

**CURRENT SEC MATTERS OF INTEREST TO CORPORATE SECRETARIES**

**Address by**

**James C. Sargent  
Commissioner  
Securities and Exchange Commission  
Washington, D. C.**

**before the  
AMERICAN SOCIETY OF CORPORATE SECRETARIES  
Pittsburgh Regional Group  
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As usual, it is a great pleasure for me to visit with one of the chapters of the American Society of Corporate Secretaries. During the more than two and a half years that I have been a Member of the Securities and Exchange Commission I have had the opportunity to address your New York, Chicago, and Houston Chapters, as well as the Society as a whole at its annual meeting in New York in February of 1958. Your fine organization over the years has contributed a great deal to our work and our efforts to make secure from disturbing influences the securities markets of this Country. Its significant contributions can best be illustrated by the many comments and participations of its members in our proposed rule changes. In practically all cases such comments and participations have been constructive and directed towards assisting this Commission in enforcing the Federal Securities Acts.

I would like, in the first instance, to urge your organization to continue to afford us the benefit of your views. You gentlemen are conversant with day-to-day problems of corporate management and your "expertise" in this field helps to direct us in our legislative duties.

This evening I would like to discuss with you some of the current problems which the SEC is trying to meet through the adoption of new rules and our proposed legislative program. This is the twenty-fifth year of the Commission's administration of the Federal Securities Acts. Today the capital markets present an entirely different picture from that which confronted the Commission upon its creation in 1934. We are faced with new and different problems which have arisen out of the growth of the capital markets, brought about by the ever-increasing capital demands made on the American public by many of the companies which you gentlemen represent.

I am sure that all of you are familiar with the low ebb of the capital markets following the crash in 1929, and the dark picture which faced the Commission in 1934. By 1932, the aggregate value of all stocks listed on the New York Stock Exchange had dropped from \$89 billion, prior to the crash, to \$15 billion. The recovery has been remarkable, and I feel that to a large extent the return of investor confidence, which is the keynote of this recovery, is the direct result of the Federal securities laws enacted during this period and their administration by the Commission. Into the state of financial chaos and hysteria which followed the crash came the Securities Act of 1933 with its broadly stated purpose of protecting investors and restoring public confidence in the securities markets by a rigid surveillance both of instruments offered in new financing and the methods by which already outstanding securities were sold.

This evening, at a time twenty-five years later, the demand for new capital is at an all-time high. We are in the midst of a bull market, wherein, volume often exceeds four million shares a day and the value of securities listed on our national exchanges daily continues to reach new highs. This value, as of January 31, 1959, was \$280.8 billion--up from the \$276.7 billion of December 31, 1958. The number and dollar amount of new securities issues registered with our Commission is constantly increasing and amounted to 970 and over \$17.3 billion, respectively, during the year ending December 31, 1958.

These figures are important because they illustrate that, today, we are in the midst of the greatest effort of financing by private capital that has ever been seen. The savings of American investors who have heretofore not invested in the securities of American business must be found, solicited and attracted into the capital markets, if your corporations are to satisfy their capital needs in the future.

In order to assist you in your task of reaching these new investors, the Commission has provided for the use of a summary prospectus by the promulgation of its Rule 434A. The aim of a summary prospectus is to omit in part or summarize certain information set forth in the more complete prospectus required to be used in the sale of securities. The Rule permits registrants using Form S-1 or S-9 to avail themselves of this sales and informational weapon. Rule 434A is designed to facilitate a wide dissemination of information in regard to registered securities and also serves as a screening device which assists corporations and their underwriters in seeking out interested persons. Rule 434A depicts the continuing development of disclosure philosophy which the Commission has been administering since 1934. I feel that the most important contribution made by the Federal Securities Act has been investor confidence which follows from disclosure. Today's securities markets are in sound condition because investment analysis is now possible through the availability of information, the disclosure of which has been made mandatory under the Securities Act of 1933 and the Securities and Exchange Act of 1934. Many of the people in this room remember the objections raised by industry to the requirements of disclosure which included sales figures, cost information, and salaries of corporate officers. The Commission took the position early in the administration of the Federal Securities Acts that these matters were important investment factors because they relate to the financial operations of the companies upon which investors must form their own investing judgments.

After two years in use, the summary prospectus has to date presented no problem. This indicates that industry and investment bankers have availed themselves of this modus operandi and have

closely supervised the use of this material. These results help to illustrate the maturity of our capital formation process. It was only thirty years ago that summarized informational materials of a most inflationary type were circulated to assist flotation of financing by misleading and misstated means. As the Rule now reads, prospective investors may have all the facts if, after reading the summary prospectus, they decide to look further by requesting a complete Section 10 prospectus.

There has developed, during these two years, a desire to extend the availability of the summary prospectus beyond its present limits. Rule 434A, as it is now constituted, limits the use of a summary prospectus to registrants filing on Form S-1, or in the case of institutional grade debt securities, on Form S-9; and where at the time of the filing such registrants are required to file reports under Section 15(d), of the Securities Exchange Act of 1934, or as listed companies on a national securities exchange, they are subject to the filing and reporting provisions of Sections 13 or 15(d) of the Exchange Act.

On February 16 of this year, the Commission gave notice of a proposed amendment to the Rule and invited interested parties to submit comments prior to March 16th. The proposed amendment would permit the use of summary prospectuses by certain additional registrants who do not file such reports, but which do meet certain standards as to size, earnings and the publication of reports.

The proposed amendment is in the form of a revision of paragraph (a) of the Rule and in essence it permits the use of a summary prospectus by a registrant if the following four conditions are satisfied:

- (1) It must have a net worth of at least \$5,000,000 as shown by its latest balance sheet filed with the registration statement;
- (2) It must have been in the same business for the last three full fiscal years and a profit and loss or income statement for those years must be filed with the registration statement;
- (3) Registrant must have had a net income of at least \$500,000 for each of its last three fiscal years; and
- (4) It must have distributed to its stockholders and made available to the public generally an informative annual report for each of its last three fiscal years, which report included a profit or loss and income statement for such year and a balance sheet as of

the end of such year, both prepared and certified in accordance with generally accepted accounting principles.

It is our hope that the summary prospectus will be used to secure the broad dissemination of information about new issues which you and we have always heartily endorsed and which is consistent with the original policies of the Acts to get information to prospective investors during the waiting period.

I realize that the 16th of March is rapidly approaching, but I hope, if you have not already done so, that you will submit any comments which you may have on this proposed amendment to Rule 434A.

Now, turning to the Commission's current legislative program, I would like to discuss a few of the proposals which should be of interest to you.

Under the Federal securities laws, the Commission is obligated to the Congress to make such legislative recommendations as the Commission may from time to time deem desirable in the public interest. In January, the Commission submitted its recommendations to the Senate Committee on Banking and Currency and the House Committee on Interstate and Foreign Commerce, which have the duty of exercising watchfulness over the execution of the Federal securities laws. The recommendations would amend an aggregate of 92 provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, and the Investment Advisers Act of 1940. These proposals were introduced on January 15, 1959, in the House by Representative Oren Harris, Chairman of the Committee on Interstate and Foreign Commerce, but have not yet been introduced in the Senate. Revised proposals with respect to the Securities Act and Trust Indenture Act were submitted to the House and Senate committees on February 16, 1959.

These recommendations for legislative action are the culmination of an extensive analysis of the Commission's experience in administering the Federal securities laws. They are designed to strengthen the safeguards and protections afforded the public by tightening jurisdictional provisions, by correcting inadequacies in the securities laws revealed in their administration, and by facilitating criminal prosecutions and other enforcement activities.

The major portion of these proposals was submitted to and introduced in the 85th Congress. However, no action was taken with respect to them.

The amendments in which I think you will be primarily interested are embodied in the proposals under the Securities Act and the Securities Exchange Act.

During the last few years, Section 3(b) of the Securities Act has been the subject of considerable Congressional interest. As you know, this provision supplies a conditional exemption from registration for securities offerings not in excess of \$300,000. The Commission's program contains a proposal to amend this exemptive provision to increase the maximum limit to \$500,000. The Commission believes that this is necessary in order to facilitate access to the public capital markets by more small- and medium-sized businesses.

A further proposal which would affect Section 3(b) offerings is the Commission's suggested amendment to Section 12 of the Act. This proposal would add a new subsection providing for clear civil liability on the part of those responsible for untrue statements of, or omissions to state, material facts in any document filed with the Commission in connection with offerings exempt under Section 3(b). Liability would be imposed upon the filing of any document containing a misstatement. Thus the purchaser no longer must prove his reliance thereon.

Section 11 of the Act now provides civil liability in the event of material misstatements or omissions in a registration statement, and Section 12(2) contains civil liability provisions which are applicable to the sale of securities generally, regardless of whether they are registered. Section 12(2) provides that "any person who \* \* \* offers or sells" a security by false or misleading statements is liable "to the person purchasing such security from him." However, under this provision, where an issuer sells to a dealer and the dealer in turn sells to an investor, it is not clear that the investor can go beyond his immediate seller (the dealer) and recover from the issuer -- who may be the person actually responsible for the misleading information in the sale.

The Commission believes that persons who sign documents filed with it containing untrue statements or omissions, persons who make or cause to be made untrue statements or omissions, controlling persons and the issuer should all be civilly liable to any person (not knowing of such untruths or omissions) who receives or is shown copies of such documents in connection with his purchase of securities, or who relies on such untrue statements or omissions in connection with his purchases.

As to the issuer, there should be no defense of lack of knowledge of any untruth or omission in a document filed with the

Commission. On the other hand, the Commission is of the opinion that liability for misleading statements or omissions in an exempt offering should not be imposed on any officer, director or other individual associated with the offering if he can sustain the burden of proof that he acted in good faith and did not know of the untruth or omission on which the action is predicated. Thus, under the Commission's proposal, officers, directors and other individuals would be liable only for actual misconduct or bad faith, whereas the issuing corporation would be absolutely liable. The Commission firmly believes that enactment of this proposal will furnish investors with needed additional protection in Section 3(b) exempt offerings.

Another provision for our legislative program which should be of interest to all of you would permit the imposition of \$100 per day fine for the late filing of reports. Section 32(a), as it now reads, provides in substance for criminal penalties for willful violations of any provisions of the Act or any rules or regulations thereunder. Section 32(b) provides for a forfeiture of \$100 for each day reports required pursuant to an undertaking provided in Section 15(d) of the Act are delinquent. That section requires that a registration statement filed pursuant to the Securities Act of 1933 shall contain an undertaking by the issuer to file the same reports required pursuant to Section 13 of issuers with listed securities, if the offering price of the security covered by the registration statement plus the aggregate value of other outstanding securities of the same class amounts to \$2,000,000 or more. The \$100 a day forfeiture provided in Section 32(b) is in lieu of any criminal penalty which might be deemed to arise under Section 32(a).

The new section would authorize the Commission, in its discretion, to recover in a civil action on behalf of the United States \$100 per day for the failure to file any information or reports required by the Act or rules thereunder for each and every day such failure to file continues beyond the time prescribed for the filing, or beyond any time extension granted by the Commission. This payment would not be in lieu of any criminal penalty under Section 32(a). The authority to impose such an assessment will strengthen the enforcement techniques available to the Commission to assure timely filings as required by the statute or the rules thereunder.

Section 19(a)(4) authorizes the Commission, under certain stated conditions, summarily to suspend trading, for specified periods, in any security registered on a national securities exchange. Generally, this power has been exercised where sudden changes of circumstances make it appear that the information available to the public about a security is misleading or inadequate to permit investors to make an informed judgment with respect to the purchase or sale of the security, so that there is a possibility for fraud to be perpetrated either upon the present investors or upon future ones, and it appears

that the additional necessary information can be obtained and made available to investors. This was recently done in the case of the stock of F. L. Jacobs, Bon Ami, Great Sweet Grass, and others. Sometimes the necessary information cannot be obtained and made available in the ten-day period, and the Commission has had to renew the suspension for one or more additional periods not exceeding ten days. Section 19(a)(4) does not expressly provide such authority. The Commission's proposed amendment to this section would codify its interpretation that it has the power to renew temporary suspensions for one or more additional periods not exceeding ten days each.

During the pendency of proceedings under Section 19(a)(2) to determine whether to deny, suspend, or withdraw the registration of a security on a national exchange, the Commission has exercised its summary power to suspend trading under Section 19(a)(4). Since this power to suspend is limited to periods of ten days, the Commission has had to follow the practice of issuing a series of consecutive orders under Section 19(a)(4); but this practice has required a new determination every ten days of the necessity of continuing the suspension under the standards of that section. Such periodic review and series of orders should be unnecessary to suspend trading during the course of a proceeding under Section 19(a)(2). Consequently, the Commission has proposed an amendment to Section 19(a)(2) which would eliminate the necessity of resorting to a series of successive ten-day suspensions under Section 19(a)(4) by empowering the Commission temporarily to suspend trading in a security pending determination of a proceeding under Section 19(a)(2).

The provisions of Section 19(a)(4) apply only to trading on a national securities exchange and the Commission has no comparable statutory power as to securities traded only in the over-the-counter markets. The Commission's recommendations include a proposal to add a new Section 15(c)(4) which will grant the Commission authority summarily to suspend trading in a security on the over-the-counter markets where the public interest and the protection of investors so requires. At present, under Rule 15C2-2 the Commission may suspend trading in the over-the-counter markets upon a showing of fraud, or deceptive or manipulative practices only; but, not upon the broader standards of the public interest and the protection of investors.

In the few minutes that remain, I would like to mention some of the proposals to amend the securities laws that have been proposed by various members of the Congress.

On January 9, 1959, Senator Homer Capehart introduced a bill directed to identifying beneficial owners in proxy contests. The bill would add to Section 14 of the Securities Exchange Act of 1934 a pro-



vision making it unlawful for any person to give or to attempt to give a proxy to vote a security registered on a national securities exchange at any meeting for the election or removal of directors, with respect to which meeting proxies are solicited by opposing nominees, unless such person is the beneficial owner of the security, or the name and last known address of the beneficial owner appear on the proxy. In addition, the bill would make it unlawful for any person knowingly to exercise or attempt to exercise any proxy in violation of this provision.

This bill is identical to S. 1601, 85th Congress, also introduced by Senator Capehart, which the Commission opposed, expressing the views that (1) there was a substantial question as to whether the bill would actually obtain disclosure of beneficial ownership; (2) in any event, the bill would not provide investors at the time of the execution of their proxies with any additional information as to the beneficial ownership of other security holders; and (3) the bill's enactment might well impede the conduct of corporate meetings.

Senator Capehart has also introduced a bill to amend Section 16(a) of the Securities Exchange Act of 1934 to require beneficial owners of more than 5 percent (instead of the present 10 percent) of any class of any equity security registered on a national securities exchange to file with the Commission reports of their holdings and transactions.

The bill is identical to S. 594, 85th Congress, also introduced by Senator Capehart. During the 85th Congress the Commission, in commenting on S. 594, raised no objection to the bill, pointing out that disclosure of 5 percent ownership might serve to permit management, or any other group, to determine whether substantial beneficial holdings were being accumulated and the identity of beneficial holders accumulating them.

By way of conclusion, I would like to express to you my fundamental belief that if the confidence and faith of the American investing public in the capital formation process are to be maintained so that the enormous amounts of needed capital can be continued to be raised at the high rate of demand anticipated by present estimates of industrial expansion and production with the resultant high standard of living for the American people, it is essential that this Commission continue its close supervision of the capital markets in accordance with the Congressional mandate expressed in the securities laws. Only by such means can there be any assurance of integrity and fair dealings throughout the securities markets and can there be any real measure of success for our free enterprise system and/or the welfare of the American people as a whole.