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ADDRESS

of

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Commissioner, Securities and Exchange Commission

before the

ANNUAL DINNER

of the

NEW YORK SECURITY DEALERS ASSOCIATION

at

HOTEL WALDORF-ASTORIA

NEW YORK, N. Y.

Wednesday, March 22, 1939 - 8:00 P.M.

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The New York Security Dealers Association and the Securities and Exchange Commission have continuously enjoyed a harmonious relationship. At times we have agreed and at times we may have disagreed. But our common endeavors have been truly cooperative in the best sense of the word. It is because of this relationship that I am gratified at this opportunity to discuss with you certain mutual problems of over-the-counter brokers and dealers.

It is also gratifying that your Association has anticipated, in a sense, the national program for brokers and dealers which was recently announced. Though you have described your achievements with modesty, nevertheless they contain many of the ingredients of a larger national program. You have by voluntary organization of your group made its members most articulate and effective. You have given your group a feeling of solidarity consistent with strong, healthy competition. You have stood for raising the standards of your business in an attempt to protect against the temptations of the market place. You have taken steps in the direction of supervising the financial condition of your members so as better to protect the trade and the public from the risks of insolvency and unsound financial practices. In these and in other respects, you have demonstrated a capacity for constructive leadership.

We have now arrived at a stage in the development of a program for regulation of the over-the-counter markets in which such constructive leadership is more than ever needed. That program was made possible by a singularly cooperative endeavor. Senator Francis T. Maloney of Connecticut introduced in the last Congress an amendment to the Securities Exchange Act of 1934. It made possible the formation under the law of a voluntary association. He obtained the immediate support both of the government and of the trade. Though differences of opinion appeared from time to time on details, there remained throughout the entire consideration of that Bill before the Congress substantial unanimity on the soundness of its basic objectives. That unanimity of opinion was born, not overnight, but as a result of several years of experience and study on the part of a number of associations, particularly the Investment Bankers Conference, Inc., and a large number of individuals in the business.

The same spirit of cooperation which led to the endorsement of the Maloney Bill continued after its enactment. Since last fall, representatives of the industry and representatives of the Commission have given unreservedly of their time and effort towards moulding a concrete program for the formation of the type of voluntary association which the Maloney Act envisages. Pursuant to the original plan, the products of that joint endeavor were presented to the trade a few days ago. The future of the association now rests principally with the trade.

Whether or not the trade should adopt this program is for the trade, and the trade alone, to decide. If the trade wants the association, the Commission is obligated to approve it if it complies with the terms and conditions of the Maloney Act. But except for that formal action, the Commission has finished its task by helping to get the enabling legislation and by helping representatives of the trade prepare a program of voluntary self discipline. I personally think that if I were a member of the trade I would be more than enthusiastic for the formation of such an association. But the decision is not ours. It is yours.

There are some who think that no association should be formed. They might be classified as follows:

In the first place, there are some small dealers who fear that the association will be dominated to their disadvantage by a few powerful underwriting houses. If the Commission felt that would be the result of the proposed program, I would be here tonight to speak against it. In the drafting of the certificate of incorporation and by-laws, every effort has been made to put the control where it belongs, namely, in the hands of the dealers. Every effort consistent with efficiency has been made to give regional autonomy to the various, diverse groups in the country. Every effort has been made to guarantee a democratic form of government. Every effort has been made to protect the small dealer against unwholesome pressures from the top.

In the second place, there are those who feel that the whole program of regulation should be undertaken by the government - not by the industry. This group may be divided into two parts. One of them is led to its conclusion by its reluctance to underwrite the cost of a voluntary association under the Maloney Act. I can sympathize with this group because it is common knowledge that the profits of brokers and dealers in recent months have not been handsome ones. And in face of slim profits, it is obviously not easy to undertake additional expense. But I think I would be less truthful than we require registrants to be in their prospectuses if I were not frank on the matter of cost. Opinions on cost will vary but the best estimate we can now make is that by the time the association has reached its full development its budget ought to be between \$300,000 and \$400,000 a year, and we feel that unless such a budget can be provided by the industry, this program should not be launched. In forming the association, the industry undertakes a direct responsibility for policing its members within the scope of the rules which it has provided. We, for our part, could not satisfy the obligations which the Congress has placed on us if we allowed to be formed an association which took the benefits of the law without assuming its very definite responsibilities. If we permit an association to be registered, we should have more than a mere expectation that in time this association may be adequately staffed and adequately manned to do the job contemplated by the statute. Rather we should have at hand assurances that it was presently so constituted. This, as I have said, means money, and if for any reason the necessary budget cannot be provided, the program should not be launched.

Another part of the group which prefers government regulation to regulation by the industry thinks that government could do a better job. Perhaps some of these, as I have stated above, fear domination of the association by a few. But others have the feeling that there should be uniform regulation of the entire industry, not regulation just of those who choose to form an association. On that I think we should make ourselves clear. If an association is qualified under the statute, this Commission will attempt to extend a comparable type of regulation through its rule-making power to the elements of the business which do not join the association. The powers of the association to pass rules of fair practice and the powers of the Commission to promulgate rules are not identical. But I believe the powers of the Commission are sufficient to supplement the enforcement program of the association in such a way as to get substantial uniformity over the whole field. This certainly is our objective.

Some such supplementary program would clearly be necessary since it cannot be expected that all brokers and dealers in the securities business will become members of such an association. It would be as desirable to equalize competitive conditions between those who are members and those who are not, as it is to equalize competitive conditions between the whole over-the-counter field and the stock exchanges.

There is a third group which apparently feels that no association should be formed for the reason that it would not gain the support of any but the group at the top of the business. If that were true, we think that such an association should not be formed. Unless the association has the substantial support of the average broker and dealer in the general securities business, it would not be sufficiently representative to meet the standards of the statute. The trade preferences permitted under the Act to those who join should not be made available unless they are to be shared by substantially the entire securities business. To place those trade preferences in the hands of just a select few would not be consistent with sound national policy. It would be one thing to have a trade association like the New York Securities Dealers Association or the Investment Bankers Conference, Inc. policing their members but without statutory authority; it would be quite another thing to have an association armed with the direct power over its members given by Congress. Such a program as the latter should be only for the benefit of all and under the administration of all.

I think the trade should weigh carefully the great advantages of a well organized, strong, articulate group policing its members. On other occasions we have pointed out the advantages which such a system entails. It would permit of greater flexibility of action and a freedom and informality of procedure which under the Constitution of the United States, an administrative agency like the SEC does not have. Enforcement and discipline would rest in the first instance with regional committees. Participation in the drafting of rules and the formulation of policies would be directly had by members of the trade; they would not be imposed from above. The principle of self-help would be utilized for raising the standards of the entire business to its own lasting benefit.

But I should in the interests of fairness state what the alternative would be. It is realistic to believe that over the years government may apply to the over-the-counter markets the same degree of regulation to which stock exchanges are now subject. The investment banking business and the over-the-counter business are too important to the arteries of commerce and trade to expect a lessening in regulation. Certainly the SEC would support a program of regulation of over-the-counter brokers and dealers, comparable to that which exists as respects members of stock exchanges. In fairness to the exchanges, that is desirable for the purpose of equalizing competitive conditions. In fairness to the public, such a program is necessary for the purpose of protecting their funds and their securities and of perpetuating the same high standards of dealing as are observed by the best elements in your business. The creation and maintenance of public confidence in the integrity of the securities markets are essential in a capitalistic system.

Such a program of regulation by the Commission has not been formulated although considerable thought has been given to it. How extensive it would be would depend to a large extent upon our budgetary conditions. And I mention it at this time somewhat reluctantly, lest it be considered as a threat. It is not so intended. It is again merely an attempt to write the prospectus fairly and with full disclosure.

And so we leave the problem of Maloney Act associations with the trade. The differences which we have with the representatives of the trade who have drafted the proposed by-laws are very limited in number and though they are substantial they are by no means insoluble. We hope there will be full and free discussion of this project so that the final decision on it will be a fair and a sound one. We hope of course that the response of the industry will be unanimous. If it is not substantially unanimous, we will be disappointed. If it is substantially unanimous, we are confident that the industry will have provided for itself a constructive permanent program of inestimable value. If the industry for any number of reasons rejects it, our joint efforts will not have been in vain. For at some future time, some other group will pick up the program where we have left it and make it a vital important part of our financial organization. Furthermore, those of us who have worked assiduously in this great cooperative program will have learned many and valuable lessons. First among these is a wholesome respect for each other. Next we have acquired an ability to work harmoniously and cooperatively together towards a common goal. And last, but not the least important, is the willingness and ability on both sides to bring to hard, practical problems an objectivity freed of emotionalism.