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SECURITIES AND EXCHANGE COMMISSION
Washington

SECURITIES EXCHANGE ACT OF 1934
Release No. 94

Joseph P. Kennedy, Chairman of the Securities and Exchange Commission, addressing approximately 1,000 Chicago business men at the Union League Club of Chicago this noon, assured American business that it may now undertake new financing without any unreasonable burdens of effort, expense or liability.

In addition to a discussion of the need of Federal regulation to prevent securities frauds, indicated by numerous complaints recently received by the Commission, the Chairman spoke specifically about three important phases of the Commission's work, namely: the responsibility of officers and directors, the registration of new issues, and the over-the-counter markets.

He urged officers and directors not to neglect their responsibility for filing reports as to their ownership in the equity securities of their companies, pointing out that "if a man acts in good faith and tells the truth as he knows it, there is no danger of liability."

He pointed out that fears about the registration of securities under the 1933 Act were without foundation. He urged business men to seek registration not only because of the protection it gives investors but also because registration will prove to be a source of protection to corporation officials against strike suits.

He outlined for the first time the Commission's objectives in the regulation of the over-the-counter trading. He stated that the Commission is considering a plan to register over-the-counter dealers and securities traded over-the-counter.

The Chairman stated that already much new financing was in process of preparation for registration under the Commission's new forms. Referring to the practice of making so-called private issues, Chairman Kennedy warned as follows:

> "Wholly apart from the unfortunate effects which such a procedure has upon the general investing public thus deprived of an opportunity to participate by investment in new and attractive offerings, I call your attention to the danger in which the issuing corporation is involved."

Discussing the questi n of new capital issues, he said:

> "You have been told when you sought to raise money or readjust corporation finances by refunding, that the labor, expense, and legal liabilities involved, imposed upon the issuer of new securities unbearable hardships. Gentlemen, I ask you now to disregard those warnings and to forget that bogie. Do your business as usual. Come down to Washington in person and present your problems to us, and I am confident that we can show you how to do new financing legally, pleasantly, and inexpensively."

In reference to the filing of reports regarding changes in the holdings of officers, directors or beneficial owners of 10% in the equity securities of registered corporations, the Chairman said:

> "If you are an official or director of a registered corporation, or the holder of 10% of such a corporation's equity securities, you are required by law to file with the Securities and Exchange Commission the amount of all securities of which you were the beneficial owner as of January 31, 1935. Thereafter, no reports are required unless the official, director, or 10% stockholder changes his holdings. Evidence at hand shows an indifferent response to this requirement with numerous instances of insufficient and incorrect filing under the requirements of the Act. Of course, in a great many instances, due to the newness of the Act and lack of familiarity with the forms for reporting prescribed by the Commission, honest mistakes have occurred. These will become fewer as time goes on. But I urge upon you the wisdom of being properly advised concerning your duties."

Pointing out the justification for the filing of such reports, he said on this point:

> "Directors and officers are the agents of shareholders who, in many cases, because of their small holdings, are powerless to investigate or to supervise. The least we can give them is information which will disclose the existence of any interest of these agents which might be adverse to those shareholders."

In dealing with the problem of regulating over-the-counter trading, Mr. Kennedy said:

> "Congress intended that no undue advantage be given to one form of trading over the other. In a sense the status quo is to be maintained. Congress foresaw that the whole Act could be defeated if effective regulation of over-the-counter markets was not provided for. We are alive to this problem. We are considering the registration (or licensing, if you will) of the dealers and brokers of the country whose business involves interstate commerce. We are considering registering the securities of large corporations similarly involved whose securities are widely distributed and requiring reports of officials of such companies in order that delisting will not be an attractive process. We shall seek to place at the disposal of investors substantially the same information concerning issues of securities traded in over-the-counter as that required of listed companies. I ask you in simple fairness - why shouldn't each form of trading be subject to regulations substantially the same? The Commission plans to provide that a registration statement filed under either Act shall be in substance a compliance with the other Act."

Summarizing the Commission's attitude, Chairman Kennedy said:

"The aim of the Securities and Exchange Commission is to exert its every effort in behalf of the restoration and preservation of sanity in the security business. We hope to interpret the Securities Act of 1933 and the Securities Exchange Act of 1934 so that no one will be asked to assume unreasonable burdens when issuing new securities, and no one will be hampered by unreasonable regulations when trading in those securities once they have been issued."

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Chicago Speech

Chicago should have an especial interest in the Securities and Exchange Commission. The legislation which created it was the fruition of philosophy expounded in the first instance by men like your own lamented Melvin Traylor, whose insistent indictments of senseless and excessive stock market speculation gave shape and substance to an enlightened public opinion that demanded Federal regulation of securities and of security exchanges.

The essence of Mr. Traylor's criticism was that the speculation of the late Twenties was needless. This speculation and the consequent manipulation were decisive factors in the creation of our Commission for the protection of the public. Congress intended to regulate not to destroy the securities business. The aim of the Securities and Exchange Commission is to exert its every effort in behalf of the restoration and preservation of sanity in the security business. We hope to interpret the Securities Act of 1933 and the Securities Exchange Act of 1934 so that no one will be asked to assume unreasonable burdens when issuing new securities, and no one will be hampered by unreasonable regulations when trading in those securities once they have been issued.

Our system of government was founded to encourage, not to limit the expansion of honest business; not to prosecute honest business but to defend it.

The senseless, vicious, fraudulent activities which Melvin Traylor deplored must be eradicated, and the necessary, legitimate, and useful activities will be encouraged to the end that profitable enterprise shall again become a commonplace in American business.

Because of the complexities involved in this far reaching security legislation, great discretionary power was lodged with the Commission to supplement the legislation in the important phases of administration.

Congress had to give flexibility and adaptibility to a law which regulated such a vast and complicated business. In these very qualities we find considerable amount of safety. In spite of changes the Commission is empowered to have its rules fit the needs of public protection and private business. By this delegation of power our Commission acts with all the force and effect and sanction of Congress itself when it promulgates rules and regulations for the control of security issues and markets. We have given the most careful study to the problem of rules and regulations. Before promulgation they are subject to the sifting processes of constructive criticism from the best available experts.

Paralyzing regulations are thoroughly unAmerican. No important rule or regulation will be adopted without consultation with representatives of any class which might be affected thereby. No regulation will be passed which is not reasonably adapted to the accomplishment of the statutory objective. No promulgation by the Commission, I pledge you, shall involve any undue risk of embarrassment, expense, or liability to business.

There is more to a statute than a command or a penalty. It should represent the wisdom of the community and in such a field of corporate law as the Securities and Exchange Commission embraces, a statute and the regulations thereunder have their best justification in the opportunity they give the Commission to educate people upon whom the Act operates. Appreciating the average business man's desire for definite and understandable regulations our aim is to have our activity find expression in simple, clear, and understandable language. We have no desire to evolve a system of complicated regulations with a professional jargon which shall be meaningless to the average lawyer, let alone to the average investor.

Skillful draughtsmanship in these highly technical subjects is a difficult art, but we have your problems in mind and your interest at heart. Our lawyers are now engaged in a thorough revision of all of the rules of the Securities Act with a view to accuracy, clarity and simplicity.

We do not consider it a personal affront when criticism is directed against our suggestions for supervising and regulating the securities business as they unfold from time to time through the publication of forms and administrative recommendations. And in turn I know you will believe me when I say that it is without personal animus and with no thought of criticizing Chicago that I ask you to consider local conditions.

You have been told that Illinois and neighboring states have in their statutes provided ample protection to the investor and that further regulation by federal rulings was unnecessary.

I am concerned about the importance of correct thinking on these matters and therefore I must take your time to set some facts before you. I cannot be too insistent in impressing upon your minds the magnitude of the task of preventing fraudulent transactions. The crafty security salesman has operated with marked success throughout the land. He has favored no territory; he has ignored no class of investors. State laws, however efficiently administered, cannot stop him entirely because the states lack jurisdiction over transactions that may be interstate in character. We have in our files many instances where fraudulent promoters were driven out by good State Commissions only to have these crooks move across the state boundary and carry on their swindles with the state authorities powerless to interfere.

The Securities Department of the Secretary of State of Illinois, for instance, estimates that they refused clearance during the year ended December 31, 1934 to questionable securities having an aggregate par value of $50,000,000.

In spite of this vigilance the Better Business Bureau of the City of Chicago estimates an annual loss in this city alone in excess of $5,000,000 from the sale of fraudulent securities, with a proportionate increase to be reckoned if manipulations are included.

Gentlemen, the aggregate of all registrations of new security issues from the Chicago City District for the last 18 months totaled exactly $5,059,683, or less than the total fraudulent securities sold during the last 12 months in the City of Chicago. The aggregate loss measured in terms of the worst catastrophe in your history, the Chicago fire, was estimated at $200,000,000. Yet one-quarter of that amount - $50,000,000 - represents the value of apparently worthless securities that seek registration annually in the state of Illinois.

The Chicago fire loss was an accidental non-recurring experience, whereas, according to the record, investors of this state and city are exposed to losses, which, were it not for the activities of state officials and the Better Business Bureau, would take from this community every four years a loss greater than that occasioned by the Chicago fire. Let me be more specific. Up to January 25, 1935 the Securities and Exchange Commission, Complaint Division, which has been in existence less than 6 months, has had filed with it by citizens of the Chicago District a total of 203 complaints, most of which have been filed within the last 90 days. These complaints include every kind of brokerage and investment salesmanship activities.

Bear in mind that these complaints are wholly apart from matters referred to your local authorities and indicate a field of activity which neither state nor city is organized to regulate. Handicapped as we have been in Washington through lack of funds, we have thus far maintained only the skeleton of an organization. Therefore, you can appreciate that we do not create unnecessary work for ourselves. We seek to discourage investigations that are obviously groundless. Yet, careful examination of our files indicates only two complaints out of more than 200 filed with us that were immediately disposed of by the Securities and Exchange Commission staff as being prima facie baseless and without merit.

Obviously, Gentlemen, the investor in the Chicago territory is not yet amply protected. There is still a vast amount of work to be done and I am sure you will not regard the Federal government as an unwelcome visitor to your fold. The protection of the investor is to your interest because you are interested in the welfare of your community. And frankly, our job will be better done and your interest will be better protected if by alert and vigilant cooperation you share our task.

Have no fear of annoyance. As I told the business men of Boston some weeks ago, the danger is not that we will interfere too often, but that we may act too late. We both are vitally interested in the advancement and protection of decent business. You possess a weapon far stronger and more potent than any forged for our arsenal - the weapon of public opinion and of public conscience.

All men instinctively resent changes and the business man is more resentful of change than any other. But the business man has never been slow to recognize innate honesty and sincerity of purpose so that frequently the ideal of today which provokes opposition and ridicule, becomes, as it is understood and appreciated, the workaday rule and practice of tomorrow. Every legislative landmark in recent history, such as the Federal Reserve Banking system, the Interstate Commerce Commission, and Insurance Companies Control Boards met at the outset seemingly endless opposition. Ultimately, however, the critics became champions and business men themselves would now be the first to resist the removal of Federal supervision from those major activities.

With all the difficulties incident to implementing a new and important piece of legislation I believe that the Securities Act of 1933 will prove to be the most serviceable legislation enacted in the public interest in recent years. And most of those difficulties have been met to the satisfaction of leading critics by newly adopted registration forms and by recent administrative interpretations.

The legislation is new, and early complaints concerning it were not always justified or sincere. I am far from contending, as I have said before, that the Act or the Commission administering it is perfect. We are learning from experience, and I assure you business men that we hope to grow in wisdom by further experience.

We confidently anticipate your ultimate approval of the Securities and Exchange Commission, feeling sure that greater familiarity with our aims and purposes will insure it.

In this connection, I wish to direct your attention to three important phases of the legislation of 1934 which affect business men like yourselves in a particular manner, first, directors' responsibilities; second, new issues; and third the over-the-counter market.

No doubt, many of you are directors of corporations whose securities are listed on registered exchanges. You are familiar enough with this legislation to know that the law requires certain registrations to be filed by issuing corporations, and certain information to be filed by individuals. It takes time and the actual experience gained only by a period of trial and error to familiarize one's self with the law. Doubtless, you will recall that there were some unpleasant experiences with regulations adopted in the early days of the administration of the income tax law. Corporations had difficulties in the beginning in complying with the terms of corporation tax laws.

Let us consider the requirement that officials and stockholders disclose their holdings. If you are an official or director of a registered corporation, or the holder of 10% of such a corporation's equity securities, you are required by law to file with the Securities and Exchange Commission the amount of all securities of which you were the beneficial owner as of January 31, 1935. Thereafter, no reports are

required unless the official, director, or 10% stockholder changes his holdings. Evidence at hand shows an indifferent response to this requirement with numerous instances of insufficient and incorrect filing under the requirements of the Act. Of course, in a great many instances, due to the newness of the Act and lack of familiarity with the forms for reporting prescribed by the Commission, honest mistakes have occurred. These will become fewer as time goes on. But I urge upon you the wisdom of being properly advised concerning your duties.

Do not be terrorized into superfluous anxiety. The last thing in the world I wish to do is to stand here and suspend the Damoclean sword over your heads. On this score the law coincides with plain common sense. We believe that if a man acts in good faith and tells the truth as he knows it, there is no danger of liability.

We seek to create confidence, not to instill fear. Our large registered corporations are affected with a public interest. Directors and officers are the agents of shareholders who, in many cases, because of their small holdings, are powerless to investigate or to supervise. The least we can give them is information which will disclose the existence of any interest of these agents which might be adverse to those shareholders.

Secondly, I wish you would address your minds to the question of new issues. In the entire Chicago Federal Reserve District since the Securities Act has been in existence a total of $19,950,054 in new securities has been registered in 38 separate registrations. This compares with a total of $1,037,000,000 for the country as a whole.

This, as you can see, is less than 2% for the country's total registered by the Chicago District. Yet, the Chicago District total volume of business during that same period represents 6½% of the country's total.

As I stated before, the City of Chicago alone has registered only $5,000,000 in new issues.

Imagine the significance of these things! Just as they stand they would mean that the courage, resourcefulness, and enterprise of this greatest industrial center in the world have become paralyzed. But we know this is not so; other figures prove it. Chicago's business activity in 1934 was 22% greater than that of 1933, a better ratio of improvement than was shown by any other section of the country. And this was in spite of the fact that owing to the drought Chicago had the smallest movement of grain and livestock in its markets in years. But this did not prevent a 55% increase in building operations, a 26% increase in bank debits and 18% increase in store sales, a 13% increase in the consumption of electricity, a 12% increase in payrolls.

No, Gentlemen, business enterprise in Chicago isn't dead. Many factors have dried up the sources of new financing in this district. And among those factors, I fear, has been an unwarranted apprehension of this securities legislation.

You have been told when you sought to raise money or readjust corporation finances by refunding, that the labor, expense, and legal liabilities involved, imposed upon the issuer of new securities unbearable hardships. Gentlemen, I ask you now to disregard those warnings and to forget that bogie. Do your business as usual. Come down to Washington in person and present your problems to us, and I am confident that we can show you how to do new financing legally, pleasantly, and inexpensively.

Do not seek refuge in so-called private issues to a few purchasers and thus attempt to avoid registration. That way lies danger.

It is true that during the early months of the Securities Act administration the opinion had been expressed in Washington that an offering of securities to an insubstantial number of persons was a transaction not involving any public offering, and hence was exempted from registration under the Securities Act. Coupled with this opinion, which, incidentally, was not an official act of the Commission, the guess was made that an offering to not more than 25 persons might be regarded as a private offering. As a result of that yardstick, there appears to be developing a dangerous practice on the part of corporations desiring to avoid registration, to seek to dispose of their securities to large institutional borrowers like insurance companies, who state that they are acquiring such securities for investment with no view to subsequent distribution.

Wholly apart from the unfortunate effects which such a procedure has upon the general investing public thus deprived of an opportunity to participate by investment in new and attractive offerings, I call your attention to the danger in which the issuing corporation is involved.

The mere number of prospective customers cannot be the sole and determining circumstance. It is one circumstance it is true, but there are others equally important, the number of units offered; the size of the offering, and the manner of the offering. I emphasize these points merely because it is so easy to become involved in grave risks of legal responsibility unwittingly.

This is all the more true because now these so called private offerings are so unnecessary. Recently a new form for registration of new issues has been promulgated, which, in the judgment of the Commission and in the opinion of many corporation lawyers, deprives any issuer of the excuse for not registering under the Act. Why commit the folly or take the risk involved of avoiding registration? In the last analysis registration not only serves the investor, it also protects the corporation and its official against subsequent suits by a trouble maker.

Lest you consider my appraisal of our revised registration forms as too optimistic, let me refer you to other testimony. The new Form A-2 for registering new issues of securities under the Securities Act of 1933 issued since your November meeting has been described by one of the most prominent lawyers in the field of corporate finance, who, by the way, was an outstanding critic of the original Act, as being so reasonable that there is nothing in the way of inconvenience or expense which should deter the American business man from seeking new capital in accordance with the requirements of the Act. The new Form 10 for permanent registration of securities on stock exchanges (under the 1934 Act) has been described by the outstanding advisor of the New York Stock Exchange as "a nice accommodation of balance between public interest and the difficulties of business" and as affording "a basis for going forward as and when we can alter our financial standards and the methods of giving them effect".

So that we can be pardoned if we feel that we have made a good start. The flow of capital into business and the maintenance of free and open markets in securities are essentials to prosperity. But the chief essential to revival is confidence, and we feel that we are contributing to the restoration of that necessary confidence by our modification of the severities of the first regulations interpreting the Act of 1933, and by our interpretation of the Exchange Act as evidenced in our registration requirements. We hope to provide reasonable rules regulating floor trading on stock exchanges and which will at one and the same time afford the public protection from excesses originally denounced and prohibited by Congress and at the same time establish the brokerage and security business on the sound foundation of salutary, necessary and profitable activities.

Finally, let me say a word about a matter which, I am told, is of vital concern to Chicago - the regulation of over-the-counter issues. Congress, almost in the opening clause of the 1934 Act, stated that "transactions in securities as commonly conducted upon securities exchanges and over-the-counter markets are affected with a national public interest which makes it necessary to provide for regulations and control of such transactions and of practices and matters related thereto, including transactions by officers, directors and principal security holders, to require appropriate reports, and to impose requirements necessary to make such regulation and control reasonably complete and effective, and to insure the maintenance of fair and honest markets in such transactions".

This statement is recognition that evils existed in both fields of trading, over-the-counter as well as on the exchange. It is true that the Act is more elaborate in dealing with organized exchanges, but in Section 15 we find a Congressional recognition that this control must not be discriminatory. In the grant of power to the Commission to deal with the problems involved in over-the-counter trading, the following significant language appears "of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest and to insure to investors protection comparable to that provided by and under authority of this title in the case of national securities exchanges".

Congress intended that no undue advantage be given to one form of trading over the other. In a sense the status quo is to be maintained. Congress foresaw that the whole Act could be defeated if effective regulation of over-the-counter markets was not provided for. We are alive to this problem. We are considering the registration (or licensing, if you will) of the dealers and brokers of the country whose business involves interstate commerce. We are considering registering the securities of large corporations similarly involved whose securities are widely distributed and requiring reports of officials of such companies in order that delisting will not be an attractive process. We shall seek to place at the disposal of investors substantially the same information concerning issues of securities traded in over-the-counter as that required of listed companies. I ask you in simple fairness - why shouldn't each form of trading be subject to regulations substantially the same? The Commission plans to provide that a registration statement filed under either Act shall be in substance a compliance with the other Act.

It is our intention to have substantially the same registration statement suffice for compliance with either Act.

And now, Gentlemen, one word about the general business situation and the role which the Securities and Exchange Commission wishes to play in recovery. Six months ago I stated: "It would be idle to deny that confidence is lacking in this country, and this is especially true of the security business." We have since had a seasonal upturn in business, and accompanying advance in stock markets, (we won't count the gold clause jitters), and a very definite improvement in the heavy industries - steel operations alone having advanced from 28% to 53%.

But now as then, business is better than confidence. Now, as then, business men, always notoriously timid, fear legislation and shrink from taking new positions.

I repeat to you what I said six months ago: "I conceive it to be an important part of the job we are trying to do here in the Securities and Exchange Commission to reassure capital as to its safety in going ahead and to reassure the investor as to the protection of his interests .... We regard ourselves ... as partners in a cooperative enterprise.... We want to see the wheels turn over and gather speed".

We shall seek to help all proper enterprises by helping the banker and broker and investment dealer to build a new capital market.

We think we already see some small evidence of increased confidence in response to our efforts. We know of substantial amounts of new financing under consideration brought to the point of finishing detail since our new form setting forth requirements governing new issues of securities were released around the first of this year. We have been officially assured by stock exchange leaders that our proposals for reorganization of internal administration of those institutions are both reasoning and reasonable. We are confident that investment and stock market leaders and American business men in general will see the major problems as we see them and cooperate in their solution.

I repeat, financial enterprise in common with all other forms of business require profit to keep them going. There is not the slightest thought of elimination or restricting proper profits, and I for one leave no tolerance or patience with the view that every man who has a dollar or wants to make one is a public enemy.

Only the man and the institution which seeks to do business guided by no motive other than that of the greatest profit the "traffic will bear", need fear our regulation and supervision. Business effort which combines the ideal of service and compensating profit will be encouraged and protected.

I ask that cooperation from Chicago. Surely the art of cooperation is not forgotten in a city which coined the most famous slogan of successful cooperation in our vernacular. The cooperation of "Tinker, to Evers, to Chance", made the historic Cubs champions in their event. We wish to be champions in our event. And with your cooperation we will be.

Let me conclude with this thought - the statutes we administer are the expression of a long standing deep rooted conviction of the American people that a business as socially expensive as the security business needed regulation. I believe our Commission, regardless of political changes, will have a permanent place in our scheme of government. I am proud to serve with this Commission in the laudable task of protecting the investor.