Address By

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At the outset I should like to state that I am thankful for the opportunity to tell you a little about the work of the Securities and Exchange Commission not only because I enjoy talking about what we do, but also because I believe that each of us who labors as a public servant in some part of the field of financing should have a fairly accurate idea of what his co-laborers are doing.

As many of you know, the Securities and Exchange Commission is a bi-partisan body whose members are appointed by the President with the consent of the United States Senate. The Commission, however, is not limited to the performance of executive functions. The Congress, in adopting the various securities acts, and in placing the administration of these statutes in the Commission, delegated to it a variety of complex responsibilities, some of a quasi-legislative nature; that is, the Commission was authorized to implement the statutes by the promulgation of rules and regulations which would have the effect of law. It also obligated the Commission to undertake quasi-judicial functions in the consideration and approval or disapproval of many complicated business transactions, the imposition of administrative sanctions, and the grant of administrative exemptions for the consummation of various types of financial transactions. The executive functions to which I have referred include the investigation of possible violations of, and the enforcement of, the laws administered by the Commission by administrative action, direct resort by the Commission to the courts for civil remedies, and by referral to the Department of Justice, for criminal prosecution.

The Commission has responsibilities under seven statutes. A brief description of these statutes and of the Commission's functions thereunder will serve to illustrate a range of administrative discretion and authority rarely found in one agency. It will also serve to illustrate the place of an administrative agency as an arm of the government.

Before discussing the statutes, I should like to describe briefly the organization of the Commission. Apart from the five Commissioners the Commission has a central office staff in Washington divided into three operating Divisions which are concerned with the day-to-day administration of the statutes. The Division of Corporation Finance examines registration statements, applications for registration of securities to be listed on stock exchanges, proxy soliciting material, annual and interim reports of companies, and, in general, administers the disclosure requirements imposed on the issuers of securities. The Division of Trading and Exchanges handles matters relating to brokers, dealers, and investment advisers; the registration and regulation of securities exchanges, and of registered associations of securities dealers. It also carries out many of theinvestigative and enforcement functions of the Commission. The Division of

Corporate Regulation administers the Public Utility Holding Company Act of 1935 and the regulatory portions of the Investment Company Act of 1940. I will discuss those Acts at greater length in a few minutes. In addition there are an Office of the General Counsel, who is the chief legal officer of the Commission and represents it before the courts, and an Office of Opinion Writing which assists the Commission in the drafting of opinions and orders in the execution by the Commission of its quasi-judicial functions and which operates independently of all other branches of the Commission's staff.

The Commission has nine regional offices and four branch offices located throughout the United States. They are entrusted with the responsibility for carrying out a variety of functions of the Commission which are most effectively accomplished locally in their respective areas. The staff of the Commission includes accountants, securities analysts, attorneys, engineers and other technicians. In addition, the Commission upon occasion calls upon the resources of other departments and agencies of the Federal Government.

The statutes administered by the Commission generally relate to the field of securities and finance. These laws have a direct impact upon the whole process of capital formation. They also affect the relationshipsamong the various interests which make up modern corporate enterprise, that is, management, security holders, controlling persons and others.

The first of the securities acts called the Securities Act of 1933 is sometimes referred to as the "truth in securities law." This Act relates to the public offering of securities by the use of the United States mails or the means or instrumentalities of interstate commerce and foreign commerce. It has two basic objectives, (1) to provide potential investors with material financial and other information concerning securities offered for public sale and (2) to prohibit misrepresentation, deceit and other fraudulent acts and practices in the sale of securities generally.

To accomplish the disclosure objectives of the Act, it is provided that before non-exempt securities may be sold to the public, a registration statement containing information regarding the issuing company and its securities must be filed with the Commission and must become effective, and that investors be furnished with a prospectus which summarizes the information in the registration statement. I should like to emphasize that the basic philosophy of this Act is to furnish to the investor the necessary information and to leave to him the decision whether or not a security should be purchased. Except for fraud and other forms of deceit, the Commission has no authority to prevent the offering of securities to the

public. One of the basic functions of the Commission under this Act is to devise appropriate forms and procedures so as to bring to the attention of the prospective investor effectively the facts concerning the company and concerning the security offered to him. It should be emphasized, however, that the action of the Commission does not involve approval or disapproval of the security offered. In fact, it is a criminal offense to represent that any action or non-action by the Commission, or the fact of registration, is in any wise an indication of approval by the Federal Government of the security or of the correctness of the material filed. Unfortunately this latter fact is not as fully and widely understood as it should be.

Other statutes administered by the Commission, as I will note in greater detail in a few minutes, do afford the Commission authority to approve or disapprove transactions, or to permit their consummation only upon conditions which the Commission may impose.

Certain exemptions from registration are provided for in the Act. Briefly these are (1) private offerings to a limited group of persons or institutions who do not propose to redistribute the securities, (2) intra-state offerings where the issuing company is organized and doing business in that state, (3) securities of municipal, state, Federal or other governmental instrumentalities, of charitable institutions, of banks and of carriers (the issuance of which is subject to the Interstate Commerce Act), and (4) offerings not in excess of certain specified amounts made in compliance with certain regulations of the Commission. In addition to the foregoing exemptions, the Congress, in 1949, amended the Bretton Woods Agreement Act by adding Section 15, which exempts from registration under both the Securities Act of 1933 and the Securities Exchange Act of 1934 (to which I shall refer in a moment) securities issued or guaranteed as to both principal and interest by your Bank. Under the amendment the Commission is empowered to determine the type of reports to be filed with it in the public interest and in the protection of investors. Regulation BW was adopted by the Commission in 1950 to prescribe the periodic and other reports to be filed by the Bank. Last month we adopted amendments to Regulation BW which were the result of a recognition of some of the operational difficulties of the Bank and our own experience with the rules originally adopted.

I should like to digress for a moment to express our appreciation of the cordial and cooperative relations which have always existed between the Bank and the Commission.

The second, in point of time of enactment, of the Acts we administer is the Securities and Exchange Act of 1934, which covers the regulation of

stock exchanges, the registration and disciplining of brokers and dealers, the filing of current information concerning securities traded on national securities exchanges and certain other companies. Under very general standards, this statute also empowers the Commission to promulgate rules regarding the solicitation of proxies by management and by others from security holders for use at the annual and other meetings of the corporation. In addition the Act makes it unlawful to manipulate the market price of securities, provides for regulation of margins (which are, by law, prescribed by the Board of Governors of the Federal Reserve System) and prohibits fraud in the purchase and sale of securities. Thus it may be seen that while this statute extends the basic disclosure philosophy of the Securities Act to securities which are traded in the principal securities markets of the country, it also vests in the Commission a variety of regulatory responsibilities and techniques.

The Public Utility Holding Company Act of 1935 gives the Commission fairly close regulatory power over the financial affairs and corporate structures of electric and gas utility holding company systems. Under this law, as distinguished from the Securities Act of 1933 where, as I have said, the only requirement is the furnishing and dissemination of information, the Commission does review financing plans of system companies. The Commission also has the job of requiring complex holding company systems to reorganize so as to bring them within the framework of statutory requirements and to simplify their securities structures.

The Trust Indenture Act of 1939 has as its basic objective to insure the services of an effective and independent trustee to enforce the rights of holders of debt securities. To accomplish this objective, the Act requires the indenture between the issuer and trustee to include specified protective provisions as well as standards for the eligibility and qualification of the trustee.

The Investment Company Act of 1940 requires investment trusts and investment companies to register with the Commission and subjects their activities to regulation in accordance with prescribed standards for the protection of investors. The Investment Advisers Act of 1940 was enacted at the same time as the Investment Company Act to provide for the registration of all persons who for compensation engage in the business of advising others with respect to their security transactions and makes unlawful practices which constitute fraud or deceit.

Chapter X of the Bankruptcy Act provides that in certain circumstances the Commission has the duty, and in others a discretionary power, to serve as adviser to United States District Courts in connection with proceedings

for the reorganization of debtor corporations. Either at the request or with the approval of the courts it participates as a partyto the proceedings and renders independent expert advice and assistance to the courts.

These seven laws contain the basic statutory authority under which the Commission operates. In addition, however, a good part of the substantive law is embodied in the rules and regulations which have been promulgated under the various Acts. Under these Acts and rules there has grown up a body of precedents, by decision of the courts and the Commission in contested cases, by published releases and by administrative interpretation on a case by case basis.

The substantive provisions of the several statutes and the various rules and regulations are inter-related in many ways and it has been feasible to effect a reasonable (but still by no means sufficiently high) degree of standardization and uniformity of forms, procedures and interpretations. For example, the Commission has effected a comprehensive simplification of a number of registration and reporting requirements to eliminate duplicate filings by companies subject to more than one Act. Uniform regulations have been prescribed as to the form and content of financial statements filed under the Securities Act, the Securities Exchange Act, and the Investment Company Act. Similarly, uniform practices, interpretations, and forms apply to proxy solicitations under the Exchange Act, the Investment Company Act and the Holding Company Act.

In the adoption of rules, regulations, forms and accounting principles and policies, it is the practice of the Commission to submit them prior to adoption to all interested persons and to invite their criticisms and suggestions. Many suggestions for rule modifications follow extensive consultation with industry representatives and others affected.

A majority of the formal cases which come up for Commission decision involve applications by parties seeking permission to undertake or continue certain action or requesting exemption from requirements imposed by the Acts or the rules or regulations. In some instances proceedings are initiated by the Commission pursuant to statutory authority and in other instances it reviews certain actions of a registered association of securities dealers. In all cases which the Commission decides, the issues and pertinent facts are set out in a notice and order for hearing and, except for certain limited matters requiring confidential treatment, a public hearing is held in which any interested person may seek leave to be heard or to intervene.

I have given you some detail in order to indicate the nature and the sources of the law which the SEC administers. I should also like to spend a few minutes to explain how we review some of the material filed with us

and to discuss at least one of the various types of problems we deal with in our day-to-day operations.

The Securities Act of 1933, as you will recall, seeks to protect the investor by providing him with essential information regarding newly offered securities. The principal part of the registration statement required to be filed with the Commission is a copy of the prospectus which is to be distributed to each purchaser. In certain offerings under $300,000, a somewhat simpler procedure is available, involving the use of an offering circular which must contain more limited basic information concerning the security, the business of the issuer, and the terms of the offering.

The statute upon its face seemingly provides only for the imposition of administrative sanctions and for the seeking of other remedies by resort to the courts in the event the information filed with the Commission does not conform to the basic statutory standards and the requirements of the form for registration prescribed by the Commission. Thus, if the registration statement or the prospectus or the offering circular contains false statements or misrepresentations or half truths, the Act authorizes the Commission to issue a stop order or to seek an injunction. In order that the Commission may intelligently determine whether to exercise the power granted under the Act, it must necessarily examine each registration statement and offering circular. Rather than resort to formal adversary proceedings which are reserved for cases where fraud or wilful violation appears, the Commission has developed an administrative technique by which the issuer is advised informally of deficiencies and afforded an opportunity to amend so as to avoid the necessity of proceedings.

We have successfully adapted this technique to much of the work of the Commission which relates to the examination and review of documentary material filed for public inspection and information. Unfortunately, however, it has also created the impression that the Commission in effect passes on the merits of securities referred to in these documents or vouches for the accuracy of information in such documents. It must be apparent, however, that the Commission could not possibly have a detailed knowledge of the business or operation of a particular issuer or solicitor of a proxy. Further, it must be clear that to make in every case a detailed on-the-spot audit type of examination necessary to assure the accuracy of the facts which a company tells about itself or its management would be prohibitive in cost and administratively impracticable. Basically, the Commission's review of material filed with it must be limited to a determination whether on its face the material conforms to the requirements of the law and the Commission's rules. This review is not, however, a cursory one and, in seeking facts concerning an issuer of securities, we avail ourselves of :

general knowledge of the staff about the business the company is in; published materials on the same subject; registration statements and reports of other companies in the same business; investment manuals; previous registration statements of the issuer or of affiliated companies; proxy statements and reports by the same company and affiliated companies and by their officers and directors and controlling stockholders; contracts or reports of the company with departments of the government or filed as exhibits to reports or statements of other companies; and miscellaneous external sources of information.

Another example of our operational problems concerns the proxy rules promulgated under powers granted in the Exchange Act. I should like to tell you a little bit of the need for this type of regulation and the problems which the Commission faces in the implementation of the statutory scheme.

As all of you know, the securities of our larger corporations are owned by many thousands and even hundreds of thousands of persons throughout the United States and abroad. The physical problems and the expense involved in attending meetings have made it impracticable for most security holders to be present and to express their views in person at such meetings. The proxy device, which is nothing more than the granting of authority to the person named in the proxy to act for the security holder, has therefore come to be of extreme importance in the conduct of corporate affairs. In considering this problem, the Congress determined that control of the proxy machinery whereby management may be continued in office indefinitely should be accompanied by a duty to inform the security holders about their corporation and its management. Subject to extremely broad standards, the Congress, therefore, delegated to the Commission the duty to adopt rules and regulations to compel those who solicit proxies to furnish to security holders information essential to an informed judgment, whether it be to elect a board of directors or to approve or disapprove any corporate proposals presented for consideration and approval.

I have selected these two segments of our work under the Securities Act and the Exchange Act to illustrate the problems we encounter in our work. Even more complex problems are frequently presented under the other Acts administered by the Commission. For example, under the Public Utility Holding Company Act, the Commission may in effect prevent an issue of securities by a public utility holding company or its subsidiary if it makes certain prescribed adverse findings in connection with the financing program. The standards prescribed for such findings are phrased in relatively broad terms, such as adaptability of the security to the capital structure of the companies in the system, the adaptability of the security to the earning power of the issuer, and the like. Consequently, in looking at a particular financing, the Commission must necessarily consider such

factors as protective provisions of senior securities such as bonds and preferred stock.

Other instances which require application of broad statutory concepts to complicated financial problems are presented under the Investment Company Act. One of the most important provisions of that Act relates to transactions between affiliated persons. With certain exceptions, the Act prohibits any affiliated person, promoter, or principal underwriter of a registered company from selling to, or buying or borrowing property from the investment company or any company it controls. This prohibition is supplemented by a provision that the Commission shall exempt by order upon application any proposed transaction if evidence establishes that its terms are reasonable and fair and do not involve overreaching, and that it is consistent with the company's business policy and with the general purposes of the Act. The disposition of such applications frequently involve unusual and difficult questions of valuation requiring the fullest use of financial experience and a delicate exercise of administrative judgment.

I have given you a bird's-eye view of the Commission as a whole. I know that many of you may have specific questions which I shall be glad to attempt to answer.