

THE CURRENT CONDITION OF THE SECURITIES MARKETS
AND ITS EFFECT ON CORPORATE FINANCING

Address by

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As usual, it is always a great pleasure for me to visit with the Members of one of the Chapters of the American Society of Corporate Secretaries. Last January 6, 1957, I visited with your New York Chapter and on March 15, 1957 I had the opportunity to talk to your Houston group. Your fine organization over the years has contributed so much to our work and our efforts to make secure, from disturbing influences, the securities markets of this country. Your significant contributions can best be illustrated by the many comments and participations of your 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.

As you know, when anyone risks discussing current markets he certainly subjects himself to possible criticism for his inability to forecast correctly the trend in the stock and bond markets. Gentlemen, if I could accurately prognosticate short-term market trends or even long-term movements, I would probably retire with my ticker tape to some Mediterranean island and bask in the sun. As you know, I sit in a commissioner's chair in the S.E.C. building in Washington, which is a far cry from a Mediterranean island.

My comments today are directed to the relationship of the money market to our country's economy, and to the financing needs of corporations through the capital market process.

Let me give you our latest figures and relate some practical developments with which we have recently been concerned--and I'll leave the crystal ball-gazing to you gentlemen who are so much

better qualified to indulge in such a pastime.

In the first 9 months of 1956, corporations offered for public sale \$7.9 billion of corporate securities. For the very same period of 1957, corporations have offered \$9.9 billion of securities--representing an increase of \$2 billion for the like period. Certainly these rather dramatic figures are realistic indications that securities offerings are continuing at a high rate. They bear an obvious relationship to the discount rate which during this period has been consistently going up, a trend which, as you well know, was recently reversed by the Federal Reserve Board. The record highlights the point that corporations have been looking to the public capital markets more and more for the financing, in addition to retained earnings, essential to support their programs of expansion as well as for other intra-corporate development.

Significantly, such dynamic activities relate to a very important phase of this Commission's work with which your various corporations are concerned--the maintenance of sound securities markets.

The ingenious mind of man never ceases to discover and develop new ways of circumventing statutory safeguards and the securities business, if any, is the field in which the mind of subversion seems to be of the highest order. We are continuously battling those elements which devise schemes to "milk" the American public. As long as individual investors are being "burned" each day by schemes which seek to wrench their money from them, the more difficult will be the task of spreading the capital market participation to a

larger segment of the American public. The figures I first recited to you clearly indicate that more public financing is being resorted to by corporations and certainly the savings of the American people are the primary source from which this money must come. This Commission, therefore, cannot sit idly by while schemes are daily concocted to take money by false pretenses and otherwise from the American investing public. The loss of even one investor resulting either from a bad experience or duplicity must be cause for great concern to industry and the Commission.

To illustrate what has been done to keep the financial markets free of subversive influences, let me report the following:

In the last fiscal year ending June 30, 1957, we have referred 26 criminal cases to the Department of Justice, involving 132 persons--the largest number in the last decade. In the last two fiscal years, 87 injunctive cases were instituted by the Commission, with 246 persons named as defendants.

These figures are important because they illustrate that the Commission has accelerated its enforcement activities at the same time that this nation's economy has achieved heretofore unequalled horizons. Although the last year has indicated less activity on share sales on the New York Stock Exchange, corporate financing has, nevertheless, been on the increase. It seems most obvious to us that we have an urgent enforcement task because the slight decrease in market activity, when coupled with increased corporate financing, dramatically illustrates the vital need for finding new investors. The savings of Americans who have heretofore not invested in the securities of

American business must be found, solicited, and attracted into the capital markets. Our enforcement actions must necessarily be on the increase so as to prevent any possibility of any injury as a result of fraud to such new investors.

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 a year 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 30 years ago that summarized informational materials of a most inflationary type were circulated to assist flotation of financing by misleading and misstated means. The evils inherent in abbreviated brochures can best be understood by looking at some "tout" forms distributed by Canadian brokers and dealers about some speculative securities. These abbreviated sheets tend to omit most of the vital statistics and are anathema to anyone who seeks the complete facts about an investment. 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.

Incidentally, I want to let you know that we have developed an excellent liaison with the provincial authorities in Canada and these "tout" sheets at the present time are definitely on the decrease.

Let us be realistic! In my opinion, the average investor does not scrutinize a prospectus. However, most persons have brokers or dealers who utilize financial advisory services. These services are constantly analyzing your companies and comparing their respective performances within the particular industry and generally. The public

receives digested information which emanates from investment advisors and brokers. Some of the information collated from filings with this Commission includes figures such as current ratios, debt ratios, book value, yield on investment, and numerous other yardsticks which guide investors. The very soundness of these figures and their public nature is the one salient difference between the '20s and the '50s. I believe the Commission's contribution to our economic development is the very key to the absence of volatile market action. Market movements can certainly be significant but the emotional factors behind human action have been tempered and calmed by cold, hard, investment facts behind our securities markets. The very firm recovery of the market after President Eisenhower's recent illness illustrates the resilience of our economy. Of course, we cannot control human emotions and the reactions that followed the news of temporary illness to our great President. The fact that the market action is significant does not serve to point out any weakness in our securities markets but rather highlights the respect and admiration the American public investor holds for his Chief of State.

Let me also add, as an aside, that the soundness of these markets is best emphasized by the fact that our study of the market activity following immediately the announcement of the President's illness established that institutional companies and mutual funds were the heavy purchasers at the height of the sell off. The action of these sophisticated investors is the finest market barometer that I can use to support my position.

Last year the Commission proposed a rule amendment that

would lower our disclosure and accounting standards for large foreign corporations. I voted against it. I'll continue to vote against any advantage extended to particular groups which runs against the fundamental concepts of Securities Act disclosure. Only recently I was in the minority because I insisted on opposing an exemption accorded a corporation domiciled in Europe from disclosing the salaries of officers and directors as required by Item 17 of Form S-1. I firmly believe that we should encourage investment by the American public in foreign business in the community of free nations, but I cannot, as a matter of law or fair play, understand why such foreign corporations should be exempt from the standards that domestic issuers must meet. This very group of American Corporate Secretaries opposed disclosure of such information 23 years ago, yet in these intervening years you appear somehow to have come around to our thinking. I believe that lessening of the disclosure standards in any way and for any group makes no sense and helps to weaken the very bulwark of a sound securities market.

At this time, I want to introduce to you the General Counsel of the Securities and Exchange Commission, Mr. Thomas G. Meeker. Tom has been kind enough to find time in joining me despite his rather crowded schedule. I have asked him to report to you on the Commission's Legislative Program, which is most appropriate with the New Year and the reconvening of the United States Legislature.