An Address

by

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Before the

NATIONAL WESTERN MINING CONFERENCE

Sponsored by

The Colorado Mining Association

Denver, Colorado

February 3, 1955

It is a real pleasure to talk to your group. It is also stimulating. I say that because in Washington we are necessarily concerned as a law enforcement agency with regulations and restrictions. You, on the other hand, are thinking in the more positive terms of raising capital and getting on with your mining. You have your job to do; we have ours. We may not always agree, but discussion--even discussion at which voices are raised--usually results in reducing areas of disagreement. Moreover, it is an important part of the process of keeping our mental perspective straight.

Public financing by the mining industry, as well as industry generally, is subject to the provisions of the Securities Act of 1933. The fact that uranium shares have found such a ready market in the recent past indicates that the Securities Act has not stopped the financing of mining enterprise.

It is important that the securities laws should be administered with proper recognition of the importance of the mining industry. Your industry is the basic supplier of raw materials essential to the maintenance of our free enterprise society. At present, moreover, your industry's activities are tied up with the very safety of the nation. The success or failure of the quest for fissionable and other strategic ores may have a material effect on our country as a force for international peace and upon the expansion of our economy and standards of living. In the tradition of our free private enterprise system, this quest for fissionable material contained in the earth is left largely to your industry. The Government did this in the belief that, under the stimulus of a definite price schedule for uranium ores and of the profit motive, private industry will do the job more efficiently and more rapidly than a government monopoly. The capital investment necessary for your quest is being supplied in some part by government, but predominately the capital needed must be supplied by traditional private financing. Certainly, in view of the importance of your task, unreasonable and unnecessary obstacles should not be placed in your path.

However, the continued success of a free enterprise system financed from private sources is dependent upon its continuing ability to generate savings and to procure their reinvestment. No industry and practically no company can survive on one shot of capital investment. From a long range point of view, only when the investor has confidence in the system will he continue to invest.

It is significant that the first "blue sky" law ever passed in this country was passed in a mining state--Nevada-- in 1909. It was repealed in 1911, to be sure, but the fact is that the importance of public confidence in the methods of raising capital by mining enterprises was realized in the mining country long before we had any Federal regulation of securities.

The Securities Act of 1933 was enacted to the end that our processes of capital formation would both inspire confidence and merit confidence. The Act was not designed as a temporary recovery measure or as a short-lived reform bill. That Act and the related Acts were intended to be and they are a part of our economic jurisprudence. As a matter of fact, in the early part of the century an Industrial Commission created by Congress recommended Federal incorporation and suggested that corporations should be required to publish information about themselves and their promoters in the raising of capital and furnish financial reports to their stockholders. England, a sophisticated country in the field of raising capital, in the midst of its Industrial Revolution and its tremendous overseas commercial development of the last century, enacted laws as early as 1844 requiring disclosure to investors of pertinent facts in connection with financing of industry and has continued to enact Companies Acts from time to time since.

The economy has grown during the period that the Securities Act has been in effect, and a lot of money has been raised by public offerings of securities. In 1934 offerings, public and private, of corporate securities came to about 400 million dollars; in 1939, the corresponding figure was about 2 billion 200 million dollars; in 1953 the amount was almost 9 billion; and the indication for 1954 is about 9 billion 300 million.

From the effective date of the Securities Act to the close of 1954, mining companies, other than coal, have made over 3,600 offerings, totaling in excess of 900 million dollars. Over 400 registration statements of mining companies (exclusive of coal mining companies) became effective in respect of approximately 450 million dollars of securities. Of this amount, approximately 241 million dollars is represented by offerings made by more than 375 mining companies in the exploratory or developmental stage. Exempt offerings of mining companies--that is, offerings aggregating $300,000 dollars or less made pursuant to our Regulation A--have since the inception of the Act aggregated approximately 293 million dollars. This involved about 2,850 separate offerings and were virtually all by companies in the exploratory stage.

We do not believe that our requirement that an offering circular be distributed to investors by companies in the case of offerings of $300,000 or less has deterred offerings by exploratory mining ventures. The obligation to issue an offering circular to investors was adopted in 1953, after first receiving broad public comment, including comment from those interested in mining. During that year there were 127 mining offerings with the aggregate offering prices of issues of this character amounting to over 18 million dollars. In the year 1954 there were 337 of such offerings with an aggregate offering price of more than 66 million dollars. If one may judge by the staggering workload carried by our Denver Regional Office staff, the requirement of an offering circular is proving to be no great drawback to those interested in financing exploratory uranium or other mining companies. Last year 232 offerings under Regulation A, virtually all exploratory uranium projects, were made in that office with an aggregate proposed offering price of approximately 52 million dollars.

These statistics have significance because they show that neither business generally nor the mining business in particular has been stopped by the securities laws from raising capital. Consequently, the question is one of administration.

The Commissioners are under a sworn duty to administer a group of laws which are both strict and technical. We are vested by the law with the power and duty in many cases to

prescribe rules and regulations required in the public interest or for the protection of investors. We must necessarily be hard bargainers. We are, after all, in many cases the representatives of the otherwise unrepresented public.

The problem for our Commission is--as it always has been--how to provide administratively for the best assurance that the facts about a business are made available.

There are those who argue that the Commission should let the registrant file papers which it thinks follow the rules and forms, sell on the basis of the papers filed and assume responsibility, penal and civil, under the liability provisions of the Act.

Recall, if you will, however, the statutory power of the Commission to suspend effectiveness by stop-order proceedings or to seek injunctions. It is impossible to reason honestly that such a power does not create a corresponding duty on the Commission to look at each registration statement or offering circular to determine whether on its face it shows deficiencies. For a Commission to take any other attitude would be abandonment of its duty.

Now, if our staff looks at a registration statement and finds something which is not in conformity with the legal requirements or which appears on its face to be a misrepresentation or a half truth, what should we do--should we lie in wait and surprise the issuer by a stop-order proceeding or by an injunction? If any such practice were introduced, I am sure the roof would fall in.

The Commission's long established practice, as you know, is to advise the issuer informally of deficiencies and to give the opportunity to amend so as to avoid the necessity of formal proceedings.

The letter of comment advising the issuer of deficiencies is sent after an examination of the registration statement or offering circular by members of the staff, including a securities analyst, an accountant, an attorney, and in some cases an engineer.

While the complaint is made that the staff sometimes compels issuers to say things that drive buyers of securities away, I submit that the staff is justified in warning registrants in those instances where it considers that the statutory standards of fair and adequate disclosure are not met.

It must be recognized that it is impossible to formulate for every business situation exact standards as to what are the material facts necessary to the making of an investment decision. Consequently, there are bound to be differences of opinion. Let us not deceive ourselves into thinking that any statute requiring fair and adequate disclosure can be administered without differences between the Commission and registrants. Those of you who work on registration statements and offering circulars know how many arguments take place among the authors of the statement before it is filed.

While in the heat of discussion of disputed positions, registrants may from time to time say harsh things and think harsh things, I think it fair to say that the comments of the Division have frequently resulted in eliminating material which, if included, might have furnished ground for the successful assertion of civil and possibly criminal liability.

Of course, I don't need to tell you that the Commission and its staff have no mystic omniscience by which they determine that the statements in a registration statement are true. The ultimate responsibility both for the facts and the figures is that of the registrant.

The fact that a registration statement has become effective or an exempt offering under Regulation A is permitted does not constitute a guarantee of the accuracy or completeness of the disclosure or an approval by the Commission of the merits of the issue. We do not know all the facts. We do not usually make field investigations of the properties of mining companies. As a consequence, our examination of registration statements and offering circulars gives no sanction to the accuracy and completeness of the disclosure made. In fact, the Act makes it unlawful for anyone to represent or imply that the Commission has approved or passed upon the merits of any security, or that

the Commission has found that the registration statement is true and accurate on its face, or that it does not contain an untrue statement of fact or omit to state a fact. I cannot emphasize this too strongly. Again I say, the ultimate responsibility for the truth of the statements made, whether in prospectus or offering circular, must in the nature of things be the responsibility of those who make the statements.

Our disclosure requirements for mining securities have evolved from experience and they vary with the stage of development of the company. Going mining companies are sufficiently akin to most industrial companies that our general forms are suitable for their use. The main requirements here are, in addition to financial statements, a summary of its earnings for the last five years, a description of its business and of the securities to be offered, and of the use to which the proceeds of the securities are to be put and information concerning the management's remuneration and stockholdings. Disclosure is required as to ore production. They must also disclose the estimated tonnage and grade of their ore reserves. These requirements are not restricted to mining companies; it is true of all extractive industries including oil and gas which are actually in production and possess a record of earnings. This information in our judgment is indispensable to an evaluation of the investment value of a going extractive industry company.

Manifestly, estimates of reserves in order not to be misleading must be made on the basis of recognized engineering principles, including appropriate sampling and other testing procedures. The instructions in our registration forms as to reserves are in accordance with generally accepted engineering usage. In fact, our definitions of "proven ore" and "probable ore" and our requirement that reserve estimates be restricted to these types of ore bodies is in strict accordance to the views of a distinguished mining engineer, named Herbert C. Hoover, whose "Principles of Mining" published in 1909 is still a classic in its field. We maintain professional mining engineers upon our staff both in Washington and in our appropriate regional offices here in Denver and in Seattle. If need be they consult with other government agencies such as the Bureau of Mines,

U. S. Geological Survey, the Atomic Energy Commission and the Defense Minerals Exploration Administration. Our engineers are available for consultation with company representatives at any time.

If reserve estimates are made or reserves are claimed by companies in their registration statement or offering circular, underlying data and maps, including sample-assay results, drill data, and other material information called for by our forms are required or requested for use of our technical staff so that they will have some basis for review of the reasonableness of the estimates.

Companies in the exploratory or development stage range from companies owning claims without known ore bodies to companies which have reserves but have as yet no period of profitable exploitation. The following areas of information are of prime importance to an investment analysis of these types of companies: The property, the management, the exploratory or development program, including the use to which funds collected from investors will be put, the promotional features of the deal and the costs of distribution and underwriting.

In the case of the purely exploratory company, experience indicates that $300,000 can accomplish considerable exploration. Therefore the great bulk of these companies utilize the exempt offering privilege afforded them by Regulation A. Manifestly, if a company without knowledge of ore occurrence in commercial quantity on its property seeks funds not only for exploration, but also for development and construction of a mill or other operating facilities, the necessity for the clearest disclosure of the nature of such proposals is apparent. For companies in an exploratory stage only, we simply require a description of the property, its location and other data of material importance, plus information as to the promoters, management and their transactions with the company. Financial statements consist solely of a statement of assets and liabilities, a statement of the sums received by the company from any and all sources and a breakdown in detail of the expenditures made by the company. The purpose of these financial statements is largely to indicate the cash consideration paid for the property, particularly to

insiders, and the extent to which funds have been used for exploration of the property as against the extent to which they have been used for other purposes such as payments to promoters and insiders. In the case of Regulation A offerings, the financial statements need not be certified by independent accountants but can be made on the responsibility of the company and its promoters. For purely exploratory companies it is apparent that there should be a clear cut statement that there are no known ore deposits. No maps, geological reports or other data are generally required. However, the use of such maps and reports is not prohibited providing they are not misleading. Where such material is used, it is reasonable to expect our professional staff to examine it with the view to determining whether they support the representations made.

It is not unusual for an exploratory company to make reference in its offering circular to producing mines in the vicinity of its own property. There can be no objection to this provided the reference to such mines is qualified with the information necessary to make the reference not misleading. Ordinarily, any such reference should be supplemented with information as to the approximate distance between the properties. If no representation is intended that the ore body being worked at the producing mine extends into the exploratory company's property or that any other important geological relationship has been established between the properties, this should be made clear. Other facts that may require disclosure are those known to the issuer concerning the size and profitability of the operations at the producing mine. If these are unknown such facts should be stated. Where a company's property has been acquired without the benefit of any previous geological investigation it is of importance to advise investors of this fact.

Of vital importance also is information concerning the promoters and their contributions to the enterprise. Here we seek to get into the prospectus or offering circular a short but clear story of the circumstances surrounding the promotion of a new company. This portrayal is essential to enable investors to determine the basic purpose of the promoters. The Act does not authorize the Commission to prescribe what promoters

shall take for their efforts. The limitation upon the promoter's rewards, insofar as the Act is concerned, is that no false statement be made in regard thereto. But we do require that both the nature of the promoter's contribution and his compensation for it should be set forth clearly and not buried. The promoter's services may be worth much or nothing to the corporation. The potential investor must determine that question for himself but he should have the facts before him.

These are our fundamental reasons for our requirement that the actual dollar cost of claims transferred to the enterprise by promoters be shown so that the investor may determine the relative contributions being made by such promoters and himself. If claims acquired by the company, in consideration of shares of stock are without demonstrable value beyond their cost to the promoters, our financial statement requirements for exploratory companies (whether their securities are registered or offered pursuant to Regulation A) prohibit the placing of dollar values upon such claims. In these cases a statement is set forth that the claims have been acquired for a specified number of shares. This eliminates any pretense of phenomenal value measured by the par value of the shares issued for claims not known to have ore occurrences or any present assurance of production.

In addition the existence of options to purchase stock in the hands of promoters and underwriters must be described and their possible diluting effects upon the investors' participation in future earnings and assets should be clearly disclosed to the investor.

Other emoluments of promoters should also be portrayed. For example, if they own or have an interest in properties adjoining the claims of the company, there should be a disclosure of such fact, if by such proximity the exploration or other work done upon the property of the company increases the value of the property owned by insiders without the risking of any funds on their part.

Let me discuss briefly the information required as to the use of proceeds and the size of underwriting commissions. If the detailed breakdown of the intended use of the proceeds is

given, the extent to which officers, directors and promoters will benefit by payments to them out of the proceeds of the public offering is made evident. Conversely, the extent to which the funds paid in by investors will be put to work in exploration and development will be clearly indicated. The investor can then determine for himself the primary motivations for the financing.

The public comments on the financing of uranium companies in magazines, periodicals, lunch table conversations, and street talk reflect almost universal agreement on two things:

(1) Those who seek capital for such enterprises should give the people the facts.

(2) Those who invest their money in such enterprises should find out the facts.

The Securities Act of 1933 in effect says the same thing. You and we have a common job to do our part in seeing to it that the investors have the facts available. Only in that way can his confidence be retained. And on that confidence depend the prospects of your industry.

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