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Speeches - SEC. Staff

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ADDRESS

of

JAMES J. CAFFREY,

Chairman, Securities and Exchange Commission

before the

AMERICAN MANAGEMENT ASSOCIATION

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Mr. Dodd, Gentlemen:

The opportunity to talk with you today was most welcome. Your association may not be predominantly interested in the technical aspects of finance. But, as business men charged with the management of our vast industrial and commercial plant, its members are aware that the problems of finance are the problems of business. One of the major functions of our financial mechanisms is to provide a channel between savings and production. The financial process justifies itself only to the extent that it serves well the need of the investor to find profitable outlet for his savings and the need of industry to have access to the national pools of saving. That is easy to see when you are looking at underwriting, whose primary function is to effect the public distribution of new securities. But it is equally true of those parts of the financial mechanisms which are concerned with trading in securities already issued; that is, the securities exchanges and the broad trading markets apart from the exchanges - the so-called over-the-counter markets. These markets have a direct and material effect on the financing of industry. The "tone", "temper" and "stability" of markets may determine whether a particular financing planned by a business management may be accomplished at a particular time and will have a direct bearing on the price of the issue.

In a broader sense the continued health, vitality, and honesty of the trading markets are essential to the continued financing of American industry by our traditional methods. As long as there are investors there will be securities markets. And as long as business continues to call upon investors' savings it will be necessary to keep up the American investor's confidence that he can buy his investments on the basis of adequate knowledge about the facts, trade them in markets free of manipulative influences, and hold them without fear that insiders are abusing their advantages.

It is the short view that securities regulation is a bar to legitimate business. It is the long view that business and investors have a common interest in the maintenance of sound standards of corporate honesty, full disclosure, and decent markets. Keep those standards high and enforce them vigilantly and you keep open the flow between savings and enterprise. Debase them and abuse them and you block that flow.

In that sense modern business calls upon its managers for the exercise of qualities best summed up, I believe, in the word "statesmanship". You all recognize what I mean when I say that the corporate manager is no longer a superforeman whose function it is to see merely that the machines are well oiled and in good working order. The American corporation has become the focus of a great many social interests. Those interests are often at loggerheads and the reconciliation of their conflicts in the light of the best possible efficient and honest running of the business has come to require the exercise of qualities of statesmanship. And in the meaning of that word lies imbedded the notion of responsibility.

A good many of you are undoubtedly weary of having reiterated to you over and over again the idea that, as business men, you have obligations extending beyond the metes and bounds of your plant. For once you would like to hear what those in government are thinking and doing in recognition of their responsibility to the American economy. I will come to that, and I think I can promise you the fullest measure of satisfaction in what I have to say. But I would be striking a false note, I would be giving you a thoroughly inadequate picture of where we stand and where we must go if I did not place my remarks in their proper setting. There is, in corporate management, as in all other fields, a set of temptations to which mere human beings may easily yield. The greatest of these is to forget the responsibilities that are implied in the manager's position, to forget that the ultimate ownership of the business may be in the hands of large, unvocal interests, to forget that when he administers the affairs of the enterprise he is not doing so on his own behalf, but on behalf of others.

There are certain provisions in our laws designed to implement those natural responsibilities. I use the word "natural" advisedly. The Securities and Exchange Commission did not invent these requirements, and not even the Congress which passed the laws invented them. I think you will see, as I review them, that they are the inevitable consequences of the new position into which history has put the modern corporation and the corporate manager.

If you plan to make a public issue of securities, with certain exceptions, you have got to file a registration statement which gives the basic facts an investor needs to know to appraise the investment. If the facilities of a national securities exchange have been opened up to your company's securities through listing and registration, certain disclosure, proxy, and insider trading requirements must be obeyed. Listing can be accomplished only through the filing of a full registration statement, and, after listing, certain current reports must be filed. If a security is listed neither the company's managers nor any other persons seeking to solicit proxies from the holders of the listed securities may do so without the use of a proxy statement disclosing material facts necessary for an intelligent vote, to afford ample opportunity to indicate preferences, and to make certain facilities available to security holders who wish to circulate a short statement to their fellow security holders. Officers and directors of any company that has an equity security registered on a national securities exchange and every holder of 10% or more of such security have to file reports showing changes in ownership of the equity securities of the company.

These provisions are keyed to the view that an honest business will tell investors what they should know about what they are buying and about what they are voting on, and will afford investors an opportunity to reach their fellow investors on important corporate problems. They are keyed to the view that the special advantages of position and information occupied by corporate insiders are advantages held in trust for the company. They are natural standards legislatively expressed and administratively and judicially enforced.

Sometime last month I sent to the President of your Association a letter inviting your Association to send representatives to a meeting with the Commission to discuss a program for formulating a set of desirable and workable changes in the Securities Act of 1933 and the Securities Exchange Act of 1934 for submission to the Congress. Your Association was selected, together with others, as representative of the issuers of securities--as representative of that segment of our economy which needs capital for production and expansion and which calls upon the American investor to provide that capital. It is part of our program to confer also with investors, underwriters, and the national securities exchanges. We are still in the process of conferring and soliciting suggestions and we are by no means prepared at this stage to state what the specific proposals will be. In general however, some discussion is possible of the broad problems being faced.

Under the Securities Act of 1933 registration is accomplished by the filing of a registration statement on a prescribed form. Unless otherwise ordered, registration becomes effective after 20 days or such shorter time as the Commission may under particular circumstances fix. The Commission does not "approve" the issuance of securities. It exercises no judgment whatsoever over whether securities are fit to be sold; it limits itself to an inspection of the information submitted with respect to the securities to determine whether that information meets the statutory standards of adequacy and accuracy.

Under the law securities which must be registered cannot be offered or sold in advance of registration, and they may not be initially sold without the use of a statutory prospectus. The aim of the statute is unimpeachable and its general purpose has received, as far as I am aware, universal acceptance. That does not mean, however, that the statute and our procedures under it cannot be improved, both in the direction of securing better investor protection and of facilitating and easing the burdens of compliance.

Improvement can take place in several directions, in continual reappraisal of our forms to cut down the variety of information required to that which is really essential for the protection of investors, and in continual reappraisal of the effects of our regulation to see whether we are accomplishing our job well and efficiently. To a great extent improvement does not require recourse to statutory change but may be procured by internal readjustment. To some extent statutory changes may be necessary. Let me review for you some of the steps which have already been taken by the Commission under its existing powers.

Recently we scrapped several forms for securities registration under the Securities Act. Those have gone into the waste basket, and as soon as we have done the basic work, others are to go, and still others will be consolidated; and a similar general program is under way for other forms. At the same time we have streamlined the form most frequently used for registration--the form known as S-1. That form, which previously consisted of two parts, has been boiled down to one part; and even that part has been reduced to eliminate from the form a good deal of data which have been, in our experience, of only casual interest to the general investor. We have eliminated lengthy descriptions of underwriting contracts previously required, cut out miscellaneous information describing the charter, killed some of the items with regard to remuneration to higher employees, options, share ownership, funded debt, historical financial information and so on.

The registration form is approaching the basic minimum that can be required for adequate disclosure. That minimum when condensed into readable and intelligible form will be the prospectus.

Proposals have been made looking toward changes in the law relating to methods of offering securities publicly. Underwriters have proposed, as a basis for discussion with the Commission, changes which would permit solicitation of investment earlier in the stages of registration than is now permitted by the law so as to facilitate primary distributions. What the ultimate recommendations will be can be known only after we have completed the program. But I can tell you now that the Commission has no intention of seeking to place unnecessary additional burdens on companies in supplying data, that the Commission is sincerely in sympathy with the desire to improve the securities distribution mechanisms, and that it will wholeheartedly join in recommending to the Congress such proposals as will accomplish those ends while preserving and fostering the basic aims of the laws as now drawn to protect the invester.

I have given you only the barest sketch of the problems that might be opened up in our forthcoming statutory revision study. I invite those of you who have an interest in it to use your opportunity to give us your individual comments and suggestions. But before I close today I want to talk briefly about one segment of the program which is, in our opinion, vital.

I think it axiomatic that the public security holders of large corporations should be informed about the affairs of their company and that their legal rights to a voice in its affairs should be implemented by the application of decent standards to proxy solicitation. The need of stockholders to have adequate information about their companies' affairs, and their need to be given an adequate statement of facts and issues when they are called upon to vote does not, in any real sense, depend on whether a company has securities listed on a national securities exchange. These are needs that are universal to the security holders of all large companies whose securities are widely held by public investors. Further, if the legal concept that a stockholder has the right to voice his views on matters of management policy is to be made a real right, the security holder should be provided, at his expense, an opportunity to circulate among his fellow security holders a reasonable statement addressed to corporate policies. That is not a revolutionary provision, it has been in operation for years under S. E. C. regulation and it is an important part of the companies bill now being considered by the House of Lords in England.

These, and other protections, will be considered in the course of our revision program. Like all the other issues in that program they will be considered openly and squarely, they will be laid on the table and subjected to full scrutiny in order to shape them in the best and fairest way possible.

The topic suggested to me by your president for today's talk was "Adjusting S. E. C. Requirements to Present Day Business Needs." It is a good topic and it represents a live idea. What I have tried to get across to you today is that that idea makes no sense in a vacuum. The S. E. C. and honest business men are engaged in a common endeavor--the protection of the investor. The S. E. C. has never conceived that the interests of honest business and the interests of investors conflict, and the S. E. C. will never abandon its duty of protecting the investor from the submarginal fringe in business or in finance. We face the choice of doing that in an ivory tower or of soliciting the help and suggestions of those who can fruitfully contribute to our work. My presence here today is an indication that we have chosen the latter course.