and I believe that its philosophy of discretionary powers delegated to commission rule is wrong and also unnecessary.

Most of the abuses which have horrified us all are punishable under existing common law, others would be no longer practical under the full disclosure requirements of the S. E. C. Act. Still others could be competently taken care of by the N. A. S. D. under the Maloney Act.

Senator WAGNER. I thank you very much.

(Thereupon Mr. Gardiner and Mr. Parker left the committee table.)

Senator WAGNER (chairman of the subcommittee). Mr. Louis Curtis.

STATEMENT OF LOUIS CURTIS, PARTNER OF BROWN BROS., HARRIMAN & CO., BOSTON, MASS.

Mr. CURTIS. Mr. Chairman and gentlemen of the subcommittee: My name is Louis Curtis. I am a partner of Brown Bros., Harriman & Co., private bankers, Boston.

I am also a trustee of an investment company but I am here not on that subject in any way. I am going to talk purely about the custodian features of this bill.

Section 17 (g) authorizes the Securities and Exchange Commission to require that the securities of a management investment company be in the custody of an institution having qualifications required in paragraph (1) of section 26 (a) for the trustees of unit investment trusts.

Section 26 (a) says that no underwriter may sell shares of a unit investment trust unless the trust indenture designates as a trustee an incorporated institution authorized by law to exercise corporate trust powers, subject to supervision or examination by Federal or State authority, with a capital and surplus not less than a minimum to be specified by the Securities and Exchange Commission.

The objection of Brown Bros., Harriman & Co. to these sections is that the Securities and Exchange Commission is authorized to require that the custodian of the securities of an investment company be an incorporated institution. That leaves out private banks. We maintain that the ability and propriety of an institution to fulfil that function is not dependent on its being incorporated and specifically authorized by law to exercise corporate trust powers. We believe that any institution which is subject to examination and regulation by Federal or State banking authorities, as the Banking Acts of 1933 and 1935 require of anyone who conducts a banking business, is entirely qualified to be such a custodian, whether it is incorporated or not.

We therefore ask that the above sections of the bill and any other sections which by amendment to the bill as originally printed may contain similar restriction be enlarged to include "banks" as defined in this bill and in the Securities Exchange Act of 1934. This would qualify as custodian a private bank which conducts a general banking business, and is subject to examination and regulation by Federal or State banking authorities, provided, if it is deemed wise, that the "bank" has a combined capital and surplus of such minimum amount as the Securities and Exchange Commission may specify.

Our unincorporated bank, established in 1818, has deposits of over $100,000,000 and a combined capital and surplus of over $13,000,000,

with unlimited liability on top of that, it has acted as custodian for investment companies for 12 years. I do not believe that the drafters of this bill intended to eliminate——

Senator WAGNER (interposing). I do not either, and if I may interrupt you right there, I think that correction will have to be made in the bill.

Mr. CURTIS. I was just going to say: I do not believe that the drafters of this bill intended to eliminate publicly examined and regulated private banks from the custodian field, and therefore regard our requested amendment of the bill as more of a technical correction than a change of policy.

Senator WAGNER. Mr. Schenker has already spoken to me about that.

Mr. CURTIS. Well, that is all I have to say. Mr. Schenker tells me that he has no objection to this amendment.

Senator WAGNER. I agree with you.

(Thereupon Mr. Curtis left the committee table.)

Senator WAGNER (chairman of the subcommittee). We shall next hear from Mr. Richard Taliaferro. Will you proceed, please?

STATEMENT OF RICHARD N. TALIAFERRO, PRESIDENT, FIDELITY FUND, INC., BOSTON, MASS.

Mr. TALIAFERRO. Mr. Chairman, I am Richard N. Taliaferro. I am appearing before this committee as president of Fidelity Fund, Inc., organized in 1930; it is an open-end diversified investment company. This company has about 2,000 shareholders, and total assets of about $4,000,000. I have been asked by other trusts, who have examined this statement, to read letters which they have addressed to me concerning such statement. The total assets of the trusts which represent these letters, combined with those of the Fidelity Fund, Inc., amount to approximately $30,000,000.

Throughout these hearings, and from our knowledge of the proposed legislation, I have been impressed with one thing—namely, if legislation is to be drawn covering within one title the whole investment-trust business, a great deal of discretion must, perhaps, be given to the Securities and Exchange Commission. Repeatedly, in the testimony, controversial points have been brought up concerning certain provisions which are not applicable to the company, or type of company, whose representative was then testifying.

There is valid reason, in my opinion, for this confusion. If, for example, a bill with a single title were to be drawn to regulate savings banks, cooperative banks, and commercial banks, the same confusion would arise and the final result would be that a great amount of discretion would have to be given to the regulatory body. It is obvious that the functions of these three institutions are quite separate and distinct.

The Securities and Exchange Commission has, in fact, made distinctions in its own classification of investment companies. Yet, when one gets into the heart of the bill, one becomes more and more bewildered because there has been an attempt made to cover so many diverse problems. The net result has been that the Securities and Exchange Commission finally, and perhaps necessarily, asks for many discretionary powers.

It seems to me that the sane approach to this problem is the simplest one: recognize at the outset that these diverse problems exist, and consider a separate title to cover each broad classification, such as:

Title I. Open-end diversified management companies.
Title II. Closed-end management companies.
Title III. Face-amount certificate companies.
Title IV. Unit investment trust.
Title V. Periodic payment plan certificates.

Now, if I can, I should like to convince you that the problem of drafting a separate title for open-end diversified investment companies would not involve undue hardship, as much work along these lines has already been done. For example, the division of securities of the State of Ohio presented to the annual meeting of the National Association of Securities Commissioners, at Skytop, Pa., last fall, a memorandum on the regulation of open-end investment companies, which has become known as "Q–3." The Securities Commissioners adopted this memorandum in open convention as a guide for the regulation of those open-end companies whose shares are offered for sale in various States. Q–3, as such, has been adopted by the State of Ohio and is being closely followed by other States, such as Michigan, Minnesota, Alabama, Kentucky, and New Hampshire.

A great deal of thought and regulatory experience was drawn upon in drafting Q–3. I feel that your committee should have the benefit of this work, and for that purpose I should like to present a copy of the Q–3 regulatory provisions for the record.

(Document entitled "Q–3 Application for Qualification of Investment Trust Shares" is as follows:)

Q–3. Application for Qualification of Investment Trust Shares

The offer or disposal of shares of an investment trust of the management type is hereby defined to be an offer or disposal on grossly unfair terms unless the articles or other instruments under which the trust, or the sponsor, manager, or custodian thereof, is created, organized, or administered are effective to:

1. Prohibit all officers, directors, or trustees of the trust or of the manager of the trust from dealing for or on behalf of the trust with themselves, as principal or agent, or with any corporation or partnership in which they have a financial interest.

(a) Such prohibition shall not prevent officers, directors, or trustees of the trust from having a financial interest in the trust, sponsor, or manager of the trust.

(b) Such prohibition shall not prevent the purchase of securities for the portfolio of the trust or sale of securities owned by the trust through a security dealer, one or more of whose partners, officers, or directors is an officer, director, or trustee of the trust, provided such transactions are handled in the capacity of broker only and provided commissions charged do not exceed customary brokerage charges for such service.

(c) Such prohibition shall not prevent the employment of legal counsel, registrar, transfer agent, dividend disbursing agent, or custodian or trustee having partner, officer, or director who is an officer, director, or trustee of the trust, provided only customary fees are charged for services rendered to or for the benefit of the trust.

(d) Such prohibition shall not prevent the purchase for the portfolio of the trust of securities issued by an issuer having an officer, director, or security holder who is an officer, director, or trustee of the trust or of the manager of the trust, unless at the time of such purchase one or more of such officers, directors, or trustees owns beneficially more than one-half of 1 percent of the shares or securities, or both, of such issuer and such officers, directors, and trustees owning more than one-half of 1 percent of such shares or securities together own beneficially more than 5 percent of such shares or securities.

2. Prohibit the retention in the portfolio of the trust of securities issued by an issuer any of whose officers, directors, or security holders is an officer, director, or trustee of the trust or of the manager of the trust if after the purchase of the securities of such issuer by the trust one or more of such officers, directors, or trustees owns beneficially more than one-half of 1 percent of the shares or securities, or both, of such issuer and such officers, directors, and trustees owning more than one-half of 1 percent of such shares or securities together own beneficially more than 5 percent of such shares or securities.

3. Prohibit the sponsor and manager of the trust, the officers and directors of the sponsor and manager, and the officers, directors and trustees of the trust from taking long or short positions in the securities issued by the trust.

(a) Such prohibition shall not prevent the sponsor from purchasing from the trust shares issued by the trust provided that orders to purchase from the trust are entered with the trust by the sponsor upon receipt by the sponsor of purchase orders for the shares of the trust and provied such purchases are not in excess of purchase orders received by the sponsor.

(b) Such prohibition shall not prevent the sponsor from maintaining a market for the securities issued by the trust in the capacity of agent for the trust.

(c) Such prohibition shall not prevent the purchase from the trust of shares issued by the trust by the officers, directors, or trustees of the trust, sponsor or manager at the price available to the public at the moment of such purchase provided there is on file with the Division an undertaking by the trust that purchases will be permitted for investment purposes only and that any sales of shares issued by the trust made by such persons less than 2 months after the date of purchase of any shares issued by the trust will be immediately reported to the Division of Securities.

4. Prohibit the lending of assets of the trust to the sponsor or manager, to officers or directors of the sponsor or manager, and to officers, directors, or trustees of the trust.

5. Require that securities owned by the trust and cash representing the proceeds from sales of securities owned by the trust and of shares issued by the trust, payments of principal upon securities owned by the trust, or capital distribution in respect of shares owned by the trust be held by a custodian or trustee which shall be a bank or trust company having not less than $2,000,000 aggregate capital, surplus, and undivided profits provided such a custodian or trustee can be found ready and willing to act.

6. Bind the trust upon the resignation or inability to serve of the of the custodian or trustee (a) to use its best efforts to obtain a successor custodian or trustee, (b) to require that the cash and securities owned by the trust be delivered directly to the successor custodian or trustee and (c) in the event that no successor custodian or trustee can be found, to submit to the stockholders, before permitting delivery of the cash and securities owned by the trust to other than a successor custodian or trustee, the question of whether such trust shall be liquidated or shall function without a custodian or trustee.

(a) Such limitation shall not prevent the termination of the agreement between the trust and the custodian or trustee by the vote of a majority of the shareholders of the trust.

7. Bind the custodian or trustee holding cash and securities owned by the trust, except as provided in paragraph 6 of this regulation.

(a) To deliver securities owned by the trust only upon sale of such securities for the account of the trust and receipt of payment therefor by the custodian or trustee, or when such securities may be called, redeemed, retired, or otherwise become payable.

(1) Such limitation shall not prevent delivery of securities for examination to the broker selling the same in accord with the "street delivery" custom whereby such securities are delivered to such broker in exchange for a delivery receipt exchanged on the same day for an uncertified check of such broker to be presented on the same day for certification.

(2) Such limitation shall not prevent delivery of securities of an issuer in exchange for, or conversion into other securities alone or cash and other securities pursuant to any plan of merger, consolidation, reorganization, recapitalization, or readjustment of the securities of such issuer.

(3) Such limitation shall not prevent the conversion by the custodian or trustee of securities owned by the trust pursuant to the provisions of such securities into other securities.

(4) Such limitation shall not prevent the surrender by the custodian or trustee of warrants, rights, or similar securities owned by the trust in the exercise of

such warrants, rights, or similar securities, or the surrender of interim receipts or temporary securities for definitive securities.

(5) Such limitation shall not prevent the delivery of securities as collateral on borrowing effected by the trust.

(6) Such limitation shall not prevent the delivery of securities owned by the trust as a redemption in kind of securities issued by the trust.

(b) To deliver funds of the trust only upon the purchase of securities for the portfolio of the trust and the delivery of such securities to the custodian or trustee.

(1) Such limitation shall not prevent the release of funds by the custodian or trustee for redemption of shares issued by the trust, for payment of interest, dividend disbursements, taxes, management fees, for payments in connection with the conversion, exchange, or surrender of securities owned by the trust as set forth in subparagraph 7 (a) (2), 7 (a) (3), and 7 (a) (4) above and for operating expenses of the trust.

8. Fix the factors and the method for the determination of the "asset value" and the "liquidating value" of the trust or its shares.

9. Prohibit the purchase of the securities of any issuer for the portfolio of the trust if such purchase at the time thereof would cause more than 5 percent of the total trust assets to be invested in the securities of any one issuer. The percentage determination referred to herein and in subparagraph (b) below may be made either at cost or at market provided one method or the other is adopted and consistently followed.

(a) This limitation shall not apply to obligations of the Governments of the United States of America or Canada or to obligations of any corporation organized under a general act of Congress if such corporation is an instrumentality of the United States.

(b) This limitation shall not apply to trusts the investment of whose funds is restricted solely to the securities of companies operating in a particular industry. In the case of such "specialty" trusts a prohibition shall be established effective to require that the assets of the trust shall be invested in the securities of not less than 10 companies and to prohibit the purchase of the securities of any issuer for the portfolio of the trust if such purchase at the time thereof would cause more than 10 percent of the total trust assets to be invested in the securities of any one issuer.

10. Prohibit the purchase of the securities of any issuer for the portfolio of the trust if such purchase at the time thereof would cause more than 10 percent of the securities of any such issuer to be held by the trust.

11. Prohibit the investment of any assets of the trust in the securities of other investment trusts except by purchase in the open market where no commission or profit to a sponsor or dealer results from such purchase other than the customary broker's commission.

12. Prohibit borrowing on behalf of the trust of amounts in excess of 10 percent of the gross assets of the trust taken at cost provided that any borrowing permissible hereunder shall be undertaken only as a temporary measure for extraordinary or emergency purposes.

(a) Such limitation shall not prevent the issuance and sale by the trust of bonds or debentures having adequate protective features for the holders thereof and for the securities of the trust junior thereto with a definite maturity date of not less than 5 years from the date of issue provided that the issuance and sale of additional bonds or debentures is prohibited if such issuance would increase the total amount of all bonds and debentures outstanding to an amount in excess of 25 percent of the total assets of the trust taken at cost or market, whichever is lower.

13. Prohibit the pledging, mortaging, or hypothecating in behalf of the trust of the assets of the trust taken at market to an extent greater than 15 percent of the gross assets of the trust taken at cost.

(a) Such limitation shall not prevent the pledging, mortgaging, or hypothecating of the assets of the trust in behalf of the trust to secure bonds or debentures issued as provided in paragraph 12 of this regulation.

14. Permit unrestricted transfer of securities issued by the trust.

(a) Such requirement shall not prevent the charging of the customary transfer-agent fee.

15. Prohibit the officers, directors, or trustees of the trust or other manager of the trust from employing the funds of the trust for the purpose of buying securities for the portfolio of the trust on margin.

16. Prohibit the officers, directors or trustees of the trust or other manager of the trust from making any short sales for the account of the trust.

(a) Such limitation shall not prevent any sale of securities by the trust where the trust owns at the time of such sale securities equivalent in kind and amount to those sold or where the trust owns at the time of such sale securities convertible into securities equivalent in kind and amount to those sold.

17. Prohibit the investment of funds of the trust in the securities of companies which have a record of less than 3 years continuous operation. Such period of 3 years may include the operation of any predecessor company or companies, partnership or individual enterprise if the company whose securities are proposed as an investment for funds of the trust has come into existence as the result of a merger, consolidation, reorganization or the purchase of substantially all of the assets of such predecessor company or companies, partnership or individual enterprise.

18. Prohibit the operation of the trust under any management contract which does not provide that such management contract cannot be amended, transferred, assigned, sold or in any manner hypothecated or pledged without the affirmative vote or written consent of the holders of a majority of the shares of the trust.

(a) It shall be further provided that in the event of the cancelation or expiration by its own terms of any management contract, no new management contract shall become effective without the affirmative vote or written consent of the holders of a majority of the shares of the trust.

19. Require that upon the death, resignation, or removal during any consecutive period of 12 months of more than one-half of the directors or trustees of the trust holding office at the beginning of such period, a shareholders' meeting shall be called forthwith for the purpose of electing an entire new board or to approve the selection of a new board where board members are not, under the instruments governing the operation of the trust, elected by shareholders.

20. Restrict the maximum load or commission to be charged upon the sale of common shares issued by the trust to 9 percent of the offering price to the public of such shares. As used in this paragraph, "offering price to the public" shall mean the asset value as hereinafter defined plus the load or commission charged adjusted to the nearest full cent. As used in this paragraph, "asset value per share" shall be determined by dividing the value of the net assets of the trust by the number of shares issued by the trust and outstanding plus the number of shares sold by the trust though certificates have not been issued at the time of calculation.

21. Restrict the maximum fee to be charged upon repurchasers of shares issued by the trust to 1 percent of the liquidating value per share. As used in this paragraph, "liquidating value per share" shall have the same meaning as "asset value per share" defined in paragraph 20 of this regulation. Any such repurchase fee shall be credited to the trust and not to the sponsor, directly, or indirectly.

22. Restrict the maximum charges per annum paid by the trust, inclusive of management fee but exclusive of interest or taxes, to not more than 1½ percent of the annual average asset value of the trust based upon computations of asset value made at least quarterly. As used in this paragraph, "Asset value of the trust" shall mean the value of the net assets of the trust plus the amount of funds borrowed for investment purposes. Proof that total charges for the last preceding year, or the last preceding 2 years if a trust has been in existence more than 2 years, have not exceeded the maximum rate above specified, shall constitute prima facie proof that total charges will not exceed such maximum in the future, provided an undertaking is given to the division that there will be furnished to the division annually and so long as the trust has securities qualified for sale in Ohio, a statement descriptive of such charges. Such statement shall be under oath and shall describe the nature of charges in the preceding calendar year, their dollar amounts, the percentage which such amounts represent of the annual average asset value of the trust for the preceding calendar year based upon computations of asset value made at least quarterly, and a list of any changes in charges contemplated at the date of such statement. Such statement shall be furnished on the fifteenth day of February or not later than 45 days after the close of the fiscal year of the trust if its fiscal year is not based on the calendar year. Where a trust has had an operating existence of less than 1 year, it shall furnish such proof with respect to probable charges as the nature of its operating experience and contemplated policies permits, together with an undertaking of the character above set forth.

23. Require that the trust redeem shares issued by it not more than 7 full business days after tender to the trust of the certificates for such shares at the asset value per share at the close of business on the day when such redemption is actually effected less charges permitted by paragraph 21 of this regulation. As used in this paragraph, "asset value per share" shall have the same meaning as in paragraph 20.

(a) Such limitation shall not prevent temporary suspension of redemption privileges in case of the closing of or restriction of trading on exchange markets as a result of which disposal by the trust of the securities owned by the trust becomes impossible. In such event redemption shall be made within a reasonable time after such markets are reopened and unrestricted.

24. Require the submission to investors of reports not less often than semi-annually of the operations of the fund, based at least annually upon an audit by independent public accountants, which reports shall clearly set forth, in addition to the information customarily furnished on a balance sheet and profit-and-loss statement, a statement of all amounts paid to security dealers, legal counsel, transfer agent, disbursing agent, registrar, or custodian or trustee, where such payments are made to a firm, corporation, bank, or trust company having a partner, officer, or director who is an officer, director, or trustee of the trust.

(a) A copy of all reports submitted to security holders of the trust shall be furnished forthwith to the Ohio Division of Securities.

25. Require that whenever dividends are paid out of capital gains such fact shall be clearly revealed to shareholders and that the basis of calculation shall be set forth.

The effective date of this regulation shall be May 20, 1939, with respect to all applications for qualification not filed prior to said date. Trusts for which applications have been filed prior to May 20, 1939, and which are registered by qualification prior to July 1, 1939, shall comply with the provisions of this regulation by July 1, 1939. Trusts now having shares registered by qualification for sale in the State of Ohio shall comply with the provisions of this regulation by December 1, 1939.

Mr. TALIAFERRO. For your convenience, I have a list of the points covered by this regulation, and they are as follows:

1. Self-dealing.
2. Ownership of securities in a company having common officers and directors with a trust.
3. Long or short position in shares of the trust.
4. Lending of assets of the trust.
5. Custodian arrangements.
6. Successor custodian.
7. Handling of funds by custodian.
8. Determining asset value.
9. Limit on investing in one security.
10. Limit on investing in the securities of one company.
11. Purchase of securities of other trusts.
12. Limitation on borrowing.
13. Limitation on pledging of assets.
14. Method of transfer of shares of the trust.
15. Margin buying by the trust.
16. Short sales by the trust.
17. Age of companies for portfolio purchase.
18. Management contracts.
19. Change in board of directors during a period of 12 consecutive months.
20. Maximum load.
21. Maximum repurchase charge.
22. Maximum operating expenses excluding taxes and interest in relation to total assets.
23. Maximum of delay for redemption.
24. Reports for shareholders.
25. Disbursements of capital gains as dividends.

Senator WAGNER. How about the shareholders? Does it specify the time when these reports are to be made?

Mr. TALIAFERRO. These are the items regulated. The regulations themselves are in the exhibit.

Senator WAGNER. Yes.

Mr. TALIAFERRO. This set of rules would appear to be a case of practical regulation in cooperation with a regulatory body set up for that purpose. Most of the open-end trusts, which are currently selling securities to the public, are registered in Ohio, and all are operating in accordance with these regulations. Furthermore, all open-end trusts, registered in Ohio, must change their charters or trust indentures, or execute a contract, so as to comply with this regulation on or before August 1, 1940, in order to maintain qualification in that State after that date. Q–3 consists of 25 rules and, in effect, draws up requirements for operating a trust from the stockholder's point of view.

As most investment trusts have agreed to qualify with Q–3, the adaptation of your legislation to the similar requirements would be a material saving in legal expense to the shareholders of investment trusts, and would remove from the whole investment trust picture the uncertainty of whether or not a given trust can operate in a manner anywhere near its present operations, after the passing of this Federal legislation.

We do not mean to imply that these regulations should be adopted in their present form, but that they are presented merely to provide a constructive suggestion when consideration is given to legislation. They may not cover all objectives, but they certainly cover the principal ones and, more important, a title drawn along these lines will give us a workable approach to legislation.

The point which we wish to stress is that, in adopting these rules, no extreme hardship has been created for the industry; and, still more important, we know just what we can do and what we cannot do. In short, we can live under this type of regulation. Yet, even here some discretion must be given in certain instances; but the power used has been that of exemption from certain provisions by certain companies where the Commission, after careful study, has found the exception not to be to the detriment of shareholders and the public. We are not adverse to such discretion, and, in fact, feel that it must necessarily be given.

Senator WAGNER. The regulations that you just mentioned, and which you introduced into the record, were provided by law or by a commission?

Mr. TALIAFERRO. They were provided by regulation; they are not a statute.

Senator WAGNER. They are in the law itself?

Mr. TALIAFERRO. They are not a statute.

Senator WAGNER. They are not a statute?

Mr. TALIAFERRO. They are not a statute; they are regulations.

Senator WAGNER. They are regulations by a public body?

Mr. TALIAFERRO. Regulations by the Securities Division of the State of Ohio.

Senator WAGNER. So it is a pure regulation?

Mr. TALIAFERRO. That is right; but it is very specific; and I should like to say in addition that a great deal of time was spent by these commissioners with people in the investment trust business. I happened to be at the convention in Sky Top, when this suggestion was made by the Commissioner of Ohio, and even there his whole regulation was changed, before being presented, after talking with several of us who were representing different trusts.

Senator WAGNER. That is what we are trying to do here; we are trying to hear all sides.

Mr. TALIAFERRO. I think this is an opportunity for us to be heard, and where we can be heard.

Senator WAGNER. Yes.

Mr. TALIAFERRO. However, Senator, I must say that the S. E. C. did not show us the same cooperation that we are receiving from your committee.

Senator WAGNER. Let me ask you this question, please: Among those regulations, is there one that provides for a notification to stockholders if there should be a change of fundamental policy of an investment trust? I do not recall whether you stated that or not.

Mr. TALIAFERRO. That is not.

Senator WAGNER. It is not?

Mr. TALIAFERRO. Not before it happens, unless you can say that a quarterly report would contain such information, showing the list of securities.

Senator WAGNER. I wondered whether there was a prohibition, among these regulations, that there shall not be any change of policy without first having the approval of the stockholders?

Mr. TALIAFERRO. There is not; but I can see no objection to such a prohibition.

Senator WAGNER. Yes.

Mr. TALIAFERRO. I should like to speak briefly on the regulation of sales activity of open-end trusts. Economically, it is best to put to use those things which one has, rather than to create additional tools. The Maloney Act set up an organization, the National Association of Security Dealers, for the supervision of operations of investment dealers for public interest. A committee of this association has been formed to administer the sales problems of investment trusts. The operations of the N. A. S. D. are under the supervision of the Securities and Exchange Commission. All active distributors of investment trusts are now registered under this group. Therefore, for the purpose of simplicity and economy, I earnestly suggest that all rules and regulations of sales activities, which your committee thinks are required in this bill, be specifically placed under the jurisdiction of the N. A. S. D., which should be required to have a permanent committee to deal with these problems.

These recommendations are submitted with the knowledge that regulation would be beneficial to our business and would keep in it persons of high character who give substantial benefits to the group of shareholders whose money is entrusted to their care.

Senator WAGNER. Thank you very much.

Mr. TALIAFERRO. Shall I put these letters in the record?

Senator WAGNER. Yes, please.

(The letters referred to are as follows:)

BOSTON FUND, INC., *April 15, 1940.*

Regarding investment trust bill S. 3580.

Mr. RICHARD TALIAFERRO,
Washington, D. C.

We understand that you are going to urge that consideration be given by the Subcommittee on Banking and Currency to redraft the bill so that separate titles will cover each broad classification of investment company. This step would in our opinion enable the committee to draft specific legislation for the most part which we feel is highly desirable. We feel that only in this way can practically

all the discretionary powers given the Securities and Exchange Commission under the present bill be eliminated. We further understand that you are going to offer for the record a copy of the Ohio regulation known as Q–3 which will be presented as evidence that most open-end trusts are already operating under rules and regulations in various States.

We, as a corporation having 2,865 stockholders, wholeheartedly support the thoughts you have on this subject and hope that you will stress the fact that if legislation is finally adopted, it will be drawn somewhat along the lines of Q–3 under a separate title. We urge this, for as a practical matter we feel such regulation adequately safeguards stockholders and yet is the type of legislation which does not disrupt our whole method of doing business.

We ask that you present our thoughts on this matter to the committee.

BOSTON FUND, INC.,
ROBERT L. OSGOOD, *Vice President.*

CENTURY SHARES TRUST,
Boston, April 15, 1940.

RICHARD N. TALIAFERRO, Esq.,
c/o Fidelity Fund, Inc., Boston, Mass.

DEAR MR. TALIAFERRO: You have asked us whether we feel it would be wise for our trust and for the open-ended management investment companies in general to have substituted for the investment company bill now before Congress a bill along the lines of Ohio's regulation Q–3. We are of the opinion that the Q–3 type of regulation with some clarification is preferable to Senate bill 3580. Q–3, in some respects, gives security holders better protection than the Senate bill and has great advantage to the industry and so to the shareholders in avoiding a multiplicity of laws with differing provisions which managers of investment companies must keep in mind and follow.

As one of the pure Massachusetts trusts whose shareholders, of course, have no vote, although the trust instrument can be amended in certain respects only with the written consent of the holders of a majority of the shares, we feel that the paragraphs of Q–3 calling for shareholders vote, that is, paragraphs 6, 18, and 19, should not apply to pure trusts to an extent which would endanger their legal status as a pure trust or force them to incur expenses which as pure trusts they now avoid.

Very truly yours,

CENTURY SHARES TRUST,
———— *Secretary.*

EATON & HOWARD, INC.,
April 17, 1940.

RICHARD TALIAFERRO, ESQ.,
Boston, Mass.

DEAR SIR: We understand that you are making to the Senate subcommittee, which is considering Senate bill 3580, a statement to the effect that a number of investment companies or trusts located in Boston, whose shares are qualified for sale in the State of Ohio under the so-called Regulation Q–3 of the Ohio Securities Division, find that regulation practical and workable.

We are qualified under that regulation and feel that it represents a careful attempt by the Ohio Securities Division to protect investors in that State without involving the filing of voluminous reports and without undue interference with the management of the qualifying company. At the same time we believe such a regulation will prevent, as to companies complying, the occurrence of the abuses at which the Federal Investment Co. Act is aimed.

While there are a few points in this regulation with which we are not in sympathy and which we would be glad to explain in detail, we are glad to say that we endorse the regulation in principle and believe it might well be considered by the United States Senate committee as a method of approach for regulating open-end investment companies.

Very truly yours,

EATON & HOWARD, INC.,
By CHARLES F. EATON, Jr.,
President.