CURRENT DEVELOPMENTS IN BASIC SEC POLICIES

Address by

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The subject of my remarks was set out in the literature preceding this conference as "Current Developments and Basic SEC Policies". It is easy enough to tell you about current developments.

It is more difficult to express in general terms basic policies as to the administration of statutes which are so complex and so detailed. Your conclusions as to the policies of the Commission can best be drawn by inductive reasoning from the specific actions of the Commission in a number of particular situations. Let me outline, however, a few of the Commission's approaches:

First, I think it fair to say that the Commission is much less interested in extending and testing what might be called its peripheral powers than it is in doing a thorough and workmanlike job of carrying out the duties which are clearly imposed upon it. There are enough of those to challenge the best that is in us.

Second, while it recognizes the need for flexibility and lack of rigidity in the administrative process, the Commission hopes to narrow the areas in which it operates as a government of men rather than as a government of laws.

For example, the subject of stabilization of prices in connection with new offerings of securities has been a matter of telephoned clearances on an ad hoc basis with principles developed by experiment and evolution, rather than officially adopted rules and regulations. At long last the Commission circulated for comment about ten days ago, proposed definite rules and regulations on that subject. We urge informed persons to give us their comments and criticisms on this very complex subject. Frankly, the ad hoc treatment of stabilizing activities which has characterized the past practice of the Commission's staff has made the codification of the limits of permissible stabilization a most difficult task and we would appreciate the help which can come from the legal profession and the securities industry in setting forth in understandable form regulations which are effective and workable.

Another example is the matter of indenture provisions and preferred stock charter provisions required in the case of securities the issuance of which is subject to the Public Utility Holding Company Act. There has been considerable variation from time to time and from staff group to staff group in the requirements which were imposed upon issuers of such securities. About a year ago the Commission, before the last change in its membership, formulated a confidential guide for staff use which produced uniformity within our own Division of Corporate Regulation. After considerable study we published two weeks ago proposed public statements of policy with respect to indenture provisions and preferred stock provisions so that issuers will know what is expected of them. We solicit comments on these statements of policy from lawyers, underwriters, institutional investors and other members of the public.

We think that the adoption of publicly known standards on the subjects of stabilization and of indenture and preferred stock charter provisions is in the public interest. After all, lawyers who are outside the large financial centers and whose contacts with the Commission are relatively infrequent should be enabled to know our requirements just as well as those who deal with the Commission almost constantly.

While the interstate nature of the process of capital formation has made necessary the enactment of Federal statutes, the Commission recognizes the role of the states. Last September there was sent to each Regional Administrator an authorization to make available to the appropriate state authorities material dealing with a pending investigation where (a) the investigation discloses a clear violation of state law, (b) it appears that there will be substantial difficulty in proving the suspected violation of Federal law, and (c) the Regional Administrator has reason to believe that the state authorities will proceed promptly to complete the investigation and enforce the state law. Other cooperative arrangements are being worked out with state administrators, as, for example, some synchronization of inspection of brokers and dealers.

Bankruptcy is a field constitutionally allocated to the Federal government and the Commission has certain duties and certain discretionary powers of intervention under Chapter X of the

Bankruptcy Act. The Commission's intervention in many cases has resulted in substantial savings to creditors and security holders and has earned commendation of the courts. Budgetary considerations, however, make it necessary for the Commission to limit its activities in this field. In determining the extent to which it will allocate manpower to activity under Chapter X, the Commission will be guided in large measure by the wishes of the Federal judiciary. The Commission should make available to the courts the benefit of the experience and special competence of its staff in matters relating to reorganization. It must, on the other hand, strive to avoid duplication of work done by the independent trustee and his counsel.

The Commission has maintained a tradition for prompt processing of registration statements and other time-schedule material. Maintaining such a tradition involves constant vigilance and high standards of administrative efficiency. The processing of non-time-schedule reports has at times been sacrificed to give a clear way to time-schedule work. In order that the Commission's role in capital formation may be constructive and meaningful, the Commission must engage in a process of constant examination of the significance of its paper procedures. As a result of such examination the Commission has worked out a number of simplifications. For example, the annual report on Form 10-K, required of listed companies and companies which have filed registration statements under the Securities Act of 1933, contains, in addition to financial statements, certain textual material which is duplicative of the information required in a proxy statement. As you may know, revised requirements have been adopted for Form 10-K which permit in effect the material in the proxy statement to serve as compliance with the informational requirements of Form 10-K other than financial statements. We have also adopted rules which simplify materially the requirements under the Securities Exchange Act of 1934 for listing additional amounts of outstanding securities. These form revisions have reduced our backlog of unprocessed material to manageable size.

Within the last week we have publicly proposed the adoption of a new Form S-9 for registration under the Securities Act of 1933 of very high-grade debt securities. This form, which is limited to 5 or 6 informational items and more condensed financial statements, would be available for senior, fixed interest,

non-convertible debt securities of issuers whose history and earnings record are such that the detailed information required for most public offerings would not be necessary in making an intelligent investment decision. I will not discuss the form in detail but I commend the release proposing it to your careful examination.

The Commission is anxious to improve its enforcement procedures. As you know, under the Securities Exchange Act of 1934 the Commission has power to make examinations of the affairs of brokers and dealers. Many members of the public think that brokers and dealers are examined with the same regularity as banks. This is not true and unless the Commission had a vastly increased budget it could not be true. Nevertheless tuning up of our administrative machinery should make possible a stepped-up broker-dealer inspection program, and we are in the process of doing just that.

The Commission is formulating rules of practice to accelerate the hearing and disposition of its quasi-judicial proceedings. Unfortunately, pre-trial conferences have not been sufficiently employed; negotiations for stipulation have been too much on an all-or-nothing basis. The President's Conference on Administrative Procedure has recommended the use of compulsory pre-trial procedures to bring about stipulations, agreements on issues, identification of documents and the like. The Commission proposes to put into force practices which will substantially conform to these recommendations. This will be a significant accomplishment because under present conditions the records in our litigated proceedings are entirely too voluminous.

The Commission just before the 1954 proxy season adopted some amendments to its proxy rules. These amendments, among other things, clarified informational requirements as to compensation, gave precise expression to the previously recognized applicability of state law in determining whether a security holder's proposal is a proper subject for action at a meeting and required demonstrated progress as a condition for repetitive submission of a security holder's proposal. You will hear more about proxy rules during this conference.

A revised form has been adopted for the registration of investment company securities. The old form for the registration of broker-dealers, which contained 27 items, has been supplanted by a form which contains 9 items. The annual report for public utility holding companies and their subsidiaries has been simplified and has been coordinated with the reporting requirements of such companies under the Securities Exchange Act of 1934.

Form U-1 for applications, declarations and statements in respect of transactions under the Public Utility Holding Company Act which is presently in force is a bulky and repetitive document, strict adherence to which in practice has not been required for a number of years. A proposed new form has been submitted for public comment, adherence to which will be insisted upon. The new form is much less bulky and states the informational requirements in much more succinct and non-repetitive manner.

The Commission currently has under advisement changes in its Rule U-70 adopted under Section 17(c) of the Public Utility Holding Company Act of 1935. This section, which limits the eligibility of commercial and investment bankers for seats on the boards of directors of registered holding companies and subsidiaries, empowers the Commission to prescribe rules to permit such persons to be directors when such permission can be granted without adversely affecting the public interest or the interest of investors or consumers. Rule U-70 as presently in force represents an accumulation of amendments over a period of many years. Amendments were adopted to take care of specific situations as they developed. This has created complexity approaching incomprehensibility. The proposed new rule which is still not simple, elicited a number of comments and suggestions. These comments are now the subject of further study.

The Commission as previously constituted in May, 1953, sent to registered holding companies and made public a letter indicating that the Commission's historical policy of not permitting companies under the Holding Company Act to have stock options would be relaxed in the case of stock purchase plans meeting requirements set forth in the letter. No declaration in respect of a plan complying exactly with the specifications of the letter has ever been filed but one or two declarations in respect of plans substantially in compliance therewith have been filed but

have not been permitted to become effective. In the meantime there has been circulated for public comment a proposed Rule U-51 to cover the situation. A public hearing has been had thereon but the Commission has not yet acted on the subject. You will recognize that the consideration of such a rule involves the basic legal question as to whether a plan which provides for the future issue of stock to officers and employees at a price less than then current market could be found to satisfy the requirements of Section 7 of the Act.

Another unresolved question still under study at the Commission concerns the requirement for compulsory sealed bidding in case of the issue and sale of securities by subsidiary companies of a registered public utility holding company if the issue and sale of such securities are solely for the purpose of financing the business of such subsidiary company and have been expressly authorized by the state commission of the state in which such subsidiary is organized and doing business.

The sections of the Public Utility Holding Company Act of 1935 relating to the issuance and sale of securities are 6 and 7. As provided in section 6(a), securities of registered holding companies and their subsidiaries (other than securities exempted under the terms of section 6(b)) may not lawfully be issued or sold except in accordance with a declaration filed under section 7 and with an order from the Commission permitting the declaration to become effective.

Contained in Section 6(b) is a directive to the Commission as follows:

> "The Commission by rules and regulations or orders, subject to such terms and conditions as it deems appropriate in the public interest or for the protection of investors or consumers, shall exempt from the provisions of subsection (a) the issue or sale of any securities by any subsidiary company of a registered holding company, if the issue and sale of such securities are solely for the purpose of financing the business of such subsidiary company and have been expressly authorized by the State commission

of the State in which such subsidiary is organized and doing business."

The problem presented by Section 6(b) is a narrow one, namely, in making rules, regulations, and orders in carrying out the Congressional directive to exempt the issues described in Section 6(b) what terms and conditions shall the Commission deem "appropriate in the public interest or for the protection of investors or consumers?"

Compliance with Rule U-50 by state regulated utilities entitled to a Section 6(b) exemption is a condition presently imposed in most cases on the granting of such exemption. The end sought by the rule is economy in the raising of capital, a statutory objective obviously appropriate in the public interest and for the protection of investors or consumers. The question is whether there is sufficient evidence that the rule attains the objective to justify the Commission, despite the statutory language "shall exempt", in requiring compulsory sealed bidding in respect of issues by a utility company which are expressly authorized by the state commission of its domicile. A proposal to amend Rule U-50 by making it inapplicable to such issues was the subject of a public hearing and an adjourned public hearing. Divergent views were expressed and the subject has been adverted to in both Houses of Congress. The Commission is giving careful consideration, on the basis of information available to it, to the question of whether in respect of such state regulated issues (a) the rule should be continued in its present form, or (b) should be made inapplicable to all such issues, or (c) should be continued in respect of bond issues but made inapplicable with respect to issues of equity securities.

I would like to comment next on a few administrative changes which are in the process of being made. The Commission's Regulation A under the Securities Act of 1933 relates to offers of securities entitled to exemption under Section 3(b) of the Act - limited under present law to offers not in excess of $300,000, (and in certain cases $100,000) in any one twelve-month period. Under Regulation A as formerly in effect a letter of notification was filed in the regional offices of the Commission along with an offering circular if one was used. While copies were sent to Washington, the filings were processed in the regional offices.

A new Regulation A was adopted in March of 1953 which provided for the mandatory use of an offering circular containing specified information, including financial statements. In order to assure greater uniformity in the standards required of offering circulars filed under the new Regulation, a systematic Washington review was superimposed upon the processing by the regional offices. This has resulted in some duplication but the result of a year's experience has been to develop uniform interpretation among all regional offices of the informational requirements of the offering circular. Now that such uniformity has been developed, the Commission is currently engaged in turning back to the regional offices complete responsibility for the administration of Regulation A. This should result in more expeditious service to the issuers of the securities while fully preserving the protection for investors provided by the Act and the Regulation.

For the first time in several years the Commission a few weeks ago held a five-day conference of all its regional administrators. It was a working conference, if there ever was one, and the results should be better enforcement, better morale, more uniformity, better liaison and a general tuning up of the administrative motor.

I haven't even mentioned the subject of the 1954 legislative program. You will hear about that this afternoon in the session which will be presided over by Commissioner Armstrong.

I want to say this in closing -- the Securities and Exchange Commission is by law a bi-partisan Commission, but the five of us, Paul Rowen, Ted Adams, Sinc Armstrong, Jack Goodwin and myself, have worked in harmony.

Naturally there are the differences of opinion which inevitably develop when five minds go to work on the same problem. Some of them are discussed with gusto and eloquence. If there were no such differences, the job of being a Commissioner would not be nearly so stimulating an experience as it is. Moreover, I want to say that the relations of the Commission with its staff are cordial. There are differences in regulatory philosophy. That, however, is not an unhealthy thing. The Commission deals with

a complex mechanism -- capital markets. Any changes made in the administering of the various securities laws should be well thought out and, as you my fellow lawyers know, arguing out is usually a necessary part of the process of thinking out.

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