Brandeis and Wall Street:
The Crafting of the Securities Act of 1933

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By the time Franklin Delano Roosevelt was nominated by the Democratic Party as its presidential candidate in 1932, the investment bankers of Wall Street had suffered major damage to their reputation and were considered the scapegoat of the economy's downfall. Throughout most of the 1920s, the growth and prosperity of the American economy made it possible for the investment banking community to operate freely. Having been a vital part of the government's bond-selling campaign during World War I, investment firms benefited from wartime access to the individual investor. Additionally, the business-friendly Republican presidents of the 1920s gave the investment banking community free reign over its business.[1]

The Investment Bankers Association of America (IBA), which was formed in 1912 as a trade association, served as the self-regulatory platform that sought to secure uniformity in state laws regarding the issuance, purchase and sale of securities. The IBA was an exclusive organization that, in 1929 represented only 650 members in a field that included more than 3,000 investment bankers. Most of the IBA's efforts were concerned with keeping New York State, the major securities market, free of regulation, and also making it difficult for states to require registration of new securities. The market crash and the onset of the depression in 1929 began a reversal of the IBA's decade-long influence on securities regulation. States began revising their statutes and rulings to roll back exemptions on securities registration and sought to reclaim the regulatory powers it had delegated to private institutions for the greater part of the decade. Even Herbert Hoover, who had helped to rally the market with his election in 1928, called for the

[1] Michael Parrish, *Securities Regulation and the New Deal* (New Haven, CT: Yale Univesrity Press, 1970), 21. Paul G. Mahoney, "The Political Economy of the Securities Act of 1933," *The Journal of Legal Studies*, Vol. 30, No. 1 (Jan., 2001), 6-7.

investigation of the stock exchange and became critical of the speculative nature of the securities market.[2]

During the summer of 1932, Roosevelt made it clear in a campaign speech given in Columbus, Ohio, that the regulation of securities and the ways in which the investment banking community conducted business would be central to the Democratic platform. He proposed that "every effort be made to prevent the issue of manufactured and unnecessary securities" and also proposed that "with respect to legitimate securities the sellers shall tell the uses to which the money is to be put."

> This truth telling requires that definite and accurate statements be made to the buyers in respect to the bonuses and commissions the sellers are to receive; and, furthermore, true information as to the investment of principal, as to the true earnings, true liabilities and true assets of the corporation itself.[3]

It was clear that financial regulation would become a central part of the New Deal. The tarnished reputation of investment bankers and growing concerns about the economy's inability to recover made it a political necessity to target Wall Street. The Securities Act of 1933, the first federal legislation to directly regulate the investment banking business, was a fulfillment of Roosevelt's campaign promises and an early victory for the New Deal.

Influenced by Louis Brandeis, who charged the banking industry with corruption and conspiracy in his book *Other People's Money* in 1914, the Securities Act of 1933 took on a Progressive Era quality that stressed the liability of the sellers to its consumers,

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[2] Parrish, *Securities Regulation and the New Deal*, 13-31. Charles R. Geisst, *Wall Street: A History* (New York: Oxford University Press, 1997), 179, 207-209.

[3] Franklin D. Roosevelt, "Campaign Address at Columbus, Ohio (August 20, 1932)" in *The Public Papers and Addresses of Franklin D. Roosevelt,* Vol. 1, 1928-32, (New York: Random House, 1938), p. 624.

or in this case, the issuers of securities to its investors. However, in addressing a number of Brandeisian concerns stated twenty years ago, the law failed to grasp the changes that the investment banking industry had undergone since the end of World War I. While the requirements and restrictions of the new law drew protest from investment bankers and businessmen across the country, it had the unintentional effect of solidifying the very banks that Brandeis had targeted in 1914 while eliminating a great deal of competition that had grown during the 1920s. The Securities Act of 1933 was, in effect, a political response that did little to change the role of the investment banker. Instead, the law aided the process of power concentration on Wall Street, the very result that Brandeis had warned against.[4]

The publication of *Other People's Money* in 1914 came as a result of the findings of the Pujo committee hearings in 1912. The hearings were called by Congressman Charles Lindbergh of Minnesota (father of the famed aviator) and named after Arsene Pujo, a Democratic Congressman from Louisiana. The Pujo committee charged J.P. Morgan, National City, First National and three smaller banks of using interlocking directorships to exert control over the supply of money and the way it was used. The term "money trust" was used to label these powerful banks, and the perception that a handful of banks controlled over $22 billion of resources ("three times the assessed value of all the real estate in the City of New York")[5] made the image of Wall Street bankers all the more threatening.[6]

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[4] Parrish, *Securities Regulation and the New Deal*, 42. Paul G. Mahoney, *The Journal of Legal Studies*, 30-31. William E. Leuchtenburg, *Franklin D. Roosevelt and The New Deal: 1932-1940* (New York: Harper & Row, 1963), 59-60.

[5] Louis Brandeis, *Other People's Money and How Bankers Use It* (New York, Frederick A. Stokes & Co.: 1914), 33.

[6] Geisst, *Wall Street: A History*, 129-134.

For Louis Brandeis, such a "combination – the intertwining of interests" on the part of the bankers was unacceptable and harmful to both companies and consumers. He purposed "publicity" as the solution: "Sunlight is said to be the best of disinfectants; electric light the most efficient policeman."[7] Brandeis advocated the mandatory disclosure of commissions or profits by bankers when issuing securities. One of the major reasons for disclosure was for the benefit of the investor, who, judging from the size of the commission, would know how invested the banker was in the security ("the higher commission for underwriting weaker security")[8] and subsequently, have the ability to judge whether or not an investment was a sound one.

While the sensational effect of the Pujo committee hearings and the Progressive pitch of Brandeis's publication aroused public opposition to Wall Street bankers, the Wilson administration hesitated to take action because of its cooperative relationship with bankers on ventures that included the domestic economic crisis in the cotton market and loans to European nations prior to World War I. Several states, meanwhile, enacted "blue-sky laws" that prohibited the sales of certain securities without a license, but, as mentioned earlier, the IBA pooled its resources to keep New York free of such laws and encouraged bankers to evade state regulation by conducting their business through mail in more lax states. Drastic reform in the Brandeisian spirit would have to wait.[9]

After World War I, the United States emerged as a creditor nation for the first time in its history, meaning that more money was loaned to other nations than borrowed from them. The "Roaring Twenties" was an era of unprecedented economic growth.

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[7] Brandeis, *Other People's Money*, 92.
[8] Brandeis, *Other People's Money*, 103.
[9] Vincent Carasso, *Investment Banking in America* (Cambridge, MA, Harvard University Press: 1970), 199-201.

New trends in investment banking developed as a result of new economic conditions. Bonds, usually in the form of corporate debt or government issues, had been the preferred security during World War I. In the twenties, however, demand for stocks, which carried greater risk but potential for greater rewards as well, prompted businesses to increase its sales force and to start selling directly to public markets. This trend gave rise to small, regional investment banks that performed underwriting services for obscure corporations. The more established Wall Street investment banks, such as J.P. Morgan and Kuhn, Loeb & Co., opposed the rapid growth of less reputable banks and also cited the deterioration in the quality of securities being offered.[10]

J.P. Morgan, Kuhn, Loeb & Co., and Dillon, Read & Co. were some of the leading private investment banks during the 1920s. They were "private" in the sense that they were not regulated like the national banks and offered its depositing services primarily to corporations rather than to the general public. These private banks were the most conservative and prestigious institutions of the era, and their interests were directly reflected in the agenda of the Investment Bankers Association. These banks were dismissive about the speculative trend in securities that developed during the 1920s and avoided the solicitation tactics of less prestigious banks. The private banks felt that their reputation and resources would consistently attract clients, but by 1928, the top five private investment banks, which only three years earlier had managed 37% of all securities, saw their dominance shrink to 19.4%.[11]

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[10] Carasso, *Investment Banking in America*, 240-243. Mahoney, *The Journal of Legal Studies*, 11-13.

[11] Geisst, *Wall Street: A History*, 162-163. Carasso, *Investment Banking in America*, 270-278. Mahoney, *The Journal of Legal Studies*, 13-15.

A much greater threat than the smaller, regional banks came from the entrance of commercial banks into Wall Street. The lure of selling of securities to individuals beckoned commercial banks as they created subsidiaries for underwriting and brokerage services. For example, the National City Bank created the National City Company, which was led by Charles E. Mitchell starting in 1916, and doing business of over $1 billion annually by 1920.[12] These "affiliates of national banks" such as Guaranty Co., Chase Securities, and Bankers Trust became "financial department stores" that offered investment banking services to corporations while offering individuals the ability to deposit money and to invest in securities. It was through these institutions that more Americans, including women, became investors. For private investment banks, the emergence of commercial banks as competitors became a problem because funds that had previously been loaned to private banks by commercial banks were now used by commercial banks for their own securities operations. More importantly, commercial banks, many of them with their own retail branches across the country, threatened the syndicate system, a system that favored high concentration of business with a few private banks.[13]

The syndicate system was a way of marketing securities that began early in the twentieth century as corporations stopped selling securities and deferred such assignments to prestigious banking houses. The growing size and risk of security issues made it necessary for a system in which multiple banking houses could participate in the planning and organizing of securities distribution. The syndicate was structured much like a corporation, with the managing underwriter – the banking house that had been

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[12] A. St. John, "Men in Wall Street's Eye: Introducing Mr. Charles E. Mitchell, *Barron's (1921-1942)*, Mar 5, 1923; 3, 10.

[13] Mahoney, *The Journal of Legal Studies*, 18.

assigned by the client to originate the security – inviting other banking houses and leading them in the underwriting process. In agreeing to bear part of the liability for the issue of new security, each syndicate member was allowed to purchase securities at a discount and sell at a profit. The syndicate system also fostered a sense of cooperation among banking houses, as they would continue a syndicate relationship from security to security, and the reputation of these firms would increase with each successful stint as managing underwriter.[14]

The increase in the number of underwriters as well as the increased speed of distributions due to retail selling in the 1920s led to an evolution of the syndicate system. The handful of exclusive managing underwriters no longer had the concentration of securities business, and affiliates of national banks began taking over. The 1920s saw the rise of the "selling group" which consisted of a large banking group that was organized specifically for covering the liability of carrying costs, traders' account, and other expenses. This process started a trend which began to distinguish between the wholesale underwriting process and the retail distribution process, to be handled by a selling group. Impeding this process was the existence of integrated banks, mostly commercial banks, which offered both underwriting services and retail outlets. These banks experienced tremendous growth in the 1920s, and by 1928, were able to surpass wholesale underwriters in managing new securities.[15]

The crash of 1929 and growing concerns about a long-term depression prompted political action. Hoover, convinced that short-selling on the stock exchange was hurting the market, expressed a degree of paranoia as he charged Democratic financiers such as

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[14] Carasso, *Investment Banking in America*, 53-62.

[15] "Some Large Distributing Firms" *Barron's (1921-1942)*, Jul 25, 1927; 7, 30. Mahoney, *The Journal of Legal Studies*, 19-20. Carasso, *Investment Banking in America*, 264.

Bernard Baruch of conspiring with European bankers to engineer a bear raid to keep the market from recovering. By late February of 1932, Hoover called on Congress to investigate the stock exchange. The Senate Banking and Currency Committee, which probed the practices on the stock exchanges, would oversee two years of intermittent testimony from Wall Street's elite. However, it was not until January 1933, when Ferdinand Pecora, a lawyer who had experience with Wall Street while serving as Chief Assistant District Attorney in New York City, was appointed that the committee hearings intensified and rose to the national spotlight.[16]

The Pecora hearings, as the Senate investigations would later be called, was, in many ways, a repeat of the Pujo committee hearings of 1912. The belief that a "money trust" existed and that it controlled numerous corporations was still intact. However, the uncovering of irresponsible and reckless abuses by investment banks became the central role of the Pecora hearings. Among the worst offenders were the commercial banks and their affiliates.

Charles Mitchell, who presided as the chairman of National City Co., the largest investment firm at the time, and National City Bank, the second largest bank in the world, answered to a multitude of charges that included: pushing of unsound stocks to investors through false or misinformed advertising, using investor money to bail out certain parts of its business and not reporting such transactions, using the securities affiliate to execute heavy trades of the parent bank in order to keep prices inflated, and creating "management funds" to give out handsome bonuses to National City Bank and National City Co. executives. Mitchell and Hugh B. Baker, the president of National City Co., would eventually as a result of the Pecora investigation. Chase Securities Corporation,

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[16] Carasso, *Investment Banking in America*, 326-327. Geisst, *Wall Street: A History*, 210-211.

the affiliate of Chase National Bank, the world's largest bank at the time, was also scrutinized for its corrupt practices which included insider trading, stock pools, and market manipulations. Its president, Albert H. Wiggin, was found to have profited during the most troubling economic moments in 1929, selling his own bank's stock short and netting himself $4 million. In peddling securities to their nationwide network of individual investors and sitting atop a reserve of deposited cash, these integrated banks were unable to resist the temptation of free spending in hopes of making a greater profit.[17]

The Pecora investigation of the private banks took a different tone. While some well-known banks, such as Goldman, Sachs & Co. and Dillon, Read & Co. were found to have pushed unsound securities and manipulated investors in the reorganization of two trusts, respectively, such offenses were pale in comparison to that of the commercial banks and their affiliates. Kuhn, Loeb & Co. was found to have offered sound securities throughout the 1920s, and its only major infraction, of manipulating the Pennroad Corporation to wrest away control from its shareholders, was acknowledged by chairman Otto Kahn as an error. In scrutinizing the J.P. Morgan & Co., the Pecora investigation was able to gain access to some of the most confidential information at the time, including the firm's articles of co-partnership and balance sheets of the previous five years. In full compliance with the government, J.P. Morgan executives were confidently able to state the extent of their business and their commitment to providing sound securities to their investors. J.P. Morgan also claimed that it employed no salesmen and only less than 2.1 of all its securities offered since 1919 were in default. Adopting the

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[17] Carasso, *Investment Banking in America*, 329-335. Gaines T. Cartinhour and William H. Garbade, Jr. "The Future of Security Affiliates," *Barron's (1921-1942)*, Mar 28, 1932; 12, 13.

Progressive tone of the Pujo committee, Pecora raised the same issues that Brandeis had raised twenty years earlier. He questioned the use of interlocking directorships to control corporations and also accused investment banks of refusing to compete with each other. The second time around, these accusations were not as potent, especially in comparison to the gross misconduct of the commercial banks. However, the sticking point in the investigation of J.P. Morgan & Co. was the figure of $48,000 – the sum of taxes paid by the partners on the 1930 incomes. Although Jack Morgan, the son of the founder and chairman of the firm, tried to explain that he and his partners had paid $11 million in taxes on their 1929 incomes and that the drop-off was due to a "disparity in tax laws," the public immediately labeled Morgan and his partners as tax evaders. Additionally, the discovery of "preferred lists" used by the firm to offer special discounts on security issues to influential figures, family and friends was criticized as a bribery tool by the committee. While no bank escaped the Pecora hearings unscathed, the investigations had the effect of marking off the excessively speculative and corrupt banks that would become the major targets of any securities regulation.[18]

Days after the close of the National City hearings, Roosevelt gave his inaugural address in which he called for the application of "social values more noble than mere monetary profit" in reference to the recent wrongdoings of the "money changers."[19] The Pecora investigations had identified an immediate need for securities legislation that would require full disclosure of the securities being sold. The investigation had also raised questions about the legality of commercial banks conducting securities business

[18] "The Week Reviewed: J.P. Morgan Advises and Explains," *Barron's (1921-1942)*, May 29, 1933; 13, 22. Carasso, *Investment Banking in America*, 336-346.

[19] Franklin D. Roosevelt, "Inaugural Address, March 4, 1933" in *The Public Papers and Addresses of Franklin D. Roosevelt,* Vol. 2, 1933, (New York: Random House, 1938), p. 11.

through its affiliates. By March 1932, a year before Roosevelt took office, several prominent banks, including Bank of America, Bankers Trust Co., and Chemical Bank & Trust, had dropped their affiliates. The threat of legislation had begun to scale back the competitive forces that hindered private banks throughout the 1920s.[20]

Roosevelt began his term in 1933 with a flurry of legislation during a period know as the first Hundred Days. By the end of his first month as president, Roosevelt proposed to Congress a securities law that would require "every issue of new securities to be sold in interstate commerce [will] be accompanied by full publicity and information."[21] Roosevelt initially called upon Huston Thompson, former head of the Federal Trade Commission, to draft a security bill. The Thompson bill was centered on the registration statute that required all securities to be registered with the FTC, that is, to provide all vital information regarding the security including the amount of commissions and other fees paid to the underwriting syndicate. In emphasizing preventive measures, the Thompson bill sought to create a self-enforcing legislation that would operate much like the Sherman Anti-trust Act. He also envisioned a greater role for the FTC, which would have the ability to revoke and impose liabilities on the directors of corporations issuing the security.[22]

The Thompson bill drew sharp criticism from both the investment banking community and Congress for similar reasons. Investment bankers argued that the measures were too strict and would hurt the securities business, especially in making

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[20] "The Future of Security Affiliates," *Barron's (1921-1942)*, Mar 28, 1932; 12, 13.

[21] Franklin D. Roosevelt, "A Message to Congress on Securities Bill" in *The Public Papers and Addresses of Franklin D. Roosevelt,* Vol. 2, 1933, ed. Samuel Rosenman (New York: Random House, 1938), p. 93-94.

[22] Michael Parrish, *Securities Regulation and the New Deal*, 49-51.

directors of corporations liable for providing information about the "soundness of their company."[23] Senator Gore of Oklahoma felt that the securities bill "should be limited to the furnishings of pertinent information to the Trade Commission, leaving it to the investors to decide whether to buy securities."[24]

Sensing a need for change in the drafting of the bill, Roosevelt was advised by Raymond Moley to ask Harvard Law Professor Felix Frankfurter to help in the drafting process. Frankfurter, a "disciple" of Louis Brandeis, brought with him an entourage of young lawyers who would eventually become influential New Dealers: Benjamin Cohen, Tommy Corcoran, and James Landis. These three shared Frankfurter's Brandeisian view that big, monopolistic organizations threatened an individual's freedom. However, their concern for "bigness" was not only limited to business, or specifically, to investment banks; they were just as concerned about the "bigness" of government and how securities legislation could end up giving too much power to a government agency such as the Federal Trade Commission. A "flexible administrative framework" was preferred over any proscriptive legislation, and this meant, as Roosevelt had mentioned in his address to Congress, "the least possible interference with honest business."[25]

Signed into law by Roosevelt on May 27, 1933, the Federal Securities Act of 1933 included the following provisions:

(a) A registration statement must be filed with the FTC (later the Securities Exchange Commission) and become effective before any person may sell the securities.

[23] "Wall St. Will Aid in Stock Reforms," *The New York Times (1857-Current)*, Mar 31, 1933; ProQuest Historical Newspapers The New York Times, 4.

[24] "Bankers Approve Investment Plan," *The Washington Post (1877-1954)*, Apr 2, 1933; ProQuest Historical Newspapers The Washington Post, 4.

[25] Michael Parrish, *Securities Regulation and the New Deal*, 59-62. From Franklin D. Roosevelt, "A Message to Congress on Securities Bill" in *The Public Papers and Addresses of Franklin D. Roosevelt,* Vol. 2, 1933, ed. Samuel Rosenman (New York: Random House, 1938), p. 93-94.

(b) Registration must disclose the public offering price of securities and any deviation from that price by any distributor.

(c) A mandatory "waiting period" of 20 days between filing and effectiveness of the security; any solicitation prior to filing and in between the "waiting period" is prohibited.

(d) Failure to file a registration statement imposed criminal and civil liabilities as well as submission of any incorrect or misleading information[26]

Immediate response to the Securities Act of 1933 from the investment banking community was not much different than the responses to the Thompson bill. Five months after the enactment of the Securities Act, IBA President Frank M. Gordon, also vice president of First National Bank of Chicago, voiced the opinion of the IBA after its annual convention in Hot Springs, Va.:

> The law is a hindrance to national recovery… its result up to this time has been an almost complete stoppage of new general market corporate underwritings for capital improvement… The gravest obstacles in the practical operation of this law are contained in the indefinite liabilities which are imposed upon industry and upon securities dealers.[27]

The "indefinite liabilities" were seen as problematic because it placed financial liabilities on almost every person involved in the creation of a new issue. This section was specifically written by the Frankfurter group to help reflect the "series of interrelated functions performed by separate professional and interest groups" in issuing securities.[28] The idea that stringent new rules had prevented corporations from taking the pains to raise capital took a foothold with investment bankers. Supports of the Securities Act dismissed such claims. Congressman Sam Rayburn, chairman of the House Interstate Commerce Committee, remarked that it is "not the securities act but the lack of a market

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[26] U.S. Securities and Exchange Commission, *Securities Act of 1933*, 15 December 2004 <http://www.sec.gov/divisions/corpfin/33act/index1933.shtml>

[27] "Securities Act Bars Recovery, Bankers Find," *Chicago Daily Tribune (1872-1963), Oct 31, 1933*; ProQuest Historical Newspapers Chicago Tribune, 23.

[28] Parrish, *Securities Regulation and the New Deal*, 60.

which is preventing the sale of securities."[29] James Landis, commissioner of the FTC, in a letter stated that "under the Securities Act, the commission has forced registrants desiring to offer [speculative] stocks to disclose the disagreeable facts, such as secret promoters' and underwriting profits, overcapitalizations, etc."[30]

The other sections of the law, in streamlining the securities business across all the states, were viewed with more favorably by the IBA. It is important to note that, as mentioned above, the IBA represented primarily the interests of conservative private banks. The 20-day "waiting period," which was intended to prevent investment banks from "beating the gun" and selling securities before their release, proved futile as bankers found ways to market to customers using a "preliminary" version of the prospectus called the "red herring."[31] What kept investment banks from "beating the gun" then, was the power given to the managing underwriter during the "waiting period." If the managing underwriter felt that the security would falter – due to unexpected poor performance by the corporation, unfavorable market conditions, or from speculative traps set by eager syndicates – the leading firm had the ability to pull out of the offering in what was called the "market-out" clause.[32]

The "waiting period" did, however, affect the retail side of investment banking by cutting off syndicate members from retail demand information during the 20-days of no solicitation. By preventing firms from engaging in the traditional public marketing campaigns such as newspaper or radio advertisements during the "waiting period," the

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[29] "More Business Heads Tell Views on Effect of Securities Act," *The Washington Post (1877-1954),* Apr 5, 1934, ProQuest Historical Newspapers The Washington Post, 2.

[30] "For Tightening of Securities Act," *The New York Times (1857-Current),* Dec 13, 1933; ProQuest Historical Newspapers The New York Times, 37.

[31] Mahoney, *The Journal of Legal Studies*, 21-22. The "red herring" got its name from the red type used to signify that the SEC had not yet approved the registration.

[32] Vincent Carosso, "Washington and Wall Street: The New Deal and Investment Bankers, 1933-1940," *The Business History Review*, Vol. 44, No. 4 (Winter, 1970), 436.

Securities Act created a wide gap between the wholesale underwriting and the retail distribution. By allowing firms to engage in oral communication with institutional buyers, either through road-shows or "red herring" prospectuses, a trend towards making the initial sale of securities wholly institutional was started. Integrated firms, such as National City Co. and Chase Securities Corporation, had accumulated enormous capital through their ability to channel securities quickly to retail outlets; with the Securities Act of 1933, such advantages became obsolete.[33]

It was the Glass-Steagall Act of 1933, in addition to the Securities Act, which helped private investment banks return back to the top of the securities business. In forcing the legal split between commercial banks and investment banks, the Glass-Steagall Act forced many banks to choose one side or the other. J.P. Morgan & Co. decided to become a commercial bank and serve its corporate depositors while several partners left the firm to form a new securities company, Morgan Stanley. Wall Street's powerful private banks, such as Kuhn, Loeb & Co., the newly created First Boston, and Dillon, Read & Co. reclaimed underwriting dominance and shared in the abundance of syndicate opportunities. Firms such as Goldman, Sachs and Lehman Brothers, strictly wholesale underwriting firms since their inception, grew in size and reputation as competition in the investment banking industry grew thin. By 1934, the concentration of managed securities in the top five investment banks climbed to 48.3% as compared to 14.6% the year before. With a decrease in the number of underwriters, the syndicate

[33] Mahoney, *The Journal of Legal Studies*, 24-25.

system which had been in danger during the 1920s, solidified itself as the standard way of bringing out new securities.[34]

Felix Frankfurter, in September 1933, noted that "conservative investment banking, within its appropriate function, has nothing to fear and everything to gain from the Securities Act."[35] He was right in the sense that "conservative investment banking" represented the well-established firms of Wall Street that did not deviate much from its usual business during the 1920s. These were the firms whose prestige and reputation with corporations would also earn them the notorious association with "money trusts" and "financial oligarchy." The Securities Act of 1933 forced investment banks to comply with new regulations and favored firms that showed a commitment to carrying out the underwriting process with precision and expertise.

Of course, it is important to note that the Securities Act of 1933 was just one of several pieces of legislation that affected Wall Street during the New Deal. The Glass-Steagall Act, previously mentioned, was a drastic piece of reform legislation that altered the structure of the finance industry. The Securities Exchange Act of 1934 created the Securities Exchange Commission that replaced the FTC as the policing agency of securities. The Maloney Act of 1938 allowed the banking industry to self-regulate by creating a set of "Rules of Fair Practice." However, most New Deal legislation having to do with Wall Street followed the Frankfurter model of "flexible administrative framework," which avoided the overhaul of existing structures and, to a degree, prevented the government from exerting too much control in reform legislation.[36]

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[34] Carasso, *Investment Banking in America*, 363-364. Mahoney, *The Journal of Legal Studies*, 13, 25-31.

[35] Quoted from Parrish, *Securities Regulation and the New Deal*, 71.

[36] Parrish, *Securities Regulation and the New Deal*, 62.

In 1914, Louis Brandeis regarded the House of Morgan as the most dangerous organization in the United States. By 1933, J.P. Morgan & Co. had opted to leave the investment banking business. In its place, however, Morgan Stanley & Co. emerged as a dominant investment bank. In the first six years of its existence, Morgan Stanley managed almost $3 billion in securities, more than J.P. Morgan's total between the years 1925-1930.[37] Louis Brandeis was indeed an influential figure in the shaping of securities legislation. The Securities Act of 1933 bore the Brandeisian imprint of discouraging "bigness" by negating the advantages of an integrated bank. It also advanced his ideas of social responsibility by requiring banks to disclose their commissions and fees as well as any other information that might help educate the investor into making a better decision.

On the other hand, the Securities Act of 1933 followed a Brandeisian concept that was not expected with regard to securities regulation. Big government, as Brandeis had shown in the Supreme Court ruling on the NIRA, was just as undesirable as big business. This led to the revision of the Thompson bill in which the power of the FTC was limited. The Brandeisian imprint was also evident in the Glass-Steagall Act, which facilitated the divorce of commercial banks from investment banks. What ultimately failed the Brandeisian goal of securities legislation, however, was the dismantling of the "money trust." While the three companies that Brandeis had mentioned in 1912 – J.P. Morgan, National City, and First National – no longer occupied the top three spots of investment banking, the notion that a "money trust" still existed remained strong in the minds of antimonopoly advocates in the 1930s. The idea that a handful of banks controlled the flow of capital in America was still very strong; many felt that the New Deal legislation had done nothing to curb the growth of investment banks. In 1938, amid a great push by

[37] Mahoney, *The Journal of Legal Studies*, 13, 28.

the antimonopoly faction of the New Deal, the Temporary National Economic Committee (TNEC) was created to investigate monopolistic practices across various industries, including investment banking.[38] The decision to investigate Wall Street once again confirmed two things: (1) the New Deal securities legislation had helped to restore the dominance of a handful of banks that had suffered through competition during the 1920s and (2) the fear of a "money trust" in the similar vein of the Pujo committee and Pecora investigations persisted.

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[38] Geisst, *Wall Street: A History*, 258.

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