CAUTION - ADVANCE
For Release Upon Delivery

THE AMENDMENTS, A LESSON IN ROUND TABLE

ADDRESS

of

EDWARD C. EICHER

Chairman, Securities and Exchange Commission

Before the Annual Convention of the

INVESTMENT BANKERS ASSOCIATION OF AMERICA

Hollywood Beach Hotel

Hollywood, Florida

Thursday, December 4, 1941

I am very glad that you invited me to attend your convention this year, because my pleasant experience with some of your members in Washington has given me a desire to meet more of you. Also, I have looked forward to an opportunity to tell you a little about our round table discussions on amendments from the Securities and Exchange Commission point of view and to congratulate you on having selected so able a person as Mac Stewart to represent you in our conferences during the past year and a half.

A lot of water has gone under the bridge since that day in May, 1940, when we first learned that the very next week Chairman Lea of the House Interstate and Foreign Commerce Committee was to start hearings on amendments to the Federal Securities Laws. I do not presume to speak for the leaders of your Association, but I am frank to say that the news took the Commission entirely by surprise. We were simply not prepared. True, we had examined some of the bills which were then before the House, but we had never gone thoroughly into the purposes of those bills in discussion with the leaders of the securities industry. We therefore proposed that the hearings be deferred until we had an opportunity to study the subject very carefully with the representatives of the industry so that we could determine what our position would be. President Connely of the Investment Bankers Association promptly agreed.

You will recall that we almost immediately took up the subject of the twenty-day waiting period. In a remarkably short period of time - I think it was only a few weeks - we had not only agreed upon but had obtained Congressional passage of an amendment which substituted for a rigid twenty-day requirement on all issues the common sense provision that the

Commission may permit registration statements to become effective just as soon as the requirements of the law have been properly complied with. I think it is only fair to say that, at the time that amendment was passed, your leaders had some very definite reservations, but it was characteristic that they were willing to give it a try. That it has worked both to the satisfaction of the Commission and the securities industry is best proven by the fact that at the present time, after over a year of trial, neither of us has proposed further amendment to this section.

After the conferences which produced that salutary result, the industry groups retired for a summer of study, and in the Fall the conferences on the whole program began in earnest. I want to make it very clear that these were long, strenuous, shirtsleeve conferences. They were not tea parties. They did not deal with generalities, but with down-to-earth specific proposals and counter-proposals. They frequently went on for several days at a time, either with the staff of the Commission or with the Commissioners themselves. At the outset there were countless points of disagreement and the good Lord alone knows how many more points of plain misunderstanding on both sides. And of course there was no small amount of wariness on both sides. In fact, the chances at that time that we would be able to complete the discussion and consideration of the entire program amicably were probably much smaller than any of us remember. I think that the thing that really saved the day and permitted the discussions to get off on the good note which, by and large, prevailed throughout, was the mutual respect for each other's

earnestness and intelligence which characterized the conferences. There was a frank recognition on both sides that we would undoubtedly encounter many points of disagreement, but there was also a mutual determination to eliminate as many of these as possible from the final product. That we jointly succeeded to a very large extent is best demonstraged in the respective reports which your industry groups and we have sent to Congress. In short, emotion was pretty definitely ruled out of the conferences. Points of difference were discussed on a rational rather than an emotional basis. Of course this is not Utopia, nor are any of us perfect men, and there were times when blood pressures were a little high. But I do not think I have ever seen almost continuous conferences on a single subject between groups representing different interests progress so smoothly over as long a period of time. In fact it is impossible to pat your conferees and their colleagues from the industry on the back without in the same gesture doing the same for us and particularly our staff.

I think you might be interested, for example, in hearing the detailed story of the conferences on the part of the program that is perhaps the most vital, both from the Commission's standpoint and that of the investment banker. I refer to Section 5 of the Securities Act. It is a good example because it involves matters in which there were ultimately elements both of agreement and disagreement. It was perfectly apparent when the conferences opened that the representatives of the securities industry were acutely interested in recommending some amendment which would allow solicitation during the so-called waiting period. It must also have been perfectly obvious to your representatives that the Commission was pretty definitely opposed to any proposal which would permit the investor to be

sold either on incomplete information or before the effective date of the registration statement. These positions were very far apart - so far apart indeed that less conscientious conferees might have immediately thrown up their hands in despair of ever making any progress. But our men and your men were made of sterner stuff. Your men did not place their claims on any high-sounding economic level. They freely admitted, and we respect them for it, that they were faced with a serious business problem in not being able to circulate sales literature prior to the effective date of a registration statement. They pointed out that under present statute the prospectus for many issues does not get to the investor until the time of the confirmation of the transaction after he has decided to buy. They also pointed out that in areas of more scattered population it was unduly expensive to send a full prospectus to a lot of prospective customers only one or two of whom might be interested in buying. In other words, they put their arguments on a straight business basis. We, in turn, made no bones of the dilemma we faced in assuring investors adequate protection. We pointed out that the Securities Act is not a Blue Sky law but a disclosure law. The backbone of the Act, we asserted, was information for the investor before he buys so that he can have the facts on which to make his decision. We admitted that the law gives the investor recourse against the issuer and the underwriter for false or misleading statements, but we took the position that the important thing is to protect the investor before rather than after he has bought.

There were many long hours of discussion of these respective points of view before anything concrete developed. I think we were slower in reaching specific suggestions under this Section than anywhere else during

our conferences. Finally the proposal was made, and I really don't know who made it first, that dealers might be authorized to distribute *after* the effective date something like the present newspaper prospectus to find out if potential customers were interested. We agreed on that, with the understanding that something would have to be done to make sure the customer was not finally sold on the basis of this piece of paper but on the basis of the full prospectus. Then, we went a step further. We agreed on the use of this short form prospectus for circularization of information *before* the registration statement became effective, again with the same proviso as to the full prospectus. Then we came to the point at which it was noted that it might be well to legalize the so-called red-herring prospectus, which some houses have used to circularize dealers before the effective date under SEC rules. From this discussion there sprang the proposal now before Congress for what has come to be known as the "priceless" prospectus. This name was given to that prospectus not because of what it contains but because of what it omits. This prospectus is as complete as possible but does not include price, spread and underwriting data. It may be legally employed *before* the effective date of the registration statement. This was another big step towards agreement - and very significantly - towards meeting the problems of your industry. In short, the Commission had conceded that it was willing to let the underwriters circularize the dealers and the dealers their customers with admitted partial and incomplete information before the registration statement became effective - with but one important question mark.

How, with this new speeding up of the selling machinery, were investors to be adequately protected? How were they to have the opportunity

of availing themselves of the full and complete information and to avoid the risk of being misled by partial information? And here, as you well know, was where we reached a point of disagreement which has not yet been resolved.

Your representatives took the position that the investor would receive adequate protection if, during the first seven days of the offering, he were given the right to cancel his order to buy by noon of the business day following his receipt of the prospectus. In practice this would mean that, before the statement became effective and even before the full information was on file with the SEC, the investor's order could be solicited on the basis of the short form prospectus or a priceless prospectus. The order would be confirmed immediately on the effective date and the investor given a copy of the full prospectus with a right to cancel his order by noon of the next day. This proposal is a far cry from the protection an investor needs if he is to be solicited on the basis of incomplete information and we felt it was going too far. We genuinely wanted to help the investment banker and the dealer in their distributing problem and recognized of course that this program would help. But our primary concern was for the investor and we could not in good conscience go along with any plan for selling which did not assure him of a chance to study the full information before he was actually committed to buy. The free circularization of incomplete data made this more acute. And frankly, we were interested in seeing that the smaller dealers had a chance to find out what they were being asked to sell before they had to make a commitment to the underwriters. We had quite a few letters from small dealers on that subject. We felt that giving either the small dealer or

the investor a chance to read the prospectus after his name was on the dotted line would do little if any good. Also, it could not be overlooked that this would open the statutory door to unseasoned as well as seasoned securities and to underwriters and dealers of unknown as well as those of known responsibility. We therefore took the position that we could go along with the circularization and solicitation during the waiting period only if the buyer were given a day in which to look over the final prospectus before he agrees to take the security.

I have told this story not to make an argument - for the arguments have already been made before Congress - but only because it so well illustrates a subject on which we jointly experienced the satisfaction of progressive agreement on the one hand and the disappointments of inability to reach agreement on the other. On both sides we worked conscientiously to overcome the vital difference in our position. A number of lengthy conferences took place even after we thought we were finished and ready to present our views to Congress. I mention this because it demonstrates the eagerness of both the Commission and the representatives of your industry to present a joint program. It is also important that even in these final conferences, when one might have expected to see tempers run high both because of the long strain under which we had all worked and the importance of the study, there was constant evidence of a serious even-tempered determination to do a job. And these final conferences did not end in a blow-up. There was simply a final peaceful agreement to disagree, mingled of course with regret on both sides that we had not been able to get together.

As you know, the hearings before the House Committee on the Securities Act have been exhaustive (and at times exhausting). But there is no doubt that, as a result of the sweat and toil of our long discussion together, we have all made a clearer presentation before Congress than would otherwise have been possible. But we have done much more than that. We have progressed far along the road to a mutual understanding and respect for each other and each other's problems. From this understanding will flow, I am sure, benefits as important perhaps as from anything that can ever be written into the statute books.