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"THE S.E.C.'S COMPETITIVE BIDDING RULE"

By

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THE S.E.C.'S COMPETITIVE BIDDING RULE

On April 7, 1941, the S.E.C. adopted Rule U-50 under the Public Utility Holding Company Act of 1935 requiring competitive bidding in the sale of securities by registered public utility holding companies and their electric and gas utility subsidiaries. The rule applies to the sale both of new securities and portfolio securities. It prescribes public invitation of sealed proposals, although it neither requires the acceptance of the highest bid, nor precludes the possibility that all bids may be rejected. Certain transactions are specifically exempted, including securities sold for less than $1,000,000; securities issued pro rata to existing security holders pursuant to any preemptive right or privilege or in connection with any liquidation or reorganization; and loans of a maturity of ten years or less, where the lender is a moneyed institution, the security will not be resold, and no finder's fee or other negotiation charge is to be paid to any third person. In addition, there is a general provision for exemption from competitive bidding by order of the Commission. We recognize that there may be offerings, not only of junior securities, but perhaps even of senior securities, where competitive bidding will not be necessary or may not serve to accomplish the objectives of the rule; and there is ample provision for the exemption of such cases. An interested state commission has the right to be heard with respect to any application for exemption, and it goes without saying that we shall attach great weight to the views of state regulatory authorities in passing upon such applications.

Since May 7, 1941, the effective date of the new rule, we have passed upon several security issues which were sold through competitive bidding. I welcome the opportunity to tell you about our experience with the new rule, particularly the procedures which have been developed with respect to Section 6 (b) cases. First, however, let me outline the events and the reasons which impelled us to adopt it.

1. *Our reasons for adopting Rule U-50*

Prior to our adoption of Rule U-50, the customary method of selling utility securities involved a sale by the issuing corporation to an underwriting syndicate at a price determined by private negotiation with the principal or so-called originating underwriter. It was an established policy of investment bankers not to compete among themselves for the securities business of any issuer which had a continuing investment banking relationship with a particular firm. Similarly, with very few exceptions, the issuing corporation made no attempt to seek competitive bids or to "shop around" for better terms than those offered by its customary banker. In some cases, moreover, there was an affiliate relationship, sometimes extending over a considerable period of time, between the originating underwriter and the issuer. As a result of these conditions there was a definite absence of free market competition in the underwriting of utility security issues. Fortunately, the provisions of the Public Utility Holding Company Act provided ample authority for meeting the problem.

Section 1 of the Act enumerates various abuses and evils which gave rise to the need for control of public utility holding companies and their subsidiaries, including those which occur when public utility companies enter int

transactions in the "absence of arm's-length bargaining" or where there is "restraint of free and independent competition." In addition to the provisions which are aimed at the maintenance of competitive conditions, the Commission was given very special authority over dealings with "affiliates." It is not strange, therefore, that the Commission's first approach to the problem of maintaining arm's-length bargaining in the issuance and sale of public utility securities was evidenced by an attempt to control relations of holding company systems with investment banking affiliates.

Thus, early in the administration of the Act, the Commission was confronted with security transactions in which there was serious question whether the negotiations were conducted at arm's-length. The Commission eventually concluded that it was necessary to establish a procedure to cope with the problem of affiliation in security issues. Accordingly, in December 1938, we adopted Rule U-12F-2, which prohibited, with exceptions, the payment of any underwriter's fee by registered holding companies or subsidiaries thereof to any affiliate unless the affiliate had been awarded the securities as the most favorable bidder in open competition. One of the exceptions was that an affiliate might act as an underwriter without competitive bidding if its participation did not exceed five percent of the total offering and its fee was computed at the same rate as that of other underwriters having a similar participation. The theory of this exception was that with their participation so limited investment bankers would no longer find it worthwhile, and therefore would cease, to dominate the securities transactions of the companies with which they were affiliated.

Our experience with Rule U-12F-2, however, was that, despite the fact that their participation was so limited, affiliated investment bankers continued to negotiate, as managing underwriters, the securities transactions of the companies with which they were affiliated. Significantly, during the two years that Rule U-12F-2 was in effect no use was made of the competitive bidding procedure it provided. Thus our attempt to assure competitive conditions and arm's-length bargaining in the sale of securities by companies subject to the Act was defeated because affiliated investment bankers, whatever their incentive may have been, continued to use their position of superior advantage to dominate such transactions.

It was claimed, moreover, that Rule U-12F-2 was burdensome and costly to issuers and underwriters alike, because prolonged investigations and hearings were found necessary in many cases to determine whether, under the Act, an underwriter and an issuer were affiliated within the meaning of Section 2 (a) (11) (D) and the Rule. And we, on our part, recognized that these hearings were not only costly and time-consuming for the parties, but presented for decision complex questions of fact. Thus we examined and re-examined the record in the *Dayton Power & Light Company* case, decided in March 1941, to avoid any possible unfairness in drawing inferences from the details of a large mass of evidence, adverse to the investment bankers there involved; and the delay and expense, necessarily incident to that careful scrutiny, occasioned further criticism of our Rule U-12F-2.

Our realization of the shortcomings of Rule U-12F-2 led us, in February 1940, to solicit suggestions as to the method by which we might "best insure the reasonableness of fees and commissions and the fairness of the terms and conditions of any proposed issue and sale of utility securities." We also instructed our Public Utilities Division to make a full study of the problem and, more than a year ago, on February 29, 1940 we wrote to each holding company system subject to the Act, as well as to state utility commissions, investment bankers and securities dealers throughout the country. In our letter we stated that competitive bidding and "shopping around" had been suggested to us as possible ways of meeting the problem. We received many replies, including nine from state public utility commissions. While three or four of the replies from the state commissions expressed doubt as to the wisdom of a general, inflexible rule requiring competitive bidding, there was unanimous approval of the insistence upon maintenance of arm's-length bargaining and competitive conditions in the sale of utility securities. One of the state commissions which has had long experience in regulating security issues wrote to us, in part, as follows:

> "We think that your Rule U-12F-2 and your practices relating to the determination of the price at which public utility holding companies and their subsidiaries should be permitted to issue securities have removed much of the secrecy that has heretofore enveloped the sale of such securities. More open negotiation and more active competition in the sale of securities have resulted therefrom. We favor more competition amongst underwriters. Competition cannot be said to exist when because of a general understanding one underwriter will evince no interest in the securities of a utility because some one else handled previous issues of that utility, or because the issuer has consulted another underwriter."

After careful consideration, and discussions with representatives of the Investment Bankers Association, the National Association of Securities Dealers, and others, it appeared to us that none of the suggestions received in response to that inquiry, other than competitive bidding, gave promise of effectively achieving the desired results. Then, in a report to us dated December 18, 1940, our Public Utilities Division formally recommended the adoption of a competitive bidding rule. Copies of that report were distributed to registered holding companies, state and federal regulatory bodies, and to a broad list of investment bankers and dealers, both directly and through the Investment Bankers Association and the National Association of Securities Dealers. In distributing the report, we invited written comments, and received numerous responses. Four of the state commissions commented upon the staff's report; two indicated general accord with the purposes of the proposed rule, one expressed a preference for direct negotiation as contrasted with an inflexible rule requiring sealed bids, and the fourth urged us to exempt Section 6 (b) cases from the proposed requirement. We then called a public conference to consider the recommended rule, and public discussion continued for four and one-half days. The conference was attended by approximately two hundred persons from every part of the country, including members of Congress, investment bankers, securities dealers, and representatives of other governmental agencies. Four members of the Commission were present at all times. All shades of opinion, pro and con, were expressed on the question, both in the written responses and at the conferences.

After weighing the evidence and considering all aspects of the problem we concluded that there was no way short of competitive bidding that would afford us satisfactory means of determining the reasonableness of spreads or the fairness of prices, assure disinterested advice in financial matters to the companies concerned, and effectively control their dealings with affiliates.

Competitive bidding for public utility securities is not a new or novel requirement. Ever since 1870 so conservative a state as Massachusetts has required by statute that, with certain exceptions, stock of gas and electric companies not taken by shareholders pursuant to their preemptive rights shall be sold at public auction. Then in 1919, Massachusetts enacted a law which Calvin Coolidge approved as Governor and which has been in effect ever since, requiring that gas and electric utilities in "issuing bonds . . . shall invite proposals for the purchase thereof by advertisements in two or more newspapers . . ." I inquire of those who so persistently have attacked our rule as a radical innovation what trace of radicalism they find in the record of Calvin Coolidge.

But Massachusetts has not been alone. In 1918 and again in 1926 the Indiana Public Service Commission required certain public utility companies thereafter to sell their securities at public auction. Since 1926 the Interstate Commerce Commission has required competitive bidding for equipment trust issues. In 1935 both the New Hampshire Public Service Commission and the District of Columbia Public Utilities Commission adopted standing orders requiring competitive bidding. And in 1939 the Federal Power Commission adopted a similar regulation.

Public utility holding and operating companies owe a duty to the public to obtain their capital at the lowest cost consistent with a sound financial structure. This duty arises from the obligation of public utility companies to furnish the public with the best possible service at the lowest possible price. The cost of capital is an important element in the determination of a fair rate of return on utility capital and thereby it enters into the determination of utility rates. Although we have no direct responsibility for such rates, it is one of the stated purposes of the Public Utility Holding Company Act of 1935 to foster economies in the raising of capital so as to enable public utilities voluntarily to reduce their rates. That object cannot be attained when, by reason of affiliations or other circumstances, registered public utility holding companies and their subsidiaries are not at liberty to seek their capital in free and open markets and to negotiate the sale of their securities at arm's-length.

2. *Our experience with competitive bidding*

The first experience with competitive bidding was furnished by *New York State Electric & Gas Corporation*, one of the large subsidiaries of Associated Gas and Electric Company. It involved a Section 6 (b) application for the issuance of first mortgage bonds in the amount of $35,393,000 and 120,000 shares of cumulative preferred stock with a par value of $100 a share. I shall outline some of the regulatory procedural steps which took place prior to the opening of competitive bids for the two issues of securities. The corporation filed its petition for permission to issue and sell the securities with the New York Public Service Commission on March 27, 1941 and a hearing on this petition, as supplemented on April 12, 1941, was

held before an examiner of that commission on April 15, 1941. On May 1, the New York Public Service Commission adopted a resolution authorizing the corporation to invite proposals for the purchase of the securities subject to certain terms and conditions set forth in the resolution, including the requirement that none of the securities could be issued until the corporation had obtained an order from the New York Public Service Commission authorizing the same. On May 17, 1941 New York State Electric & Gas Corporation filed its Section 6 (b) application with the Securities and Exchange Commission and on June 9 the Commission issued its order granting the application and permitting the declaration to become effective subject to the following conditions:

1. That the applicant obtain from the Public Service Commission of the State of New York a final order approving the issuance and sale of said securities in conformity with contracts for the purchase thereof, arrived at as a result of competitive bidding; such bidding to be conducted and such contracts to be executed in manner and form as described in the application and declaration, as amended;

2. That the applicant report to the Commission the results of the competitive bidding as required by Rule U-50 (c) and comply with such supplemental order as the Commission may enter in view of the facts disclosed thereby.

On June 10 and 11, 1941, the corporation published advertisements in New York City newspapers inviting proposals for the purchase of the securities and June 23 was specified as the date for submitting bids. In its original form the invitation provided that each proposal had to be for the purchase of either (1) all the bonds and all the stock, or (2) all the bonds, or all the stock. It also provided that the corporation, unless it should reject all bids, would accept the bid or bids which yielded the lowest aggregate annual cost of money. However, in order to prevent the automatic exclusion of insurance companies from the opportunity to bid successfully, which might well result from the lack of a complementary bid for the preferred stock, the invitation was amended to provide that any bidder could bid for all the bonds or all the stock but not for all the securities in a single or so-called basket bid. The corporation on its part agreed not to accept any proposal for the purchase of the bonds unless it also accepted a proposal for the stock and vice versa. By the terms of the invitation each bidder was required to tender a certified check for 5 percent of the principal or par amount of the securities covered by his bid.

The corporation opened the bids, which it had received, at 12 o'clock noon on June 23, 1941. There were four bids for the bonds, three of which were submitted by three groups of underwriters and one by The Equitable Life Assurance Society. No bids were received for the preferred stock. Accordingly all bids were rejected. You will be interested to know why no bids were tendered for the preferred stock. The invitation had specified that each proposal for the preferred stock must be not less than par value for stock having a dividend rate of no more than 5 percent. While the corporation's officers were of the opinion that they were assured of receiving bids within these limits, it developed that a number of the bankers in the two underwriting groups which had intended to bid on the preferred believed that they could not pay at least par for the 5 percent preferred stock without

suffering a loss on the resale of the stock to the public. Subsequent investigation by members of our staff confirmed the fact that each of the two underwriting groups had desired to make a bid on the preferred but had been unable to do so because a substantial number of underwriters in each group had been unwilling to bid on the stock within the limits imposed.

Thereafter officials of the corporation conferred with members of the Securities and Exchange Commission and its staff and determined upon the following course of action, subject to approval by the New York Public Service Commission and the S.E.C.:

1. To enter into a purchase contract with The Equitable Life Assurance Society for the sale to it of the bonds, bearing interest at the rate of 3-1/4 percent, at a price of 104.015 percent of the principal amount plus accrued interest, subject to the corporation's completing arrangements for the sale of the stock within a specified time. The proposed sale of the bonds to The Equitable Life was, in effect, a delayed acceptance of the best bid which the corporation had received for the bonds on June 23.

2. To readvertise for proposals for the purchase of the preferred stock on the same basis as previously except that the maximum dividend rate which could be specified by a bidder was to be 5-1/4 percent instead of 5 percent.

At the request of the corporation, the New York Public Service Commission, on June 26, 1941, modified its Resolution with respect to the preferred stock to the extent of authorizing invitation for proposals at a price not less than par with an annual dividend rate not greater than 5-1/4 percent. On the following day the S.E.C. adopted a supplemental order granting an exemption from Rule U-50 with respect to the issuance and sale of the bonds to The Equitable Life at its bid price and permitting reinvitation for proposals to purchase the preferred stock provided the public have at least two days' notice thereof prior to the receipt and opening of bids. Prior to the issuance of our supplemental order a representative of a group of insurance companies endeavored to persuade the S.E.C. to require competitive bidding anew for both the bonds and the preferred stock. The Commission, however, considering all of the facts felt that it was unnecessary and prejudicial to the spirit of competitive bidding to permit a second bidding on the bonds. The Equitable Life, along with the other original bidders, had bid for the bonds in good faith; the price was satisfactory to the company; and it did not seem to be appropriate to allow second-guessing on that business.

On June 27 the corporation readvertised for bids for the preferred stock which were to be received and opened on July 1. A syndicate headed by Blyth & Co. and Smith, Barney & Co. bid $100.07 for a 5-1/8 percent preferred stock which represented a cost of money to the corporation of 5.121 percent. A syndicate headed by The First Boston Corporation and Glore, Forgan & Co. were the successful bidders with a price of $100.85 for a 5-1/10 percent preferred stock, or a money cost of 5.057 percent. Approximately 34 underwriters participated in the purchase of the stock, which was reoffered to the public at the price of $103.50 per share. The distribution of the stock is reported to have been "sticky" and the selling group was not terminated until August 14. On August 15 the stock was quoted at 103 bid and 103-1/4 asked.

On July 1, 1941, the corporation obtained an order from the New York Public Service Commission approving the issuance and sale of the bonds and the stock to the persons and upon the terms and conditions set forth in the order. On the following day the S.E.C. issued its final order pursuant to Rule U-50 granting the corporation's Section 6 (b) application as amended.

Two other corporations have issued or sold securities pursuant to the provisions of Rule U-50. On June 11, 1941 the Philadelphia Company, a subsidiary holding company in the Standard Gas & Electric Company system, publicly invited proposals for the purchase of $48,000,000 collateral trust sinking fund bonds and $12,000,000 collateral trust serial notes. The invitation specified that each issue was to be bid for separately, and the company agreed to accept the highest bid for the lowest coupon rate (which had to be in multiples of 1/8 percent) for each issue, unless all bids were rejected, subject to the requirement that no bid would be accepted unless it yielded to the company at least the full principal amount of the issue.

Two large underwriting syndicates submitted bids on June 24 for each issue of securities. A syndicate consisting of 91 members headed by Kuhn, Loeb & Co. and Smith, Barney & Co. bid a premium of $162,000 for the $48,000,000 bond issue bearing 4-1/4 percent interest coupons and a premium of $1,500 for the $12,000,000 serial notes bearing 2-5/8 percent interest coupons. Another syndicate of 31 members headed by Mellon Securities Corporation and The First Boston Corporation bid a premium of $67,200 for the bonds bearing 4-1/4 percent interest and a premium of $8,400 for the 2-5/8 percent serial notes. The Philadelphia Company accepted the high bid in each instance. The bonds which were purchased by the Kuhn, Loeb group at 100.337 percent of the principal amount were to be resold to the public at a price of 102-1/2 percent. This issue, in the language of Wall Street, "went out the window" and on August 15 the bid and asked prices were 104-7/8 and 105-1/8, respectively. The serial notes purchased by the Mellon Securities group at 100.07 were to be resold to the public at an average price of 100.637 percent. The Commission's final order, approving the terms of sale and declaring the company's declaration to be effective, was issued on June 25, 1941.

On June 20, 1941 the Commission made findings and entered an order approving a plan filed by Standard Gas & Electric Company for disposition of 590,527 shares of $10 par value common stock of San Diego Gas & Electric Company owned by it. Bids were invited by Standard through advertisements published in certain metropolitan newspapers on June 24, 1941. The invitation specified that bids might be made for all or any part of the stock offered; that bids for part of the stock would not be accepted unless the total amount of such partial bids equalled the number of shares offered.

Two underwriting syndicates submitted bids on July 7, 1941 for the whole offering, but no partial bids were tendered. The successful bidder was a syndicate of 31 underwriters headed by Blyth & Co. which bid $13.427 per share and proposed to reoffer the stock to the public at $14.375 per share. There was a substantial difference between this bid and that made by the other syndicate headed by Kidder, Peabody & Co. and Eastman, Dillon & Co. Its bid was $12.5139 per share, which was approximately $539,000 less for the block of stock than the total price bid by the Blyth group. The Commission's final order, approving the sale of the securities to the high

bidder, was issued on July 8, 1941. The selling group on this issue was terminated on July 22, although stabilizing activities were continued by the syndicate until August 8. On August 15 the stock was quoted at 14-1/8 bid and 14-1/4 asked.

After the completion of the first three competitive bidding deals, we felt that it would be appropriate and desirable to make a routine check-up of the manner in which competitive bidding is developing. Accordingly we directed two members of our staff to make an investigation of the mechanics of the organization of syndicates which had bid on securities under Rule U-50 and the procedures followed in determining their bids with particular reference to the New York State Electric & Gas case. Interviews were held in the New York offices of the Commission with representatives of more than 20 underwriting houses. A transcript of the conversations was taken and a report was rendered to the Commission.

3. *The formation of syndicates*

With respect to the formation of syndicates to bid on securities issued pursuant to Rule U-50, an officer of one of the large underwriters testified that:

> ". . . on business where we in the past have headed a group on a negotiated basis, we are going to form a group to bid, and we are going to start to form that group by approaching those who were associated with us on the negotiated basis."

It is to be expected that this policy will generally be followed in the industry. It appears further to be the inclination of the major members of such traditional groups to accept the invitations so proffered, provided they receive satisfactory participations. Other bankers expressed the view that, other things being equal, they would prefer to accept "the invitation of that group which was led by the bankers who had been the historical bankers . . . for the reason that . . . they would know more about the situation."

At the present time, therefore, the traditional banker has some advantage over others in organizing a group to bid competitively. This is so not only because of the tendency of the larger participants to adhere to the historical group, and the inclination of others to join the group headed by the "informed" banker, but also because the traditional banker is likely to know of the intended issue somewhat sooner than others, and can therefore start forming his group before others can decide what course to take. It is not unlikely, however, that as time passes, these advantages will tend to disappear as the ties between issuers and their traditional bankers are broken by the force of competitive bidding.

The syndicates that were organized to bid on the first three issues offered under Rule U-50 were quite large. The three syndicates that bid on the securities of New York State Electric & Gas Corporation consisted of 44, 50, and 81 members, respectively. Similarly, the two syndicates which bid on the Philadelphia Company securities had 31 and 91 members, respectively. Despite this experience several bankers expressed the view that as time goes on the groups will tend to be smaller in size on account of the tendency of bankers to demand larger participations in competitive syndicates than they were accustomed to receive in negotiatedunderwritings in

order to make up for those issues lost. It is the view of others, however, that, while there may be a tendency to the formation of smaller groups, there is a reasonable probability that the pressures will be such that the bidders for each issue will include at least one large group comprised of bankers who were excluded from the other syndicates. Thus in connection with the proposed Wisconsin Power & Light financing at least four groups have already been formed. It is reported that two of these groups are relatively small, consisting of but 14 and 19 members, respectively, while another has attracted more than 50 members. It thus appears that the urge to do business by the many may well, under competitive bidding, offset the desire of the few to concentrate it in their own hands. Any effort to limit closely the number of participants by the managers of syndicates will only stimulate others to organize their own groups.

4. *The determination of bids*

The syndicates which bid on the first three issues of securities pursuant to Rule U-50 followed several different procedures in determining their formal bids. The first was the so-called "Town Meeting" method whereby a bid was reached after a full discussion by representatives of all the members of the group. A variation of this procedure was followed by one syndicate which had a preliminary price meeting of the "minor" members of the group. In that instance the "minors" were asked to submit to the syndicate manager the price range within which they would be willing to stay in the account and their views with regard to spread. These figures were tabulated and submitted to the "majors" in the group prior to their preliminary price discussion. The final price meeting, attended by all members of the syndicate, was held in the morning of the day scheduled for the receipt and opening of bids. At this meeting, several members of the group, whose maximum prices were exceeded by the other members, dropped out and their participations were absorbed by the "majors" in the account. A bid price was then determined and a preliminary discussion was held with respect to dealer concessions and other incidental details.

One of the syndicates which bid for the New York State Electric & Gas securities and another which bid for the Philadelphia Company securities used the "committee" method of determining their bids. In each case there was a small separate group, comprised mainly of the larger participants, which fixed the bid, and any member of the syndicate was free to withdraw if the proposed bid did not conform to his views.

Each of the foregoing methods has its adherents and it is too early to tell which will survive and become the general practice.

5. *Basket Bids*

A basket bid is an offer of a total sum of money for two or more issues of securities to be purchased as a single package. An invitation specifying a basket or package bid may or may not also permit the submission of separate bids for all of each class of securities being offered. Obviously, if separate bids for each issue are not permitted, the competition is arbitrarily restricted to those buyers who are able and willing to bid for all the securities on an all or none basis. If separate bids for each class of securities are invited, but not required as a prerequisite for the submission of a bid for all of the securities treated as a package, there is a possibility that certain bidders, able to bid only on one type of securities, might be automatically excluded by reason of the lack of complementary bids for the other issues being offered.

One might be forgiven a slight suspicion that some of the investment bankers who criticized our ruling against a basket bid for the securities of *New York State Electric & Gas Corporation* were not uninfluenced by a desire to shut out the insurance companies. We must remember that the insurance companies are in possession of very large sums of public savings, and one may rightfully question whether these funds should be denied direct access to the investment markets. It has been urged by some that the smaller insurance companies stand a better chance to secure satisfactory investments, if utility securities are purchased and distributed by investment bankers. But it would appear that as long as the conditions of bidding in each instance are free and open so that no interested persons or groups are precluded from bidding by any technicality, no one has a right to complain who does not take advantage of the opportunities thus made available. We observe that small retail enterprises have successfully met the competition of large chain store organizations by pooling their purchasing activities.

The Commission's views on the question of permitting the tendering of basket bids are still in a formative stage. Certain principles, however, are clear. Rule U-50 was adopted for the purpose of ensuring arm's-length bargaining and the maintenance of competitive conditions in the sale of public utility securities. Companies, therefore, should be free to utilize any bidding procedure which will promote that objective. If, in any particular instance, the aggregate volume of the proposed security issues is not too large, and if there is adequate assurance that separate bona fide competitive bids will be received for each issue, it is my view that an issuer should be permitted, if it so desires, to invite the tendering of package or basket bids. On that basis the issuing company has an opportunity to see whether the best bids for each of the separate issues aggregate a higher or a lower sum of money than the best basket bid and it can make its decision accordingly. By the same token, the underlying assumption or prerequisite, stated above, would assure equality of opportunity to all who might desire to bid for one or more of the issues offered.

6. *Conclusion*

Although a few investment bankers are still sniping at Rule U-50, the great majority are too much absorbed in making a living to thrash over old straw. Here is what one well known banker said about competitive bidding on the basis of his experience with the first three issues:

> "I think this competitive bidding is getting on all right. If it were mine, I would let the thing run a little longer until the pattern developed a little more.
>
> "Now, the prime essentials are all right. I don't believe in any of these situations today, for instance, that there has at any time been any collusion. Now, that is absolutely essential to the success of a competitive bidding scheme and I consider it one of the fundamentals. All right, that is established; various groups will come in and bid against one another, and without relation to the past affiliations of those houses. That is a hurdle that is over. You have got it and it is assured; another pillar set down.

"Now, let's get these things set down here, and watch it, see the trend, see that nobody is cheating -- and nobody is cheating, as far as I know, to date; it has been clean as a hound's tooth. Let's let the pattern develop a little bit. We will find faults with it, but I don't think the time has come yet where anybody can be dogmatic about it. I see all kinds of little things that I don't like: things that are annoying, and things that I don't believe are going to be best for the industry in the ultimate. But given the competitive bidding system, I say, for God's sake, let's try this out, and everybody do the best they can under it, and the pattern will develop and if it is wrong, why, it will be changed in one way or another. I perhaps am too old to try and change trends. You fellows are setting the trend, and I regard my job as trying to fit in with the trend. And that is what everybody ought to be doing right now, and I think they are."

Since Rule U-50 became effective there appears to have been active competition between investment bankers both in the formation of groups to bid on new issues (frequently without relation to past affiliations) and in the tendering of bids. The insistence upon competition in the sale of this particular kind of merchandise follows the traditional American pattern of the Sherman Act, the Clayton Act, and the Federal Trade Commission Act. All of them aim to preserve competition and to keep that competition fair. These laws, backed by both major political parties, are among the foundation stones of our democratic system of capitalism. Let it not be thought that Rule U-50 is merely a matter of business procedure. Ours is a system of free enterprise and when practices are allowed to develop which eliminate or suppress competition, the very fundamentals of that system are endangered. The liberating influence of our competitive bidding rule will foster free enterprise and competition in a field which has long been characterized by concentration of the management and underwriting of new securities in the hands of a few firms.