ADDRESS

of

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Los Angeles, a city harboring many conflicting social philosophies, forms an excellent background for the discussion today on the subject of mineral exploration and development financing under the Securities Act of 1933 and the Securities Exchange Act of 1934. I wish to thank your committee, which by prearrangement submitted its report to me the latter part of September of this year. Your Congress is to be praised, for such an arrangement permits a more comprehensive consideration of this controversial subject.

Because those of us here are by training, vocation or association, vitally interested in mining and its future, because we speak its language and because we look upon its problems through much the same glasses, I feel, that despite our obvious disagreements as to practice, we are entirely in agreement as to the ultimate objective. We want to see the mineral resources of this country intelligently, economically and thoroughly exploited. We want to see an exploration or development project go to the public for necessary funds with success and without suspicion. We want to see an orderly process of exploration, development and exploitation with a minimum of governmental control or supervision. Today your committee says that present controls, insofar as they pertain to mine financing, and I shall use that phrase instead of mineral exploration and development financing through this talk, are oppressive and needless burdens as administered. It is my opinion that such controls are not oppressive, that they are necessary and that their enforcement will eventually benefit the industry whose spokesmen presently condemn them. It is my further opinion that the industry cannot long survive in its present form without them unless there arises in the industry itself an effective system of self control that adopts the code of financial ethics outlined in this legislation.

I have read this report carefully and with great interest. I should have read it with equal interest but possibly less carefully, had I not expected to appear here today as a representative of the Commission. It is therefore my good fortune for under less stringent conditions such consideration could have been postponed.

The report is disappointing to me both as an officer of the Commission and as a mining engineer, for it shows, despite the efforts of your committee over a period of two years when it has availed itself of the "liberal assistance and helpful suggestions of registrants" and the "ready cooperation of various officials of the Securities and Exchange Commission", that in their minds reconciliation of the various problems is no nearer today than it was in Denver two years ago. In view of the tremendous amount of work that your committee has done and in consideration of the time it has spent on this subject, there appears to be little that I can add that will be of value, since I have never been present at the various conferences mentioned in the report.

My only criticism of the report is that it is too general. I had hoped that the findings which are described as "inescapably critical" would be more specific. In other words, I had hoped that your committee would report, for instance, that form A-O-1 was unsatisfactory because the answers to items 18 and 25 must be set forth at the beginning of the prospectus or because item 34A required a statement of the weight or volume of proven ore if the issuer claimed any proven ore, or for other reasons. I had hoped that

specific illustrations would be given of difficulties caused issuers in their efforts to comply with the laws. I had even hoped that suggested revisions might be included in this report. Had your committee done this, it would now be possible to discuss each disagreement and try to find a common ground. As it is, your committee says only that "A-O-1 is unsatisfactory". I could answer "A-O-1 is satisfactory" and would have submitted an argument equally as good. Such an argument, however, is of no positive value since I am sure that neither of us takes the extreme position.

I do feel, however, that a start has been made for now the various criticisms have been assembled and placed on record. It is unfortunate that your committee reported so generally, for otherwise I am sure that some progress could be made. On some points, however, there appear to be fundamental differences of opinion.

In formulating this answer to your committee's report, I first attempted to answer each criticism individually. This failed, again due to the general nature of the criticisms. I found, as I have just stated, that for lack of specific example, I could only answer unsatisfactory by satisfactory, excessive by reasonable, or unsympathetic by sympathetic. It is necessary then to further analyze these findings and recommendations.

There are two basic charges in this report. They state generally that procedure under the present laws is complicated and burdensome and that the administrative agency is unfriendly and unsympathetic. These two charges may be further simplified into one. That charge is registration, for every finding or criticism by your committee may be reworded into the statement that registration is a burden to the registrant. The various findings are merely recitals of the manner in which some registrant considers the process of registration to have been burdensome. Some consider it to be impractical, complicated, time consuming, expensive, or unnecessary, and others consider that the Commission in its duties has been unfair, uninformed, meticulous, equivocal, and unfriendly. Generally then, the discussion of this report may be limited to the subject of registration.

Section 5(a) of the Securities Act of 1933 states generally that unless a registration statement is in effect it shall be unlawful to use the instrumentalities of interstate commerce in the original sale of a security. Sections 6, 7 and 8 of the same Act relate generally to formal requirements and Commission procedure insofar as they pertain to registration. The constitutionality of this provision has been repeatedly tested and repeatedly upheld. It will remain, therefore, on this and similar statutes until it is repealed. The likelihood of repeal is a question of personal opinion.

Registration has but one objective and that it is the full and fair disclosure of all material facts. It is primarily an instrument prepared for the use of investors by the registrant, although a condensation called a prospectus is generally used. It is therefore an added burden on the registrant that did not exist before the date of the Securities Act. It was so intended to be. Briefly, this requirement is based on a principle that the simple standards of trusteeship demand a high standard of financial morality as the price of confidence. Registration, then, is simply a process of forcing partial compliance with a fundamental principle of ethics. It is unfortunate that such a procedure is necessary but mine financing has

only to look at its historical background and even its present background to see why. It is more unfortunate that because of the actions of a few, the burden must apply to all.

Despite the fact that registration does add a burden, its cost is not entirely lost to the registrant. First it reduces unfair practices in competition for capital, second it reduces the possibility of subsequent civil and criminal proceedings by immediately raising the question of materiality, and third it often discloses material information unknown even to the registrant. Such benefits are only of value to the person or persons who wish to be trustees in fact.

Generally speaking, then, there is no argument but what registration is a burden on the registrant. Your committee says that the administrative agency has exceeded reasonable requirements and has made the burden oppressive and needless and that a lifting of the burden will not impair the capital market for legitimate mining ventures. For lack of specific examples of oppression and needlessness, I can only say that in my opinion the Commission has been most fair to everyone concerned, and that a lifting would only increase prosecutions for violations of Section 17 of the Securities Act. Neither of us can be or is impartial, however, due to our connections, mine with the Commission, and some members of your committee with various promotional enterprises. Despite this there is at least a common ground for disagreement and a solution should not be impossible.

Charges directed at the Securities Act of 1933 or its complementary rules and regulations have been the subject of many discussions since the law became effective. Briefly, it was passed because of the widespread demand for a form of investor protection and it was so drafted. The rules and regulations pertaining to this law deal for the most part with formalities applicable to all or many types of issues. The $100,000 exemption requires a minimum of information while the $30,000 exemption is a further exemption from even these minimum formalities. Their adequacy is questioned by your committee in a manner that answers itself in part, for the issuer is permitted to exhaust his exemptions before registration. Since stock, however, issued for cash, property or services, is issued for value received, there can be no discrimination. Any course of action such as your committee suggests, attracting as it would, any number of fraudulent schemes, would only defeat the purpose of exemption. An exemption from registration for mining issues until $100,000 had actually been received by the issuer would make it a playground for every larceny expert in the country and no bona fide issuer could hope to compete. Under present exemptions, conditions are troublesome enough and each year issuers of mining securities availing themselves of these exemptions always incur more civil or criminal liabilities than issuers who register. Many feel, because they can avoid registration, that the Commission has no jurisdiction. This is not true for Sections 12 (with a single exception) and 17 acknowledge no exemptions. Actually, the exemptions from registration were placed there for the purpose of providing simple methods for local purposes. It was and is intended that nationwide or large scale issues of securities should be registered. Due to the many schemes that have already been designed to circumvent registration, there appears little liklihood that exemptions will be modified unless the Commission requires more instead of less information. A clear and comprehensive statement of the law, rules and regulations as they apply to mine financing, was presented by Day Karr, Regional Administrator at Seattle, before the Mining Association of Montana, and I shall be glad to see that copies are available to all who wish them.

Other criticisms of legal procedure are beyond the scope of my subject but the general charges of unfairness and incompetence of administration are not. Your committee, which is composed in part of mining engineers of experience and recognized standing, has decided that the Commission administrative and engineering staffs are unfair and incompetent. Since I have been both an administrator and an engineer during the past two years, I cannot but accept the label so publicly given. Because I have never met more than three members of that committee, only one of whom is an engineer and because he has participated in registration for compensation, I cannot help but be chagrined. It is fortunate that such arbitrary powers of judgment and public punishment do not belong to the Commission.

The charge of unfairness has two answers. First, any person finds laws and their administration unfair if they dispute his personal standards of freedom of action. This happens in all actions to which the Commission is a party. The second is that human relationships are such that opposing standards in controversies often give rise to transient ill feeling which in some cases due to permanent restraints imposed on some lucrative racket, is translated into a general charge of unfairness and unfriendliness. I could charge members of your Congress and your committee, despite its title, of the same feeling toward the Commission, since its findings are stated to be the cross-sections of opinions and experience of a large number of registrants only. I do not do this, however, because I know it to be an element of the period of adjustment that now faces us. From personal observation I can only say that the Commission and its Registration Division have given more patient thought to the problem of promotional securities than any other type of original issue. It must, however, always consider both the rights of the issuer and the investor and for that reason will probably continue to be charged with many shortcomings by both for a long time to come.

On the subject of competence, it is charged that the Commission has "attempted" to set up its own standards of what constitutes sound engineering practice. It is suggested that engineers possessing that exclusive characteristic designated as "recognized standing" be charged with the problem of standards. This is a course of action that the Commission has followed from the beginning, although other virtues have been placed above "standing". It has repeatedly availed itself of the knowledge possessed by engineers of the United States Geological Survey, Bureau of Mines, and engineers of the various states and universities. In addition it has never hesitated to employ the temporary services of various unimpeachable experts engaged in private practice. This was done when questions of policy required expert opinions on some particular subject or subjects of controversial character. In others the Commission has used the facilities of its permanent staff. If a doodle bug, or 15,000,000 tons of ore on basis of three samples, or three million on the basis of local legend, is sound engineering practice, then the Commission has set up its own standards. If the act of turning over a lease on three unpatented claims having no known or indicated ore occurrence, gives those claims a value of $1,000,000, or if two narrow veins can be said to double the grade of 50,000,000 tons of ore not known to exist, or if a mine staying on development until it is worked out, is good practice, the Commission is again guilty. If the original issuance and subsequent donation back to the treasury by an issuer represents an arm's length transaction and the property is worth 100% more, or if Miami's caving costs can be obtained in a narrow vein, or if the re-building

of a road twelve miles from a mine that is only accessible by foot or horseback and which has been caved for twenty years will increase its value by five times, is representative of sound engineering practice, then the Commission may well be criticized for "attempting" to set up its own standards.

The charge of meticulosity may be warranted in a few cases. In many instances, however, a registrant has sought through the well considered use and arrangements of words to follow the letter of the law while circumventing its spirit. In such cases the Commission can only fight fire with fire. It is unfortunate that such situations occur. Truth and full disclosure are usually surprisingly simple while deviations lead on and on bringing complications from unexpected sources and of unexpected magnitude. It is the Commission's duty in such cases to ferret out the truth by whatever method appears best, a meticulous method if necessary.

The charge that the Commission is equivocal probably refers to opinions expressed by its employees and there are probably as many opinions as there are employees. Rulings, however, by the Commission or by any one of its division heads, only change when circumstances change. The charge is probably due to the complicated structure of the industry the Commission must police. An unequivocal answer can only be given to the simplest question of future action when all the facts are known and acts by the one who inquires subsequent to any opinion that vary from the stated facts thus change opinions. It is also true that opinions are often sought which will lend an aura of official sanction to a predetermined course of action. This necessarily requires bad faith by the inquirer and misrepresentation to the Commission. Later when more is known of the true facts, the Commission will alter its opinion.

In a general way, these are general answers to your Committee's general criticism. They are unsatisfactory to me and I feel they must be to you, for both the criticism and answer fail to get to the heart of the problem that faces mine financing at the present time. It is not a question of registration, of S.E.C. like or dislike, of S.E.C. competence or incompetence; it is simply that there is no real demand for speculative securities and in many instances actually a resistence to them. The Commission has received many letters expressing absolute distrust of any promotional mining issue, letters requesting the exercise of confiscatory powers not possessed by this Commission, letters recording unconscionable frauds on those least able to suffer loss, letters requesting government ownership and operation of mines, letters from state agencies saying that certain promotions will be summarily evicted from that state whether they are bona fide or not, and many other expressions of contempt and suspicion. These are not hand picked letters but merely illustrations of thousands on file with the Commission. They may be called straws in the wind, and the wind has been blowing in one direction for a long time.

The problem of this industry today then is not alone the burden of registration or even the burden of complying with a just law, it is the problem of the high cost of selling speculative securities, not mining securities alone, caused by the passive and sometimes militant resistance of investors. This alienation of confidence is the cumulative result of thousands of unconscionable promotions carried on with increasing disregard for the public welfare since roughly 1850. This process produced the Securities Act, the burden of registration, and other burdens.

There is no doubt but what the Securities Act is a shock and a burden to this industry. It was a shock to every industry that permitted such practices to reign unchecked. Had this association or any other comparable association adopted in the past the same vigilant interest in the cash investor as it now does in the issuer, this might not have happened. Since, however, the operating theory that suckers were only for the regal support of the smart guy existed then as now in the high as well as the low places, nothing was done beyond the assumption of an air of amused tolerance. The miner or engineer then left a field choked with opportunity when he found that he could not hope to reasonably compete for capital. Control or burdens came because the normal prudent cash investor found himself handicapped not only by the ordinary hazards of mineral exploration and development, but by fraud, misrepresentation, half truths, manipulation, mismanagement, reduced equities, false quotations, fake balance sheets, and other complicated forms of common larceny.

The Securities Act actually sets up a code of financial ethics which if followed will gradually restore the confidence of prudent investors. If it has placed an excessive burden on issuers, it is only because truth is an excessive burden. If this code of ethics is not followed and experience shows that it has not been followed in the past, future burdens may make today's seem commonplace. In view of the very practical question of future supplies of cash for promotional enterprises, it would appear prudent to give some attention to investors.

Two courses are open. One is a course of action that holds a brief for only the promoter, right or wrong. The other recognizes rights inherent to both sides and considers both sides in search for a course of action equitable to all. The Commission must follow the second but it will welcome the company and assistance of associations such as yours in charting its course of action. This has already been done in the investment banking field. The constructive and impartial assistance and criticism of an association such as this would be of untold value to the promoter, the investor and the Commission.

If such a state of affairs were possible, I would suggest, and I take it that this is a day of suggestions, that your association go beyond its natural duty of vigilant watchfulness over the rights of miners and mining, and consider a duty to the problem of public welfare. I would suggest that it sponsor a series of articles giving its readers (1) the viewpoints of both promoters and investors, (2) practical impartial interpretations of the laws and their procedural details, and (3) editorial criticism of Commission action based on the complete public record. I would suggest informative equitable non-technical articles in magazines of general circulation. I would suggest round table conferences. I would suggest the formation of an impartial visiting committee to attend any public activity to which the Commission is a party. I would suggest a public service on the part of your widespread members that would permit a promoter to obtain competent advice cheaply. I would suggest steps looking toward elimination from your own industry of practices considered by your own leadership to impair the capital market for legitimate mining ventures. I would finally suggest steps looking toward the gradual elimination from this field of those individuals who consciously use promotional ventures primarily as a meal ticket, looking toward its eventual return to the miner, the engineer and bona fide promoter.

Changes such as we have seen in the past few years come slowly. A change that makes the government an active party in interest cannot be assimiliated at once. It has, however, occurred in aeronautics, investment banking, and in the New York Stock and Curb Exchanges. I have no doubt but what it can be done here, fairly, honorably and to the everlasting benefit of the whole industry.

I wish to thank the Chairman of your committee on cooperation with the Securities and Exchange Commission, Mr. Dolbear, and your secretary, Mr. Conover, for the invitation to address you today; I have enjoyed it thoroughly.

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