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ADDRESS

of

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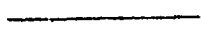
Chairman, Securities and Exchange Commission

before the

ANNUAL MEETING OF THE WESTERN DIVISION

of the

AMERICAN MINING CONGRESS



CITY AUDITORIUM

Denver, Colorado

Thursday Afternoon - October 1, 1936.

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This opportunity - to put before a group such as this some of our common problems - is for me an unusual and most welcome one. In the three and one-half years that I have had a concern with the administration of the Federal Securities Act of 1933, I have naturally had to cope with the many and complicated problems of finance that relate peculiarly to mining. We have had the aid of experts on our staff who were taken directly from the industry. We have had the help, readily given, of various professional mining groups. We have had the hearty and sincere cooperation of those members of Congress whose familiarity with the industry has sprung from long association with its practical problems. Out of these discussions have developed both our aims and our program, and this occasion affords a really unique opportunity to lay these before all of you.

In approaching the questions involved in the financing of our mining industry we must recognize at the outset that we are dealing with matters of great national significance. The problems of an industry such as this, which produced one and one-quarter billions worth of raw materials in 1935, and which ranks with agriculture as a basic industry, are truly national problems that deserve careful and sympathetic study. Furthermore, mining finance, especially in the precious and semi-precious field, possesses characteristics different from those commonly present in ordinary industrial financing. Where, in the average manufacturing industry, the problem of successfully distributing the product is integral to the problem of manufacture, in precious metal mining it plays a much lesser part. Instead, in precious metal mining, the discovery and development of a source of supply becomes paramount.

This emphasis on the continuing need for new sources of metal injects into the mining industry and its financing an element of speculation different in character than that found in other fields. Admittedly this speculative element is markedly less in the developed enterprise, but any discussion of mining finance must recognize that this speculative characteristic exists to one degree or another as a normal condition in all mining. This very fact, unfortunately, has been seized upon by unscrupulous promoters who use it as a lever for the development of their schemes. The speculative nature of mining is used as a pretext and a justification by those who promote securities rather than mines and who are ever ready to promise a pot of gold at the end of every rainbow. I cannot emphasize this fact too much, for it is of vital concern to recognize that the very characteristics of this splendid industry are such as to make it possible for men with no consciences to bring discredit upon it. And from these men we all suffered. Money, the precious life-blood of the industry, was diverted away from legitimate investment and legitimate speculation into the pockets of those who had no concern for the welfare of the industry and who had never really sunk their roots into the territory from which they sought a livelihood.

The principles of the Securities Act of 1933 are admirably adapted to dealing with mining finance. That Act recognizes expressly that in a true sense all investment is speculative, in that its value depends on future returns and as such is subject to contingencies both known and unknown. Furthermore, following the democratic assumption that the safety of the people lies with the people, the Act says in no uncertain terms that the question as to whether any individual should part with his money for a share in an enterprise should be left to the individual. It does not insist upon particular

methods of financing. It does not seek to limit promoters' profits or distribution costs. It does, however, insist that these and other known elements of the venture must be set forth clearly and unequivocally. Anything else is, and should be, at the seller's peril.

In dealing with this general question of the relationship of the Securities Act to financing, it becomes important first to describe the field in which it operates. The province of the Act is, as it constitutionally should be, that in which the mails or instrumentalities of interstate commerce are employed. But even in this field of interstate commerce, an effort is made to distinguish between problems of financing which are national in character and those which are not. The field of private financing is placed outside the province of the Act. When an individual limits his appeal for funds to a limited group of friends or associates, who presumably have not only first-hand knowledge of that individual, but also of his venture, the safeguard of mutual trust and confidence is probably better as a practical matter than any that the law can devise. A second field, in which the application of the statute has been left to the discretion of our Commission, includes offerings of a size less than \$100,000, which, because of their limited character, do not present the national problems involved in the larger size offerings. It is only with the largest offerings, made with all the elaborateness that attends corporate offerings, through salesmen and to investors removed often thousands of miles from the state of operations, that our Commission is principally concerned. To these the mechanism of registration specified by the statute becomes applicable.

This brief summary of the scope of our statute will show you that our problem in the mining field is a two-fold one: first, to carve the exemption for the small public offering in its most practical and desirable form, and second, to fit the mechanism of registration to meet the needs of the industry. That these two questions should have been solved immediately to the satisfaction of everyone concerned was obviously too much to hope. But inasmuch as we are on the eve of projecting new solutions to both of them, and inasmuch as we seek to get the benefit of your informed judgment on the practicability and desirability of these solutions before adopting them, let me put their major outlines before you.

First, as to the exemption of the small public offering. The conditions under which it is granted today have from our experience shown that it is not accomplishing its purpose of being restricted to that financing which is reasonably limited from the standpoint of distribution. The type of promoter whose chief, and, perhaps, only asset is a mailing list has been seeking the shelter of these regulations. It seems to us that the promoter who seeks a hundred thousand dollars or less should, if his proposition has any merit, be able to raise that amount by some means other than a high pressure mail or salesman campaign. He should be able to raise his funds within the boundaries of a few states, and there should be little objection on his part if our sole requirement were that he comply with the state securities laws in the states in which he solicits funds. On the other hand, if the area of his solicitation is national in scope, and he seeks to solicit by the use of the mails in a dozen or more states, to require registration with the national agency seems a desirable

and sensible method. In other words, the solution we suggest is this - to give an exemption in offerings of a hundred thousand dollars or less in all cases where the corporation will show compliance with the state laws in the states in which it solicits funds. This obviously gives an option of a very practical kind to the corporation. If it is going to solicit funds in only a few states it may choose to qualify in these states rather than seek registration with us. If it is going to solicit throughout many states, in what will obviously be a substantial mail campaign, it will as a practical matter choose to register nationally rather than qualify with numerous state agencies. The idea seems to me to have much merit. It will naturally arouse opposition from those enterprises who can live only by soliciting far from home, where the truth as to their nature is unlikely to penetrate. The genuine small enterprise, speculative though it may be, should seem to me to welcome not only the practicality of thus being able to deal locally with a local problem but also of thereby getting rid of the unfair competition of its parasitic neighbor.

Obviously, not only the success of this small public offering device, but the success of the entire program depends upon the facility with which registration can be effected. This leads me to the second problem I want to put before you.

We started with one general form of registration applicable to all industries. Not only did that form possess the inadequacies that would inhere in almost any first effort, but the differences intrinsic to various industries made for difficulties in administration that were probably as acute in the mining industry as anywhere else. Despite that fact, common sense in administration made possible its adaptation to the situations presented by the extractive industries so that since the inception of the Act roughly \$125,000,000 of mine financing has been effectively registered. But the recognition that we could do better both for the mining industry and for the investor was always present, and with that in mind we prepared a new form of registration for mine financing.

Not only has a great deal of work and effort gone into this form, but, in order to avoid serious mistakes, it was submitted a short time ago to a representative list of prominent mining men, both in the East and West, for criticism. Much genuine and constructive criticism has already been offered.

Our chief concern during the past few years has been with companies engaged in gold and silver mining. Enough similarity exists, however, between these companies and base metal mines to make it possible for us to work out a single registration form covering all types of mining. But inasmuch as there is this preponderance of precious metal registrants, the form is particularly adapted to their use. Furthermore, we have concerned ourselves in this instance with the issuance of securities by companies in the promotional stage. These companies include the simple pure prospect, the semi-developed property as well as the developed property that has not yet reached the stage of actual production. Obviously the information available with reference to these different types of companies

varies, and flexibility in the amount and kind of information required must be an essential feature of any registration form. If a property is primarily speculative, the requirements cannot extend beyond insisting upon a fair and competent summary of such pertinent facts as are definitely known regarding the property, together with the opportunity to present the basis of belief regarding such development as is contemplated.

Of prime importance to investment in mining enterprises seem to be the following factors: the property, the management, the development program, including the uses to which funds will be put, the promotional features of the deal, and the costs of distribution and underwriting. These are the features which the form seeks to penetrate, and I should like to sketch briefly the ways in which it tries to do so.

In dealing with the question of the property, the attempt has been made to differentiate those mining properties where sufficient work has been done to disclose tonnages of proven or probable ore from those properties that are still relatively undeveloped. It is recognized that in properties of the first group it is possible and desirable to present the facts concerning the presence of such ore in the form of an assay map. It is also possible, where such ore has been exposed, to make an estimate of operating costs, based on available information - and no more than an estimate is asked for.

But where definite tonnages of proven or probable ore are not claimed - that is, where the property is still undeveloped - neither an assay map nor a cost estimate is asked for. Indeed, under these circumstances it might be misleading. Instead, only such customary surface and underground maps showing what development work and sampling have been done need be supplied. Generous latitude is afforded a registrant of a partially opened up property to present all facts justifying his opinion for the expenditure of funds in development. This should give ample opportunity for the raising of capital to open up resources which have not been exposed, and the certainty of which can be determined only by development.

The underlying thought back of the property questions is to eliminate statements regarding tonnages, assay values, and costs that have little if any factual basis. The registrant can tell all the facts regarding these vital points. But when definite claims are made of concrete figures of tonnage, values or costs, they must be supported by facts. On the other hand, it is recognized that funds may be legitimately sought for purely prospective undertakings, but in that event numerical estimates, which obviously cannot be supported by facts, should not be claimed.

In this attitude we have already been preceded by our friends in Canada, where precisely the same position is taken under new rulings recently adopted by the Ontario Securities Commission; namely, that responsibility must be accepted for every statement regarding tonnages and assay values, and that competent exhibits justifying such claims must accompany every application filed with them.

The engineering exhibits that we would require are called for primarily in the case of the semi-developed and developed properties. No hardship should be involved in furnishing them, for the well-run mine possesses them

already. Except under unusual circumstances, the inability to furnish such exhibits is in itself a reflection upon the management of the enterprise. As such it is a warning to an investing public that management, even though perfectly honest, is not doing an efficient job. Thus, it may well prophesy loss in what would otherwise be a sound investment.

Throughout in seeking adequate information concerning the property, for the sake of potential investors, our efforts have been bent towards getting facts that would generally seem to be available and that are intrinsic to any judgment as to the possible success of the venture. Brevity in description is desired, and undue burdens are sought to be eliminated.

In dealing with the development program, flexibility of approach seemed essential. An opportunity is afforded to set forth estimates of expenditures in stages so as to connect them logically with the development program. What is asked for is not precise, exact amounts, but the type of tentative budget that a mining engineer would set up for his client as estimates of development and equipment expense. What his client, the registrant, already has, it seems fair should be available to his new partners, the investors.

Much effort has been spent in seeking to get a short but clear story of the circumstances surrounding the promotion of the new company. Our experience in this regard tells us that frequently herein lies the test as to whether the projected enterprise is a promotion of mining or a promotion merely of stock certificates. The Act does not authorize the Commission to determine what the promoters shall take for their efforts as contrasted with what the public will get for its cash contribution; the only limitation upon the promoters' rewards insofar as the Act is concerned, is that no false statement be made in regard thereto. Thus we do insist, and I think rightfully, that both the nature of the promoter's contribution and his compensation for it should be set forth clearly and not buried beneath an unintelligible mass of dealings between the promoter and the corporation during the stage when the corporation is but the promoter under a different name and what appears to be a bargain is nothing more than a transaction with himself. The promoter's services may be worth much or nothing at all to the corporation. The potential investor must determine that question for himself, but he should have set forth before him the basis of that bargain.

Hardly less significant as a test of the genuineness of the enterprise is the data concerning underwriting and distribution costs. How much of the money goes into the mine as contrasted with how much sticks with the security salesman en route, is of the utmost importance. Furthermore, pricing also tells its story. In an undeveloped property pricing that steps up according to the quantity of securities sold without regard to any legitimate factors that enhance the value of the stock is of itself a lure and a delusion. The fair underwriting or distribution program should not have to compete with these methods, and disclosure reduces to a minimum this type of unfair competition.

In dealing with the financial history and the present financial position of a promotional venture, we have learned to realize that adequate disclosure can be obtained by a greatly simplified form and far less comprehensive schedules. Accordingly, while we retain

the balance sheet, the schedules which have been required heretofore have been greatly reduced, and in place of the profit and loss statement there is required only a statement of the funds which have been available to the issuer and the uses to which they have been put.

These then are the salient features of the plan. That some ironing out will have to take place is obvious. But I believe that you can count on us to show a non-technical, liberal temper in dealing with the problems which registration may raise. Our function is to be industrially minded. Indeed, my conception of our work is that of the conservation of our financial resources. Every dollar that we prevent from going into an illegitimate scheme is a dollar saved not only for the investor but for industry. Every illegitimate enterprise that we break up is one more blow to unfair competition, one more step in the reconstruction of the investors' confidence in business itself. We must hope that this rebuilding will follow lines free from the weaknesses which some years ago threatened the very structure itself. What those lines shall be, it is not wise to dictate. But the fundamental principle that investors should be partners in the enterprise and as such entitled to information that will let them know of what their partnership consists is essential to any sound program of corporate finance.

From the application of such a principle an industry such as yours has all to gain and nothing to lose. You and we look upon industry as a way of life, a method of enriching all those who participate in it, a genuine partnership between management and ownership. As such you seek the type of mutual trust and confidence between management and security holders that will endure through bad times as well as good. Nothing cements a bond of that character so strongly as adequate and full disclosure. Our function is the simple one of promoting ways and means of disclosure so that the investor who has placed his funds in the hands of management may know what is being done with that money. If we perform it properly, it makes your task so much easier, your cares that much less.

That realization is nothing new to the representatives of your industry with whom I have had the privilege of conferring heretofore. It is the basis upon which we have lived and worked together, interchanged ideas, and fashioned our plans. It seemed to us then that the need for an adequate exchange of information between management and the security holder increases in importance proportionately as the speculative character of an enterprise increases. Losses are always hard to take, but losses arising from undisclosed sources tend to breed not only disappointment but suspicion. The losses no human agency can avoid, but the causes for suspicion are within control. To the extent that we can remove them, we serve industry and the investor, helping to build the basis for a credit structure that will endure. And what I assume that you wish for is credit from the public on an enduring rather than a here-today-but-gone-tomorrow basis, conservation of the public's dollars for forthright investment, all at a reasonable and practical cost. That we are furthering that program by our presently contemplated steps is my hope, and my belief is that its success to the spiritual and material welfare of industry will be of greater moment than any of us can now foresee.