in force, because they are listed on national security exchanges. That rule is identified as Rule X-14A-1, and there are six pages of rules and a schedule, 14A.

The reason I bring that up is that there is so much talk of rules and regulations and there is so much mention of that through this bill that I wanted to show you gentlemen just what we are talking about when we talk about rules and regulations.

Now, the plain fact of the matter is, gentlemen, that you and we have been given only half a bill. The other half is left to future rules, regulations, and orders of a Government commission.

Senator WAGNER. Well, do I understand——

Mr. QUINN. I want to go on, Senator.

Senator WAGNER. All right.

Mr. QUINN. I am not talking loosely. If anything, I am understating the case.

There are 83 delegations of power to the S. E. C. in the 81 provisions of title I, exclusive of the preamble and general definitions.

Someone with a perverted sense of humor has even counted how many times the bill mentions the words "investment company" and how many times the word "Commission" recurs. They tell me that in this bill to regulate investment companies the words "investment company" occur 135 times and the word "Commission" occurs 141 times.

I don't argue that all of these delegations are unnecessary or all of equal importance. Some of them must be in an act of this sort to give necessary elasticity.

But I have analyzed them carefully and I find that there are 35 delegations of power which are of real importance, 13 covering accounting and reports, and 22 covering other important questions of general policy and detailed operation of investment companies. These 35 delegations do not include 12 giving the right to grant exemptions, in most cases without any guiding rules or standards and with complete freedom in most if not all cases, to favor one company or discriminate against another. I do not say the S. E. C. would do that—but the power is there.

Let me go at it another way. As I analyze the bill, it deals with 30 different separate subjects. Of these 30 subjects only 8 are covered by definite, specific provisions; five are covered by specific provisions, but the S. E. C. can grant exceptions, in most cases without any limitation whatever on their discretion; 10 are covered partly in the bill, but the powers reserved to the S. E. C. further to define, alter, and rule are so vital that in many of these important matters no one will know where one stands until the Commission issues its rules, regulations and orders; 7 are covered by virtually blanket delegations of power to the S. E. C.

I think you will agree that my statement that you are considering only half a bill is really no exaggeration.

I would like to make this clear, and I hope neither you gentlemen nor the Commission will interpret what I have to say regarding delegation of powers as an attack on the S. E. C. It is neither so intended nor so designed. The objections which I will present are no reflection on that body. The arguments I will make can with equal force be applied to any Government agency. My only present question regarding the S. E. C. is how they are going to have any time to devote

to regulating the daily life of this business. They have to administer the Securities Act of 1933, the Securities and Exchange Act of 1934, the Public Utility Holding Company Act, the Chandler bankruptcy bill, the Barkley Trust Indenture Act, and the Maloney Over-the-Counter Act. How five men can humanly cope with that gigantic administrative job is more than I can understand.

I am not interested in attacking the S. E. C. but I am interested in trying to the best of my ability to make you gentlemen see that a business to be regulated has a right to ask that the law governing that business be clear, explicit, and understandable, and that you can't expect a business to function or a management to do a good job if a good part of the management's time and effort is spent in trying to guess not only what a law means but in following the daily flow of rules, regulations, and orders which can come out of these delegated powers.

In connection with these important delegations of power, I would like to make four points:

First. Many of them are blank checks of power which it is proposed that you gentlemen shall sign and hand over to a Government agency with little or no limitation on their use.

Two. They give the commission not only the right to make rules and regulations but in most instances they also give the right to the commission to make orders which may compel one company to do one thing and compel another company to do another. As a general policy I think this is open to serious question, as it opens the way for possible favoritism or discrimination.

Many of these provisions are molded on provisions in other acts, notably the Public Utility Holding Company Act. That was referred to several times in the testimony of previous days. In fact, in taking over one of the sections from that act the word "consumer" has lost its way into this bill. But I say in all seriousness that in my opinion, in the aggregate, they go wider and deeper than in any previous act.

Whether or not they were necessary in a previous act is not a matter for present discussion but I do think that the argument that they were necessary there is no argument for their inclusion here. Powers that may have been necessary and defensible in a particular industry and in a particular bill should not now be enshrined as established precedents for this and all other businesses. Just think back a short time and remember how extreme and novel those powers were considered at that time. Then let me recall Mr. Schenker's characterization of them in these hearings as "boiler-plate."

With your permission I would like to go into some detail regarding certain of the powers reserved to the Commission in this bill. Unless this is done I do not think you gentlemen will realize how sweeping are some of the powers given them and how wide is the discretion left to that body.

I talked this morning about the discretion left to them in connection with the question of dividends, and I think that it was very clear there that it went beyond a reasonable length in giving discretion over so important a subject.

I would like to refer now to section 18, dealing with capital structure. This contains that remarkable provision giving the Commission power after 2 years to require by specific order that every regis-

tered investment company take such steps as are necessary and appropriate to effect an equitable redistribution of voting rights and privileges among the holders of the outstanding securities of such company or companies.

The language is ambiguous and one cannot be quite certain whether this power applies only to investment company systems or as well to investment companies which form no part of a system, but I am advised that it probably includes the latter as well. Mr. Schenker in his testimony confirmed this opinion. Mind you, this is not a matter to be covered by general rules and regulations, but by specific order addressed to the individual company. That means that the S. E. C. is given the power in its discretion to decide with respect to each company what it considers to be an equitable distribution of voting rights and privileges.

How this is to be accomplished I do not know. I am not a lawyer. I say this with some diffidence because all the people who have appeared for the other side are lawyers. But I have had sufficient experience with corporate affairs to know that voting rights are determined either by the law of the State of incorporation or by the certificate of incorporation. I know that such changes as are envisaged can be made only by the vote of the stockholders themselves. The corporation as such obviously has no power, but the act reads:

> Shall require by order every registered investment company take such steps as are necessary.

It is a matter of contractual rights as between the various classes of stockholders.

Senator HUGHES. Excuse me, Mr. Quinn. Will you let me ask a question?

Mr. QUINN. Yes.

Senator HUGHES. Doesn't that mean such steps as are necessary to require them to amend their charter?

Mr. QUINN. But the charter can only be amended by the vote of the shareholders, Senator.

Senator HUGHES. But they can take the steps that are necessary to do that?

Mr. QUINN. They can put the question to the shareholders, and it is for the shareholders to decide.

Senator DOWNEY. Let me interpose a statement. It says that the move to change the voting power must be instituted by the stockholders; it cannot be done by the directors.

Senator HUGHES. The stockholders would have to move to call a meeting of the directors to consider a change in their voting powers and the stockholders at the meeting could take that up. That is the usual rule. That is the way I understand it.

Mr. QUINN. Shall I proceed, Senator?

Senator WAGNER. Yes.

Mr. QUINN. Is the S. E. C. to be given the necessary jurisdiction to make each stockholder vote in favor of a redistribution of voting rights to accord with the judgment of the Commission as to what is equitable for that corporation? If so, is it to have the authority to do it once or will they come back every time that a rise or fall in market values shall have so affected the relative asset values of the various classes of securities as to make their previous decision of what was equitable no longer tenable? Is the Commission to have the authority

to give voting rights to bonds and debentures and, if so, will it have the further jurisdiction over members of State legislatures to compel such changes in State law as may be necessary to make this possible?

But aside from the question of difficulty of enforcement, and this is no mere technicality, it may serve well to illustrate the radical nature of the proposal. I do not suppose that I have to point out to you gentlemen what an extreme interference this is with existing contract rights of security holders. I have heard Mr. Schenker say that he will present a separate memorandum on the constitutionality of this provision. As I said, I'm not a lawyer. I don't know what is constitutional or what is not but I feel confident that the Congress will not wantonly destroy existing contract rights of real value.

I understand that proponents of the bill feel that it is not fair and equitable that in many instances holders of common stock, whose asset value has drastically shrunk, should now have voting power out of proportion to the underlying value of their security in relation to the senior security. But have they considered that the reason that in the main the asset value of this common stock which they now wish to disenfranchise has drastically shrunk while the liquidating value of say the preferred stock remains at par is because this common stock has by contract with the preferred stockholders placed their money behind the contribution of the preferred stockholders as a cushion to the investment of the preferred stock? As a part of this contract and as a part of the consideration for their placing their funds behind the contribution of the preferred stockholder they have received certain contract rights. Is it fair now to say that because their asset value has shrunk while the asset value of the preferred stock has remained intact, due to this contractual arrangement, the common stockholder shall now be deprived of his contractual voting rights?

If this radical idea is sound, why confine it to investment companies. Why not legislate that when an industrial company operates at a deficit all voting power should be taken away from the common stock and given to the bondholders.

Apart from the question of interference with the contract rights of stockholders, can anyone imagine a broader and more unlimited delegation of power than that given to the Commission in this respect to—I am now quoting—"take such steps as are necessary or appropriate to effect an equitable redistribution of voting rights and privileges"? There are no standards and there are no guides for action. This vitally important matter is left to the unlimited discretion of the Commission.

Section 25 gives the Commission the right to veto any plan of reorganization, voluntary dissolution, or liquidation of certain investment companies or any plan of reorganization or restatement of capital of any investment company. This is apparently modeled on the Chandler Act which gives the S. E. C., under the bankruptcy power, certain rights to render advisory opinions in the reorganization of insolvent companies under court jurisdiction.

But this proposed legislation goes leagues beyond that. It gives the Commission greater rights over solvent companies than they now have over insolvent companies. They can veto any plan of reorganization or recapitalization. Regardless of the shareholders opinions in the matter, the right of their deciding is taken away from them and vested in a Government bureau. They can only do what they want with the blessing of the Commission.

And the only curb on this power is that the Commission must find a plan "not equitable and fair to all classes and persons affected." No standards of equity and fairness are stated. They are left to the sole discretion of a Government bureau.

This provision goes even further. Under the Chandler Act the Commission is authorized to give advisory opinions to the court which has the company under its protection. The provision in this act sets the S. E. C. above the courts. I refer to the provision that no one is permitted to present a plan of reorganization to a United States court without the previous approval of the S. E. C. I refer further to the provision that no United States court can approve a plan until it has received the approval of the S. E. C.

The discussion of this provision in the committee has been enlightening. Senator Herring suggested the possibility that the powers of the S. E. C. over the reorganization of companies in bankruptcy or receivership be limited to powers similar to those given the S. E. C. under the Chander Act—Is that correct, Senator?

Senator HERRING. That is right.

Mr. QUINN. And that the S. E. C. be given the right only to render an advisory opinion upon the court's request. Judge Healy agreed that this might be the proper limitation. But in the case of the mergers, consolidations, or recapitalizations of solvent companies Judge Healy said that that was not enough. His argument, as I interpret it, is this. Plans of recapitalization and reorganization are sometimes complicated and difficult to understand. He did not make clear that under the proxy regulations embodied in this bill the S. E. C. can go practically the limit to see that both sides of the question are presented with complete fairness, impartiality, and clarity. The proxy regulations give the Commission the power to see that the shareholder is given all the information that can reasonably be required for him to make up his own mind.

But at this point we come to the kernel of Judge Healy's argument and we come to what in my opinion is one of the most glaring faults in the philosophy underlying certain portions of this bill. The S. E. C. is not willing to let the shareholders decide what they want to do. They are not willing to limit themselves to seeing that the stockholders get all the information necessary for them to make up their mind. The S. E. C. wants to decide for the shareholders because they think they are apparently neither able nor competent to decide for themselves. I think that is a fair interpretation of what Judge Healy said.

How else can you explain the insistence of the S. E. C. that a voluntary plan of a solvent company for readjusting its capital structure shall be subjected to their approval before the stockholders have a right to say what they want to do?

Senator HUGHES. I might say that I am not sure but what he is right about that. I doubt if they are competent to decide about these complicated matters. Going back to what you said a minute ago about the court having the jurisdiction, I cannot go quite that far.

Mr. QUINN. I am not talking about companies under the court; I am talking about solvent companies making voluntary plans of readjustment of their own, outside the court.

Mr. Schenker in his comment made one further illuminating statement. He said sometimes the majority wish to do something which

might be bad for the minority. What sort of a new doctrine is this that a Government agency is going to decide all questions for shareholders? Is the democratic rule of the majority no longer to hold, but must we all come down to a Government agency to find out what can and what cannot be done, regardless of existing laws, regardless of existing rights, and regardless of the wishes of those concerned?

Anything approaching this, in my opinion, gentlemen, is not regulation. It goes much further than that.

Section 33 (a) contains not only a legal novelty but a prohibition on the United States courts from acting on matters within their jurisdiction without prior consultation with the S. E. C. This section prohibits any officer or director from settling any threatened suit for an alleged breach of official duty. This provision is patently a trial venture in uncharted legal seas. It adds a further novelty in that it prohibits any United States court from approving the fairness of the proposed settlement until after the Commission has filed a report concerning the fairness of the plan. I am not a lawyer and I am not competent to judge, but it does seem to me to make common sense that if the S. E. C. proposes to invent new Federal legal procedure or reform existing legal procedure, it ought to hand that job over to the proper department. It ought not to stick such a provision in this bill. If the idea has any merit, which I honestly doubt, it should apply not only to investment companies but to all companies in all businesses. It has no place in this bill.

Section 13 (b) provides that no registered investment company shall change any fundamental investment or management policy unless each change is authorized by shareholders. As a general statement, this is not open to criticism. It expresses the agreed principle that shareholders should be consulted in regard to any radical change in policy on the part of their management. But the Commission is given the right by rules and regulations to designate what investment policies are fundamental. It can by order say what policies are fundamental to each particular company. Is this not overregulation and does it not go beyond the bounds of sound legislation? Can't this desirable objective be achieved in some other way?

Senator WAGNER. Have you any ideas?

Mr. QUINN. I have an idea, Senator.

Senator WAGNER. You are going to suggest it, are you?

Mr. QUINN. This is going to be discussed in somewhat fuller length somewhat later on.

Senator WAGNER. All right; because I am interested in that question, too.

Mr. QUINN. I think there is an easier way to solve it. Section 9 (c) is part of that section which requires registration with the Commission of officers and directors of investment companies. The registration of investment companies themselves may well be desirable if only to bring all companies within certain rules which now apply to those companies listed on national security exchanges. But I question greatly the wisdom of requiring the directors of investment companies to register. This is a requirement which applies to the directors of no other form of American business. Bank directors are not required to register; insurance company directors are not required to register. But this provision not only requires the registration of

directors of investment companies but gives a Government bureau the right to dictate without limitation the type of information, business and personal, which the directors must file with it and which it has the right to make available to the public.

Now, I recall Judge Healy's discussion on that point, and I feel that the Commission would probably limit that; but what I am talking about is the law as written. This is what the law permits them to do.

Section 17 (g), part of that same thing, goes one step further. This section gives the Commission the right to require by specific order directed to an individual director of an individual company that that director must be bonded and in such amount as the Commission may fix. I have never heard of bonding directors who are not officers. I have certainly never heard of such a provision in any law.

These are a few samples. I think you will agree that they contain, as far as we are concerned, a good deal more than elastic.

You may rightly say, "You have been very critical but what would you suggest be done in regard to this delegation of power. Certainly some of them are necessary. How would you go about remedying what you consider excessive grants of power?" If you ask me, I would say that I would send the bill back where it came from for a complete overhauling with the following instructions:

If the men who drafted the bill in regard to certain matters have been unable after 4 years to make up their minds what should be done and have reserved the right for the Commission to make up its mind later on, it is pretty certain that those are not proper matters for legislation and should be scrapped immediately.

If they have made up their minds and have not wanted to put their decision in the bill because it would sound too dictatorial and too strong tell them not to hide behind the curtain of future rules, regulations, and orders but to spell it out so you can see what they have in their minds.

If they think it is necessary to provide a certain flexibility in certain rigid requirements of the bill, tell them to be sure that there is not (*a*) power left to increase the rigidity and (*b*) there is no power left to require one company to do anything which is not required of all investment companies generally.

In dealing with exemptions, tell them not to leave sole and complete discretion to the Commission. Tell them to set down certain standards to guide the Commission and those who may wish to apply to the Commission for exemptions.

This is, I think, Senator, extremely important: Ask them to expressly provide for some sort of official consultation with duly constituted representatives of the industry before any rules or regulations can be promulgated by the Commission on any subject.

I have not touched one important part of the bill, those sections which deal with reports to shareholders and accounts of the companies. With the general principle that shareholders should be furnished periodically with complete detailed information of the status and operations of their company no one has any quarrel whatever. In fact most of the better known investment companies do a first class job in this respect.

Before discussing the way this acceptable principle is worked out in this bill I would like to make a comment in regard to the general

subject of accounts and reports of investment companies because I think it will help to clarify the discussion.

In the first place, unlike the railroad business and the public utility business in which the Government has prescribed rather stringent rules on how accounts should be kept and reports made, the investment company accounts and reports have no purpose other than informing the shareholder. Judge Healy kept referring constantly to the utility business as a precedent. But in the utility and railroad business there is another consideration which must be weighed and which justifies rather stringent and exact rules on how accounts should be kept. In the railroads the rate-making aspect enters and in the public-utility business this consideration is also present. This is an important distinction.

The second point I would like to make is that a proper report of an investment company is the clearest and most understandable of any form of business report. Let me try to explain why this is true.

Look at the balance sheet of an investment company and you will see on the asset side cash items, the amount of investments and their value at the time of the report. You have thus a clear and concise statement of what the assets are worth at the time of the report. If you will turn to the supplementary information furnished in most reports, you will find a complete list of all securities held together with their individual market values. If there is no market value there is a statement on the basis on which the valuation has been arrived at.

If you turn to the auditor's report you will usually find a statement that the auditors have not only verified all accounts but have inspected and counted all securities owned by the corporation at the date of the report and found them to be in agreement with the books of the corporation and with the securities as listed in the report.

You thus have the cleanest, clearest picture of the assets of the corporation and their value which one could ask.

On the liability side current liabilities are shown and various other items of debt if it exists, capital stock, and surplus.

In many reports you not only have this clear-cut balance sheet but you have a statement summarizing assets and liabilities and showing the asset coverage of each type of security outstanding as of the date of the report.

The statement of an investment company is thus the easiest statement of any type of business to understand. In a bank statement no shareholder or depositor is given any information on which he can appraise the extent of the risk involved in the loans that have been made, or is given detailed information of the securities owned.

In an insurance company no stockholder or policyholder has any way of appraising the amount or quality of the underwriting risks.

In a manufacturing company no stockholder has any idea of what his plant may be worth if it had to be disposed of. He does not know the details of inventory; patent rights may be important or not; and there are a thousand and one elements which make it difficult for him to appraise the value of the assets of his company. The investment company stockholder is under no such handicap.

If you turn to the income account of most investment companies you will see the income set forth, together with the sources from which it is derived, and you find the expenses set down in pretty considerable detail.

If you turn to other pages of most annual reports you will find a statement of the commissions paid by the corporation in connection with its purchase and sale of securities, and if they have been paid to any people connected with the corporation, a statement of the amount paid to each such person. You will also find other pertinent information so that the shareholder has a pretty complete picture of how his company stands at the time of the report and what has happened to it in the interval since the last report.

It would seem, therefore, reasonable that these practices of accounting and reporting which are common to most of the well-run companies could be embodied in the provisions of this bill in general terms.

But what do you find instead—a complete blank check to the Commission. There is no single standard to guide them or to restrict them. Let me show you the extent of the powers given them.

Senator HUGHES. Might I interrupt you a minute?

Mr. QUINN. I beg your pardon?

Senator HUGHES. Might I interrupt you a minute?

Mr. QUINN. Yes.

Senator HUGHES. Would it be feasible for you to furnish the committee with your last report?

Mr. QUINN. Yes, sir; I will be glad to.

Senator HUGHES. I do not know whether you want to make it part of the record.

Mr. QUINN. I will be glad to show it to you.

Senator WAGNER. Have you it here?

Mr. QUINN. I do not know whether the last annual report is here or not. I will be glad to get it.

Senator WAGNER. And we will put it in the record.

Mr. QUINN. All right, sir.

First, let me deal with accounts. Section 31 (d) gives the Commission the right to make rules and regulations for uniform methods for keeping accounts and other records and for prescribing methods, practices, and procedure to be followed in determining entries to be made.

It goes further. It gives the Commission the power to prescribe by order the account or accounts in which particular outlays, receipts, expenses, income, profits, losses, depreciation, appreciation, dividend distributions, and other transactions shall be entered, charged, or credited and the manner in which any such entry, charge, or credit shall be made.

It goes even further.

Senator WAGNER. Is there any objection to that? Do you object to that?

Mr. QUINN. We object to that seriously, sir. It goes even further. It gives the Commission the right to prohibit the keeping of accounting methods other than those prescribed by the Commission and the keeping of such records in a manner other than that prescribed and approved by the Commission.

You were told that this was not as rigid as it sounds, that there was an exception permitting the keeping of other accounts. But examine this exception carefully and you will find that it only permits subclassification of accounts. The S. E. C. has the absolute power to order each individual company to make such general entries on its