbiased advice. (Report of Research Department of Illinois Legislative Council, on Statutory Regulation of Investment Counselors, September 1939.)

<sup>55</sup> See Appendix F.

possess the requisite training and experience, or any officer, director or member thereof has or is about to engage in any fraudulent transactions.<sup>56</sup>

## 2. Connecticut

The State of Connecticut on May 12, 1937, passed a statute<sup>57</sup> which, like the California statute, required investment counsel organizations to register with the State Securities Commission. The Connecticut statute specifically excluded from the scope of its definition certain financial units such as banks, loan associations, etc. The bases for denial or revocation of registration are closely similar to those in the California statute.

## 3. Illinois

Illinois, in its rules and regulations respecting the sale and disposition of securities, apparently supports the practice of permitting brokers and/or dealers to give investment counsel advice in addition to their usual transactions in securities.<sup>58</sup> The rule which applies to investment counselors, however, defines the standard of fiduciary obligation which should obtain in cases where such broker and/or dealer attempts to furnish investment counsel advice in those transactions. The provisions in this respect read as follows:

Investment counsel or advice, whether by one specializing solely in rendering investment counsel or advice, or by a dealer or broker, incidental to usual transactions in securities, shall be strictly on the basis of fiduciary relationship between the counselor or advisor and the investor or prospective investor. In no event shall such counsel or advice be influenced or colored by the element of profit or compensation through the sale or trade-out of any security held by the investor. Any advice or counsel given to an investor respecting the position of a security held by such investor must be solely on the basis of interest or pecuniary profit to the investor. Any investment counselor who in any manner, whatsoever, either directly or indirectly, places or assists in placing any contract for the purchase or sale of securities is held to be a registrant and must be qualified as provided by the provisions of the Illinois Securities Law.

## 4. Michigan

The Michigan securities statute includes in its definition of "dealer" in securities one "who for any consideration acts as an investment

<sup>56</sup> Some information on the operation of the California statute was supplied in a letter from the Securities Commissioner of California to the Commission. This letter reads, in part, as follows:

"Since the Corporate Securities Act was amended in 1931 to make provision for the licensing of Investment Counsels, the number of applications have been as follows:

1931	42
1932	105
1933	102
1934	97
1935	89
1936	113
1937 (January to April)	33

Our records disclose that during the period from August 1931 to April 1937, two investment counsel certificates have been suspended, twenty investment counsel certificates have been revoked and 101 investment counsel certificates have not been renewed. Each certificate expires on the 31st day of December of the year in which it is issued."

<sup>57</sup> See Appendix F.

<sup>58</sup> See Rule 15 of Illinois Rules and Regulations under the Illinois Securities Law effective December 31, 1938.

counselor and advises the purchase and sale of securities." As a "dealer," therefore, he is required to be licensed by the State Securities Commissioner.<sup>59</sup>

#### 5. New Hampshire

The New Hampshire securities statute includes within its definition of "securities" "contracts of services and advice relating to investments, or membership in organizations or associations purporting to render such services or advice," which, in other words, describes the services of an investment counselor. A further provision of the act provides that "dealers in securities," which would thus include persons selling investment counsel advice, must register with the securities commission. The State Securities Commission has the authority under the statute to investigate the financial standing and reliability of a prospective dealer and to pass upon the advertising material to be used by such person in connection with his activities.<sup>60</sup>

#### 6. Oklahoma

The State of Oklahoma, by an amendment to its Securities Act in May 1933, provided that only registered dealers may function as investment counselors,<sup>61</sup> but exempted lawyers and certified public accountants. Registration was conditioned upon the posting of a bond to account for customers' funds and securities and to satisfy judgments obtained by customers against the dealer in actions based on security transactions.

#### 7. Rhode Island

Rhode Island provides for the registration of brokers, and in the definition of broker includes every person who "for any cause acts as investment counsel and advises the purchase and sale of securities."<sup>62</sup>

### B. PRIVATE INVESTMENT COUNSEL ASSOCIATIONS

Two private associations of investment counsel firms exist in this country—The Investment Counsel Association of America organized in the State of New York<sup>63</sup> and The Investment Counsel Association of Southern California.<sup>64</sup>

With respect to the purposes and objectives of The Investment Counsel Association of America, Rudolf P. Berle, its counsel, testified:<sup>65</sup>

<sup>59</sup> See Appendix F. In addition, Rule 14 of the Michigan Rules and Regulations adopted January 1, 1936, is similar to the Illinois Rule 15, above cited, defining the standard of fiduciary obligation to be maintained by an investment counsel.

<sup>60</sup> See Appendix F.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

<sup>63</sup> This association at the time of the public conference on investment counselors had just completed various of its organizational phases and had few members. The organization had not as yet undertaken any active membership campaign. (*Op. cit.*, *supra*, note 10, at 21670.)

<sup>64</sup> See Appendix G for a statement of the purposes, objectives, and the Code of Professional Practice of these organizations.

<sup>65</sup> *Op. cit.*, *supra*, note 10, at 21673-5.

A. \* \* \* In that chaotic growth [of investment counsel], a great many people held themselves out, as I understand it, as being investment counsel, when actually they had none of those qualifications and, as you pointed out, Mr. Schenker, earlier, you had the entire range from the fellow without competence and without conscience at one end of the scale, to the capable, well-trained, utterly unbiased man or firm, trying to render a purely professional service, at the other end.

Recognizing this range, a group of people in the forefront of the profession realized that if professional standards were to be maintained, there must be some kind of public formulation of a standard or a code of ethics.

There had to be some kind of distillation of the experience which they had had, which could produce a code of ethics, to which the public at large, and to which laymen could turn in determining what kind of thing they might expect from an investment counsel, that term having come to be appropriated by a great variety of people who previously had never had any experience at all. The result of that feeling on the part of a number of leaders in this profession, certainly in the forefront of the profession, was the formulation of the code of ethics \* \* \* and the formulation of an organization known as the Investment Counsel Association of America to implement the code of ethics.

\* \* \* \* \*

The Investment Counsel Association, in its organization, is not now in a position to police, if you please, those individuals who not only do not conform to this code of ethics which has been formed, but probably would not wish to conform. There is a definite problem, as you pointed out.

On the other hand, it is my own personal view, that the formulation of that code is of tremendous value, in that for the first time a group in the profession have undertaken to establish a group of standards and the investing public is in a position to see these standards in type and can ask of anybody who seeks to advise them, "Are those the standards by which you govern yourself, whether you are a member of the Association or whether you are not?"

It was the unanimous opinion of the representatives at the public examination, both of firms which are members of the Association and non-member firms, that, although a voluntary association would serve some salutary purpose, such an organization could not cope with the most elemental and fundamental problem of the investment counsel industry—the investment counsel "fringe" which includes those incompetent and unethical individuals or organizations who represent themselves as bona fide investment counselors. These individuals and organizations not only could not meet the requirements of membership, but because of the nature of their activities would not even consider voluntarily submitting to supervision or policing. Mr. Berle, when examined on the effectiveness of voluntary organizations to deal with the basic problem of incompetent and dishonest investment counselors testified:<sup>66</sup>

Q. Well, as you see it then, at least at the inception of the Association, this is just a distillation of the experience of people who formed the organization, their experience, and what they conceive the code of an investment counselor should be, isn't that so?

A. Yes.

<sup>66</sup> Id., at 21675-8.

Q. It is tantamount to a public proclamation that you believe a real investment counsel should be guided by these things and have these qualifications, isn't that so?

A. That is one phase of it.

Q. As you have indicated and as Mr. White has indicated, that will not meet the situation of the individual who holds himself as investment counsel, who not only probably could not qualify as a member of the Association, but would avoid becoming a member of the Association so as not to be subject to those ethical principles and possible policing by the Association, isn't that so?

A. It would not come within the policing power of the Association; that is perfectly true.

On the other hand, I do not think that the value of having a code of that sort stated prevents—I won't say prevents, but improves—the situation created by the tremendously rapid growth of the profession.

Q. It is that group of individuals that we have been describing as the "fringe" that constitutes a major problem in the investment counsel situation in the broad sense, isn't that so?

A. It certainly does, yes.

Q. There is no way the Association can compel them to become members and comply with the code, is there?

A. No.

Q. And there is nothing that the Association can do, if the individual is not a member of the Association and does not conform to your code of ethics?

A. That is correct.

Q. To meet that situation you need some agency which has compulsory power to compel them to conform to those standards, isn't that so?

A. Yes, someone else has got to do that job.

Q. The code of ethics of the Association propounds what you conceive the standards of a true investment counsel should be, and attempts to educate the public to your conception of these standards. An individual is thereby put on notice that if he does not conform to those standards he at least does not conform to what your idea of an investment counsel should be?

A. Which we believe is not an unrepresentative point of view.

Q. You do not contend, do you, Mr. Berle, that the Association is the panacea of the evils of the investment counsel in the broad sense?

A. Far from it. It is too large a problem, but it is very, we believe at least, a very constructive step in the direction of formulating standards.

Q. And I think you will also concede that unless you can deal with the fringe you are not realistically dealing with the problems, isn't that so?

A. I would not put it quite as strongly as that.

Q. How would you put it?

A. I think it is a purely realistic approach that we have.

Q. Yes.

A. For example, you cannot undertake to regulate the fringe, unless you have got an idea as to what kind of a standard at least the best minds in the profession think ought to be established as the standard.

On the other hand, certainly any realistic approach has got to deal with the fringe that you refer to, in order to do a complete job. I thoroughly agree with that.

Mr. Rose also testified:<sup>67</sup>

Q. Now, in connection with your investment counsel association you heard Mr. Berle's testimony. Do you agree with him, Mr. Rose, that aside from any

<sup>67</sup> Id., at 21708-10.

salutary purpose that the formulation of this code may have that the Association cannot completely deal with the problem of the investment counselor in a broad sense?

A. I do, yes, sir.

Q. And do you agree that one of the vital aspects of the entire problem are those individuals who designate themselves investment counselors who do not conform to your conception of what an investment counselor is, and therefore would not even be in a position to qualify for your Association?

A. From a social standpoint that would appear to be the vital problem.

Q. The most vital problem; yes. It is those individuals who call themselves investment counselors who do not have the requisite training, experience, and financial responsibility, and who do not have the requisite ethical standards, which presents one of the major problems in the investment counsel situation; isn't that so?

A. Yes, sir, I think so.

Q. From what I can see the Investment Counsel Association was not formed with the idea that it could solve those aspects of the problem, but was an additional effect that the Association might have generally?

A. I think it was pretty definitely recognized in its formation that the Association would not solve that problem, and we would not attempt to solve it.

Various representatives of the industry conceded that the problem of investment counselors must be dealt with on a national basis in order to be solved. Mr. White testified as follows:<sup>68</sup>

Q. Isn't it also a fact that that type of individual is the more elusive, so far as state boundaries and jurisdictions are concerned?

A. I should think he would be.

Q. And do you think that the only effective method of handling that situation, if it is to be handled at all, is to be on a national basis rather than on a local restricted area, or state basis?

A. I should think that would be preferable.

Mr. Rose also testified:<sup>69</sup>

Q. Of course, one of the major problems of the investment counselors, who are really investment counselors, is the stigma placed on those types of individuals by the activities of the individuals who are on the fringe; isn't that so?

A. Yes, that is true. I think that is one factor that stimulated the formation of the Association.

Q. And yet you will never be able to effectively meet that unless it is dealt with on a national scale?

A. I think that is true.

<sup>68</sup> Id., at 21667-8.

<sup>69</sup> Id., at 21710-11.

## APPENDIX A

### List of Investment Counsel Firms Which Replied to Investment Counsel Questionnaire<sup>a</sup>

Name of firm	City	Date of organization
Abel, Roy W.	Long Beach (Calif.)	'34
Abelson & Co.	Denver	'33
Abraham, Nathan	New York City	'23
Administrative and Research Corporation (N. Y.)	do	'34
Advisory Corporation, The	do	'34
Alexander Hamilton Institute	do	'16
Alexander, R. R. & Co.	Cleveland	'25
Alexander, Ralph A.	Boston	'35
American Institute for Economic Research	Cambridge	'34
American Institute of Finance	Boston	'19
Anderson, Allen & Co., Inc.	New York City	'34
Anderson and Cromwell, Inc.	Boston	'30
Anderson, C. S. & Co., Inc.	New York City	'34
Anderson-Hatch, Inc.	do	
Anderson, James M.	Santa Ana	'27
Angas, L. L. B.	New York City	'36
Associated Counsellors, Inc.	do	'35
Atkinson, Albert E.	Cleveland	'32
Axe, E. W. & Co., Inc.	New York City	'33
Ayers and Co.	Cleveland	'36
Bankers Investment Service, Inc.	Milwaukee	'36
Barlow, Frank C.	Binghamton	'28
Barnes, John K.	New York City	'32
Barnes, N. S.	Pasadena	'34
Barney, Chas. D. & Co.	New York City	'33
Barrett, Julian N.	Atlanta	
Bay State Management Corporation	Boston	'36
Bayliss, Kenneth H.	St. Paul	'30
Beattie, John A. & Co.	Pittsburgh	'30
Beck, Mack & Oliver	New York City	'31
Bell & Wright	San Francisco	'36
Bent, Charles Howard	Chicago	'35
Bentley, Harold D.	New York City	'30
Bernhard, Arnold	do	'31
Bernstein Macaulay, Inc.	do	'34
Betts and Morris, Inc.	Troy	'34
Beverly National Co.	Los Angeles	'35
Bishop & Co.	Philadelphia	'36
Bowen, Albert J.	Santa Anna	'36
Boyd & Comey	Cleveland	'35
Braun, John A.	New York City	'36
Breckinridge & Co.	Chicago	'31
Brewer, Arthur L.	Los Angeles	'37
Bristol Investment Counsel Corporation	New Bedford	'30
Brookmire Bulletins, Inc.	New York City	'34

<sup>a</sup> The list includes, with a few exceptions, all organizations replying to the Commission's questionnaire. It was not possible to make a list of selected firms that would correspond to some standard definition of investment counsel. As a result, the firms included vary considerably in the nature of their services. The list does not, of course, represent registration with the Commission or approval by the Commission.

**List of Investment Counsel Firms Which Replied to Investment Counsel  
Questionnaire—Continued**

Name of firm	City	Date of organization
Brookmire Corporation	New York City	'34
Brown, C. A.	Houston	'33
Brown, C. H. & Co., Inc.	Minneapolis	'34
Brundage, Story & Rose	New York City	'32
Bugbee, Nathan D.	Boston	'34
Bull, W. R. Management Co., Inc.	New York City	'34
Burden, Joseph W.	do.	'24
Bushnell, Geo. D. & Associates	Chicago	'33
Business Economic Digest, The	New York City	'25
Caldwell, John H.	Boston	
Cambridge Associates, Inc.	do.	'24
Capital Management, Inc.	Indianapolis	'36
Capital Research & Management Co.	Los Angeles	'31
Carles, Frederick, & Co.	Winter Park, Fla.	'37
Carre, D. Beach	Little Rock	'36
Carter, C. Shelby & Co., Inc.	New York City	'32
Cavanaugh, Morgan & Co.	Los Angeles	'36
Chamberlin Associates, Inc.	New York City	'29
Chase, John P., Inc.	Boston	'32
Cherry Securities Service (Inc.)	Chicago	'36
City Bank Farmers Trust Co.	New York City	'30
Clad, Ernst E.	do.	'31
Claffin, Warren & Co., Inc.	Boston	'31
Clarke, John R.	Manhattan Beach	'29
Clarke, Sinsabaugh & Co., Inc.	New York City	'33
Clevenger, James L. & Co.	do.	'34
Clifford, A. M.	Los Angeles	'16
Clinch & Co., Inc.	New York City	'27
Clinton and Clinton	Hollywood	'36
Coburn, William H. & Co.	Boston	'19
Connors, Myles F.	New York City	'32
Cooper, Donald B.	Boston	'34
Cooper, Dudley R.	San Diego	'27
Courts Co.	Atlanta	'32
Cox, Geo. Clarke	New York City	'24
Coyle & Creighton	Buffalo	'32
Crocker, R. D. & Co.	Chicago	'31
Crymes, R. J.	San Francisco	'36
Cummings & Dunker	Boston	'36
Cutler, Hubble Co.	Detroit	'32
Dahl, Lauren A.	Los Angeles	'33
Dana, N. P. & Co., Inc.	Boston	'32
Davis, Claude B.	Glendale	'34
de Goumois, Marc.	New York City	'36
DeMandel, J. E.	San Francisco	'36
De Villiers, Victor	New York City	'17
DeWolf Advisory Service	Los Angeles	'34
Dodge & Cox	San Francisco	'30
Dominick & Dominick	New York City	'29
Drumbheller, Ehrlichman & White	Seattle	'33
Eaton & Howard, Inc.	Boston	'31
Eberle Economic Service, Ltd.	Los Angeles	'21
Economic Analysts, Inc.	Wilmington	'32
Economic Research, Inc.	New York City	'28
Eddie-Davidson, Inc.	do.	'31
Emrich, George L. Jr. & Co.	Chicago	'31

## List of Investment Counsel Firms Which Replied to Investment Counsel Questionnaire—Continued

Name of firm	City	Date of organization
Engineers Traders' Corporation	Chicago	'29
Equities Research Service, Inc	New York City	'30
Estabrook & Co.	Boston	'29
Estate Management Corporation, Ltd., The	Beverly Hills	'35
Evans, Chas. De. F.	St. Louis	'33
Fairchild, McCune & Co., Inc	Chicago	'35
Falk, R. Tracy, Co., Inc	New York City	'36
Farguhar Service, Inc	do	'32
Felheim, LaSalle	do	
Fenner & Beane	do	'36
Ferguson, John A.	San Francisco	'36
Ferguson, Marshall M.	Los Angeles	'34
Fiduciary Counsel, Inc.	Wilmington	'31
Fiduciary Trust Company of N. Y.	New York City	'30
Field, McDonald & Co.	Detroit	'36
Financial Advisory Service, Inc.	New York City	'26
Financial Association of Ill., Inc.	Chicago	'36
Financial Management Corporation	do	'32
Financial World Research Bureau	New York City	'29
Fisher & Co.	San Francisco	'31
Fitch, George W.	Los Angeles	
Fitch Publishing Co., Inc., The	New York City	'13
Follansbee, Frank	Palo Alto	'33
Fontaine, G. M. Associates	San Jose	'30
Foster, Orline D. (Mrs.)	New York City	'36
Forbes, John A., Investment Counsel	Rockford	'34
Framhein, Fairchild & Co.	Chicago	'33
Fritz, Sparta, Jr.	Philadelphia	'33
Fulton Trust Co. of New York	New York City	
Fund Management Co., The	Boise	'36
Gagg, Louis R.	Milwaukee	'35
Gann, W. D., Scientific Service, Inc.	New York City	'27
Gardner, Donald S.	San Diego	'35
Gartley, H. M., Inc.	New York City	'34
George, Clifton, Jr.	San Antonio	'35
Gibson, Thomas, Inc.	New York City	'07
Gifford, Raymond T.	Boston	'32
Gifford Trading Co.	Milwaukee	'37
Gilbert, Donald N.	Syracuse	'37
Gofen and Glossberg	Chicago	'32
Goldman, Sachs & Co.	New York City	'33
Gomez, Frank P.	San Francisco	'37
Gongall, S. W. & Co.	Minneapolis	'29
Gotschall, John Clark	Santa Barbara	'36
Graphic Market Advisors	New York City	'36
Gregory, DeLong & Hoyt, Inc.	Chicago	'34
Grier, John C., & Co., Inc.	Detroit	'32
Griffing, Stanton	Palo Alto	'30
Hadley, L. B.	Marquette	'35
Halsey, R. W. & Co., Inc.	New York City	'25
Hamilton Investment Counselors	do	'35
Harris, Everett & Co.	Los Angeles	'37
Hart, William A.	do	'32
Haseltine, William G.	Boston	'26
Hass, Cyril H.	New York City	'34
Haydock, Lamson & Co.	Cincinnati	'25

**List of Investment Counsel Firms Which Replied to Investment Counsel  
Questionnaire—Continued**

Name of firm	City	Date of organization
Heber-Fuger Research Corporation.....	Detroit.....	'32
Heber-Fuger Wendin, Inc.....	do.....	'35
Helser, J. Henry, & Co., Inc.....	Portland, Oreg.....	'32
Henderson, J. R.....	Passadena.....	'36
Henry, Frank J.....	Atlanta.....	'34
Herndon, Howard V.....	San Francisco.....	'33
Hickernell, Warren F. & Co., Inc.....	New York City.....	'35
Higgins, Edgar.....	do.....	
Hill, David A.....	Chicago.....	'35
Hill Financial Service, Inc.....	San Francisco.....	'35
Hinckley, Henry N.....	Ithaca, N. Y.....	'36
Holbrook Company, The.....	Boston.....	'30
Howard, John Babcock & Co.....	do.....	
Howell, Anderson & Co.....	Chicago.....	'31
Hurt, Walter F.....	Tulsa.....	'31
Illinois Investment Co.....	Chicago.....	'37
Industry & Security Survey Corporation.....	New York City.....	'36
International Statistical Bureau, Inc.....	do.....	'32
Investment Analysis Bureau.....	St. Louis.....	'31
Investment and Business Forecast, The.....	New York City.....	'17
Investment Counsel Bureau.....	Detroit.....	'31
Investment Counsel, Inc.....	do.....	'29
Investment Counsel, Ltd.....	Hollywood.....	'29
Investment Letters, Inc.....	Detroit.....	'33
Investment Management Corporation (Chicago).....	Chicago.....	'31
Investment Management Corporation (Cleveland).....	Cleveland.....	'35
Investment Management, Inc.....	Kansas City.....	'36
Investment Management Service.....	New York City.....	'30
Investment Research Corporation.....	Detroit.....	'27
Investment Supervision, Inc.....	New Bedford.....	
Investors' Bureau.....	San Francisco.....	'25
Investors Counsel, Inc.....	New York City.....	'32
Investors Management Co., Inc.....	do.....	'24
Investors Research Bureau, Inc.....	Syracuse.....	'26
Investors Service Bureau.....	Chicago.....	'33
Jefferson Investment Co.....	Port Arthur.....	'35
Jennys & Co.....	New York City.....	'35
Johanson, Arthur V.....	Pasadena.....	'37
Johnston & Lagerquist, Inc.....	New York City.....	'31
Jones, Berkley.....	St. Louis.....	'31
Julius, Emory C.....	Long Beach.....	'34
Jutte, Charles Brokaw.....	Oakland.....	
Kales-Kramer Investment Co.....	Detroit.....	'35
Kauffman, Andrew H.....	St. Louis.....	'33
Kelsey Statistical Service.....	Chicago.....	'31
Kennard, R. Parry.....	New York City.....	'34
Kennedy, C. J., Jr.....		
Kimball, Lewis E.....	Hollywood.....	'36
Kincade, Forrest James.....	San Francisco.....	'37
Kurr, Fred L., Inc.....	New York City.....	'36
Landon, H. M.....	do.....	'27
Langham, James Mars.....	Santa Monica.....	'32
Langmuir, Dean, Incorporated.....	New York City.....	'33
Lehman Brothers.....	do.....	'32
Lennon, Harry B.....	San Francisco.....	'36

## List of Investment Counsel Firms Which Replied to Investment Counsel Questionnaire—Continued

Name of firm	City	Date of organization
Leppo & Co.....	.....do.....	'31
Lewisohn, Randolph S.....	New York City.....	'35
Loges, W. G., Investment Counsel.....	.....do.....	'36
Loomis, Fred P.....	Seattle.....	'31
Loomis, Sayles & Co., Inc. (Connecticut).....	Hartford.....	'32
Loomis, Sayles & Co., Inc. (Delaware).....	Washington, D. C.....	'32
Loomis, Sayles & Co., Inc. (Massachusetts).....	Boston.....	'26
Loomis, Sayles & Co., Inc. (Michigan).....	Detroit.....	'29
Loomis, Sayles & Co., Inc. (Pennsylvania).....	Philadelphia.....	'29
Loomis, Sayles & Co., Inc. (Wisconsin).....	Milwaukee.....	'33
Lorenz Investor's Digest & Advisory Service.....	Scranton.....	'35
Lyon, Ralph.....	San Francisco.....	'31
Lyttle, Herbert G.....	Hueneame.....	'31
MacDonald's W. J. Market Advisory Service.....	New York City.....	'28
MacKubin, Legg & Co.....	Baltimore.....	'31
McCart, John L.....	Los Angeles.....	'36
McCuen, C. Melvin.....	.....do.....	'32
McDermid, Miller & McDermid, Ltd.....	Vancouver, B. C.....	'31
McIntosh, J. R., & Co., Inc.....	New York City.....	'28
McIntyre, John V.....	Los Angeles.....	'37
McJilton, Thomas.....	Pasadena.....	'36
McLean & Company.....	Tacoma, Wash.....	'36
Maiss, George A., Jr.....	St. Paul.....	'30
Mallory, George D.....	Berkeley.....	'34
Malmin, Philip L.....	Los Angeles.....	'36
Management Associates.....	Boston.....	'29
Mansfield, Robert W.....	New York City.....	'34
Maree, A. Morgan, Jr., & Associates.....	Los Angeles.....	'31
Marshall & Greenwood.....	New York City.....	'35
Marshall, R. F. & Co., Inc.....	Boston.....	'36
Martin Co., Inc.....	Philadelphla.....	'31
Maunsell Company, Inc.....	Boston.....	'35
Maupin, R. C. & Co.....	Chicago.....	'34
Mayo, Geoffrey, Ltd.....	San Marino.....	'31
Mercer-Allied Corp.....	New York City.....	'32
Meyer, George.....	Los Angeles.....	'31
Minis, A., Jr.....	Savannah.....	'31
Montgomery, Carl D.....	New York City.....	'33
Moody's Investors Service.....	.....do.....	'14
Moore, J. Warren.....	Los Angeles.....	'31
Myrick, Donald.....	Santa Barbara.....	'32
National Investing and Trading Corporation.....	Detroit.....	'35
Nation Stockholders' Society of America, Inc.....	New York City.....	'32
Neill-Tyson, Inc.....	Larchmont.....	'31
Neville, Rodie & Co.....	New York City.....	'33
Newby, Clare Cecil.....	.....do.....	'33
New England Financial Service.....	Boston.....	'33
New York Daily Investment News.....	New York City.....	'35
New York Trust Company, The.....	.....do.....	'30
Nichols, William B. & Co., Inc.....	.....do.....	'29
Norman's Advisory Service.....	Los Angeles.....	'31
O'Neill, Grover & Co.....	New York City.....	'24
Oyster, Seward, Sisson & Trowbridge.....	San Francisco.....	'32
Pacific Coast Investors' Association.....	Los Angeles.....	'34
Parkinson, J. B. & Co.....	Houston.....	'30

## List of Investment Counsel Firms Which Replied to Investment Counsel Questionnaire—Continued

Name of firm	City	Date of organization
Parrott & Stewart	New York City	'33
Payne and Strong	Los Angeles	'37
Pell-Kip & Skinner, Inc.	New York City	'34
Penfield Mower, Inc.	Boston	'31
Pettit, Karl D.	New York City	'32
Piper, Clarence B.	Pasadena	'35
Plumridge, T. E. & Co.	New York City	'37
Poleman & Elder, Inc.	St. Louis	'35
Poor's Supervisory Service	Babson Park	'32
Porteous and Company, Inc.	New York City	'36
Pratt, Robert W.	Providence	'36
Prudden, Russell F.	New York City	'33
Puisifer, Fiske & Scheyhing	do	'35
Redman, F. B.	Los Angeles	'36
Reps, S. Paul	Montrose	
Republic Investment Corporation	Hollywood	'31
Reserve Management Corporation	New York City	'34
Roberts, W. Earl Company	St. Louis	'33
Robinson, George P. and Co., Inc.	New York City	'34
Robinson, Harlan B.		
Rotan, George V. Co.	Houston	'36
Rowe, John L.	Los Angeles	'36
Roystone, W. H.	New York City	
Russell, Berg & Co.	Boston	'34
Sanna-Wakefield Service	New York City	'34
Schlesinger, Edwin J.	do	'28
Schultheis, Emil	Flushing	
Scobey, Wilfley	New York City	'32
Scott, R. M., Jr.	Denver	'33
Scudder, Stevens & Clark	New York City	'19
Sears, Thomas D.	Santa Barbara	'34
Securities Advisory Counsel, Inc.	New York City	'33
Securities Advisory Service, Inc.	Boston	'34
Securities Analytical Service, Inc.	Detroit	'35
Securities Counsel, Inc.	Jackson	'32
Security Research Associates	Los Angeles	'37
Security Supervisors, Inc.	Chicago	'33
Seeger & Sweet	St. Louis	'35
Seligman, J. W. & Co.	New York City	'33
Shaw, A. Vere & Co.	New York City	'30
Shea & Co.	Chicago	
Shearson, Hammill & Co.	New York City	'35
Shepard, C. C.	Detroit	'32
Sheridan, Farwell & Morrison, Inc.	Chicago	'29
Shields & Co.	New York City	'29
Siems, Harry William	Pasadena	'34
Silberling Research Corp., Ltd.	Palo Alto	'29
Simpson, John A.	Los Angeles	'36
Simpson, L. Earle	New York City	'31
Singer Thompson Co.	Milwaukee	'28
Sinnickson, Richard & Co.	Cincinnati	'29
Smith's Investment Service	Boston	'32
Smith, Swanson & Co.	Chicago	'34
Smith, Vernon D.	Los Angeles	'36
Smolen, Henry	New York City	'36
Sorneson, L. A.	Hicksville, N. Y.	'32
Sovereign Corporation	Jersey City	'36

**List of Investment Counsel Firms Which Replied to Investment Counsel  
Questionnaire—Continued**

Name of firm	City	Date of organization
Sparks, R. M. & Allen, E. E.	Boston	'31
Spence, W. H. & Co.	Los Angeles	'33
Spencer, R. A. Bingham	New York City	'34
Spencer Trask & Co.	do.	
Standard Supervisory Service	do.	'29
Standish, Racey & McKay, Inc.	Boston	'32
Stanton, F. W.	Detroit	'36
Stein & Roe	Chicago	'32
Stelle, Omar P.	Muskegon	'31
Stengel, L. T.	Los Angeles	'32
Stephenson, J. T. & Co.	San Francisco	'33
Sterling, Grace & Co.	New York City	'36
Stern, Lawrence and Co., Inc.	Chicago	'35
Stewart, D. M. & Co., Inc.	New York City	'33
Storr, Aloy L.	St. Louis	'33
Sundholm, C. Eric	Jamestown	'34
Sweeney, Daniel J., Jr.	San Francisco	'36
Sweetser Sheppard & Deakin	Philadelphia	'25
Swenson, S. H.	New York City	'35
Symmonds, Lloyd	Pasadena	'32
Tackett & Callner	Chicago	'34
Tanenbaum, I. Edwin, Inc.	New York City	'31
Tauber & Tauber, Inc.	do.	'32
Taylor, Sanford B.	Detroit	
Technical Trends, Inc.	Los Angeles	'35
Terrien, G. D.	Tulsa	'30
Tilden Bros. & Grannis, Inc.	Chicago	'32
Tillman Survey, The	Boston	'23
ToeWater, George M.	Cincinnati	'30
Town Topics Financial Bureau	New York City	'39
Tracy, Paul S.	Denver	'31
Traders Daily Guide	Oakland	'33
Trader Horne's Trend Indicator	New York City	'32
Trading Associates, Inc.	Boston	'35
Trainer and Associates	New York City	'30
Unge, B. W.	Topeka	'31
United Business Service Co.	Boston	'12
Vance, Chapin & Co., Inc.	New York City	'36
Vance, Ray	Jersey City	'30
Van Cleef and Jordan	New York City	'32
Van Strum & Towne, Inc.	do.	'30
Wachtel, David F.	Atlanta	'32
Waldman & Co., N. E.	New York City	'32
Wall Street Financial Bureau, Inc. (The)	do.	'23
Wall Street Financial Service Guild, Inc.	do.	'28
Ward, E. K.		
Ward, Joseph W.	Pittsburgh	'32
Ward, Osgood & Park	Boston	'36
Watkins & Fordon, Inc.	Detroit	'32
Wellington Corporation	Wilmington	'29
Wentworth & Co.	New York City	'36
Westcott, James H.	do.	'18
Wetsel Advisory Service, Inc., A. W.	do.	'32
Wetsel Market Bureau, Inc.	do.	'28
White, Harry A.	Chicago	'31

List of Investment Counsel Firms Which Replied to Investment Counsel  
Questionnaire—Continued

Name of firm	City	Date of organization
Wightman & Co., M. S.....	New York City.....	'33
Willis & Christy.....	Los Angeles.....	'31
Willoughby & Osgood.....	Boston.....	'34
Wimer, Nye A.....	New York City.....	'35
Winslow, Wallace J., Jr.....	do.....	'37
Witter, Dean & Co.....	San Francisco.....	'33
Wolferman, Leo R.....	New York City.....	'33
Wood, Richard V.....	Louisville.....	'33
Woodruff & Company, Inc.....	Chicago.....	'35
Wortham, Howard F.....	New York City.....	'34
Wosk, David L.....	San Diego.....	'32
Yabuki, George K.....	Oakland.....	'34
Yeager & Co.....	New York City.....	'26
Yetman's Statistical Service.....	Boston.....	'30
Young and Koenig, Inc.....	Pasadena.....	'32
Young & Ottley, Inc.....	New York City.....	'29
Young Management Corporation.....	do.....	'36
Ziesmer, Moody & Co.....	Beverly Hills.....	'36
Zucker, J. H.....	Los Angeles.....	'25

## APPENDIX B

### List of Investment Trusts and Investment Companies With Which Investment Counsel Firms Were Affiliated at Some Time From January 1, 1933 to June 30, 1936

Name of counsel	Name of investment trust or company	* Period of service *
Administrative and Research Corporation.	Maryland Fund, Inc.....	6/22/34, date.
	Quarterly Income Shares.....	8/23/34, date. 9/1/34, date.
Anderson, Allen & Co., Inc.....	National Fund, Inc.....	4/6/36, date.
Anderson and Cromwell, Inc.....	Fidelity Fund, Inc.....	7/5/33, date.
Axe, E. M. & Co.....	American General Equities, Inc.....	2/1/35-9/30/36.
Boyd & Comey.....	Commonwealth Securities, Inc.....	6/4/35-6/4/36.
	Middle States Securities Corporation.....	1/1/35, date.
Bull, W. R. Management Co., Inc.	Composite Trading Corporation.....	1/1/35, date.
	Republic Investors Fund, Inc.....	7/1/34, date.
Cambridge Associates, Inc.....	Plymouth Fund.....	5/12/33-12/7/35.
	Keystone Custodian Funds.....	3/1/32-12/28/36.
Capital Management, Inc.....	Market Street Investment Corporation.....	3/15/36, date.
Chase, John P., Inc.....	Amoskeag Co.....	5/ /34, date.
Clafin, Warren & Co.....	Clafin Warren Fund.....	8/1/31-2/27/36.
Dana, N. P. & Co., Inc.....	(A commingled fund).....	5/26/36, date.
Dodge & Cox.....	Investors Management Trust.....	7/1/31, date.
Dominick & Dominick	National Bond & Share Corporation.....	3/6/29, date.
	Shareholders Corporation.....	4/ /33, date.
Drumheller, Ehrlichman & White.	Equity Fund, Inc.....	3/9/33, date.
	Eaton & Howard Management, Fund A-1.....	1/1/33, date.
Eaton & Howard, Inc.....	Eaton & Howard Management, Fund B.....	1/1/33, date.
	Eaton & Howard Management, Fund F.....	1/1/33, date.
	Eaton & Howard Accumulative Fund.....	1/1/33-9/24/34.
	Cumberland Investment Co.....	6/10/35, date.
Edie-Davidson, Inc.....	Pilgrim Investors, Inc.....	2/6/34, date.
	Central National Corporation.....	5/14/36, date.
	Collateral Equities, Inc.....	12/27/35, date.
	Income Foundation Fund, Inc.....	1/1/35, date.
Ferguson, Marshall M.....	William C. Hay, Ltd.....	10/22/34-6/1/36.
Fiduciary Counsel, Inc.....	Rapid Transit Investment Fund.....	12/19/35, date.
Gongall, S. W., & Co.....	General Equities, Inc.....	4/1/34, date.
Grier, John C., & Co. Inc.....	Capital Management Corporation.....	3/18/35-9/10/36.
Hart, William A.....	Wm. A. Hart Investor Group.....	6/6/34, date.
	Wm. A. Hart Investor Group 1.....	3/20/35, date.
	Wm. A. Hart Investor Group 2.....	3/20/35, date.
	Supervised Investments, Inc.....	5/4/29, date.
Haydock, Lamson & Co.....	Investment Counsel Fund, Inc.....	1/14/36, date.
	Mutual Investment Fund.....	7/—/32-12/30/36.
Heber-Fuger Research Corp.....	American Midland Co.....	6/1/33-5/24/35.
Investment Counsel, Inc.....	Capital Management Corporation.....	3/6/36, date.
	First Management Foundation.....	11/21/34, date.
	Investment Counsel Equity Fund.....	2/23/35, date.
	Investment Counsel Investment Fund, Inc.....	2/23/35, date.
	Second Management Foundation.....	11/28/34, date.
Investment Research Corp.....	Investment Co. of America, The.....	5/20/27, date.

\* "Date" refers to the date on which the reply to the questionnaire was submitted, generally between December 1936 and March 1937.

List of Investment Trusts and Investment Companies With Which Investment Counsel Firms Were Affiliated at Some Time from January 1, 1933 to June 30, 1936—Continued

Name of counsel	Name of investment trust or company	Period of service	
Investors Management Co., Inc.	Investment Trust, Fund A	1/1/25, date.	
	Investment Trust, Fund B	4/15/27, date.	
	Investors Fund C	12/10/30, date.	
Langmuir, Dean Inc.	Cumulative Trust Shares	12/15/33, date.	
	North American Trust Shares 1955	} 12/6/33, date.	
	North American Trust Shares 1956		
	North American Trust Shares 1958		
	North American Bond Trust		
Group Securities, Inc.			
Loomis, Sayles & Co. (Conn.)	Fairway Club	4/3/33, date.	
Loomis, Sayles & Co. (Mass.)	Loomis-Sayles Mutual Fund, Inc.	11/5/29, date.	
	Loomis-Sayles Second Fund, Inc.	12/12/34, date.	
Loomis, Sayles & Co. (Mich.)	Founders Securities Trust	1/12/31, date.	
	United Invt. Assurance Trust	1/12/31, date.	
	Consolidated Bond & Share Corporation	1/1/36, date.	
	Union Securities Corporation	12/20/34, date.	
	Mutual Investment Trust	10/7/31-2/9/34.	
	Equitable Trust Co., Trust 100	5/4/29, date.	
	Mutual Income Foundation	5/4/33, date.	
	Century Fund	7/15/33-8/15/34.	
	Lytle, H. G.	Huenema Investors Corporation, Ltd.	5/-/30, date.
	McJilton, Thomas	Canadian Capital Corporation, Ltd.	2/-/36, date.
Management Associates	Incorporated Investors	11/23/25, date.	
Mackubin, Legg & Co.	Fundamental Investors, Inc.	4/7/34, date.	
	Traders Corporation	5/1/34-11/1/36.	
Moody's Investors Service	Diversified Investment Trust, Inc.	6/24/32-12/29/33.	
Mercer-Allied Corporation	Mercer Fund	10/1/32-6/30/33.	
	Mercer-Managed Accounts	7/1/33-12/31/35.	
Meyer, George	Southeast Investment Co.	1/1/31, date.	
	San Antonio Investment Co.	2/-/35-12/-/36.	
	Chain & General Equities, Inc.	8/7/30-3/31/35.	
Nichols, Wm. B. & Co. Inc.	Chain Store Investment Corporation	9/8/30-3/31/34.	
	Brookmire Investors, Inc.	10/15/34, date.	
Reserve Management Corporation.	Weatherly Securities Co.	10/15/34, date.	
	R. B. C. Fund, Inc.	6/30/34, date.	
Russell, Borg & Co.	Financial Security Fund	3/-/36, date.	
Scott, R. M. Jr.	First Investment Counsel Corporation	4/-/28, date.	
Scudder, Stevens & Clark	Second Investment Counsel Corporation	7/-/28, date.	
	Third Investment Counsel Corporation	3/-/29, date.	
	Diversified Security Trust	11/-/24, date.	
	Account No. 238B	10/1/35-3/30/36.	
	Account No. 1802	11/1/32, date.	
	Account No. 1649	6/1/32, date.	
	Security Supervisors, Inc.	Selected American Shares, Inc.	2/6/33, date.
	Shaw, A. Vere & Co.	Trusted Industry Shares	7/11/33, date.
		Affiliated Fund, Inc.	5/14/34, date.
		American Business Shares	3/15/35, date.
Silberling Research Corporation.	Pacific Seaboard Foundation, Ltd.	4/-/31-6/-/34.	
Singer-Thompson Co.	American Investment Co.	8/30/28, date.	
Sovereign Corporation	Sovereign Investors, Inc.	3/13/36, date.	
Standard Supervisory Service	Independence Shares Corporation	12/21/34, date.	
	Consumers Securities Co., Inc.	7/24/33, date.	
	Commerce Investment, Inc.	7/17/33-7/17/34.	
	Super-Corporations of America Depositors, Inc.	2/5/32-5/5/36.	
	Utilities Share Corporation	11/11/31-11/3/34.	
	Distributors Group, Inc.	11/25/32-5/25/33.	
	Selected Shares Corporation	9/27/31-12/27/34.	
	Blue Ridge Corporation	12/1/35-2/29/36.	

**List of Investment Trusts and Investment Companies With Which Investment Counsel Firms Were Affiliated at Some Time from January 1, 1933 to June 30, 1936—Continued**

Name of counsel	Name of investment trust or company	Period of service
Standish, Racey & McKay, Inc.	Equitable Investment Corporation.....	6/20/35, date.
	Equitable Management Corporation.....	
Trading Associates.....	Clients' Funds of Trading Association.....	4/1/35, date.
Vance, Ray.....	Mutual American Securities Trust.....	1/1/33, date.
Van Strum & Towne.....	Century Trust Shares.....	4/11/32-10/11/33.
	Franklin County Association.....	4/1/32-4/1/33.
	Union Association.....	3/10/32-3/10/33.
	Southern New York Investment Corporation.	3/16/36, date.
	Paradise Syndicate.....	6/10/36, date.
Vance, Chapin & Co., Inc.....	Sovereign Investors, Inc.....	3/4/36-1/31/37.
Wellington Corporation.....	Wellington Fund, Inc.....	1/1/33, date.
Young & Koenig, Inc.....	Provident Fund, Union Oil Company of California.	3/-/34, date.
Young & Ottley, Inc.....	Administered Fund, Inc.....	4/1/31-9/1/36.

## APPENDIX C

### Employees of 362 Firms Replying to the Investment Counsel Questionnaire, Classified by Type of Organization,<sup>a</sup> June 30, 1936

Number of employees	Corporation		Sole proprietorship		Partnership		Department		Association		Foundation		Total	
	Number of firms	Number of employees	Number of firms	Number of employees	Number of firms	Number of employees	Number of firms	Number of employees	Number of firms	Number of employees	Number of firms	Number of employees	Number of firms	Number of employees
1.....			85	85									85	85
2.....	12	24	33	66	7	14							52	104
3.....	16	48	16	48	5	15	2	6					39	117
4.....	11	44	11	44	8	32							30	120
5.....	18	90	8	40	3	15	1	5					30	150
6.....	8	48	4	24	8	48	2	12					22	132
7.....	5	35	2	14	2	14							9	63
8.....	4	32	1	8	1	8							6	48
9.....	4	36	1	9	1	9	1	9					7	63
10.....	5	50	1	10			1	10					7	70
11-15.....	10	132			5	62	3	35					18	229
16-20.....	13	245			2	37	4	75	1	16			20	373
21-25.....	4	89											4	89
26-50.....	10	326			2	61	3	113			1	30	16	530
51-75.....	6	362			1	60							7	422
76-100.....	3	270					2	192					5	462
Over 100.....	2	251			1	186	2	434					5	871
Total.....	131	2,082	162	348	47	561	18	891	1	16	1	30	362	3,928

<sup>a</sup> The number of employees includes sole proprietors, partners, and officers.

## APPENDIX D

### Powers and Affiliations of 56 Investment Counsel Firms With Investment Company Clients

Name of service	Name of investment trust or company	Affiliated with trust *		Discretionary powers with service		Execution of orders		Confirmation of orders sent to—				Selection of broker by service	
		Yes	No	Yes	No	Yes	No	Client	Service	Client and service	Custodian	Yes	No
Administrative and Research Corporation (New York).	Maryland Fund, Inc.....	x			x		x	x					x
	Quarterly Income Shares, Inc.	x			x		x	x					x
	American Depositor Corporation.		x		x		x	x					x
Anderson, Allen & Co., Inc.	National Fund, Inc.....		x		x		x			x			x
Anderson & Cromwell, Inc.	Fidelity Fund, Inc.....	x			x		x	x					x
Axe, E. W. & Co., Inc.	American General Equities, Inc.		x		x		x	x					x
	Commonwealth Securities, Inc.		x		x		x	x					x
Boyd & Comey.....	Middle States Securities Corporation.	x			x		x			x			x
	Composite Trading Corporation.		x		x		x			x			x
Bull, W. R. Management Co., Inc.	Republic Investors Fund.	x			x		x	x					x
Cambridge Associates, Inc.	Plymouth Fund.....	x			x		x			x			x
	Keystone Custodian Funds.	x			x		x	x					x
Capital Management, Inc.	Market Street Investment Corporation.	x			x		x			x			x
Chase John P., Inc...	Amoskeag Company.....	x			x		x	x					x
Clafin, Warren & Co., Inc.	Clafin Warren Fund.....	x		x		x			x		x	x	
	Manages a commingled fund.	x		x		x			x				x
Dodge & Cox.....	Investors Management Trust.	x		x		x			x				x
Dominick & Dominick.	National Bond and Share Corporation.	x			x		x			x			x
Drumheller, Ehrlichman & White.	Equity Fund, Inc.....		x	x			x	x					x
	Shareholders Corporation.		x		x		x	x					x
Eaton & Howard, Inc.	Eaton & Howard Management Fund A-1.	x		x		x			x				x
	Eaton & Howard Management Fund B.	x		x		x			x				x

\* The investment counsel service may be affiliated with the investment trust or company either through officers or directors common to both, through stock ownership, or through sponsorship.

## Powers and Affiliations of 56 Investment Counsel Firms with Investment Company Clients—Continued

Name of service	Name of investment trust or company	Affiliated with trust		Discretionary powers with service		Execution of orders		Confirmation of order sent to—				Selection of broker by service		
		Yes	No	Yes	No	Yes	No	Client	Service	Client and service	Custodian	Yes	No	
Eaton & Howard, Inc. —Continued.	Eaton & Howard Management Fund F.	x		x		x			x				x	
	Eaton & Howard Accumulative Fund.	x		x		x			x				x	
Eddie-Davidson, Inc.	Cumberland Investment Co.	(b)			x		x	x						x
	Pilgrim Investors, Inc.	(b)			x		x	x						x
	Central National Corporation.	(b)			x		x	x						x
	Collateral Equities, Inc. Income Foundation Fund, Inc.	(b)			x		x	x						x
Ferguson, Marshall M.	Wm. C. Hay, Ltd.		x		x		x	x						x
Fiduciary Counsel, Inc.	Rapid Transit Investment Trust No. 2.		x		x		x	x						x
Gongall, S. W. & Co.	General Equities, Inc.	x		x		x		x						x
Grier, John C. & Co., Inc.	Capital Management Corporation.		x		x		x							x
Hart, William A.	William A. Hart Investors Group.	x		x		x		x						x
	William A. Hart Investors Group No. 1.	x		x		x		x						x
	William A. Hart Investors Group No. 2.	x		x		x		x						x
Haydock, Lamson and Co.	Supervised Investments, Inc.	x			x		x	x						x
	Investment Counsel Fund, Inc.	x			x		x	x						x
Heber-Fuger Research Corporation. Investment Counsel, Inc.	Mutual Investment Fund.	x		x		x			x		x	x		
	American Midland Co.	x			x		x			x				x
	Capital Management Corporation, Ltd.		x		x		x	x						x
	First Management Foundation.		x		x		x	x						x
	Investment Counsel Equity Fund, Inc.	x		x		x		x						x
	Investment Counsel Investment Fund, Inc.	x		x		x		x						x
	Second Management Foundation.	x			x		x							
Investment Research Corporation. Investors Management Co., Inc.	Investment Company of America, The.	x			x		x	x						x
	Investment Trust Fund A.	x		x		x			x					x
	Investment Trust Fund B. Investors Fund C, Inc.	x		x		x		x						x

<sup>b</sup> Affiliation exists, but the specific affiliated companies are not named.

Powers and Affiliations of 56 Investment Counsel Firms with Investment Company Clients—Continued

Name of service	Name of investment trust or company	Affiliated with trust		Discretionary powers with service		Execution of orders		Confirmation of order sent to—			Selection of broker by service		
		Yes	No	Yes	No	Yes	No	Client	Service	Client and service	Custodian	Yes	No
Langmuir, Dean, Inc.	Cumulative Trust Shares	---	x	---	x	---	x	x	---	---	---	---	x
	North American Trust Shares 1955.	---	x	---	x	---	x	x	---	---	---	---	x
	North American Trust Shares 1956.	---	x	---	x	---	x	x	---	---	---	---	x
	North American Trust Shares 1958.	---	x	---	x	---	x	x	---	---	---	---	x
	North American Bond Trust.	---	x	---	x	---	x	x	---	---	---	---	x
Loomis, Sayles & Co., Inc. (Connecticut). Loomis, Sayles & Co., Inc. (Massachusetts).	Group Securities, Inc.	---	x	---	x	---	x	---	---	x	---	---	x
	The Fairway Club	---	x	---	x	---	x	---	x	---	x	---	x
	Loomis, Sayles Mutual Fund, Inc.	x	---	x	---	---	x	x	---	---	x	x	---
	Loomis, Sayles Second Fund, Inc.	x	---	x	---	---	x	x	---	---	x	x	---
	Founders Securities Trust.	---	x	---	x	---	x	x	---	---	---	---	x
	United Investment Assurance Trust.	---	x	---	x	---	x	x	---	---	---	---	x
	Consolidated Bond and Share Corporation.	---	x	---	x	---	x	x	---	---	---	---	x
	Union Securities Corporation.	---	x	---	x	---	x	x	---	---	---	---	x
	Mutual Investment Trust.	---	x	---	x	---	x	x	---	---	---	---	x
	Equitable Trust Co.—Trust 100.	x	---	---	x	---	x	---	---	x	---	---	x
Loomis, Sayles & Co., Inc. (Michigan).	Mutual Income Foundation.	---	x	x	---	---	x	---	---	x	---	---	x
	The Century Fund	---	x	---	x	---	x	---	---	x	---	---	x
	Hueneme Investors Corporation, Ltd.	x	---	x	---	---	x	---	---	x	---	---	x
	Canadian Capital Corporation, Ltd.	x	---	---	x	---	---	---	---	---	---	---	x
Management Associates.	Incorporated Investors	x	---	---	x	---	x	x	---	---	---	---	x
Mackubin, Legg and Co.	Fundamental Group Corporation.	---	x	---	x	---	x	x	---	---	---	---	x
	Traders Corporation	---	x	---	x	---	x	x	---	---	---	---	x
Moody's Investors Service.	Diversified Investment Trust, Inc.	---	x	---	x	---	x	x	---	---	---	---	x
Mercer-Allied Corporation.	Mercer Fund	x	---	x	---	---	x	---	---	x	---	---	x
	Mercer Managed Accounts.	x	---	x	---	---	x	---	---	x	---	---	x
Meyer, George	Southeast Investment Co.	---	x	---	x	---	x	x	---	---	---	---	x
	San Antonio Investment Co.	---	x	---	x	---	x	x	---	---	---	---	x
Nichols, Wm. B. & Co., Inc.	Republic Investors Fund, Inc.	x	---	---	x	---	x	x	---	---	x	---	x
	Chain & General Equities, Inc.	x	---	---	x	---	x	---	---	x	---	---	x

**Powers and Affiliations of 56 Investment Counsel Firms with Investment Company Clients—Continued**

Name of service	Name of investment trust or company	Affiliated with trust		Discretionary powers with service		Execution of orders		Confirmation of orders sent to				Selection of broker by service		
		Yes	No	Yes	No	Yes	No	Client	Service	Client and service	Custodian	Yes	No	
		Nichols, Wm. B. & Co., Inc.—Cont.	Chain Store Investment Corporation.	x		x		x				x		
Reserve Management Corporation.	Brookmire Investors, Inc.		x	x		x				x				x
Russell, Berg & Co.	Weatherly Securities Co.		x	x		x	x							x
Scott, R. M., Jr.	R. B. C. Fund, Inc.	x		x		x	x			x				x
Scudder, Stevens & Clark.	Financial Security Fund, Inc.		x	x		x	x							x
	First Investment Counsel Corporation.	x		x	x	x							x	
	Second Investment Counsel Corporation.	x		x	x	x							x	
	Third Investment Counsel Corporation.	x		x	x	x							x	
	Diversified Securities Trust.		x	x		x				x				x
	Account No. 238B		x	x		x				x				x
	Account No. 1802		x	x		x				x				x
	Account No. 1649		x	x		x				x				x
Security Supervisors, Inc.	Selected American Shares, Inc.	x		x	x	x				x	x			
Shaw, A. Vere & Co.	Trusted Industry Shares.		x	x		x	x							x
	Affiliated Fund		x	x		x	x							x
	American Business Shares.		x	x		x	x							x
Silberling Research Corp., Ltd.	Pacific Seaboard Foundation, Inc.		x	x		x	x							x
Singer-Thompson Co	American Investment Co.	x		x						x				x
Sovereign Corporation.	Sovereign Investors, Inc.	x		x		x	x						x	
Standard Supervisory Service.	Independence Shares Corporation.		x	x		x	x							x
	Consumers Securities Co.		x	x		x	x							x
	Commerce Investment, Inc.		x	x		x	x							x
	Super-Corporations of America Depositors, Inc.		x	x		x	x							x
	Utilities Shares Corporation.		x	x		x	x							x
	Distributors Group, Inc.		x	x		x	x							x
	Selected Shares Corporation.		x	x		x	x							x
	Blue Ridge Corporation		x	x		x	x							x
Standish, Racey and McKay, Inc.	Equitable Investment Corporation.		x	x		x	x							x
Trading Associates, Inc.	Clients' Fund of Trading Associates, Inc.	x		x		x								x
Vance, Chapin & Co., Inc.	Sovereign Investors, Inc.		x	x		x	x							x
Vance, Ray	Mutual American Securities Trust.		x	x		x				x				x
Van Strum & Towne, Inc.	Century Trust Shares		x	x		x	x							x

Powers and Affiliations of 56 Investment Counsel Firms with Investment Company Clients—Continued

Name of service	Name of investment trust or company	Affiliated with trust		Discretionary powers with service		Execution of orders		Confirmation of orders sent to				Selection of broker by service	
		Yes	No	Yes	No	Yes	No	Client	Service	Client and service	Custodian	Yes	No
Van Strum & Towne, Inc.—Continued.	Franklin County Associates.	---	x	---	x	---	x	x	---	---	---	---	x
	Union Associates, Inc.	---	x	---	x	---	x	x	---	---	---	---	x
	Southern New York Investment Corporation.	---	x	---	x	---	x	x	---	---	---	---	x
	Paradise Syndicate, Inc.	---	x	---	x	---	x	x	---	---	---	---	x
Wellington Corporation.	Wellington Fund, Inc.	x	---	---	x	---	x	x	---	---	---	---	x
Young & Koenig, Inc.	Provident Fund, Union Oil Co. of California.	---	x	---	x	---	x	x	---	---	---	---	---
Young & Ottley, Inc.	Administered Fund, Inc. (in liquidation).	x	---	---	x	---	x	---	---	---	x	---	x
	Administered Fund Second, Inc.	x	---	---	x	---	x	---	---	---	x	---	x

# APPENDIX E

Advertisements of Investment Service in Six Selected Newspapers, Sunday, January 31, 1936

NEW YORK HERALD TRIBUNE

### ANYBODY CAN RECOGNIZE MARKET MOVEMENTS

...for a New Trend is Under Way

Stock Profits Are More for 'Retail' Stocks

Special Information Supplied to Address

...A. W. Wilson, Author, "Service" ...

### A LOW-PRICED STOCK GUIDE

...The Financial World ...

### FINANCIAL WORLD

...WHAT TO BUY NOW

...For Greater Safety in Selecting Stocks ...

...What Penetration Offer ...

#### DECISIVE

The Cash, Trade ...

...M. W. GARDNER, Inc.

#### STOCK

A Stock at \$2

...M. W. GARDNER, Inc.

#### AVIATION

...M. W. GARDNER, Inc.

#### The Best Investment

...M. W. GARDNER, Inc.

#### LOW PRICED STOCKS

...M. W. GARDNER, Inc.

#### 2 LOW PRICED STOCKS

...M. W. GARDNER, Inc.

#### Bargain Steel Stock under \$20

...M. W. GARDNER, Inc.

#### AND A CHEAP STOCK FOR LARGE PROFIT

...M. W. GARDNER, Inc.

#### NEW DECLINE AHEAD!

...M. W. GARDNER, Inc.

Advertisements of Investment Service in Six Selected Newspapers, Sunday, January 31, 1936—Continued

NEW YORK TIMES

A LOW PRICED STOCK GUIDE

Some low priced stocks are attractive, others only appear to be. The February FINANCIAL WORLD contains a guide...

3 BALANCED INVESTMENT PROGRAMS

Programs for investment \$2,000, \$1,000 and \$500.00 will be sent to each reader...

What is the reason why \$2,000, \$1,000 and \$500.00 will be sent to each reader...

SOMETHING FOR EVERY INVESTOR TO THINK ABOUT

There are many things to think about in the stock market...

There are many things to think about in the stock market...

SELLING STOCKS TOO SOON

There are many things to think about in the stock market...

There are many things to think about in the stock market...

OUR VIEWS ON THE OUTLOOK

There are many things to think about in the stock market...

There are many things to think about in the stock market...

There are many things to think about in the stock market...

There are many things to think about in the stock market...

There are many things to think about in the stock market...

There are many things to think about in the stock market...

There are many things to think about in the stock market...

There are many things to think about in the stock market...

There are many things to think about in the stock market...

There are many things to think about in the stock market...

There are many things to think about in the stock market...



A New Magazine defines its Aims and Policies

Continued on inside...

The Financial Observer

Financial Observer is a new magazine...

Financial Observer is a new magazine...

Financial Observer is a new magazine...

Financial Observer is a new magazine...

Financial Observer is a new magazine...

Financial Observer is a new magazine...

Financial Observer is a new magazine...

Financial Observer is a new magazine...

Financial Observer is a new magazine...

Financial Observer is a new magazine...

Financial Observer is a new magazine...

Financial Observer is a new magazine...

Financial Observer is a new magazine...

Financial Observer is a new magazine...

Financial Observer is a new magazine...

Financial Observer is a new magazine...

Financial Observer is a new magazine...

Financial Observer is a new magazine...

135 Market Leaders Appraised

The Magazine of Wall Street

COURSE OF STOCK MARKET INSTRUCTION

What About Copper? MAGMA COPPER ANACONDA

VARIETY CHAIN STORES

DECISIVE PRICES

AVIATION!

FINANCIAL WORLD

Advertisements of Investment Service in Six Selected Newspapers, Sunday, January 31, 1936—Continued

**CLEVELAND PLAIN DEALER**

**For Greater Safety  
in Selecting Stocks**

*and for FREE copies of*

**"ENGINEER BRIDGES  
WALL STREET"**

**New Yardstick for Security Values**

**What Constitutes Offer the Best  
Investment Opportunities**

**A LOW PRICED  
STOCK GUIDE**

**FINANCIAL WORLD**

**WHAT  
TO BUY  
NOW**

**CONVERT FINANCE**

**ARE YOU  
A SAFE STOCK  
FOR LARGE PROFITS**

**CONVERT FINANCE**

**DETROIT FREE PRESS**

**WHAT  
TO BUY  
NOW**

**CONVERT FINANCE**

**ARE YOU  
A SAFE STOCK  
FOR LARGE PROFITS**

**CONVERT FINANCE**

**SUNDAY STAR, WASHINGTON, D.C.**

**A LOW PRICED  
STOCK GUIDE**

**FINANCIAL WORLD**

**NEW  
DECLINE  
AHEAD?**

**CONVERT FINANCE**

**THE SPOKESMAN REVIEW, SPOKANE WASH.**

**A LOW PRICED  
STOCK GUIDE**

**FINANCIAL WORLD**

**ARE YOU  
A SAFE STOCK  
FOR LARGE PROFITS**

**CONVERT FINANCE**

## APPENDIX F

### State Statutes with Respect to Investment Counselors

#### CALIFORNIA

##### *Definition:*

The words "investment counsel" as used in this act shall include every person or company other than a broker, who in this state, for compensation, engages in the business of advising others either directly or through publications or writings as to the value of securities or as to the advisability of investing in or purchasing of securities, and every person other than a broker or certified public accountant who issues or promulgates analyses or issues reports concerning securities; provided, however, that said term shall not be construed to include any licensed, practicing attorney who renders or performs any of said services in connection with the practice of law.

##### *Registration of the Investment Counselor:*

No person or company, other than a broker, shall act as an investment counsel until such person or company shall have first applied for and secured from the commissioner a certificate then in effect authorizing such person or company so to do. Every such certificate shall expire on the thirty-first day of December next after its issuance unless sooner suspended or revoked.

To secure such certificate, the applicant shall make and file in the office of the commissioner an application therefor in writing, verified by or in behalf of the applicant. In such application, the applicant shall set forth, in addition to such other information as may be required by the commissioner:

- (1) The name, residence, and post-office address of the applicant;
- (2) If a corporation, association, joint stock company, or partnership, the name, residence, and post-office address of each of its managing officers, agents or partners, as the case may be;
- (3) A succinct statement of facts showing that the applicant and each of its managing officers and agents or partners, as the case may be, is of good business repute and possess the experience and education which would qualify him to act as investment counsel; and
- (4) The general plan, character and method in which applicant proposes to conduct its business.

If the applicant is a corporation or an association organized under the laws of any other state, territory or government, it shall file with its application a copy of its articles of incorporation or association, together with a certificate executed by the proper officer of such state, territory or government, not more than thirty days before the filing of such application, showing that such applicant is authorized to transact business in said state, territory or government, and also in such form as the commissioner may prescribe its written instrument irrevocably appointing the commissioner and his successor in office its true and lawful attorney upon whom all process in any action or proceeding against it, arising out of or founded upon the fraud of such applicant in the conduct of its business as investment counsel, may be served with the same effect as if said corporation or association were organized or created under the laws of this state and had been lawfully served with process therein.

The commissioner shall examine such application for an investment counsel's certificate and shall make such further investigation of the applicant and its affairs as he shall deem advisable. If from such examination the commissioner shall be satisfied:

(a) That the applicant and its officers, directors, and members, if any, are of good business repute and in the opinion of the commissioner qualified by experience and education to conduct an investment counsel business;

(b) That neither the applicant nor its officers, directors, or members, if any, have violated any of the provisions of this act or of chapter 226 of the statutes of 1923; and

(c) That neither the applicant nor its officers, directors, or members, if any, have engaged or are about to engage in any fraudulent transaction, he shall issue such certificate. Otherwise, he shall deny the application and notify the applicant of his decision; provided, however, that if the only ground for such denial falls under subdivision (b) or (c) of this section, the commissioner may, in his discretion, waive such ground for denial and issue a certificate to the applicant if satisfied that in the particular case the application of either subdivision is purely technical and does not substantially affect applicant's honesty and integrity, and that the inability of applicant to meet either of these requirements will in no way interfere with a proper performance by the applicant of his duties as an investment counsel.

The commissioner may at any time temporarily suspend any investment counsel's certificate issued by him if he finds, after a hearing upon such notice as he, in his discretion, shall deem reasonable, that there exists any of the grounds hereinabove enumerated for the denial of an application for an investment counsel's certificate. If, at the expiration of thirty days from the date of such suspension, the certificate so suspended has not expired or has not been revoked, as hereinafter provided, it shall be deemed reinstated. The commissioner must revoke any investment counsel's certificate, if, after hearing upon notice, he shall find the existence of any of the grounds, hereinabove enumerated, for the denial of an application for an investment counsel's certificate; provided, however, that such revocation shall be discretionary with the commissioner if the only ground for such revocation falls under subdivision (b) or (c) of this section and he is satisfied that in the particular case the application of either subdivision is purely technical and does not substantially affect applicant's honesty and integrity, and that the inability of applicant to meet either of these requirements will in no way interfere with a proper performance by the applicant of his duties as an investment counsel. (Deering, General Laws of California (1937), Vol. I, Act 3814, S. 2 (12), S. 9.)

#### CONNECTICUT

##### *Definition:*

The term "investment counsel" shall include any person, who, in this state, shall engage in the business of advising others, either directly or by mail or through publications or writings, as to the value of specific securities or as to the advisability of investing in purchasing or selling such securities, for a compensation or commission or at a profit, but shall not include any national banking association or federal savings and loan association located in this state or any state bank and trust company, industrial bank, savings bank, or building and loan association under the supervision of the bank commissioner, nor any person registered as a "broker" under the provisions of chapter 212 of the general statutes, as amended.

*Registration of the investment counselor:*

Each registration of an investment counsel shall set forth, in addition to such other information as may be required by the commissioner, the following: (a) The name, residence and post office address of the registrant; (b) the form of organization under which registrant conducts business; (c) if such investment counsel be a corporation, an association, a joint stock company or a partnership, the name, residence and post office address of each of its directors, managing officers, agents or partners, as the case may be together with such information in respect to the business record or experience of each such direction, officer agent or partner and such other information as may be required by the commissioner; (d) the general plan, character and method by which the registrant proposes to conduct his business and the form of business he is engaged in or is transacting; (e) a statement as to whether such investment counsel or, if such investment counsel be other than an individual, whether any partner, principal, officer, director or branch manager thereof has been convicted by a court of competent jurisdiction in any state or country of any criminal offense in connection with any transaction involving the sale or offer for sale of securities; or has been enjoined or restrained by order of any court, commission or public official from selling or offering for sale securities in any state or country or continuing any practices in connection therewith, or been arrested or prosecuted for any violation of law involving securities in this or any other state, or been convicted of any criminal offense of any nature or sentenced to imprisonment in a jail or other penal institution, or, having applied for registration or having been registered or licensed as a dealer, broker or salesman of securities in any state or country, has had such registration or license refused, suspended, canceled or withdrawn, either by request or otherwise. If such investment counsel or any such partner, principal, officer, director or branch manager has ever been convicted, restrained, enjoined, arrested or prosecuted, or has had any registration or license refused, suspended or canceled, or withdrawn, by request or otherwise, such investment counsel's registration shall have incorporated therein complete details thereof.

The registration of an investment counsel shall be sworn to before a person qualified to administer oaths by the person making the same and shall state that the alleged facts therein contained are true of his own knowledge and, if such person be a partnership, such oath shall be made by a member thereof and, if such person be a corporation or any other form of an association, such oath shall be made by an executive officer thereof. Any person who shall make a false statement in such registration or in any sworn statement or affidavit attached thereto shall be subject to the penalties prescribed for violation of the provisions of section 1533c of the 1935 supplement to the general statutes and of the provisions of any other section of the general statutes violated thereby. Said commissioner may adopt forms to be used by persons registering as investment counsel as herein required, and shall furnish such forms to any person requesting the same, without charge.

Upon receipt of the registration of an investment counsel, accompanied by the fee required by this act, and upon compliance with the provisions of this act, the commissioner may make such further investigation of the registrant and his affairs as he shall deem necessary or advisable. Upon the completion of such examination or investigation, the commissioner shall, subject to his authority to refuse such registration as hereinafter provided, enter the name of such person on a register of investment counsel to be kept in his office, properly indexed and open to the public, provided no registration shall be so entered within five years after the date of a conviction of any criminal offense

in connection with any transaction involving securities, or within five years after the date of the issuance of any permanent injunction or restraining order in connection with securities, or within five years after the cancellation of any license or registration as broker, dealer or salesman, in this or any other state, as a result of alleged fraudulent transactions on the part of any such registrant, or, if the registrant be a partnership or a corporation or any other form of an association, on the part of any partner, principal, officer or director therefor. The commissioner is authorized to refuse to accept the registration of an investment counsel for any reason which is cause for the cancellation of such registration, or whenever the commissioner shall have reason to believe that such refusal is necessary to protect the public against fraud. The commissioner shall not issue any certificate or written evidence to any person registered as an investment counsel. Each person who has registered as an investment counsel, shall immediately file with the commissioner in writing any change of residence, mailing address, or place of doing business, or any other changes in such registration that may, from time to time, occur.

\* \* \* \* \*

If the commissioner shall be satisfied, either after an investigation or otherwise, that any person registered as an investment counsel (a) has violated any of the provisions of this act; (b) has violated any of the provisions of said section 1533c; (c) has rendered advice of a fraudulent nature, with intent to perpetrate a fraud in connection with or relating to the purchase, sale or continued investment in any security; (d) is in any way dishonest or is conducting or has conducted his business as investment counsel in a fraudulent manner or is about to engage in any fraudulent transaction; (e) has failed or refused to file such information with respect to the business or the facilities of the organization of such investment counsel as has been required by the commission, or (f) has made a material false statement in the registration, the commissioner, upon notice to such person and affording him an opportunity to be heard, may cancel such person's registration. Notice from the commissioner sent by mail in a sealed envelope, postage prepaid, to such person at his principal address, shall be deemed sufficient notice to such person. The commissioner shall not cancel the registration of any investment counsel except upon such notice to such person given as herein provided.

\* \* \* \* \*

Each person registered as investment counsel shall pay to the commissioner for the use of the state an annual fee of fifty dollars. Any registration, unless sooner revoked, shall expire at midnight on June thirtieth next succeeding the effective date of such registration. Such fees shall be paid in advance and no person shall be deemed to be registered as an investment counsel unless he shall have paid the fee herein provided for. In addition to such annual fee, each person registered as an investment counsel shall pay the actual cost, as determined by the commissioner, of any investigation or examination made of such investment counsel's affairs under the provisions of said section 1537c, as amended, or any provision of this act, by or on behalf of the commissioner. (Connecticut, General Statutes (Supp. 1937) Ch. 212, Sec. 7470.)

#### MICHIGAN

Hereafter it shall be unlawful for any person to engage in the business of dealing in securities whether exempt from or included in the provision of such decision of this act without first procuring a license and continuing to be

licensed therefore, as hereinafter provided, \* \* \*. For the purpose of this act, any person who for any consideration acts as an investment counselor and advises the purchase and sale of securities, shall be deemed a "dealer" \* \* \*. (Michigan, Public Acts of 1935, Act 37, Section 21.)

#### NEW HAMPSHIRE

Under this chapter dealer shall mean any individual, partnership, association, or corporation engaging in the selling or offering for sale of securities, except through the medium of, or as agent or salesman of, a registered dealer. But sales made by or in behalf of a resident of this state in the ordinary course of bona fide personal investment of his personal holdings, or change of such investments, shall not constitute such resident, or the agent of such resident, if not otherwise engaged either permanently or temporarily in selling securities, a dealer therein. A nonresident desiring to make such sale of his personal investments must first obtain the approval of the insurance commissioner.

Securities shall include all classes of stocks and shares, bonds, debentures, evidences of indebtedness and certificates of participation, certificates of warehousemen, rights and interests in land from which petroleum or minerals are, or are intended to be, produced, ship shares, and investment contracts in the form of a bill of sale, or any similar device, and contracts of services or advice relating to investments, or membership in organizations or associations purporting to render such service or advice.

\* \* \* \* \*

No dealer in securities shall, in this state, by direct solicitation or through agents or salesmen, or by letter, circular, or advertising sell, offer for sale, or invite offers for or inquiries about securities, unless registered as a dealer under the provisions of this chapter.

Any dealer desiring registration shall file written application therefor with the insurance commissioner, accompanied by a registration fee of twenty-five dollars, the fee to be returned if the application is not granted.

The application shall be in such forms as may be prescribed by the commissioner, and shall state in writing the principal place of business, the name or style of doing business, and the address of the dealer, the names, residences and business addresses of all persons interested in the business as principals, officers, directors, or managing agents, specifying as to each his capacity and title, and the length of time during which the dealer has been engaged in the business.

The commissioner may examine or cause to be examined at the expense of the applicant or dealer the affairs and condition of a registered dealer in securities or an applicant who desires to become registered as such dealer. An applicant shall furnish in addition to the information required in the application such other documentary evidence of condition and responsibility as the commissioner may require, including without limiting the generality of the foregoing, authentic copies of articles of incorporation, partnership agreements, by-laws, balance sheets, and earning statements. By December first of each year every licensed dealer in securities shall furnish under the oath of such responsible member or members of the dealer's organization as the commissioner may require an annual financial statement for the period ending June thirtieth of each year, exhibiting with reasonable detail, assets, liabilities, profit, and loss of the dealer for a period of one year upon a form to be furnished by the commissioner.

\* \* \* \* \*

The application filed with the Commissioner for registration as a dealer shall be held for investigation for a period of four weeks from the date when the application reaches the commissioner.

Upon being satisfied of the applicant's good repute, financial standing, reliability, and right to public confidence, the commissioner may register the applicant as a dealer.

\* \* \* \* \*

The commissioner may, unless furnished with satisfactory evidence as provided in the preceding sections, or in case of violation of any provision of this chapter, or in case of dishonest, deceitful, or fraudulent conduct on the part of any dealer in connection with the carrying on of the business, revoke such dealer's registration, and may, having reasonable cause to believe that such facts exist, suspend such dealer's registration until satisfied to the contrary. (New Hampshire, Public Laws, Ch. 284, Secs. 2, 6.)

### OKLAHOMA

*(Registration of Dealers and Salesmen, Requirements, Bonds, Fees.)* No dealer or salesman shall engage in business in this state as such dealer or salesman or sell any securities, including securities exempted in section 4, of this act, except in transactions exempt under section 5, of this act, unless he has registered as a dealer or salesman in the office of the commissioner pursuant to the provisions of this section. No person, other than a registered dealer, shall in this state, for a commission or compensation, act as investment counsel or engage in the business of advising others directly or through publications or writings as to the value of securities or as to the advisability of investing in or purchasing securities; provided, however, that this provision shall not be construed to include any licensed practicing attorney who renders or performs any of said services in connection with the practice of law or to any certified public accountant who issues or promulgates analysis or issues reports concerning securities.

Provided, that nothing in this act shall require such registration, for the sale of insurance, by agents, who are required to be licensed for such purpose by the commissioner of insurance.

An application for registration in writing shall be filed in the office of the commission in such form as the commissioner may prescribe, duly verified by oath, which shall state the principal office of the applicant, wherever situated, and the location of the principal office and all branch offices in this state, if any, the name or style of doing business, the names, residence and business address of all persons interested in the business as principals, copartners, officers, and directors, specifying as to each, his capacity and title, the general plan and character of business and the length of time the dealer or salesman has been engaged in business. The commissioner may also require such additional information as to applicant's previous history, record, and association, as he may deem it necessary to establish the good repute in business of the applicant.

There shall be filed with such application an irrevocable written consent to the service of process upon the commissioner in actions against such dealer in manner and form as hereinbefore provided in section 9.

If the commissioner shall find that the applicant is of good repute and has complied with the provisions of this section, including the payment of the fee hereinafter provided, he shall register such applicant as a dealer upon his filing a bond in the sum of five thousand (\$5,000.00) dollars, running to the state of Oklahoma, conditioned that the dealer shall properly account for any

moneys or securities received from or belonging to another and shall pay, satisfy, and discharge any judgment or decree that may be rendered against such dealer in a court of competent jurisdiction in a suit or action brought by a purchaser of securities against such dealer in which it shall be found or adjudged that such securities were sold by the dealer in violation of this act or that such purchaser was defrauded in the sale of such securities. Such bond shall be executed as surety by a surety company authorized to do business in this state; or such bond may be a personal bond, provided that the dealer shall keep on deposit with the commissioner, as surety, securities exempt under subdivisions (a), (b), or (e) of section 4 of this act of the marketable value of at least the amount of such bond, which said securities shall be returned to such dealer when the liability under such bond has terminated or been satisfied. One recovery upon such bond shall not void same, but it shall be subject to successive suits and recoveries until the penalty thereof is exhausted; provided, that the aggregate liability of the surety on such bond for all such suits and recoveries shall not exceed the sum of five thousand (\$5,000.00) dollars; and, provided further, that no action shall be brought for recovery under the provisions of this act after two years from the date of the act or transaction in violation thereof. Upon suits being filed to recover damage from a dealer who has executed a bond, with a surety company as surety thereon, in excess of the amount of any such bond, the commissioner, by written notice served upon such dealer, may require such dealer to give a new bond, and if the same is not given within twenty (20) days after such service the commissioner may revoke the registration of such dealer. (Oklahoma Statutes, Title 71, Ch. 5, S. 41.)

#### RHODE ISLAND

The term "broker" shall mean and include every person, other than a salesman, who in this state engages, either for all or part of his time, directly or through an agent, in the business of selling any security, whether issued by himself or another person, or in the business of purchasing or otherwise acquiring such securities for another with the purpose of reselling them, or of offering them for sale to the public, for a commission or at a profit, or for any consideration acts as an investment counselor and advises the purchase and sale of such securities.

No person shall sell securities as a broker or salesman respectively within the state unless he is registered as such with the chief of division of banking and insurance. Said chief shall not register any person as a broker or salesman unless said chief shall determine that the character of such person is such that he will conduct the business of broker or salesman without fraud. If demanded by said chief, any person desiring to register as a broker or salesman shall furnish the names of three responsible citizens of Rhode Island who can vouch as to the character of the applicant. If it appears to said chief that any person registered as a broker or salesman is violating any of the provisions of this chapter or is conducting his business as broker or salesman in a fraudulent manner or is violating any of the regulations of said chief, said chief, upon notice to such person, shall cancel such person's registration.

Upon the finding by said chief that a person may act as a broker or salesman within the state, the name of such broker or salesman shall be entered in the register of brokers or salesmen; but the finding of said chief that a person shall not act as a broker or salesman, and that his name shall not be entered in or should be cancelled on the register shall be in the form of an

order to that effect. Where the registration of a person as salesman as broker is cancelled for cause said chief shall so note upon the register.

Every person applying for registration as a broker or salesman or filing any lists or information or making application to said chief to sell securities, shall file with said chief his permanent mailing address and such changes thereof as may thereafter from time to time occur. Notice from said chief sent by mail in a sealed envelope, postage prepaid, to such person at such address shall be deemed sufficient notice to such person. Said chief shall not suspend or forbid the sale of securities or cancel the registration of any broker or salesman except upon notice to such person given as aforesaid.

Every such broker who is not a resident of this state, shall, at the time of filing his application for registration, also file a written instrument appointing said chief in his name of office and his successor in office to be the true and lawful attorney of such nonresident broker in and for this state upon whom all lawful process in any action or legal proceeding against said nonresident broker may be served with the same effect as if said nonresident broker were a resident of this state. Said power of attorney shall stipulate and agree on the part of said nonresident broker that any lawful process against said nonresident broker which is served on said attorney shall be of the same legal force and validity as if served on said nonresident broker, and that the authority shall continue in force so long as any liability remains outstanding against said nonresident broker in this state. A copy of such appointment, duly certified by said chief, shall be received in evidence in all courts in this state. Service from such attorney shall be deemed sufficient service upon the principal. Whenever the said chief shall have been duly appointed attorney to receive service of all lawful process for any such broker, said chief shall forthwith forward by mail, postage prepaid, a copy of every process served upon said chief to said broker at his last known post office address. For each copy of process said chief shall collect to and for the use of the state, the sum of two dollars, which shall be paid by the plaintiff or moving party at the time of such service, to be recovered by him as part of his taxable costs if he succeeds in his suit or proceeding. The term process, when used herein includes any writ, summons, petition or order whereby any suit, action or proceeding shall be commenced or any other process original or mesne in connection therewith. (Public Laws of Rhode Island, 1935-1936, Ch. 2339, S 5, 6.)

## APPENDIX G

### PURPOSE AND OBJECTIVES, INVESTMENT COUNSEL ASSOCIATION OF AMERICA AND INVESTMENT COUNSEL ASSOCIATION OF SOUTHERN CALIFORNIA

#### PURPOSES AND OBJECTIVES, INVESTMENT COUNSEL ASSOCIATION OF AMERICA

The Investment Counsel Association of America is a voluntary non-profit association. Its objects are: (a) to promote high standards of integrity and public responsibility in the profession of investment counsel; (b) to maintain a "Code of Professional Practice" as a guide to the profession; (c) to promote strict adherence to the Code by all members of the Association; (d) to provide for effective discipline of all members of the Association; and (e) to aid the profession of investment counsel, its clients, and investors generally in such matters and in such manner as the Investment Counsel Association of America may from time to time determine.

#### Code of Professional Practice Adopted by the Investment Counsel Association of America

Whereas, the profession of investment counsel came into being to meet a growing need for a type of competent and unprejudiced services not otherwise rendered; and

Whereas, experience in the rendering of investment counsel services has established certain basic principles of responsibility and conduct requisite to sound professional practice; and

Whereas, these basic principles must be accepted and maintained if the investing public is to be assured of the standard of investment counsel services to which it is entitled;

Now, therefore, we, the subscribers to this Code of Professional Practice,

Do declare the following principles to guide all those who profess to render investment counsel services;

Do pledge ourselves and our organizations to adhere to these principles; and

Do agree, through proper Articles of Association, to enforce such adherence by all subscribing members:

#### I. DEFINITION AND LIMITATION OF FUNCTIONS

It is the function of the profession of investment counsel to render to clients on a personal basis competent, unbiased and continuous advice regarding the sound management of their investments. An investment counsel firm should devote its time exclusively to the performance of this function and services incidental thereto; it should not engage in the business of security merchandising, brokerage, banking, the publication of financial services, or acting as custodian of the securities or funds of clients; and neither the firm nor any

partner, executive or employee thereof should directly or indirectly engage in any activity which may jeopardize the firm's ability to render unbiased investment advice.

## II. COMPETENCE AND RESPONSIBILITY

To serve its clientele effectively and continuously an investment counsel firm should include at least two responsible partners or principal executives of demonstrated investment ability and unquestioned integrity; it should be supported by a competent staff of experienced assistants; and it should maintain adequate capital and reserves at all times.

## III. COMPENSATION FOR SERVICES

Compensation of an investment counsel firm should consist exclusively of direct charges to clients for services rendered, and should not be contingent upon profits, upon the number or value of transactions executed, nor upon the maintenance of any minimum income.

## IV. SOLICITATION OF NEW CLIENTS

The methods employed, and all written or oral statements made, by an investment counsel firm in securing new clients should conform to standards consistent with the professional nature of investment counsel services.

## V. CONFIDENTIAL RELATIONSHIP

All information concerning the security holdings and financial circumstances of clients should be held in strict confidence by the firm and its personnel.

## PURPOSE AND OBJECTIVES, INVESTMENT COUNSEL ASSOCIATION OF SOUTHERN CALIFORNIA

The enunciated object of the Investment Counsel Association of Southern California is to "assist in the development and perfection of the work of the investment counselor; to promote fitting and appropriate ethical standards, methods and procedure and conduct of business; to encourage economic financial and investment research; all to the end that the quality of services to be rendered by investment counselors may measure up to the high standards which the public has a right to expect and to demand."

## Code of Ethics and Standard of Practice

### CANONS

#### *Section 1.*

(a) **Professional Character of Work:** The Investment Counselor should ever be mindful of the professional character of his work, and with dignity, conduct his every act in a manner consistent therewith. Through profound study and analytical research, he should strive to achieve proficiency in each of its many phases, and aim to serve with honor, distinction, loyalty, and fairness, both the public and his fellow members.

(b) **Disinterested Position:** He should continuously occupy an impartial and disinterested position, as free as humanly possible from the subtle influence of prejudice, conscious or unconscious; he should scrupulously avoid any affiliation, or any act, which subjects his position to challenge in this respect.

(c) **Basis of Fee:** His remuneration should be a reasonable fee, chargeable directly to his client, and he should accept no compensation of any character whatsoever from any other source.

In determining the amount of the fee, it is proper to consider: (1) the time and labor required, (2) the nature and complexity of the problem, (3) the responsibility assumed and amount of value involved, and (4) the value of the services to the client.

He should not share in profits accruing to his clients by virtue of securities sold, bought, or held, by his client; nor should his fee be determined or affected by the number, or value, of transactions which may take place over a future period, whether the time be specifically stated or indefinite. In both of these cases, his position as a disinterested adviser is subject to serious challenge.

Whenever possible and expeditious, fees should be predetermined, fixed and mutually agreed upon in advance of his employment.

(d) **Protection of Clients' Purchasing Power:** He should ever maintain as his primary objective, protection of principal and income. He may properly regard enhancement of both principal and income, as a worthy secondary objective. But he should ever be on his guard lest this secondary objective become a primary one.

(e) **Unwarranted Expectations:** He should never indulge in creating exaggerated or unwarranted expectations of any character. The future is never certain; the most competent opinion and soundest judgment are ever subject to the vicissitudes of new and unforeseen factors.

(f) **Confidential Relations:** He should scrupulously preserve, guard and respect the confidences of his client, not only during his employment but also thereafter. His client should reciprocate in equal measure.

## ADMONITIONS

### *Section 2.*

(a) **Advancing Claims to a Profession:** This field of endeavor is essentially of a professional character; to what degree it will be entitled to be so regarded, will depend upon the manner in which it is conducted. Very manifestly, those members who make a profound study of economics, the underlying science, and attain proficiency in the various departments which are vitally and intimately connected with their every day problems, and who render competent, scholarly service upon high ethical standards, will further the claims to a profession; those who act otherwise will retard. The ultimate decision rests in their hands.

(b) **Publicity, Advertising, and Soliciting:** A well-merited reputation for ability, integrity, and fidelity to trust, is the most worthy and effective advertisement possible, for both young and old; this cannot be forced, but is the resultant of character and conduct.

The professional attitude toward solicitation and advertising is too well known to require specific admonition. Let each determine his own procedure with the full knowledge that by his acts shall he be known.

Due to the recent origin of this field of endeavor, one clarifying statement appears pertinent. Educational publicity, conducted with dignity, is constructive; and conversely, undignified advertising, or that which holds forth unwarranted claims, either directly or by inference, is destructive.

(c) **Service Available to All:** The investment counselor should provide that his service be available to those of extremely modest means. This field of en-

deavor cannot fulfill its full obligations to society, if it is available only to the comparatively rich. All investment counselors worthy of the name should be willing to devote a reasonable portion of their time to such cases, irrespective of whether the remuneration is adequate.

(d) **General Qualifications:** The investment counselor, to qualify as such, should possess a sound knowledge of accountancy, statistics, corporation finance, money and banking, and economics; and he should have a wide experience in investment analysis and security markets. He should strive to excel as an expert analyst, able to distinguish that which is significant from that which is not, and capable of drawing conclusions which should prove as trustworthy as the circumstances and available data permit.

(e) **Promiscuous Expression of Opinion:** The investment counselor should refrain from expression of definite opinion in all cases wherein he is not qualified, by virtue of insufficient knowledge or available data. If circumstances permit, or render it advisable, he may express either a tentative opinion, or a preference; such distinctions should be made clear to his client.

(f) **Comprehensive Reports:** The investment counselor should be qualified, if employed so to do, to prepare and submit a comprehensive report, logically supporting any definite expression of opinion he may voice.

(g) **Circumstances Surrounding Client:** The investment counselor should endeavor to ascertain all circumstances surrounding his client; the more complete this information, the more efficiently can he serve. Of especial importance among such factors, is the temperament of his client; a characteristic frequently not fully appreciated even by the client himself. Some individuals, though courageous when prices move favorably, become profoundly disturbed when experiencing severe adversity; always a possibility. Such individuals are not fitted temperamentally to hold securities which are more susceptible to wide price fluctuations, and rarely, if ever, should do so. Wisdom dictates that such situations, distressing to both adviser and client should be carefully avoided.

(h) **Select Securities Appropriate to Client:** The investment counselor should select and recommend only such securities as, in his best judgment, are suitable and appropriate to the requirements of each individual case; his client's desires are entitled to careful consideration. But he is unwise to become a party to an investment policy which he is convinced is unsound in principle.

(i) **Short-term Price Fluctuations; the Trader:** Through competent and intensive research, long-term price trends may be forecast with a reasonable degree of accuracy; never with precision. It still remains to be demonstrated that short-term price fluctuations can be forecast with any high degree of sustained success; the preponderance of evidence still favors the contrary.

Wisdom dictates that the investment counselor avoid all endeavor to forecast price fluctuations of a short-term character. As a trader is primarily interested in short-term price movement, it would logically follow that the investment counselor cannot supply that which the trader seeks; connections of this character, sooner or later, are very likely to prove unsatisfactory to both parties, and react to the discredit of this field of endeavor.

For these reasons, the investment counselor would pursue the course of wisdom by declining to become a party to such trading transactions; certainly he should not encourage them.

(j) **Outright Purchases; Trading Policy; Marginal Speculation:** Because of foregoing and other reasons, the investment counselor would act wisely to pursue the following practices: (1) to recommend securities only for outright purchase,

and primarily for investment; (2) to advise against a short-term trading policy; and, (3) to refrain from advising clients upon marginal trading transactions which involve carrying securities upon borrowed funds.

(k) *Marginal Trading on His Own Account*: Very manifestly, he who does not keep his own financial house in order, is not qualified to advise others with respect to theirs.

The investment counselor, for this good reason, should always maintain a sound position in the management of his own affairs. The practice of carrying securities upon borrowed funds, either directly or indirectly, tends to subject both his financial position and judgment to impairment. Hence this practice is condemned for the investment counselor. However, it is not intended to prohibit the borrowing of funds to meet legitimate or exceptional circumstances which may arise; such exceptions should be confined to very moderate proportions.

(l) *Exchanges; Short-Term Price Fluctuations Not a Criterion*: In recommending exchanges of securities, the investment counselor should forewarn his client that while prices ultimately tend to conform to true investment value, this is not necessarily true over short-term periods. Hence an exchange based upon the soundest of judgment, may appear to have been unwise, if judged by subsequent price movements, especially over a short-term period. Time alone will prove the quality of judgment.

When such inevitable eventualities occur, this procedure will permit a better understanding and tend to avoid situations which are distressing to both client and adviser.

(m) *Large Risks*: Very manifestly, the assumption of large risks is frequently necessary and concomitant to economic progress. Such risks should be assumed only by those who desire, and are fitted, both temperamentally and financially, to assume them. Wisdom dictates that the investment counselor should not become a party to the assumption of such risks by those who, in his judgment, do not meet these requirements.

(n) *Discretionary Accounts*: Advising upon investment problems necessarily involves heavy and grave responsibilities; only the thoughtful advise without the prerequisite qualifications. These responsibilities are sufficiently heavy when the client approves an action in advance; but are infinitely increased if action is taken without the client's previous knowledge and approval.

Wisdom dictates that the investment counselor should decline to accept discretionary accounts. Notwithstanding the soundness of this principle, exigencies occasionally arise which render it impossible, inadvisable, or inexpedient to submit recommendations for approval prior to taking action. When circumstances clearly warrant, and if permitted by law, the investment counselor may, at his discretion, accept such undertakings; to decline to serve might work an injustice to his client. But he should accept with extreme caution and reluctance.

(o) *Opinions Uncolored by Client's Desires*: Among the correlated problems, the investment counselor may be called upon to express an opinion as to the fair market value of securities of a close corporation, for inheritance tax or other purposes; or to serve as an expert witness. When acting in such capacity, he should scrupulously avoid permitting the desires of his client to influence, or color, either his opinions or his statements; both should represent his best and well-considered judgment, irrespective of his client's position. He should advise his client in advance of employment, as to his attitude in this respect.

(p) *Client's Banking or Investment Connections*: The investment counselor should encourage his clients to select their own banking and investment con-

nections; he should never disturb existing connections unless for good and sufficient reasons, carefully considered. He should never undertake custodianship of securities, nor act as broker, or dealer in behalf of his client.

When circumstances render it impossible or inexpedient for his client to place or modify orders directly with his broker or investment dealer, the investment counselor may, if permitted by law, transmit his client's instructions or desires to such broker or dealer, in his client's name and behalf. In so doing, he is not acting as a broker, dealer, or security agent, but merely, for accommodation, performing acts which his client could do, and would do, were it not for the extenuating circumstances.

(g) Intermediaries and Division of Fees: The investment counselor's responsibilities and qualifications are individual; his relation to his client should be personal, and the responsibility should be direct to the client. His services should not be controlled or exploited by the intervention of any intermediary between adviser and client; nor should there be a division of fees between the counselor and any such intermediary. This is the spirit of the professional attitude which should control; but it is not intended to interfere with proper relations between the counselor and his full-time employees, who may or may not be qualified counselors. In all cases, such exceptions should be warranted by the circumstances.

○