

Remarks made by J. Sinclair Armstrong
Member, Securities and Exchange Commission, at the
Executive Session of the 37th Annual Convention of the
National Association of Securities Administrators
3:15 p.m. -- Tuesday, September 28, 1954
Hotel Roosevelt, New York City

On August 10, 1954, President Eisenhower signed into law the Administration's bill to amend the Federal securities acts. The amendment (P.L. 577, 83d Cong., 2d Sess.) will go into effect on October 10, 1954.

The bill had been passed unanimously in both the Senate and the House.

The act represents the first amendments of the securities acts in many years. Many previous efforts to improve the acts over the past thirteen years proved abortive. A year of intensive work by the Senate Banking and Currency Committee and the House Interstate and Foreign Commerce Committee, advised and assisted by the SEC, went into this legislation.

An important provision of the amended law will permit wider use of offering prospectuses for new issues of securities, particularly short-form summary prospectuses, during the so-called waiting period after the registration statement has been filed with the SEC but before it has become effective. Normally this is 20 days. The SEC is presently drafting rules to implement this provision of the new law. Information will be more readily available to the investor before he actually buys the securities.

The amendments also permit greater use of newspaper advertisements during the waiting period. This should make it easier for small investors all over the country to invest in new issues of securities, whose distribution has up to now tended to be concentrated in a few cities having large capital markets.

Other provisions of the new law

- (1) reduce from one year to 40 days after distribution of a new issue of securities has been commenced the period during which dealers must deliver prospectuses in trading transactions;
- (2) simplify the information required in a prospectus used in an offering that lasts more than 13 months;
- (3) reduce from six months to 30 days after distribution of a new issue has been completed the time when a dealer can extend a customer credit on the new securities;

- (4) clarify the SEC's rule-making authority on "when-issued" trading;
- (5) eliminate from prospectuses summaries of certain trust indenture provisions which have heretofore been required, thus permitting simplified, more readable prospectuses for debt issues; and
- (6) provide simplified procedures for registration of securities of investment companies, the so-called "mutual funds."

I would like to discuss in a little more detail the amendment which I referred to a few moments ago designed to permit wider use of offering prospectuses for new issues of securities, particularly short-form summary prospectuses, during the waiting period. You have all been aware, I am sure, over the years of the apparent anomaly in permitting the distribution of "red herring" prospectuses, which purport to give information about the security to be offered but not to constitute an offer in the technical legal sense.

One of the original purposes of the Securities Act when it was framed in 1933 was to provide a period after the registration statement had been filed with the SEC and before it became effective during which prospective investors could become familiar with the pertinent facts relating to the issuer and the underwriting. It was in furtherance of this objective of disseminating information about the issuer and underwriter during the waiting period that the "red herring" prospectus mechanism and, more recently, the short-form identifying statement were devised. The 1954 amendment to the Federal law was intended to give a firmer statutory basis for this pre-effective dissemination of information and to give the Commission greater flexibility in permitting summaries and condensations of the pertinent material set forth in full in the Federal registration statement.

The amendment in no way affects the legal provisions which have existed up to now by which the full statutory prospectus must be furnished at the time the sale (as distinguished from the mere offer) is consummated.

As pointed out in the report of the Committee on Interstate and Foreign Commerce of the House of Representatives, the amendment will conform the statute to the present practice, encourage greater dissemination of information by relieving underwriters and dealers of fears connected with pre-effective distribution of written material, will make possible dissemination of more accurate information to the investor than he now generally receives, will not take away any of the protection heretofore afforded investors by the Securities Act of 1933,

and will not change the liabilities for statements made or not made in the registration statement and prospectus. (House of Representatives, 83d Cong., 2d Sess., Report No. 1542).

Looking at these amendments from the standpoint of the State securities laws, we have made a careful study of possible conflicts with the State laws. Basically, our conviction is that to the extent "red herrings" and identifying statements were permissible under State legislation during the waiting period, there should be no difficulty in, and, indeed, the States in all likelihood should welcome, the use of the prospectuses and summary prospectuses which will be permissible under the revised Federal law.

It appears that 37 States have securities laws which provide for the registration of securities and prohibit both offers and sales prior to the effective date of registration. Notwithstanding the prohibition against pre-effective offers (as distinguished from sales) of securities, many State Securities Commissions have provided administratively for the dissemination of information prior to the effective date of registration.

To the extent that any problems may arise, it is hoped that they can be worked out through administrative cooperation without the States finding it necessary to amend their laws. I assure you that the SEC has no desire to suggest any action one way or the other to any State, but has every desire to, and will to the best of its ability, cooperate with State authorities in working out a practical solution of any problems which may arise in this field.