Address by

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before the

INVESTMENT BANKERS ASSOCIATION

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One day a few months ago, I stopped to see the Chairman of another Federal Commission in the thought that we could with mutual profit exchange some ideas on how to live in a bureaucracy and like it. Among his suggestions was one to the effect that a good way to keep track of where you are going in the administration of a government agency is to make a speech about your work once in a while. It compels you to sit down reflectively and to come to a few conclusions as to what you have done, why you did it, and what else you plan to do. I am grateful to you, therefore, for the opportunity to present a general summary of current events at the Securities and Exchange Commission.

Making changes in the securities laws or in the methods of administering them involves much more than a determination of general attitudes. Undoubtedly if the question were put to this group, or to the staff of the Commission, or to a meeting of a parent-teachers association, everyone would agree that the selling of securities should be honestly conducted, that there should be no useless red tape, and that the Government should not interpose unnecessary obstacles to the raising of capital or interfere unnecessarily in the management of private enterprise. Agreement on general concepts is only a short first step. Philosophical theories in Government have meaning only as they are reflected in specific detailed laws, rules, forms and policies.

That self-evident truism indicates the magnitude of the task which confronts us at the Commission. The capital

markets are dynamic, and the Commission's attitudes can, therefore, never remain static. It must keep reviewing its major premises as well as its administrative procedures. The change of national administration merely emphasizes this responsibility.

In re-examining policies it isn't enough to decide that such and such a procedure is too cumbersome. It must also be determined what, if any, substitute is required; whether the change could be made by rule or whether legislation is required; whether the change would adversely affect anybody; whether it would be misunderstood by the public; whether other related changes might be necessitated. This process requires first a general policy decision by the Commission, then a ferreting out of particular complexities or particular procedures of doubtful value, the drafting of a tentative proposal, circulation of the proposal pursuant to the Administrative Procedure Act, tabulation and consideration of

comments, modification in the light of those comments, and finally, adoption. Please don't think that I am trying to stir up sympathy for the bureaucrat's hard life. I am merely pointing out that our work has to do with the administration of some very technical statutes and that it must be done with technical precision. A willing heart is not enough. The practices under the Acts have been built up over the whole 20 year period since 1933. The business community itself would be the last to approve a haphazard, impulsive series of hastily conceived changes.

The Acts which the Commission administers were adopted in the period 1933 to 1940. The statutory scheme has been amended only in insignificant particulars. Some of the Acts have not been amended at all. There has been sharp and bitter criticism of some of the legislation, but the process of capital formation goes on pretty efficiently and there is no public outcry for major changes.

The administration of the Acts has been criticized from time to time, sometimes for being too lenient, sometimes for being too harsh, but the criticisms have largely concerned some personalities, a few areas of over-ambitious statutory construction, occasional overzealousness, and, in earlier days, a manifestation of punitive spirit. I think you will agree that much of this criticism has died down.

The old Hoover Commission's Task Force found that the Commission "on the whole has been notably well administered", that the critics of the Commission "concede that its staff is able and conscientious, and that the Commission generally conducts its work with dispatch and expedition where speed is most essential" . It also said: "There are of course some weaknesses : . . but in evaluating them, one should keep in mind the basic fact that the Commission is an outstanding example of the independent commission at its best."

The conclusions that can be drawn from what I have just said are simply these:

(1) The principles behind the Acts which the Commission administers are basically sound, but there should be changes in some of the Acts to eliminate impracticalities and unnecessary complexities, leaving undisturbed, however, the protection of investors and of the public interest presently afforded by the Acts.

(2) The Commission's own procedures and policies should be examined so as to eliminate unnecessary and duplicative work as well as over-strained construction of statutory powers.

One of the very heartening things which I have found is a general agreement on the foregoing conclusions. By that I mean general agreement among the members of the Commission and its staff and those in your industry who represent you in such matters.

Last June the Commission received inquiries from representatives of most segments of the securities business, as to the manner of submitting proposals for legislative action by the Congress. The Commission indicated that it would make its services available to the Banking and Currency Committee of the Senate and the Interstate and Foreign Commerce Committee of the House of Representatives and would be available to confer with representatives of industry groups to determine areas of general agreement.

As you probably know, the Commission has now received various legislative proposals submitted by the IBA, the NASD, the Stock Exchanges, and the National Association of Investment Companies. These proposals are largely concerned with technical changes to the various securities Acts. If I may be permitted to express an opinion on the subject, I think that the representatives

of your industry in presenting a modest legislative program have shown both good judgment and an appreciation of the necessity of keeping intact the protection presently afforded to the investor and to the public.

Under an arrangement with Senator Homer E. Capehart, Chairman of the Senate Banking and Currency Committee, the industry's legislative program has been discussed informally with Senator Prescott Bush, Chairman of the Subcommittee on Securities, Insurance and Banking. He has kept his fellow Senate Committee members advised of these informal discussions. Tentative agreement in principle has been reached between the Commission and the industry on many matters, and drafts of some legislation are being prepared.

Representative Charles A. Wolverton, Chairman of the House Interstate and Foreign Commerce Committee, has been kept

advised as to the progress of these discussions. He has indicated that he would prefer to consider a program only after definitive drafts have been prepared.

As you are aware, the Commission as an Executive agency of the Government must clear any legislative program with the Executive Office of the President. The Executive Office has been advised of our participation in these discussions, but since definitive drafts have not been prepared, the proposals have not been discussed in detail with, or cleared by, the Executive Office.

I know that the game isn't over until the whistle blows at the end of the last quarter, but I do think that there is justification for hoping that some desirable changes, which in no way remove any protection from investors, will be presented to the Congress soon after it reconvenes.

In view of the fact that the proposed legislation still requires the labor of draftsmanship as well as clearance by the Executive Office, it would be premature for me to summarize it in my remarks today. I have no doubt there are those among you who are as familiar with it as I am and who can answer your questions on the subject.

We are also engaged in an extensive program of rule changes. These range all the way from accomplished facts to visions in the wide blue yonder.

Being investment bankers you are no doubt most interested in registration statements under the Securities Act of 1933. We have two or three accomplishments to report on that score, plus some good intentions.

There has been proposed for adoption a new form for the registration of investment company securities. This form

enjoys industry-wide approval and was formulated in collaboration with representatives of the industry. Its evolution took place during both the preceding and the present administration of the Commission.

The Commission has circulated for comment proposed rule changes under the 1933 Act and the Public Utility Holding Company Act which are designed to do away with the agony of waiting for two post-effective orders following the acceptance of a competitive bid for utility or public utility holding company securities. If this proposal is adopted it will result in the elimination of several hours of waiting around the Commission's offices for orders which practically always have been forthcoming as a matter of routine. Sometimes the reoffering by underwriters or even the effectiveness of the post-effective amendment is delayed until the day after the acceptance of the winning bid. Under the new procedure, if two bids are received, no second order under the Holding Company Act will be necessary and no

supplemental filing will have to be made until 10 days after the closing. No second order under the 1933 Act will be necessary since the price amendment will become effective automatically when filed - whether in Washington or at any of the regional offices. This should permit final effectiveness within a couple of hours after the opening of bids in almost all cases. The proposed rule changes under the 1933 Act will also confirm the Commission's position that underwriters are free to offer (subject to their purchase of the issue) during the bidding period, and should generally clarify and simplify the registration procedure on a competitive bidding job.

As you know the Commission early in 1953 adopted a so-called Form S-8 for the registration of securities offered to employees under plans meeting certain prescribed standards. Study is being given to extending the availability of this form to

a wider class of employee offerings. Serious study is also being given to the adoption of a simplified form of registration statement for institutional grade debt securities of issuers which file reports with the Commission under either the 1933 Act or the 1934 Act. It follows that if the registration statement is shorter both the time required by the issuer to prepare it and the time required by the Commission to examine it can be materially shortened. If such a plan can be legally adopted it will be possible to shorten the time schedules on such offerings sufficiently to make them more competitive with private placement.

The adoption of such an abbreviated form does pose some difficult legal problems. For example, Section 305 of the Trust Indenture Act requires the prospectus to contain an analysis of certain indenture provisions. It may be necessary to amend this Section to permit elimination of this analysis. There is also

a question as to what standard will determine the availability of the short form for a particular debt security. If the Commission prescribes quality standards such as rating in a service or coverage of fixed charges by earnings, the Commission might be said to be departing from the philosophy of not passing on the merits of securities. Somehow we feel that a way will be found and that a simplified registration statement for securities of the type indicated will be devised.

Your sister organization, the NASD, has pressed for a simplification of the form for registration of brokers and dealers. The present form which has been in effect since 1945 has 27 items. The Commission will shortly propose a form which contains 8 or 9 items. The difference between the two forms assumes increasing significance because of the requirement that changes occuring with respect to any item must be reported. The adoption of the new form

will give registered broker-dealers less than one third as many matters requiring current reports. This would considerably reduce both your paper work and ours.

In order to have a starting point for use of the new form, so that reports of change will be related to the simple form rather than the old complicated form, registered brokers and dealers will be required to fill out one of the new forms on or before some fixed date in 1954.

I know that proxy statements and Form 10-K annual reports are of more concern to issuers than to investment bankers. You might however be interested in what we are doing.

The Commission has circulated revised proxy rules and has received almost 150 comments, some favorable and some unfavorable. Among them were many constructive, well reasoned suggestions and criticisms. These will be carefully considered in

determining whether, and to what extent, the published proposal will be modified before adoption. You may rest assured that the present Commission is as much concerned as any of its predecessors in using its statutory powers for the protection of the interests of security holders in respect of proxies for corporate meetings. We must recognize, however, that our rule-making power under a Federal law relating to the solicitation of proxies does not give us a free hand to prescribe the substantive rights of stockholders under state corporation law.

In carrying out the Commission's policy to cut down the paper work required of issuers - and incidentally the volume of paper which must be handled by the staff - our Corporation Finance Division came up with a suggestion now being circulated for public comment which cuts out duplication between the normal annual proxy statement and the so-called 10-K annual report. The 10-K annual report

consists of two parts, the first an item by item report of certain information concerning the issuer and its management, and the second, financial statements. Under the new proposal any company which solicits proxies under our rules can fulfill the requirements of the first part of the 10-K annual report merely by referring to the proxy statement for its annual meeting. This monumental paper saving change does not deprive the investor of any protection or the public of any information since the material in the proxy statement parallels almost exactly the material called for in the first part of the 10-K annual report. The change will simply cut out the necessity of filing the same information twice.

There are in process of preparation rules relating to stabilization of prices in connection with offerings of securities. That subject is, of course, highly technical and difficult and has been so since prior to the passage of the Securities Exchange Act

of 1934. Section 9(a)(6) of the Exchange Act makes it unlawful to stabilize "in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors". Years ago the Commission adopted some stabilizing rules applicable to offerings "at the market". Since public offerings are almost always at a fixed price, the Commission really has no stabilizing rules applicable to the normal type of offering. There are, of course, certain rules on manipulative and deceptive devices and the approach of the Commission has been - and still is - that an alleged stabilizing operation is illegal if it amounts to manipulation.

However, the Commission takes the attitude that the industry is entitled to the benefit of specific rules on the subject of stabilization. In practice any proposed stabilizing activity is now cleared by telephone on a case by case basis. I understand

that this has worked out well. Those who direct our Trading & Exchanges Division operate on principles which are becoming generally well known. However, I submit that such a method of control is in effect a government of men rather than a government of laws and is unsound in basic theory. We have hopes that stabilizing rules can be formulated which will state basic principles on paper instead of in the brain cells of a comparatively few people. After all, the administration of a regulatory statute should not be a matter of folklore.

Under present practice there is a lot of paper work imposed on issuers in connection with applications for listing under the 1934 Act of additional issues of an already listed security or of rights to subscribe to such issues. The information contained in many of the forms presently required for such applications comes to us in other reports. We are about to circulate for comment

proposals to reduce materially the number of rules and forms dealing with that subject. The forms will be shorter and the filings fewer.

Last week we put out for comment a proposal designed to give increased recognition to the intention of Congress expressed in the Public Utility Holding Company Act of 1935 to exempt from the requirements of that Act the sale of securities by an operating public utility which is a subsidiary of a holding company in cases where a state regulatory body approves the transaction. Up to the present time, the application of such a company for an exemption has been granted on condition that it comply in effect with the very provisions from which it seeks exemption - a very ingenious way of imposing terms and conditions which make meaningless the exemption which Congress enacted. That seems to be an area in which pure duplication between state and Federal regulatory authority can be eliminated.

The Commission's proposal is that its competitive

bidding rule shall not be applicable to an issue of securities by a utility company, subsidiary of a holding company, if the regulatory commission of the state in which the issuer is organized and does business approves the transaction. We are studying further possibilities of cutting out other regulatory procedures in the issue of utility securities which duplicate the work of state regulatory bodies and which the Holding Company Act itself contemplates as eligible for exemption. We are not thwarting the intention of Congress in any of this. We are simply giving effect to the words of the statute itself.

Do not for one moment get the impression that our approach to the job is negative. We believe that by cutting duplication, unnecessary work, and activities not within our statutory responsibility, we make available manpower to do a better job in carrying out our prescribed statutory duties in the protection of investors and the public.

We hope soon to work out a plan to tone up our whole enforcement program through more efficient and better coordinated investigatory procedure. We are not ready to make any announcement on that, but we think that our activities in the promotion of disclosure and the prevention and punishment of fraud are of much more service to the nation's economy than our activities in the second guessing of management.

We also regard with a very sober sense of responsibility the role of the Commission in the regulation of investment companies commonly known as mutual funds. I say that because any expanding system for gathering capital, which in turn is invested in other enterprises, presents a regulatory problem. If you stop to think for a moment you will recall that every other system of gathering capital and re-investing it has developed problems which required the imposition of state or Federal controls - banks, trust companies,

insurance companies, public utility holding companies, even building and loan associations. Investment companies are no exception. Because their importance as an investment medium is growing so fast, because their securities are being sold by so many with such enthusiasm, and because managing and advising such companies introduce new concepts of fiduciary duty, the techniques required for their effective regulation are necessarily still in an evolutionary stage.

Our Commission has enormous day to day responsibilities under the Investment Company Act. I am not at all sure that human beings possess the wisdom necessary to make the findings which the Act requires us to make in certain matters. Moreover, under Section 14 of that Act, we are required to make overall studies of the economic effects of investment companies and to make reports and recommendations to Congress on the subject. We cannot in

good conscience doze in our big red chairs and assume that the administration of the Investment Company Act will automatically take care of itself.

You have been a patient audience but this long speech has been inflicted upon you in the thought that you are, or should be, more interested in a reasonably detailed account of what is going on at the Securities and Exchange Commission than you would be in a general philosophical discussion of the subject. Administration is an aggregate of detail. You can appraise the Commission's work only on the basis of its approach to specific problems. I hope you conclude from this review that we are going about our job with a conscientious appreciation of our obligation as public servants and with good common sense. Conscientiousness and common sense are not very glamorous. It takes a mature woman indeed to accept the adjective "conscientious" or the adjective "sensible" as a

compliment. A former member of the executive staff at the time of his resignation is reported in the press as having remarked that he would be less than happy with an SEC policy that provided only limited opportunity for new activity by the agency. Frankly, our Commission is not concerned with empire building or searching for new activity. We want our contribution to the success of President Eisenhower's administration to be a sound, sensible, workmanlike and alert job of discharging the responsibilities that Congress gave us.

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