Address by

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I have spent a good many years sitting on the same side of the table with you and I frankly feel a little strange appearing in my own home town as what, until the President's speech last Monday night, was known as a bureaucrat. He - God bless him - revived the term public servant. On the other hand, I feel that there is no philosophical inconsistency between my work of a year ago and my work of today.

The Securities and Exchange Commission is dedicated to the effective and honest functioning of the capital markets. Your companies are interested in the same thing. The words "public interest and the interest of investors" recur in section after section of all our Acts. Your job and ours both have to do with making private enterprise work. There is no more basic conflict between us than there is between the credit department and the sales department of any of your companies.

Legal protections for investors in private industry, whether state or federal, do not smack of socialism. They are the very antithesis of socialism.

But let's face it - there is a superficial, as distinguished from a fundamental, clash between any regulatory scheme and complete freedom of action in the raising of capital and in the management of corporate enterprise. Moreover, by overbroad construction and over use of the Commission's rule making powers there can be exercised by it a degree of control which substitutes governmental judgment for decisions that are properly the function of management, the elected representatives of the stockholders.

You as corporate secretaries frequently act as liaison officers between the management of your companies and the Commission. You perhaps, more than other corporate officers, are overly sensitive to the minor irritations involved in registration statements, reports, proxy statements, security holders' proposals, and the like. You are all convinced of the high caliber of the management of your particular companies. You believe in your hearts that what is good for management is good for investors. The Commission on the other hand is

administering laws which must be applicable alike to conscientious management and to management less conscientious. I suggest, therefore, that in the administration of statutes enacted for the protection of investors, our rule must be that what is good for investors is good for the management. The philosophical and administrative problem is to determine in how broad an area a Commission like ours should attempt to determine what is good for investors. A governmental agency can be wrong on occasion, you know.

Legal controls on the activities of corporations and their managements are inherent in the very nature of things since corporations are creatures of the state. They are not natural born flesh and blood citizens. Their every right derives from the state.

The corporate form of organization provides the only method yet discovered - aside from state socialism - of gathering capital from multiple sources and putting it to work. The development of the legal concepts of the corporate entity was closely followed by, and in part caused by, a deeply significant economic phenomenon in the United States and more recently Canada, namely; investment by the general public.

The rush of people to get into the securities market is as significant an economic and social development as the rush to settle the West. That great movement of population changed the face of the nation, but it created many problems: simple law and order, Indian rights, homestead policy, water rights, fence laws, statehood, reclamation, public power, and irrigation. The problems were and are complex and controversial and some of them still aren't solved. The economic movement of the general public into the capital markets also created problems. The states were the pioneers in their solution. Each state sought to answer the problems and to curb the evils which were near at hand. Consequently, the laws differed widely and the goals of a uniform state securities' law and a uniform corporation law are still beyond the horizon. The interstate character of this surging economic movement caused the enactment of federal securities laws, and we do not have all the answers yet. Let's remember though that we are dealing with a great economic movement which, like the settlement of the West, is changing the face of the nation.

The value of anything that is done in governing the capital markets or the management of corporate enterprises must always be tested by whether it hinders or helps the growth and stability of the American economy. Figures of speech are only partially accurate but I suggest that you might

picture the ideal situation as a stream of capital flowing uninterruptedly into American enterprise but kept within its banks by levees in the form of adequate but not oppressive laws. The levees prevent capital from flowing into fraudulent schemes or from being diverted by abuses and waste on the part of those entrusted with its management.

The problem of effective and sensible legal regulation is complicated by the dual sovereignty inherent in our Federal system. Corporations are created by the states; their internal affairs are controlled by state law; and yet certain activities are subject to regulation by the Federal Government. I don't propose to philosophize at length on that subject. Let me point out, however, that the Securities and Exchange Commission must make many day to day determinations which involve drawing the line between state and Federal authority. For example: the Commission, as you know, last week adopted some amendments to the proxy rules which specifically prescribe state law as the standard to determine, in connection with stockholders' proposals, what is a proper subject for action by security holders. Prior to the adoption of the rules, the Commission had received comments, oral, written and in the press, expressing the opinion that it was a step backward for it to measure the propriety of security holders' proposals by the standard of state law. I pointed out at the public hearing that by proposing that standard we were not turning the clock back or scuttling corporate democracy. The Commission in administering the security holder proposal rule must pass upon specific proposals. In order to decide whether a particular proposal is a proper subject for action by security holders, it must have some standard. It has to have some place to draw the line. What kind of a standard can we use? Is it to be our own standard, depending on individual judgment as to what would be good things for stockholders to consider, or is it to be some kind of legal standard? It must be the latter - otherwise we have a government of men, not of laws. Actually, over the years the Commission has historically used state law as the standard, and the new rule doesn't overthrow anything. In 1945, Securities Exchange Act Release No. 3638 said:

> "Speaking generally it is the purpose of Rule X-14A-7 to place stockholders in position to bring before their fellow stockholders matters of concern to them as stockholders in such corporation, that is, such matters relating to the affairs of the company concerned as are proper subjects for stockholders' action under the laws of the state under which it is organized."

In Professor Louis Loss' book - and he as you know was formerly Associate General Counsel of the Commission and was a very articulate exponent of broad construction of the Commission's powers - he makes the statement: "Where state law is clear that a particular matter is for the directors alone, that would seem to be decisive. If Congress had intended to give the Commission power to reallocate functions between the two corporate organs, so revolutionary a federal intervention would presumably have been more clearly expressed."

He footnotes the statement by saying: "This would approach federal incorporation in all but name." I might add the further observation that not only has Congress not clearly expressed a desire to give the Commission power to reallocate functions in the corporate structure, but there would be grave doubts as to the congressional power so to do in respect of corporations existing under the laws of the states.

This problem of Federal and state jurisdiction also confronts the Commission in the administration of the Public Utility Holding Company Act of 1935. Section 6(b) of the Holding Company Act authorizes the Commission to exempt from the requirements of that Act the sale of securities by an operating public utility which is a subsidiary of a holding company in cases where a regulatory body of the state in which the public utility is organized and in which it does business, expressly authorizes the transaction. The Commission, however, is empowered by rules, regulations or order to subject the exemption to such terms and conditions as it deems appropriate in the public interest or for the protection of investors or consumers. Historically, the Commission has granted exemptions on condition that the applicant comply in effect with the very provisions from which it seeks exemption - a procedure which can make meaningless the exemption which Congress enacted. That seems to be an area in which pure duplication between Federal and state regulatory authority can be eliminated. The Commission has recently circulated a proposal that its competitive bidding rule under the Holding Company Act shall not be applicable to an issue of securities by a utility company, subsidiary of a holding company, if the regulatory commission of the state in which the issuer is organized and does business expressly authorizes the transaction.

This proposal is not based on any definitive determination of policy as to the merits of competitive bidding. It is designed as a step in giving effect to the words of the exemption provisions of the statute which Congress enacted and to give that effect in a very limited area in which a qualified state regulatory authority passes on the same transaction.

I would like to make one fundamental observation on the subject of recognition of state sovereignty. We are going to have state created corporations, state blue sky laws, and state public utility commissions for a long time to come. Unless the Constitution of the United States is drastically amended, these state created instrumentalities could not be abolished by Federal law. If our Federal regulatory agencies by their administrative procedures and interpretations give no effect, or merely a patronizing polite token recognition, to state law and state determinations, there will inevitably develop such an atrophy of the organs of state government that functioning of state corporation and regulatory laws will break down to the point of impotency. Any such break-down will occasion dangers to our economy and to the interest of investors far more serious than any failure to stretch Federal powers to their maximum constitutional limits.

What are we trying to do at the Commission? As I have said on several previous occasions, we are reappraising a number of practices, rules and forms. We are trying to curtail paper work and duplication and procedures which are not in fact related to the protection of investors. I mention a few things that we have done both to achieve those ends and to provide additional protection of investors:

Adoption of new forms for registration of management investment companies and for registration of securities of open end investment companies, and new rules concerning registration and reporting requirements for investment companies,

Adoption of a rule requiring brokers and dealers to file financial statements with their applications for registration,

Proposal of a 9-item form for registration of brokers and dealers instead of the present 27-item form,

Simplification of forms and reports of brokers and dealers associations to eliminate voluminous exhibits containing information otherwise readily available,

Adoption of a new accounting regulation dealing with stock options,

Elimination of quarterly reports of gross sales or revenue,

Adoption of a rule relieving exchanges on which a security is admitted to unlisted trading privileges from reporting information which duplicates information reported by the issuer where the security is fully listed on another exchange,

A proposed revision of annual and current reporting forms, the effect of which will be to eliminate filing of information already reported in the proxy statement,

Revision of the proxy rules,

Rules to eliminate delay in offering of securities sold at competitive bidding and dispensing with the necessity of routine supplemental orders presently required,

A proposed rule to exempt from competitive bidding issues of state regulated utility subsidiaries of holding companies, where the issuance of such securities is entitled to exemption from the Public Utility Holding Company Act of 1935,

Proposed simplification of "when issued" trading rules to eliminate 14 rules and 2 forms,

Proposed simplified rules and application forms in connection with listing additional amounts of outstanding securities on an exchange,

A new rule prohibiting trading in unvalidated German dollar bonds,

A proposed simplified rule, designed to supplant the present well-nigh incomprehensible rule, relating to permitted financial connections of officers and directors of companies in holding company systems.

During the coming year, we intend to take final action one way or the other on those of the items just mentioned as are still in the proposal stage and to devote our attention to the following:

1. A more vigorous and better coordinated enforcement program,

2. More effective cooperation between the Commission and state securities administrators,

3. Furnishing of assistance requested by the Administration and the Congress in the preparation and study of amendments to the statutes administered by the Commission,

4. The possibility of adopting general rules to give greater effect to the exemption provided in the Public Utility Holding Company Act of 1935 for issues of state regulated utility companies,

5. A study of investment companies as authorized by section 14(b) of the Investment Company Act of 1940,

6. Improved administration of Regulation A, the exemptive regulation for small offerings,

7. Substantial progress in completing the integration program under Section 11 of the Public Utility Holding Company Act of 1935,

8. Provision for public releases covering interpretations which presently do not receive adequate public notice,

9. Consolidation and simplification of forms and elimination of duplicative reports,

10. More effective use of so-called identifying statements to disseminate information about securities during the waiting period,

11. Reexamination of the Commission's policy of participation in private litigation,

12. A program to expedite disposition of contested matters which presently involve enormous expense to litigants and to taxpayers,

13. Clarification of our complex rules and reporting requirements in connection with "insider trading".

In the very near future we hope to have ready for public circulation the following proposals:

1. Provision for simplified registration forms for a wider class of employee stock plans,

2. A revised registration form for securities of closed end investment companies,

3. A new and simplified form for registration of institutional grade debt securities,

4. The adoption of new registration forms and rules for investment advisers,

5. The revision of rules relating to the accounts and records of brokers and dealers,

6. A standard form for financial statements of brokers and dealers,

7. A revised system annual reporting form for utility holding companies,

8. Revised quarterly and annual report forms for management investment companies,

9. Rules to regulate stabilization of the price of securities being publicly offered.

All of this sounds perhaps like a policy of "fiddling with the fringes". Maybe it is, but let us remember that the Commission administers a series of statutes which have become woven into our economy. Furthermore, those statutes are the law until Congress changes them. The most effective contribution that the Commission can make is improved administration. If we do that job wisely, there will be no public demand for reintroduction of such harassing complexities as we may succeed in eliminating. In other words, the improvements we make should stick.

It may be that a program of fiddling with the fringes or tidying up the scene is not sufficiently inspiring. I think, however, that the basic concepts involved in our Acts, namely,

(a) Truth in the sale of securities,

(b) Dissemination of information to security holders,

(c) Accountability of management to security holders,

(d) Curtailment of unfair use of inside information, and

(e) Prevention of manipulative practices in the markets,

are sound concepts; that they are not going to be changed by legislation; and that the Commission's contribution should be to make them effective without harassment and without undue interference with the day to day operation of business.

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