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Speeches

Address by James M. Landis, Member Federal
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To take pleasure in speaking before this Association is to say the commonplace. But no one looking at the scene from a standpoint such as mine, after almost a year of operation of the Securities Exchange Act, can be other than grateful for an opportunity to talk in a business-like manner before an audience such as this composed of the representative members of our national stock exchanges. We are through, I trust, with the series of misunderstandings and misconceptions that accompanied the entry of the federal government into the field of security regulation. We have learned during the past year something of the manner in which we can work together, putting a concrete and living meaning into the word "cooperation", a word too frequently holding little more than a gesture of empty friendliness.

From our standpoint we make no secret of our desire to work with the exchanges and to use their powers of self-discipline and self-control to effectuate the objectives common to both of us. Aid and assistance of this character has been forthcoming genuinely and wholeheartedly. As illustrative of my meaning let me call to mind some of the tactics of this cooperation. Transactions that on their face arouse our suspicion are commonly first investigated by the business conduct committees. Rules that involve the difficult and technical matters of exchange transactions are always discussed and debated with exchange officials before being promulgated as law. The listing committees of exchanges are asked in the first instance to bear the burden of examination prior to registration and to give us their help in getting out the facts and figures called for by our forms. On occasion, as the need for flexibility of administration becomes apparent, and that need seems better to be met by exchange regulation as contrasted with commission regulation, we have asked the exchanges to adopt regulations in lieu of prescribing them ourselves. Similarly in the consideration of desirable changes that might attend modern exchange government, we have acted as advisers, urging, as effectively as we knew how, certain reforms that we believed had been too long delayed in their making. Indeed, the Securities Exchange Act has been, perhaps, as much an experiment in the self-government of exchanges as an effort of governmental regulation. Granting that there are specific objectives to be attained, the latitude that the Act gives us permits us to ask those who too desire them to assume the responsibility of bringing about their realization.

The task that is most immediately confronting the Commission today is that of securing the permanent registration of securities listed on and traded in the exchanges. The date set by the Act for the accomplishment of this task is July first of this year, and by that time we hope that the major portion of it will have been accomplished. Forms for most types of issues have been promulgated and have been arriving at the headquarters of the Commission at the rate of from fifty to two hundred a day. For those issues for which forms have not been prepared, ample time is to be allowed so that no unnecessary break in the continuity of trading need occur. This process of registration will bring on to the exchanges some new issues but will also occasion the loss of issues already on the exchanges. I do not know, however, of a single important issue that has signified its intention not to register and thus maintain its exchange market. The issues that will drop out of their own volition are the minor issues, which from the standpoint of distributional volume do not possess

great national significance. But even so, they give concern to many exchanges, chiefly the smaller exchanges, as well as to us, for our common objective must be to seek to exercise our influence and our powers to maintain an exchange market wherever the character of the issue and the nature of its distribution make this its natural and appropriate market.

Without making concessions as to the nature of the information that ought to be supplied by every corporation that seeks to list its securities upon an exchange, we have already, wherever possible, encouraged corporations to retain their listings upon those exchanges where they are already listed. We have eliminated such unnecessary burdens as might be entailed by duplicate filings. We have done away with the necessity of filing duplicate reports by directors, officers and ten per cent stockholders, allowing the filing of such reports on any one exchange on which the security is listed. Such refusals as still exist with reference to the listing of securities on our smaller exchanges, seem to me due not to these but to two other causes, one of which the exchanges themselves can, perhaps, remedy and the other which Congress in Section 15 of the Securities Exchange Act has given the Commission specific powers with which to deal with the problem.

The first matter to which I have reference is the cost of maintaining listings upon an exchange where the volume of trading is small. This cost arises not from any fees that are charged by the exchanges, but primarily from the expenses incurred as a result of maintaining an additional transfer agent in the city where the exchange is located. Hardly a request for delisting is made to us that does not give this cost as its prime reason. In some cases that cost is in excess of the dollar volume of the security trades upon the exchange during the entire period. In no case does the cost decrease appropriately with the decline in the number of transactions occurring on the exchanges. Obviously the interest of the stockholders of the corporation as a whole must weigh a cost of this nature against the benefits arising from continued listing and we as a Commission must do the same. It thus becomes essential for the exchanges, when the volume of trading is small, to see to it that the costs of maintaining a transfer agent are kept at the lowest reasonable minimum, so that corporations will not hesitate to assume that expense.

The second reason for the refusal of certain corporations to continue their exchange listings seems to me to spring from an extremely short-sighted viewpoint of their ultimate action. This reason, to be specific, arises out of their desire not to disclose to their stockholders the type of information that is now a prerequisite to listing upon an exchange. Consequently, they choose to seek the over-the-counter markets where none of this disclosure is at present demanded.

We have dealt concretely with this attitude in several instances and on occasions persuaded the corporations of their short-sighted point of view. But permit me at this time to put the argument for retaining exchange markets before you. It has been true in the past that securities listed on exchanges, that were known to have reputable listing requirements, possessed and rightly possessed advantages in the public mind that did not attach to mere over-the-counter or unlisted securities. With the inauguration of the registration requirements of the Commission, these advantages in the public mind should be immeasurably increased. Not only will the listed securities possess collateral

values that they would not otherwise obtain, but the listed corporations will succeed in instilling an atmosphere of trust and confidence among the investing public that the unlisted corporations cannot hope to acquire. And rightly so, a corporation that refuses to give out to its investors the type of information called for by the registration requirements, and now, being supplied without unnecessary burden and cost, by the very great majority of listed corporations, cannot rightly claim to be discharging faithfully those duties that ought to attend the handling of the public's money. Its securities will tend to have a speculative, as distinguished from an investment merit, and in the absence of open and avowed portrayal of the company's progress will be amenable rather to rumors than the impact of fact.

Thus far, however, I have dealt with this problem only from the standpoint of considering consequences that would normally be attendant upon refusing to meet the requirements that now attend listing. I have not considered the possibilities of further Commission action with reference to the over-the-counter market. Broad powers over this subject reside, as you all know, in the Commission. The power has already been exercised to attempt to insure a certain minimum of fair practice in these markets. How far and to what extent it can be exercised to greater advantage is a matter that the Commission has now in contemplation but as to which it has not yet announced its plans. Certain principles, however, seem fairly obvious. The first is that corporations in seeking a market for their securities, wherever that market may be, should, in justice to the public whose investment gave and gives them vitality, allow that public an ample basis upon which to reach conclusions as to the price it will pay for continuing its investment in that enterprise. The second principle flows from the first, namely, that the function of governmental action under this power is to bring about the giving of information to the public about the progress of its investments, and not directly to move business from one market to another. Factors such as the extent of distribution and the nature of the enterprise will lead to the choice of the appropriate market. Thus the principle of action would seem to be not only to insist upon fair practices in whatever market security transactions occur, but also that wherever the invitation to the public to buy may be made, open and equivalent disclosure shall be had. Such principles seem hardly to need defense; instead it is their absence in specific situations of which the public must be made to be upon its guard.

After the suspicions which the public mind has held during the past years with reference to stock exchanges, it is, indeed, singular that the exchanges are the very instrument that can most effectively be used and are girding themselves to dispel that distrust. With adequate listing requirements and periodic reporting, a better basis for intelligent investment will exist than ever before. But this will be true, only if two things occur. First that there be public appreciation of this function of the exchanges and steady adherence by the exchanges to the performance of that function. Second, that the investing public will acquire some appreciation of the nature of a security and the means of reading these reports that are the guide to its intrinsic worth. Too many members of the public still believe that surplus is the equivalent of cash in the bank, or are unable to differentiate between dividends that are a return of capital and those that represent true earnings. Progress in this field will necessarily be slow. Silly criticisms by people who do not have the intelligence to understand the simplest financial data are being made daily in the press. But the attitude of the listing committees of exchanges, investment services, and generally the financial press, is sufficient evidence of the worth of what has already been accomplished, and inspires one with the hope

that an economic democracy competent to guide its own destinies is not merely an idle dream.

If the year behind us is at all a gauge to the years ahead of us, for my part I have much confidence. As the newness of regulation wears off, its objectives become more plain, more patent, and more generally accepted as being truly democratic in character and comprising an attempt to set us as a nation astride our complex financial and corporate system. Fears that it might collapse, which were wide-spread two years ago but fortunately were never shared by government, are dissipating as we see that we need only remove the causes that made for hurt, to find the strong substantial core of good beneath. With the aid as in the past year of the unstinted and patriotic services of the various professions, the larger public and the exchanges, from our standpoint the task is not only that much easier but that much more certain of accomplishment and of benefit to all alike.