CURRENT TRENDS IN THE FEDERAL SECURITIES LAWS

Address of

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It is indeed a privilege and an honor which you extended to me tonight -- a privilege to appear before the Association of the Bar of the City of New York because this bar association is so well known and respected by lawyers everywhere, and an honor because of the illustrious members and representatives of the SEC who have preceded me in addressing your organization. I am indebted to your Committee on Post Admission Legal Education, your Section on Administrative Law and Procedure and your Section on Corporate Law Departments for the kind invitation to be with you this evening.

Perhaps many of you will recall that nearly 18 years ago your Section on Administrative Law and Procedure invited a then Commissioner and the then General Counsel to address an evening session of the Section. The Commissioner, whose untimely and sudden passing yesterday in New Haven has indeed been a shock to all of us, was Judge Jerome Frank. The General Counsel was your Chairman of the Committee on Post Admission Legal Education of your Section on Administrative Law and Procedure, Chester T. Lane, who extended the invitation to me to be here this evening.

More of you will recall a similar discussion some two years ago with the then Commissioner, now Chairman, J. Sinclair Armstrong, and my immediate predecessor as General Counsel, William H. Timbers. None of you will recall an address given to this association some 55 years ago by the late Joseph H. Choate, one of the most distinguished members of your Association. If you will indulge me in a personal remark, I have a very special interest in recalling that address tonight because it was a memorial to one of the two members of my family who have been privileged to be members of your Association, the late Charles F.Southmayd. I refer to several of the remarks made by Mr. Choate on the occasion of his address in May of 1912. Mr. Choate told the Association that "Mr. Southmayd retired from practice at 60 being afraid, as he told me that if he continued, he might make some mistake which I really believe that up to that time he had not done -- at any rate he had made none that anybody else had found out about." If my uncle were here I am certain he might observe that perhaps I should have taken a cue from him and retired before tonight.

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It is interesting to reflect, Mr. Lane, upon the changes wrought in our national economy since the Commission's birth some twenty-two years ago. It has now become an accepted, vital part of the nation's economy and its capital formation process. This process has expanded and changed and the Commission has had to meet new problems and new ideas as the result of its experience gained over those twenty-two years. There is, of course, a tremendous difference between the Commission's impact on the American economy today compared with the 1930's. In those early days Congress intended that the federal securities laws would, by effective enforcement, prevent the practices in the capital markets which had damaged the public. Comparatively speaking, capital formation was then at a standstill. For instance, new issues of corporate securities offered for sale in 1934 were only 400 million dollars. In 1956, the figure was 13 billion dollars -- 33-1/2 times more than it was in 1934. The volume of trading on the registered exchanges last year was nearly 37 billion dollars and the value of all stock listed on all exchanges reached a peak of approximately 260 billion dollars last July. The number of broker-dealers registered with the Commission reached a new high of about 4,670. Therefore, with respect to today's successful operation of the securities markets and the unimpeded flow of investment capital into industry, the problems arising out of the laws which the Commission administers, if not more difficult, are at least more complex.

I should like tonight to discuss the current trends at the Commission with respect to these laws. This is a most opportune time to consider this subject as we enter the new year with a new Congress. Despite 22 years of effort, there is still need for Commission surveillance of the securities markets and an equal need for its continuing reexamination of the statutes it administers.

For instance, right here in New York City we can see a resurgence of the "boiler rooms" of which I am sure you have read.

The Commission, of course, is meeting and will continue to meet the 1957 boiler-room problem by intensifying its enforcement work, and we are hopeful that with the increase in our staff authorized by the last Congress we may again put them out of business through the use of every legal means at our disposal.

I am confident that in 1957 you will observe an agressive three point program to meet the new problems arising in the securities markets. First, inspections of brokers and dealers, investigations of securities frauds, revocations, injunctions, and criminal proceedings will mushroom. Second, the Commission will continue to revise and strengthen a number of its rules and procedures. Finally, the Commission has been considering and will continue to consider how the Congressional intent to protect the investing public may be brought up to date by legislative amendment of the existing statutes. Mr. Lane has suggested that you would perhaps be most

interested in a discussion of these last two items and accordingly I should like to spend the balance of my time here tonight briefly reviewing some of those matters which I think you may expect will be considered by the 85th Congress and some of those rule-making changes which are now undergoing study at the Commission.

Under the federal securities laws 1/ the Commission is obligated to make legislative recommendations to the Congress and the Committees which have a duty of watchfulness over it 2/ as the Commission deems desirable in the public interest. A legislative program, designed to make the Commission's enforcement activities more effective by eliminating or minimizing various problems of a technical nature was submitted to the 84th Congress last year.3/ Unfortunately, the press of other business prevented Congress from considering them. I think you may expect, however, that the Commission will re-submit these technical proposals in substantially the same form to the 85th Congress, as well as additional proposals which are new but which likewise are designed to meet modern problems with equally modern enforcement concepts.

Some of you may be familiar with the Commission's 1956 legislative program. Since the close of the last Congress the Commission has been studying all of the Acts which it administers in connection with the preparation of a legislative program for 1957. I shall not attempt though to review in entirety either the 1956 proposals or those which have been under study since the close of the last Congress. I will, however, touch upon some of those specific proposals, both old and new, which I believe are of interest to securities practitioners and the bar generally and which I think may be submitted to the 85th Congress.

The "technical amendments" of last year were so called because they would not in any way change the basic philosophy or general effect of the statutes. Rather, they were designed to strengthen the jurisdictional provisions of the statutes, to correct certain loopholes or inadequacies, and to facilitate criminal prosecutions. We consider these proposals to be vital to the effectiveness of our enforcement work. I will discuss some of these proposals in a few minutes. However, other bills were introduced in the 84th Congress which did not originate with the Commission but which we have been studying and are continuing to study.

One problem which has grown and become troublesome in the past few years has been the abuse of the so-called Regulation A exemption. As you may know, this regulation, enacted pursuant to Section 3(b) of the Securities Act of 1933, permits offerings for issues of securities that do not exceed $300,000 without compliance with the registration provisions of the Act subject to terms and conditions provided by Commission rule or regulation. As might be expected, a numerically few yet increasing number of unscrupulous

1/ Sec. 28, Securities Act of 1933; Sec. 21(a), Securities and Exchange Act of 1934; Sec. 23, Public Utility Holding Company Act of 1935; Sec.46(a), Investment Company Act of 1940; Sec. 216, Investment Advisers Act of 1940.

2/ Sec. 136, Legislative Reorganization Act of 1946.

3/ S. 3915, H. R. 11129, 84th Cong., 2d Sess.

promoters have abused this exemption. As a result, a good many investors in Regulation A securities have suffered serious losses. The Commission has already taken affirmative action under its rule-making power to eliminate some of the abuses which have become prevalent. You may recall that the Commission revised Regulation A last July 4/ adding, among other things, special requirements for offerings by companies newly organized or those without a net income for at least one of the preceding two years. The Commission is presently giving consideration to announced proposals 5/ which would make the exemption available only to issuers and offerings meeting specified standards based upon a record of net earnings on the part of the issuer or upon a limitation of the number of units of securities that might be issued pursuant to the exemption as distinct from the aggregate offering price of the securities. Alternative provisions are being considered which would require the meeting of one or the other of the two Standards mentioned, the meeting of both, or the meeting of either.

Section 3(b) was the subject of considerable Congressional interest during the 84th Congress. Representative John B. Bennett of Michigan introduced a bill 6/ nearly two years ago which would have repealed the exemption. The Commission felt that repeal would adversely affect the raising of capital by legitimate small business enterprises, and thus opposed it.

Last spring Representative Bennett introduced another bill 7/ which would apply to persons associated with an exempt offering the same civil liabilities that apply to persons associated with a registered offering. 8/ The Commission opposed this bill because it felt it would in substance require the equivalent of registration for small issues and thus have the indirect effect of repealing the exemption. However, the Committee on Interstate and Foreign Commerce favorably reported the bill 9/ and, although it was passed over in the last session of the Congress it may again be introduced in the 85th Congress.

Representative (now Judge) Arthur G. Klein of New York had a different approach. He introduced a bill 10/ which would have enlarged the area of civil liabilities under Section 12 of persons responsible for misstatements or omissions of material facts, or for misrepresentation or fraud, in connection with Section 3(b) exempt offerings, but which

4/ Securities Act Release No. 3663, July 23, 1956.
5/ Securities Act Release No. 3664, July 23, 1956.
6/ H.R. 5701, 84th Congress.
7/ H.R. 9319, 84th Congress, Companion bill, S. 4113, introduced by Senator Purtell.
8/ Sec. 11, Securities Act of 1933.
9/ H. R. Rep. No. 2513, 84th Congress.
10/ H. R. 11308, 84th Congress.

would not have gone as far as the Bennett bill, which applies liability, virtually of a fiduciary nature, to all persons associated with an offering despite lack of knowledge of or responsibility for fraudulent misstatements or omissions. The Commission felt that Judge Klein's approach was clearly in the public interest. You may be interested to know that Representative Leonard Farbstein of New York re-introduced the Klein bill provisions on January 3,11/ and I believe that the Commission will continue to support this legislation in 1957.

There is another aspect of Section 3(b) of the Securities Act which may be of interest to you. This is a proposal to amend Section 3(b), so as to make the exemption available to issues of securities that do not exceed $500,000 subject to appropriate terms and conditions.

The amount originally was $100,000. It was increased by Congress in 1945 to the present $300,000. 12/

The Commission's legislative proposals of 1954, among other things, would have increased the exemptive limit to $500,000. 13/ The increase was approved by the Senate. It was the only proposal deleted by the House Committee on Interstate and Foreign Commerce.14/ The Committee indicated its reason to be that a purchaser of exempt securities does not have a cause of action against the issuer and others for false or misleading statements or omissions as he would under Section 11 in the case of registered securities.15/ If the Klein-Farbstein approach to strengthen these provisions, which we have just discussed, is favorably considered by the Congress, this objection may no longer be an obstacle to the increase of the exemptive limit.

I might add that the proposal to raise the exemptive limit is supported by the President's Cabinet Committee on Small Business.16/ Last August, the Committee recommended to the President that the maximum amount be raised to $500,000, and suggested that the Commission should limit the exemption privilege to seasoned businesses and should withhold it from issuers of so-called "penny stocks". The proposal will afford the Commission greater flexibility to adjust requirements to the needs of small issuers.

11/ H.R. 173,85th Congress.
12/ Public Law 55, approved May 15, 1945.
13/ Incorporated in S. 2846, H. R. 7550, 83rd. Congress
14/ H. R. Report No. 1542, 83rd. Congress, 2nd. Session.
15/ ibid p.18
16/ Progress Report to the President, Aug. 9, 1956.

Let me briefly mention one more problem in connection with exemptions from registration to which we have been giving a great deal of attention recently. The Commission's latest Annual Report, its 22d, 17/ points out that a substantial but undetermined number of securities have been sold in violation of the registration and prospectus provisions of the Securities Act pursuant to claimed exemptions which, in fact, were not available. We believe that these sales have been made in the main under claims of the "private offering" exemption 18/and the intrastate exemption 19/ and in numerous instances have involved fraud. In most of these cases the Commission has no means to discover facts showing the unavailability of a particular exemption until it receives, months after sales have been made, reports or complaints from unwary public investors who have been "taken" for substantial sums.

Further complicating the Commission's problems in this area has been the fact that an increasingly large number of securities claimed to have been issued pursuant to these exemptions have been transferred to United States citizens through Canadian, Swiss, Lichtenstein, and other foreign financial institutions, under foreign laws which make it difficult or impossible to trace the transactions in which the securities have been sold to the public or to determine the availability of the exemption. We have increased our efforts to discover sales to the public made without registration at the earliest opportunity in order to determine whether in fact these exemptions were available and if not to take appropriate legal action. But this does not help the investor who has parted with his money without the benefit or the full disclosure provisions which would be required where the exemption in fact was not available.

Therefore the Commission is now considering the feasibility of requiring, perhaps by statute, rule or regulation, the filing of some form of advance notice of reliance upon the private offering and intrastate exemptions.

Let me just touch upon one more aspect of this exemption problem, which, as you can well see, has many facets and in which your Association has expressed great interest. Rule 133 as currently in effect defines the terms "sale", "offer", "offer to sell", and "offer for sale" so as to make the registration and prospectus requirements of the Act inapplicable under certain circumstances to corporate mergers, consolidations, reclassifications of securities and acquisitions of assets of another person, in

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17/ January 3, 1957, p. 4.
18/ Sec. 4(1), Securities Act of 1933.
19/ Sec. 3(a)(11), Securities Act of 1933.

conformity with the statutory provisions of the state of incorporation or the organic instruments. For many years the Commission has taken the position that certain such transactions did not involve the offering or sale of securities, and hence registration of the new securities resulting from such transactions was not required under the Act. With the passage of time, this interpretation, commonly referred to as the "no sale" theory, has been administratively narrowed by the Commission. Moreover, the theory of Rule 133 has not been extended by the Commission to the other statutes which it administers.

As a result of the "no sale" theory, a considerable number of transactions have been effected without registration in situations where security holders have, in effect, been traded out of their holdings into new securities of an entirely different company or business without the legal protection afforded by the registration provisions of the Act and without proper information as to the nature of the enterprise into which they were going. Also the rule has facilitated distributions of securities to the public for cash without compliance with the registration requirement of the Act. The Commission felt that this situation was of sufficient gravity to warrant a thorough re-examination of the "no sale" theory. The Commission recently released a notice 20/ of a proposed revision of the rule which, if adopted, will make the exemption unavailable for these transactions, but would not operate to make any exemption presently available under the Act or Commission Rules and Regulations unavailable to securities issued in transactions of the character covered by Rule 3(a)(9). The proposed revision would in effect rescind the existing Rule 133 and substitute therefore a rule which would define an "offer" to include the solicitation of a vote, consent, or authorization of stockholders of a corporation in favor of such mergers, consolidations, reclassifications of securities and transfers of assets. Under the revised rule a sale would be deemed to occur when the approval of stockholders to the merger, consolidation, reclassification or transfer is obtained. We have received a number of comments from the industry and the bar. There will be an open hearing on this proposal at the Commission's Washington office this Thursday, January 17.

Registration and exemptions therefrom are not the only problems. The Commission has been reviewing its administrative hearing procedures. Some modernization of its stop order procedure as set forth in Section 8 of the Securities Act (and incidentally Section 305 of the Trust Indenture Act of 1939) may well be overdue. As Section 8 is presently written, whenever the Commission has reason to believe a registration statement is false or misleading in any material respect, it must first have a hearing before it can issue a stop order to prevent the statement from becoming effective or to suspend its effectiveness. Our experience is that in many cases a registrant

20/ Securities Act Release 3698, October 2, 1956.

does not really dispute the allegations considered at such a hearing. Nevertheless, because the hearing has been definitely set as required by the statute the registrant generally appears at the hearing but presents little or no evidence to contradict the facts developed by the Commission staff. Frequently he tacitly admits the deficiencies by filing amendments during the hearing.

This lack of any genuine issue of fact at the hearing, together with the filing of correcting amendments before the close of the hearing, has caused confusion and delay. Until now the Commission has dealt with the problem on an ad hoc basis, sometimes exercising its discretion to consider amendments filed after the proceeding has been initiated and sometimes deferring such consideration until after a stop order has been issued at the close of the hearing.

Perhaps the statute should be amended to provide for a hearing only where the registrant desires to stand on the material last filed with the Commission and thereby raise a genuine issue of fact or law in a hearing on such material. At any rate, the Commission may well make some recommendation to the Congress in an attempt to clarify and simplify its stop order procedure.

Section 10(f) of the Securities Act provides, inter alia, that the Commission may require by rule and regulation the filing of forms and prospectuses used in connection with the offer or sale of registered securities.

The Commission may recommend that an obvious gap in Section 10(f) be corrected so that it will have explicit power to require the filing of supplemental sales literature used in connection with the offer or sale of registered securities. Similar provisions are already contained in Section 24(b) of the Investment Company Act with respect to sales literature of certain investment companies and their underwriters, and in Rule 258 with respect to sales material used by companies filing under Regulation A. It should be evident that investors are entitled to the same safeguards under registration as under Regulation A.

As I have said, it is extremely likely that all the proposals to amend the Securities Act included in the 1956 technical amendment program 21/ will again be urged upon the new Congress. I will mention those which may be of particular interest to you. For instance, whether or not a registrant can withdraw a proposed registration statement prior to its effectiveness is a problem arising out of Jones v. S.E.C., 22/ an early case wherein the

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21/ S. 3915, H. R. 11129, 84th Congress.

22/ 298 U.S. 1 (1936)

Supreme Court held that the registrant could withdraw as a matter of right. This holding has been given a limited construction in subsequent decisions.23/ Last year the Commission proposed that Section 6(c) be amended so as to limit the right to withdraw by requiring the Commission's consent, and to give the Commission the right to impose such terms and conditions as may be appropriate in the public interest.

Then the question arises under the present Section 12(2) as to whether the mails or interstate facilities must be used in making the misrepresentation in order for civil liability to attach, or whether any use of the mails or interstate facilities is sufficient to create liability. The Second and Fifth Circuits have construed this section so that the delivery of securities by mail was sufficient to create liability. The Seventh Circuit, however, held that the misrepresentation itself must have been transmitted through the mails or by use of interstate facilities. Accordingly, the Commission likely will propose that the statute state clearly that the section would apply if there were any use of the mails or interstate facilities. Actually, this would merely conform jurisdiction for private actions to that already provided for the Commission by Section 17(a).

Let me just mention the subject of injunctions. Section 20(b) of the 1933 Act provides that the Commission may obtain an injunction when it appears that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the Act or any rule or regulation. This section should be clarified to make it plain that injunctions may arise on a showing that a defendant "has engaged" in acts constituting a violation, instead of requiring a showing that the defendant "is" so engaged. Violations frequently come to our attention after the Act has been violated. While past violations are considered a sufficient basis for injunction by some courts since they indicate the possibility of future violation, other courts regard the problem as discretionary. The Commission's enforcement of the Act would be aided if the statute expressly stated that a past violation was a basis for an injunction. The same proposal will be suggested as an amendment to Section 20(b) of the 1934 Act. Both the Investment Company Act 24/ and the Investment Advisers Act 25/ so state. So the proposed amendment would make the Acts uniform in this respect.

Another section of the 1933 Act which should be clarified, I think, is Section 24, which makes any untrue statement or omission of a material fact in a registration statement a criminal offense. It seems only logical that this section be amended to apply not only to registration statements but to all other documents filed under the Act as well. Misrepresentations can be just as vicious and

23/ Cf. Resources Corporation International v. S.E.C., 103 F. 2d 929 (C.A.D.C., 1939); Oklahoma-Texas Trust v. S.E.C., 100 F. 2d 888 (C.A. 10, 1939); S.E.C. v. Hoover, 25 F. Supp. 484 (N.D. Ill., 1938).

24/ Section 42(e)

25/ Section 209(e)

fraudulent when contained in a Section 3(b) exemptive filing as they would be in a registration statement. Whether or not a misstatement is a crime should not depend on the method by which it is filed.

Before leaving the Securities Act, I should like to mention that the Commission has proposed adopting a note to Rule 460 26/ which would, if adopted, specify certain of the more common situations where it is the Commission's policy to deny acceleration of the effective date of a registration statement under the standards of Section 8(a) of the Act. A number of Commission practices with regard to withholding acceleration have developed over the years, the legal validity of some of which has been challenged by members of the Bar. Some individuals have even gone so far as to suggest that the statute be amended to take away from the Commission the power to deny acceleration in certain circumstances.

The Commission has felt that administrative practices which have developed over the years should be made known to the public and subjected to public scrutiny.

I should mention to you that there are several policies regarding acceleration which have been developed in the last year to meet administrative problems. These pertain to the Commission's unwillingness to grant acceleration where during the prefiling or post filing but pre-effective period there is evidence of "gun jumping", that is, pre-effective sales which are illegal. Also, we have been withholding acceleration where one or more of the underwriters does not meet the test of financial responsibility required under the Exchange Act, and, most important, we have been withholding acceleration where apart from the processing of the registration statement itself we have been making an investigation of the issuer or the underwriter for illegal or fraudulent activities. We have been acting in this area case by case and believing, as we have done so, that we are fulfilling the over-all objectives of investor protection expressed in the Securities Act. The Commission is holding open hearings this Thursday, January 17, on the proposed note.

Now I'd like to mention a proposal which would apply to both the Securities Act and the Securities Exchange Act. Most of the provisions of both Acts which apply to the public generally, or to all brokers and dealers, base Federal jurisdiction on the use of the mails or facilities of interstate commerce in the particular transaction which is prohibited. The Commission believes that these sections should be applicable to registered brokers and dealers and to members of national securities exchanges irrespective of any use of the mails or facilities of interstate commerce in the particular transaction. In short, the status of a person as a registered broker-dealer or as a member of a registered exchange would be relied upon as one basis for federal jurisdiction under the provisions of both the Securities and the Securities Exchange Acts.

26/ 22nd. Annual Report, p. 46.

It appears safe to predict that one bill to amend the Exchange Act, introduced in the last Congress by Senator Fulbright,27/ will be re-introduced. The bill would apply the financial reporting, proxy, and insider reporting and trading provisions 28/ of the 1934 Act to all corporations having 750 or more stockholders, or debt securities of 1 million dollars or more outstanding in the hands of the public, and 2 million dollars of assets. The securities of these companies are not listed and traded on national securities exchanges and thus are exempt from those provisions. In response to the bill we made a complete objective study of the financial reports and proxy soliciting material of these companies, large publicly held corporations, which number about 1,200 in all. We endorsed enactment of the financial reporting, proxy and insider reporting provisions of the bill, but recommended deferral of any action on the application of the insider short-swing-trading recovery provisions to these unlisted securities pending further study.29/ The Commission considers the proposed legislation as a whole, however, to be consistent with the standards expressed by Congress in the federal securities laws and vitally necessary for the protection of public investors in these large, publicly held corporations.

In addition, the Commission is extending its study, pursuant to Senator Fulbright's request, so as to obtain information about the financial reporting and proxy practices of insurance companies, to provide a basis for further consideration by the 85th Congress. The Commission had not previously included insurance companies in its study because the bill had contained an exemption for such companies. The Commission is, however, now studying some 530 insurance companies to obtain the data necessary for its forthcoming report to the Congress.

I think you may also expect that the Commission will again press for some technical amendments to the Securities Exchange Act of 1934, similar to those submitted to the last Congress. 30/ For instance, the present definition of the term "member" of an exchange expressly includes each partner of a member firm but does not expressly include officers and directors of a member corporation.31/

27/ S. 2054, 84th Congress (See also H.R. 7845)
28/ Sec.7,12,13,14 and 16, Securities Exchange Act of 1934.
29/ Report of Securities and Exchange Commission to Senate Banking and Currency Committee, May 17, 1956.
30/ S. 3915, H.R. 11129, 84th Congress.
31/ Sec. 3(a)(3), Securities Exchange Act of 1934.

Since the national securities exchanges now allow corporate memberships, it is difficult to see why officers and directors of the member corporation should not be required to meet the same standards and be subject to the same sanctions as they would be if a member firm were a partnership.

Another likely recommendation with respect to securities exchanges would eliminate the present provision in Section 6(e) which provides that the Commission shall enter an order either granting or denying registration of securities exchanges within thirty days after the application is filed. This provision has created serious difficulties both for the Commission and the attorneys representing the applicant. Within that thirty-day period the Commission must examine the application to determine whether the rules of the exchange meet the statutory standards, conduct an investigation, order a hearing, conduct a hearing, review the record, and enter an order, including the preparation and writing of an opinion where this is appropriate.

If the 30 day requirement were eliminated from this section, it would be consistent with the requirements in Section 15A(e) which does not limit the Commission's time to enter its order granting or denying the registration of a national securities association.

The manipulation and stabilization provisions for securities registered on national securities exchanges have also been considered. It is proposed to make certain minor changes to strengthen these provisions of the Exchange Act, without altering their general purpose or effect.

Section 9(a)(1) prohibits manipulation by the use of what are commonly known as "matched orders." It is designed to prohibit manipulation by arrangements, perhaps among confederates or co-conspirators, to enter buy and sell orders at substantially the same time for the purpose of creating a false appearance of activity and influencing the price. In order to come within the prohibition, however, the section now requires that the orders must be of substantially the same size, at substantially the same time, and at substantially the same price. The Commission would delete the words "substantially the same size." The Court of Appeals for this circuit strictly interpreted this phrase.32/ Stock exchange rules and practices normally result in orders being executed in 100-share lots. Therefore the over-all size of the buy and sell orders placed by a manipulator at a given time ordinarily has no relationship to the effectiveness of "matched order" manipulation.

Section 9(a)(2) contains more general anti-manipulative provisions. Section 9(a)(6) authorizes the Commission by rule to regulate stabilization of securities registered on national securities exchanges. Each of these subsections now requires proof

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32/ Wright v. S.E.C. 112 F. 2d. 89,93

of a "series of transactions." The more detailed rules of the Commission with reference to manipulation and stabilization, 33/ adopted pursuant to section 10(b) of the Act, apply to individual manipulative or stabilizing transactions, without requiring proof of a series of such transactions. Experience has shown that where the price at which a large distribution of securities is going to be made is keyed to the market price existing at the commencement of the distribution, as is commonly the case, even one manipulative transaction can affect the over-all price paid by the public and received by the distributors by many thousands of dollars. It is, therefore, proposed to make sections 9(a)(2) and 9(a)(6) applicable where one or more manipulative or stabilizing transactions is effected. The proposal merely involves the codification in the statute of a principle already in effect under the Commission's rules relating to manipulation and stabilization.

Section 10 contains prohibitions against effecting short sales and against engaging in fraudulent activities in the purchase or sale of securities, in contravention of Commission rules. It is proposed to revise and strengthen the jurisdictional provisions of the section in some respects and to request Congress to enact as part of the statute itself the Commission's general anti-fraud rule under section 10(b), Rule 10b-5.34/ This rule is generally similar to the anti-fraud provisions of section 17(a) of the Securities Act, except that section 17(a), applies only to frauds in the sale, as distinguished from those in the purchase of securities. The proposed codification of the rule will, I think, make the Act more effective as a basis for criminal prosecution, particularly in view of the fact that section 32 provides that no person shall be subject to imprisonment for violation of a rule if he proves he had no knowledge of such rule.

Section 15(b) provides for the registration of brokers and dealers and for the denial, revocation, withdrawal and cancellation of such registration. Proposals being considered by the Commission relate to the bases on which registration may be denied or revoked, the sanctions which the Commission may impose, and the procedures to postpone the effectiveness of a registration.

For instance, the Commission feels that the conviction of any "financial-type" crime should be enough on which to base denial or revocation, rather than the present limitation to convictions arising out of securities transactions or from conducting a broker-dealer business.

Again, the Commission also feels that it should have an expanded power to suspend the registration of a broker-dealer where it believes that revocation is too drastic.

33/ Rule 240.10b-1 through 240.10b-8

34/ Formerly called Rule X-10B-5

Let us now take up one more proposed revision to the 1934 Act. Section 12(d) gives the Commission authority to deal by rule with the problems of so-called "when-issued trading", that is, trading in a security prior to its issuance under contracts providing for delivery and settlement "when, as and if" the security is issued. However, this provision, like many other provisions of the statute as originally adopted, applies only to the exchange markets, rather than to the over-the-counter markets. It is proposed that the Commission be given similar authority with respect to "when-issued" trading in the over-the-counter markets.

Another area in which you may expect some legislative proposals is in the regulation of Investment Advisers. The Investment Advisers Act of 1940 provides for the registration with the Commission of persons engaged in giving investment advice for compensation with certain specific exceptions such as banks, publishers of publications of general circulation and certain professional men such as lawyers, accountants, engineers and teachers. The jurisdiction of the Commission under this statute is, however, very limited.

While the Act prohibits fraudulent and deceptive practices, the Commission has no present authority under the Act to inspect investment advisers' books and records to say nothing of its lack of authority to require that books and records be maintained. It has no adequate means of determining whether investment advisers are mishandling clients' funds or securities or engaging in other fraudulent practices in connection with their business.

Any investment adviser who has not been convicted of certain types of crimes, who is not subject to an order enjoining him from engaging in certain activities, and who files an accurate and complete application, is eligible to become registered as an investment adviser. The provisions of the Act prohibiting fraudulent practices at present apply only to investment advisers who happen to be registered. 35/

In 1945 the Commission submitted a report to Congress pointing out many deficiencies in the Investment Advisers Act and recommending a number of amendments to make it more effective Unfortunately no action has been taken on these recommendations.

You may expect that the Commission will submit to Congress a report on the presently existing inadequacies of the Act, together with suggested correcting amendments which I shall not enumerate in detail.

35/ Section 206.

The Commission also is contemplating some revision of the Investment Company Act of 1940. I will not attempt to list the proposals, beyond saying that some are being considered which will further the basic purpose and policy of the statute without, however, extending its present supervision over investment companies and their affiliates.

Within the very near future, I expect that the Commission will send drafts of its proposed legislative program to the registered securities exchanges, the National Association of Securities Dealers, and other interested organizations. Thereafter a conference will be called by the Commission with respect to this program.

As you might have gathered from what I have said, the Commission has given considerable study and thought to its amendment program. The end result will be, I am sure, increased investor protection and more modern procedures at the Commission.

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