

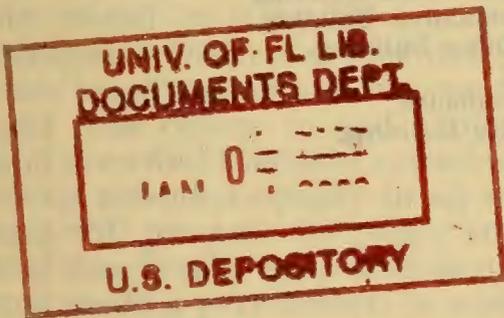
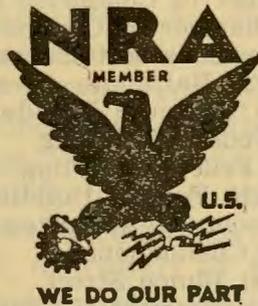
NATIONAL RECOVERY ADMINISTRATION

AMENDMENT TO
CODE OF FAIR COMPETITION

FOR

INVESTMENT BANKERS

AS APPROVED ON FEBRUARY 27, 1935



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1935

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Approved Code No. 141—Amendment No. 4

AMENDMENT TO CODE OF FAIR COMPETITION

FOR

INVESTMENT BANKERS

As Approved on February 27, 1935

ORDER

APPROVING AMENDMENT OF CODE OF FAIR COMPETITION FOR
INVESTMENT BANKERS

An application having been duly made pursuant to and in full compliance with the provisions of Title I of the National Industrial Recovery Act, approved June 16, 1933, for approval of an amendment to Section 4 of Article V of Amendment No. 2 of the Code of Fair Competition for Investment Bankers, which is attached hereto and hereby made a part hereof, and Notice of Opportunity to be Heard having been afforded to all interested parties, and any objections filed having been duly considered and the annexed report on said amendment, containing findings with respect thereto, having been made and directed to the President:

NOW, THEREFORE, on behalf of the President of the United States, the National Industrial Recovery Board, pursuant to authority vested in it by Executive Orders of the President, including Executive Order No. 6859 dated September 27, 1934, and otherwise; does hereby adopt and incorporate, by reference, said annexed report and does concur in and adopt the findings of fact made therein, and does find that said amendment and the Code as constituted after being amended comply in all respects with the pertinent provisions and will promote the policy and purposes of said Title of said Act, and does hereby order that said amendment, which is attached hereto and made a part hereof, be and it is hereby approved, and that the previous approvals of said Code and said Amendment No. 2 are hereby modified to include an approval of said Code in its entirety as amended.

NATIONAL INDUSTRIAL RECOVERY BOARD,
By L. C. MARSHALL, *Executive Secretary*.

Approval recommended:

L. H. PEEBLES,
Division Administrator.

WASHINGTON, D. C.,
February 27, 1935.

REPORT TO THE PRESIDENT

The PRESIDENT,
The White House.

SIR: An application has been duly made pursuant to and in full compliance with the provisions of the National Industrial Recovery Act for the amendment of Amendment No. 2 of the Code of Fair Competition for Investment Bankers for the following purposes:

The addition of a new Sub-Section (e) to Section 4 of Article V to require that in order to receive a concession on each purchase of securities the investment banker (other than a member of the selling syndicate or selling group organized in connection with the distribution of the issue of securities in question) must sign a certificate which will indicate that said investment banker is performing a service for which he is entitled to the concession.

The Code of Fair Competition for Investment Bankers was approved on November 27, 1933. Amendment No. 2 of this Code contains all of the Fair Trade Practice provisions and was approved on March 23, 1934.

The Code provides that where new securities are being distributed through a selling syndicate or selling group there can be only one price at which the new securities can be offered to the public during the life of the selling syndicate or selling group, the intent being to avoid any preference or discrimination in sales to investors. However, the Code provides that another investment banker may have the concession from such public offering price if and to the extent that the selling syndicate or selling group agreement authorizes such concession. Since certain purchasers, notably banks in the normal course of their business, purchase new issues of securities, either for redistribution or for their own investment account or both, they are as a class in the dual capacity of distributors and investors. Therefore, such purchasers, under the Code as now written, when purchasing solely for their own investment account, are in a position of receiving preference as compared with other investors.

The proposed amendment would require that before a concession could be given to an investment banker (other than a member of the selling syndicate or selling group organized in connection with the distribution of the issue of securities in question) he must certify that he is purchasing the securities either (1) solely for the account of clients, or (2) for his own account but with the intention of redistributing the securities to his clients in the ordinary course of his business. No certificate is required of participants in the selling syndicate or members of the selling group, because the necessary control is included in the syndicate or group agreements.

The effect of the amendment would be to consistently maintain the principle of no discrimination between investors by putting all investment bankers on a level with private investors when they purchase securities solely for investment and not for distribution. It proceeds on the theory that an investment banker is entitled to a lower price than that available to the public only when that investment

banker actively participates in the distribution to others of the securities in question.

FINDINGS

The Deputy Administrator in his report to the National Industrial Recovery Board on said amendment of said Amendment No. 2 of said Code having found as herein set forth and on the basis of all of the proceedings in this matter:

The National Industrial Recovery Board finds that:

(a) The amendment of said Code and the Code as amended are well designed to promote the policies and purposes of Title I of the National Industrial Recovery Act including the removal of obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof, and will provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, by inducing and maintaining united action of labor and management under adequate governmental sanction and supervision, by promoting the fullest possible utilization of the present productive capacity of industries, by avoiding undue restriction of production (except as may be temporarily required), by increasing the consumption of industrial and agricultural products through increasing purchasing power, by reducing and relieving unemployment, by improving standards of labor, and by otherwise rehabilitating industry.

(b) The effect of the amendment will be to consistently maintain the principle of no discrimination between investors by putting all investment bankers on a level with private investors when they purchase securities solely for investment and not for distribution.

(c) The amendment will eliminate unfair competitive practices by prohibiting the granting of a concession by a selling investment banker to any purchaser where such concession is merely an inducement for the purchaser to purchase securities from said investment banker rather than the recognition that the purchaser will perform a service in the distribution of the securities which entitles him to such concession.

(d) The Code as amended complies in all respects with the pertinent provisions of said Title of said Act, including without limitation subsection (a) of Section 3, subsection (a) of Section 7, and subsection (b) of Section 10 thereof.

(e) The Code empowers the Code Committee to present the aforesaid amendment on behalf of the Industry as a whole.

(f) The amendment and the Code as amended are not designed to and will not permit monopolies or monopolistic practices.

(g) The amendment and the Code as amended are not designed to and will not eliminate or oppress small enterprises and will not operate to discriminate against them.

(h) Those engaged in other steps of the economic process have not been deprived of the right to be heard prior to approval of said amendment.

For these reasons, therefore, this amendment has been approved. For the National Industrial Recovery Board:

L. C. MARSHALL,
Executive Secretary.

FEBRUARY 27, 1935.

AMENDMENT TO CODE OF FAIR COMPETITION FOR INVESTMENT BANKERS

Amend Article V, Section 4, of Amendment No. 2 of the Code of Fair Competition for Investment Bankers: Add the following new Sub-section to be known as Sub-section (e):

(e) No investment banker (other than a member of the selling syndicate or selling group organized in connection with the distribution of the issue of securities in question) shall be allowed a commission or concession by such selling syndicate or selling group, nor shall any investment banker, (other than as aforesaid), be allowed a commission or concession by a participant in such selling syndicate or by a member of such selling group as provided in paragraph (b) of this section, unless the investment banker receiving such commission or concession shall furnish to the manager of the selling syndicate or selling group or to such participant in the selling syndicate or such member in the selling group at the time of the confirmation of the purchase or the entering of a subscription in connection with which such commission or concession is or is to be received, or prior to the date of confirmation of sale or of allotment, a certificate in a form to be approved by the Code Committee and signed by such investment banker stating he claims a commission or concession upon the purchase of the security in question and that such security is being acquired either (1) solely for the account of clients, or (2) for such investment banker's own account but with the intention of redistributing such security to clients in the ordinary course of his business.

Approved Code No. 141—Amendment No. 4.
Registry No. 1707-04.

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