DALLAS SECURITY DEALERS ASSOCIATION

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WHAT'S NEW AT THE SEC

Address by

C L A R E N C E H. A D A M S

Commissioner
Securities and Exchange Commission

The Securities and Exchange Commission has been in existence now for nearly twenty years; slightly more than twenty if you take into account its predecessor, the Securities Division of the Federal Trade Commission. All of you know something about the SEC; many of you doubtless know a great deal about it; and some of you may know nearly everything about it. Nevertheless, the question "What's new at the SEC?" is always pertinent, for it must ever be a dynamic organization keeping pace in the dynamic field of the great securities markets of this country, and now that a new national administration has taken over in Washington the question is perhaps of more than usual interest at this time.

As you may be aware, the SEC is made up of five members, no more than three of whom are permitted by law to be of the same political party. The Chairman is designated by the President from among the five. This meant that because of two vacancies and the expiration of one member's term, it fell to President Eisenhower to appoint, with Senate confirmation, three new Commissioners. One of the things that has been particularly gratifying to me is the fine qualifications and high caliber of the other four Commissioners and the harmonious and energetic way each is addressing himself to the problems that lie ahead. This augers well, I think, for the success of the first Republican Administration of the Securities and Exchange Commission since the Commission was established. Of course, there is not absolute conformity of opinion on all things and in all cases. But we are all pulling in the same direction and the objective of each and all of us is to see that the "public interest and the protection of investors"

is served and that it is served as efficiently and economically as possible. We want to avoid officiousness for its own sake, but to be alert and effective against that minority whose malefactions endanger the good name of all in the securities business. It follows that we want to interfere as little as possible, consistent with our responsibilities, with the orderly conducting of legitimate business and financial transactions.

It is a particularly appropriate time for us at the Commission to review critically what we have in the way of statutes to administer, our rules and regulations under those statutes, and our techniques in the administration of the statutes. Let us consider for a moment what may be of especial interest to you gentlemen, the provision in Section 17 of the Securities Exchange Act of 1934 for periodic inspection of brokers and dealers by examiners or other representatives of the Commission. The legislative direction is that the Commission do as much or as little inspecting as it deems necessary or appropriate in the public interest. As a matter of practical fact, the extent of the broker-dealer inspection program depends primarily on the availability of funds. Unfortunately the general public labors under the impression that brokers and dealers are examined pretty much the same as banks. That isn't so. Under present budgets, it can't be so. The Commission is anxious that the investing public and the Congress understand this fact.

The Commission and the National Association of State Securities Administrators are engaged in a cooperative study to determine the extent to which overlapping of the State and Federal broker-dealer inspection

programs can be eliminated. The SEC inspection covers both financial condition and trading and selling practices. State inspections vary widely from state to state, and in some states are non-existent or nearly so. Since neither the SEC nor the State Commissions have available funds to make regular, periodic inspections of each registrant, there should be some coordination designed to avoid harassing multiplicity of inspections of some and long-time omission of inspection of others.

In addition to official inspections by the State authorities and by the SEC, there are inspections by the National Association of Securities Dealers and, in the case of the members of national security exchanges, by such exchanges. A public agency cannot, of course, abandon its functions to private agencies nor would the members of a private agency support the use of their inspectors as informers to the public authorities with respect to matters not involving defalcations or insolvency.

This subject is receiving serious consideration. I hope that our Commission and the other inspecting authorities can come forward with some helpful and intelligent recommendations.

There are more important aspects of our relationships with State Securities Commissions than this however. The new Republican administration believes in the fundamental importance of government on the local level and questions the necessity that all regulation must emanate from Washington. We think there are areas which can be just as effectively regulated by the states. As a step in the direction of decentralization and greater cooperation on our part with the State Commissions we have

authorized our regional offices to make available to state authorities information developed in SEC investigations where the facts developed indicate a violation of state law which can be more readily prosecuted than the suspected violation of federal law, and where it appears that the state authorities will proceed promptly to complete the investigation and enforce the state law. Now this will not only augment the responsibilities of our regional offices, but will call for increased activity and responsibility on the part of state authorities. That we should have alert and strong State Securities Commissions, with an adequate budget and able staffs with well defined authority, is, I think, very important and will become increasingly so, and I am confident that you gentlemen in the securities business will be the first to realize this and to bend your very best efforts towards that end.

Another aspect of the Commission's regulatory functions which may have been especially troubling to you, or some of you, is how to know just how far those functions go, and why. You may be aware, or not aware, as the case may be, of certain things which the Commission requires or prohibits, of which a study of the statutes and the Commission's rules and forms would seem to give no inkling. The reasoning behind these requirements and prohibitions may lie deep in the Commission's files in memoranda and letters on individual cases and may never have been generally publicized. If you want to know, for example, whether or not a proposed stabilizing transaction is proper and lawful, you may have to get in touch with the Commission specifically on the question and get an individual interpretation, even though the transaction may be by no means an extraordinary and

unprecedented one. It is time we reexamined some of these requirements and prohibitions to see how well they stand up, and if they seem justified they might well be given official expression in some form more readily available to all whose concern they might be.

The Securities Act of 1933 is the oldest law administered by the SEC and the one probably best known to the greatest number of people. With its provisions for the registration of securities proposed to be offered for public sale and its provisions for the use of an accurate and informative prospectus in connection with such sale, I am sure you are familiar. Few quarrel with the principle of "truth in securities" upon which that Act is founded, but it is still felt in many quarters that the process of registration is too complex, is too expensive, that it takes too long, and in general that it has a hampering effect upon the raising of new capital. Over the years I think the Commission has succeeded fairly well in specializing and simplifying its registration forms, and its staff as it grew in experience (although it is now reduced in numbers to less than half what it once was) has been able to process the registration statements more speedily and more incisively. Although the statute specifies a 20 day cooling period between the filing of a registration statement and the date upon which it may become effective and the securities be offered for sale it is provided that this period may be shortened by specific action of the Commission upon request and at the discretion of the Commission. There have been some registrations which became effective in less than 20 days, but the majority still takes 20 days or even longer. We have by no means closed our minds to the

possibility of further simplifying the registration forms and further reducing the waiting period without loss of protection to investors. For example, we are now considering a streamlined registration form for debt securities of institutional grade issued by companies which have been filing annual and periodic reports with the Commission under the Securities Exchange Act of 1934, and it is contemplated that the waiting period in these cases shall be substantially less than 20 days. This would involve defining the standard for such securities. That standard could probably be by reference to at least two rating agencies. To what extent the tendency towards private placement of this type of security has resulted from what are conceived to be the difficulties and delays of registration for public sale we cannot, of course, guage exactly. However, with an abbreviated registration form and accelerated effectiveness of registrations on that form, it would seem reasonable to anticipate increased participation by the general investing public in financings by means of securities of this caliber, and it follows that underwriters and dealers should have increased opportunity to offer this type of security to their customers.

We are also looking into the possibility of simplifying procedures in competitive bidding cases. As you may know, under the present arrangements, the registration statement becomes effective for the purpose of inviting bids and, of course, at that time contains no information with respect to the price, the names of the underwriters, and sometimes the interest or dividend rate and other features of the security since these

are tied in with the bidding. After the winning bid has been determined it then becomes necessary to file a post-effective amendment to the registration statement in which the missing data are supplied and the post-effective amendment must be scrutinized and ordered effective by the Commission before the prospectus in final and complete form can be distributed. After all, the information concerning the issuer is already set forth in the effective registration statement, thereby satisfying all the requirements of the 1933 Act except, information as to spread and terms of offering. All this makes for considerable frenzy as the underwriters are naturally anxious to reduce as much as possible their carrying period after their bid has been accepted. It appears that this somewhat nerve-wracking period as well as the not inconsiderable expense involved might be eliminated without loss of protection to investors. At any rate, we are looking into it.

The question of amendment of the Securities Act itself is also, as you probably know, being given close study. It would be most inappropriate for me to offer any prediction of precisely in what manner the Act might be amended. The Commission with its background of knowledge and experience with the Act in its present form will naturally play a part, but the legislation must, of course, be the work of Congress. Among matters to be given attention will almost certainly be clearer direction as to the proper use of the prospectus. There is ample evidence that in very many cases, indeed the vast majority, the offering is made verbally, which means that in many cases the prospectus is not delivered to the investor prior to or at the time of the offering but only later

at the time of confirmation of the sale. It is partly for this reason that our rules, numbers 132 and 414 under the Securities Act of 1933, were adopted to encourage the use by underwriters and dealers of what we have termed an "identifying statement" or "notice of proposed public offering" in connection with prospectus offerings. For the benefit of those of you who may not yet have had experience with the identifying statement, I will explain that it is a short statement, only a few paragraphs long and seldom with more than two or three lines in a paragraph, giving such bare bones of information as the title of the security being offered and certain of its characteristics, the name of the issuer and its general type of business, the offering price (if known at the time the identifying statement is being used), etc.; all culled from the prospectus. At the bottom of the identifying statement is a tear-off which can be filled in and sent back to the company or underwriter or dealer by those who would be interested in obtaining a full prospectus. A copy of the identifying statement is filed with the Commission as a part of its related registration statement and its use is usually permissible almost as soon as the registration statement has been filed. It is not intended to be a selling document (that is one reason why we have insisted that it be kept so short) and its use prior to effectiveness of the registration statement is not considered to constitute an offering of the security in violation of any provision of the Securities Act. It can be published in a newspaper, mailed or circulated in any other manner. We hope it will operate as a screening device assisting the sellers to locate persons who would be interested

in obtaining a prospectus. It is our earnest hope that an appropriate way may be found under the Texas Securities Act so that this document may be used by Texas dealers.

Another matter which I believe will receive attention is the length of the period following the initial offering of an issue of registered securities during which a broker or dealer selling any securities of the same class must deliver a prospectus with every confirmation of sale. As you know, the period now specified is a full year, even though the initial distribution may have been completed in a very short time. This requirement for prospectus delivery may become quite burdensome, particularly in the case of securities actively traded on an exchange.

There is also the question of the inflexibility of the Act with respect to a feeling out or sampling of the market before registration is effective. In a great many cases the offering price is not determined until just before the registration statement becomes effective and it has been contended that some testing of the market before that, which the Act presently forbids, is often essential to a fair and realistic determination of what the price should be. This inflexibility may also have played its part as an inducement towards private placement in lieu of public offering of securities.

I should be loth to give the impression by any remarks I have just made that we have any disposition lightly to brush aside the registration and prospectus requirements of the Act. These requirements

are fundamental to a "truth in securities" law, we believe. To reconcile them with necessary practices in the business of selling securities may be no easy task. We shall try to be realistic, but we shall guard jealously the protections and safeguards to the public interest which our statutes were designed to provide. Constructive suggestions are most welcome. With careful thought and good will I think fair solutions can be found.

The reporting requirements imposed by the Securities Exchange Act of 1934, and the proxy regulations arising out of Section 14 of the same Act are perhaps of less immediate concern to you than the matters we have just been discussing. But we have been doing some soul-searching on these as well and I might indicate briefly a few of the things which have come up. If you are familiar with Form 10-K, the form on which companies file annual reports with the Commission, and are also familiar with the requirements relating to proxy statements you may have discerned a certain similarity; duplication in fact. It may be possible to eliminate most of this duplication by collapsing some of the requirements. For example, it may be feasible to permit the proxy statement, since proxy statements are generally filed before annual reports, to suffice as a goodly portion of the annual report. This should make for efficiency and time saving not only for the companies involved, but for us.

In addition to annual reports there are certain interim or current reports on a form designated 8-K which must be filed reasonably promptly after certain events occur in order that these events, considered important

to the fortunes of the company, may be adequately publicized. We have under consideration a reduction in the categories of events required to be disclosed so that reports on Form 8-K, although fewer, will be more truly noteworthy.

We have recently abandoned a requirement that companies coming within the other reporting requirements report each quarter on Form 9-K their gross sales and operating revenues. The abandonment of this requirement was based in part upon indications that the quarterly figures of gross sales or operating revenues may have a misleading effect because the current trend of a company's gross sales may be contrary to the trend of its earnings.

Some functions and activities which the Commission has taken on are not really required by the statutes we administer and these are receiving our critical scrutiny. In particular I might mention the publication of statistical information derived from information in our files. While undoubtedly all of this statistical information has been of value in some quarter it behooves us to consider what part of it may have duplicated the projects of others or may have been primarily of private and restricted rather than public benefit.

My talk has been very largely, it would seem, of curtailment. Although an assessment of the value and practicality of our functions would be in order in any case, I would be less than frank if I did not confess that budgetary restrictions are playing some part. The new administration has stressed the necessity for economy and we shall cooperate to our utmost. Nevertheless, it would not be economy in any

true sense if in an excess of zeal for cutting expenditures we destroyed our effectiveness as an agency serving the public interest. I have already declared our devotion to the aims and principles which are the foundation of the statutes we administer. Those principles and their practical realization, I am sure you will agree, have as much value to you and to your industry as to anyone.