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ADDRESS

of

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In the short time that we have this evening - and I assure you that I will do my best to keep it as short as possible - I would like to spend a few minutes talking about the Securities and Exchange Commission - its purposes, its functions, its operations and its achievements.

Being a mid-westerner myself, I have always considered this part of the country to be right in my backyard, even when I'm in Philadelphia. Therefore, I'm particularly happy to have this chance to be here tonight. And I want to assure you that I have discovered from my association with the other Commissioners and the staff members, that geographical differences are no bar to a common desire to utilize every reasonable opportunity to confer with the members of the securities industry concerning our common problems. For that reason, we welcome this opportunity for a get-together; to hear your views and to tell you something about the Commission.

You all know of the SEC and you all know of its work. But I want to talk with you about some of the phases that perhaps you aren't able to get from releases, opinions, orders, prospectuses and registration statements. You will understand, of course, that I can not lay claim to an intimate knowledge of these matters based upon any long connection with the agency, as I have been on the Commission for only about six months. But I hope that I have picked up some thoughts that may be of interest to you.

If I may say a purely personal word, I trust that I came to the SEC with an open mind and with an objective approach. At least, to the best of my ability, I attempted to do so. Being only human, I took to it my own particular philosophy. I approached it from the standpoint of a mid-westerner. As part and parcel of my personal background I have always believed, and I believe now, that the role of government is that of the disinterested and impartial umpire, and the orderly conduct of any activity, whether it be in sports or in business, depends upon having a referee to insist upon compliance with the rules and to assess the penalties for infractions. That does not mean, however, that the referee should call the plays, or should carry the ball.

I know of no place in modern administrative law where this principle has been more succinctly set out and more scrupulously adhered to than it was by the Congress when it enacted the Securities Act of 1933. In writing the "rules of the game" set forth in that Act, the Congress clearly and definitively provided certain standards. It made as the fundamental cornerstone the doctrine of "full disclosure" - to end fraud by turning the light of publicity on it.

In 1934 the Congress created the Securities and Exchange Commission, and gave to it the administration of the Securities Act. Under this Act the Commission, contrary to the oft-expressed popular belief, does not approve or disapprove securities. Rather, it simply provides that reasonably full and complete information concerning a security shall be made available, so that anyone who desires to purchase or sell can, if he chooses, inform himself of its salient features and make up his own mind as to what he wishes to do. One can offer any security for sale if it is effectively registered and all the truth is told about it. The decision to take the risk rests with the investor and is not made for him by the Commission. The law then provides civil and criminal sanctions for failure to furnish such information.

Further, in the Securities Exchange Act of 1934 the Congress empowered the Commission to supervise exchanges and the over-the-counter market. Here again, it was not for the purpose of arbitrarily dictating what the industry should do in matters of business policy, but only to prevent manipulation, fraud, and deceit; to insure financial responsibility and to preserve proper standards of business conduct and investor confidence.

In the interest of time, I shall not now detail the other Acts which the Commission administers. But I would like to make this point crystal clear: The standards set up by these two Acts are no more, and probably are far less, than the minimum standards that every respectable person in the securities industry wishes to have observed. It is true that the minds of reasonable men may differ as to the particular method by which these admittedly laudable purposes may be accomplished. Nevertheless, I know of no one worthy of a place in the industry who wants to go back to the days of the bucket shop, the boiler room, and what we down in Kansas used to call the "pencil bandits". Those were the very elements that tended to degrade the securities business and to destroy public confidence in it.

It is my hope that the maintenance of the principles of full disclosure, and the attendant duties devolving upon exchanges, brokers, and dealers, will be sufficient to keep the securities business upon the high plane where it is, where it belongs, and where it should and must remain. I believe that adherence to these principles will achieve this purpose. I am quite sure that the full membership of the Securities and Exchange Commission, and the members of its staff, feel exactly as I do. None of us in Philadelphia want to go any further than is necessary. All of us are anxious to see the success of the present scheme of things, with such changes as are inevitably required by experience and in keeping with its spirit and purpose.

For one reason, I hesitate to think of what the alternative to this program would be. It once was suggested that we should have an agency which would permit or refuse issues to be sold. To substitute, on a national scale, the judgment of government officials for the judgment of issuers, dealers and investors - through empowering agency approval of issues - would lead to results which I don't think any of us want in the securities business.

How does this affect you as a member of the securities industry? To start with, today the investing public has available the amount of capital which otherwise would have been taken by the racketeers for fanciful gold mines, and oil wells, and the whole host of "bunco" schemes so long utilized to defraud the unwary. Every time a confidence man is put out of business, or is prevented from commencing his operations, his prospective victims are saved from him and are candidates for the legitimate security dealer.

Secondly, there is gradually being developed a public confidence in the securities industry. The man or the woman with some idle capital is today more receptive to the idea of investing it in the hope of receiving a return. To be sure, this is a slow and painful process, but it will eventually make a much better, sounder and more profitable undertaking of the securities business, and will create a healthier capital market for our economy of free enterprise.

In the third place, it affords you an opportunity to be of greater service to your clients - both present and prospective. It tends to improve the class of merchandise which you have for sale. It enables you and your customer to know more about the security - so you can better advise him and he can better understand and appreciate your advice. You no longer must go to him to sell a "pig in a sack" which neither you nor your customer have had a look at. You are no longer simply peddling bets on the outcome of a horse race. For that sort of speculation, some states have legalized bookies - but they certainly aren't worthy of being classed as in the securities business.

All in all, these laws make possible the fulfillment of the aims and the dreams of the legitimate dealer.

It is true, of course, that with these advantages come the attendant obligations. When we - as physicians, as lawyers, or as securities dealers - enjoy the confidence and trust of our clients - when as professional men (and in substance that is what the relationship of security dealer and client leads to) we undertake to advise them and guide their conduct and actions - then we must rise to meet the increased moral responsibility that falls on our shoulders.

It is not my purpose tonight to moralize or "preach", but I feel that we must constantly keep before us the challenge that the trust that our fellow men place in us, requires that we do not betray them.

I do not mean to imply for a minute that all of this unfinished business devolves upon the industry - not at all. We of the SEC have a big task ahead of us. We recognize that fact. And I want to assure you that we are trying every day to perfect our administration of these Acts. We want to make them function as well as we can. Within the framework given to us, it is, and will continue to be, our desire to see the investing public and the securities industry get all of the information possible, and at the same time to see that the burden of complying with the provisions of the law shall not be an undue one for the issuer or underwriter. In other words, we want to administer these Acts so that there are made readily available all necessary and pertinent facts about security issues and so that the public may be assured that it will be treated fairly by all security brokers and dealers - and - we want to accomplish these ends with an absolute minimum of red tape and with an absolute minimum of interference with legitimate and ethical conduct of security transactions and security businesses.

But the Securities Act and the Securities Exchange Act have definite aims, and good ones. I would not like to think that there were anyone here - or any responsible member of the securities industry - who thinks that fraud and market-rigging and such unethical practices are good things. Any member of the industry who engages in these types of conduct not only violates his duty to his clients, but his duty to the other members of the industry and to the public. And we can't fight fraud, and we can't fight market manipulations, and we can't fight unethical conduct without regulation of these elements. To control unethical practices is as much your concern as it is ours, and the best results can be obtained only by our joint efforts.

I therefore believe that you of the industry, and we of the SEC, have a common stake in seeing that this present scheme of things works, and works well. I do not for one minute envisage my job as a member of the SEC as being adverse in any sense to your positions as respected and important members of the securities industry. Of course, that doesn't mean for a minute that the Commission cannot or will not get "tough", so to speak, whenever individuals fail in their duties or breach their obligations - I suspect that our record affords ample proof of that fact. Fortunately, such individuals are a very small minority, and do not represent the industry. So, to put it bluntly, and more or less colloquially, we are all in this thing together and we should and must see that we are able to stamp out the admitted evils which once existed among the less scrupulous segments of the so-called "financial world".

I want to talk with you particularly about one or two specific matters which are presently claiming the attention of the Commission. But before I do, I want to invite you to consider them, and to consider all of the work and activities of your Securities and Exchange Commission, as something which is of immediate interest, and of great importance, to you. The Commission always welcomes the help, the suggections, and the comments that you can give it. This job is of such a magnitude that we believe it will take the best that all of us have to give. Cooperation between the industry and the Commission offers the surest road toward accomplishment of our common goal.

We have a long established practice of the Commission of consulting with those having an interest in the effective functioning of the Acts which we administer. In line with that practice, I want to take advantage of this opportunity to discuss with you the problem of dissemination of information contained in a Securities Act registration statement between the filing date and the effective date. This period, as you know, is referred to as the "waiting period", or "the cooling period".

While the compilation of information in a registration statement and prospectus and the filing of those documents with the Commission in Philadelphia is fine in and of itself, it does not help you in Omaha very

much in determining whether you want to participate in a selling group if you don't know what information is contained in the documents filed. Likewise, a filing in Philadelphia doesn't give your customers a chance to sit down and study that information so that they can make up their minds what to do when and if you should offer the securities for sale when the registeration statement is effective and you can lawfully make offers.

In considering this problem we must not forget that the dissemination of information regarding a security during the waiting period cannot be used as an attempt to sell the securities during that period in violation of the Act. On October the 11th last we circulated certain proposals relating to the use of red herring prospectuses and summaries, and we requested that you let us have your considered written comments on these proposals on or before November the 12th. The response when I left Philadelphia on November 2nd was splendid. These proposals, as submitted to the Commission, were tentative only, and the Commission in turn submitted them to those interested in the problem, as a basis for discussion between them and ourselves. The draftsmen of the proposals did not intend them to be in final form, but intended them as an approach toward attaining the broadest possible dissemination of information during the "waiting period". What rules will eventually evolve, I am not in a position to say at this time.

The red herring prospectus is nothing new to the industry. Its use started as a result of one of the Commission's releases issued way back in November 1933, before the Securities Act had reached its first birthday. The effectuation of full and fair disclosure requires not only that adequate and accurate information be filed with the Commission in the first instance, but also that this information reach prospective purchasers before they are asked to buy a particular security.

As you know, Section 5 of the Act makes it unlawful to sell or offer to sell a security unless a registration statement is in effect with respect to the security, if the mails or facilities of interstate commerce are used.

Section 8 as originally passed provided that the effective date of a registration statement should be the 20th day after if was filed. This 20-day waiting period was intended by the Congress to eliminate many of the abuses connected with high-pressure salesmanship. It was further expected that this 20-day waiting period whould allow sufficient time for public scrutiny of all of the facts regarding the security before the public was asked to buy it. It was expected that the Commission would make only a preliminary check-up during the period. This last is important to remember because it indicates that the framers of the Act expected that issuers and underwriters would file statements which were substantially complete and accurate when filed.

The interpretative releases of the Commission have fostered the use of red herring prospectuses, provided they were not used as selling literature. Until about a year and a half ago red herring prospectuses were distributed in a great many instances to dealers and other large investors, if not to the investing public generally. About that time it came to the attention of the Commission that in some instances the information contained in red herrings was so materially misleading and inadequate as to present an entirely different picture from that shown by the information contained in the final prospectus.

I have already mentioned the waiting period as consisting of 20 days. If a registration statement is not amended, or if amended pursuant to a Commission order or with its consent, it becomes effective on the 20th day after it is filed. However, under the statute the Commission has the power to shorten that 20-day waiting period, and the shortening of that period of registration is known as "accelerating effectiveness of registration". This power to accelerate is not one, however, that the Commission may exercise willy-nilly. The Commission is bound by the statute to refuse acceleration if the public does not have sufficient information available at the time when acceleration is requested. Acceleration is sought with respect to practically every registration statement. The Commission, in an endeavor to correct the evil of having securities sold on the basis of materially misleading and inaccurate red herring prospectuses, resorted to a policy in April of 1945 of refusing acceleration where such red herring prospectuses were circulated, until we received satisfactory proof that the nature of the material inadequacies or inaccuracies had been communicated to the persons to whom the red herrings were distributed.

The fact is that since the adoption of this policy there has been a diminishing amount of information being circulated about new issues through the means of the red herring prospectuses before they are properly offered for sale. Some underwriters blame the dwindling distribution of red herrings on the adoption of this policy. These underwriters seem to have forgotten that one of the factors to be considered by the Commission in determining the question of acceleration is whether or not adequate information has been made available to the public. This reason for the scanty use of red herrings may be an attempt by some issuers, underwriters and their counsel to justify the neglect of their own primary responsibility of filing materially complete and accurate registration statements in the first instance. One important reason for the lack of adequate information during the waiting period undoubtedly was that most issuers, underwriters and dealers in the recent past were able to sell new issues without very much effort. There was, for the most part, a sellers' market in which avid purchasers competed with each other to snatch up securities. Despite the reasons advanced for the diminishing use of the red herring prospectus, we realize that if underwriters and dealers are to be encouraged to circulate them or other forms of information, they must be assured that the dissemination of this type of information will not in itself constitute an attempt to dispose of securities.

It is with that in mind that we approach the problem of getting adequate and accurate information into the hands of the dealer and the investing public during the waiting period. It is neither safe nor desirable that investors plunge headlong into unknown investments. Whether the availability of information will prevent this is problematic. We think it will. But we do know that the availability of information will enable investors to make informed judgments of the risks involved. Further, the ready availability of information will enable brokers and dealers and other securities experts to form their opinions about the security. It is certain that the absence of their informed opinions contributes to the lack of a stable market and enhances the opportunities for fraud and manipulation. The result of inadequate information is that brokers and dealers - outside of a small group favored by particular underwriters - are unable to purchase the securities properly offered, unless they do so with their eyes closed. That you do not want - and we at the Commission do not want it.

In an attempt to dispel the alleged fears of the underwriting fraternity, one of the proposals submitted declares that a red herring prospectus used between the filing and the effective date, which contains reasonably accurate and complete information and bears a specific legend limiting its use to informative purposes only, will not constitute an attempt or offer to dispose of a security.

The proposal as submitted attempts to set up a standard as to what is reasonably accurate and complete information, and declares that a red herring prospectus would be reasonably accurate and complete if prepared on the basis of the information contained in the registration statement as amended to correct the inadequacies and inaccuracies mentioned in the Commission's first letter of comment. Such a red herring would be substantially complete, except for price and underwriting data.

We at the Commission fully realize that if this proposal is to work effectively we must endeavor to accelerate our examination during the waiting period. This we are prepared to do. I want to make it clear that the adoption of a proposal such as that which has been submitted would not prevent the use of a red herring prospectus prior to the receipt of the first letter of comment. If a registration statement as filed is adequate, complete and not materially misleading, any issuer or underwriter is at liberty to circulate the red herring just as he has always been able to do so, provided it is circulated not for the purpose of soliciting indications of interest but for informative purposes only. The present proposal merely provides that the circulation of a red herring prospectus shall not in itself constitute an offer to dispose of the security, provided it is prepared on the basis of the information contained in the registration statement as amended after the receipt of the Commission's first letter of comment.

The second proposal provides in essence that the final statutory prospectus may consist of a red herring which is attached to and make a part of a "document" containing such additional information as is necessary to correct inaccuracies and to supplement inadequacies in the red herring. It further provides that any person to whom a red herring prospectus is sent prior to the effective date need be sent only the "document" if both are sent by the same person. To further the purposes of these proposals, the Commission would refuse acceleration of the effective date where it believes that underwriters have not tried to accomplish an adequate dissemination. Dissemination of information would be the price of acceleration. Underwriters will be expected to get red herrings into the hands of dealers, particularly those who will be asked to join the selling group.

Before I left Philadelphia comments from the industry had begun to pour in, and from what I have seen, they are going to contribute substantially towards the adoption of an effective and practical method of disseminating information about the security prior to the time when it is offered for sale. What the final rules will be, I do not know at this time, but any rules which are adopted can only succeed if the persons for whose protection they were formulated take advantage of their benefits.

Before long we will have reached some definite results on the red herring rules I have been discussing. Those results will get the usual publication afforded to our new rules. Don't hesitate to write in and ask for copies if you need them. These proposals are only part of our program to improve, simplify, and expedite registration procedure. In line with this program is a series of changes in our forms. It is our hope that these will not only simplify compliance but aid in speeding up our processing of registration statements.

Essentially, these plans contemplate (1) the streamlining of the registration statement by omitting certain requirements which the Commission has learned, by experience, unnecessarily complicate the registration statement and prospectus and, in that way, to accomplish a double purpose; (2) the scrapping of certain forms, and (3) simplification of prospectus requirements.

The proposal involves the amendment of Form S-1, which is the registration form most generally used, both as to content and form. This makes possible the repeal of Forms A-1, A-2, and E-1, which had been adopted early in the administration of the Securities Act and since been superseded by other forms; and we now propose to scrap Forms A-1, A-2, and E-1.

Form S-1 itself is the result of the application by the Commission of the experience gained in administering the Act. Originally, it was necessary to file both a registration statement with two parts and a general prospectus which contained only the information filed in one of the parts.

It is now proposed to eliminate all items of the S-1 registration statement which call for information not required to be in the general prospectus and to abolish the two-part division of the registration statement. In doing this, it becomes necessary at the same time to effect certain changes in the information which must be contained in the prospectus and in other parts of the registration statement.

The controlling factor in making these changes is to develop a prospectus that would contain, in simple form, that information necessary to the investor and to exclude all other information which, though pertinent, might not be of primary concern to the investor and which, in the past, may in some cases have made the prospectus a vehicle to avoid disclosure by its very length.

We propose cutting out of the prospectus a good deal of the lengthy and often complex description of the underwriting contract; in some cases to cut out certain historical financial information which is otherwise required by law to be disclosed; to cut out complicated descriptions of the securities of the issuer not being registered, to the extent that they are not necessary to determine the merits of the securities being offered; and to make other changes which are now, necessarily, only in the formulative stage. I do not want to take up your time with a detailed exposition of the changes contemplated. They are contained in the Commission's Release Number 3171 under the Securities Act, which was distributed on November 20th.

The changes I have just mentioned are only part of a general program to overhaul the registration procedure and to apply to its revision the great wealth of Commission experience gained in the twelve years of its existence. I am not now in a position to go into this program any further than I have. Some changes are now under consideration, others are soon to be announced. Just as quickly as they can be formulated they will be published and your comments and suggestions will be solicited.

One of the most important aspects of the capitalist system of economy is a free market. You cannot have a free market when companies refuse to give their investors information sufficient for them to determine the value of their investment. You cannot have a free market when the prices of securities are manipulated to satisfy the selfish interests of a few individuals. As stated by the House Committee on Interstate and Foreign Commerce:

> "There cannot be honest markets without honest publicity. Manipulation and dishonest practices of the market place thrive upon mystery and secrecy. . . . Delayed, inaccurate, and misleading reports are the tools of the unconscionable market operator and the recreant corporate official who speculate on inside information." /H.R. Rep. No. 1383, 73rd Cong., 2nd Sess. (1934) 11./

The Securities and Exchange Commission is going to continue to do all that it can to insure the maintenance of a free market, of an honest market. And I think no one can help but agree that this is for the good of all involved - the issuer, the investor, the broker-dealer, and the public.

To the accomplishemnt of this goal, I earnestly ask your cooperation and help - and in turn I pledge you the sincerest efforts of your Securities and Exchange Commission.

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