ADDRESS

OF

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When I was asked on behalf of Senator Dirksen, a month or so ago, to address a luncheon meeting of investment bankers and others on the subject of the Securities and Exchange Commission, I must admit that I thought of the subject with some trepidation, for two reasons. The first reason was that I could imagine at any any meeting which the Senator and I might attend together those present would much prefer to hear from him than from me. I think that is true here in Illinois and in Chicago, because we are all aware of his long and valuable career in public service, and his recent distinguished work in the Senate as a very important policy maker of the new Republican Administration. Therefore, I think you would be only human if you preferred to hear more at length from him rather than from me.

Secondly, I approach the subject of the SEC with caution at the present time, because I have only been in office for a month, and I am sure you will understand that what I say to you is spoken only in terms of aims and ambitions whereas it would naturally be more pleasant and satisfying were it possible to talk in terms of accomplishments.

The new administration of the SEC is at about the point in the football game when the opening whistle has blown, the ball has been kicked, but the first scrimmage is yet to be played.

However, if you will take what I have to say in that light, I would like to give you very briefly a few of the ideas that motivate and animate the newly constituted Commission.

I am sure I don't need to tell this group -- the term we use in the Commission for a group like this is "sophisticated" -- I am sure I don't need to tell this sophisticated group what the scope and authority of the SEC is. Briefly, we are in charge of implementing and putting into effect the policies of Congress enunciated in the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, and, finally, the Investment Advisers Act, also of 1940. We also participate in an advisory capacity under certain circumstances in corporate reorganizations under Chapter X of the Bankruptcy Act.

This is a large area of regulation. I think the first aim of the new Commission, looking at these laws, is to study and review the vast complex of regulations, precedents, forms and procedures which have grown up over these years.

One objective in undertaking this program of review and study is to find out whether and to what extent the regulatory processes which have been set up in the SEC over this long period have gone

beyond the scope and intent of the basic legislation enacted by Congress. Now I don't mean to suggest that we have prejudged the question, but I think all of you in the investment banking business are aware, and, as a former practicing lawyer having to deal with SEC matters for investment banking clients, I have been aware of areas in the administration of the 1933 Act and the 1934 Act where the justification for what the SEC has required is difficult to find in the statute, and, indeed, has depended more on the philosophy of the personnel of the Commission administering the laws than upon the mandate of Congress. Some of the precedents and principles established by the Commission are not even available in published rules or reports, but are buried in interpretations in individual cases to which the public or the practicing lawyer, or the investment banker or public utility holding company executive setting up a financing plan, have no general access. For example, the only way to be sure a proposed stabilizing transaction is lawful or unlawful is to get an interpretation from our Trading and Exchange Division, even though there are many of similar transactions every year. A basic principle of the new Administration, and this seems so fundamental that I hope you won't think I am passing off a bromide on you by saying it, is that the government should be a government of laws and not of men, and we think this principle applies in all the areas regulated by the SEC.

Also in our review of the regulations and forms, we have in mind implementing basic economic policy of the new Administration. In his address to the Congress on the State of the Union on February 2 of this year, President Eisenhower cited as one of the "grand labors" of the new Congressional and Administration leadership the "encouragement of those incentives that inspire creative initiative in our economy so that its productivity may fortify freedom everywhere."

We have, therefore, in the short month in which the new Commissioners have been in office, inaugurated studies in all of the operating divisions of the Commission and in the Regional Offices, soul-searching studies of all of the regulations, forms and techniques which were in effect when we took office. We are aware, for example, that techniques and forms used in the registration of new issues of securities under the 1933 Act have been criticized for unnecessary complexity, and the registration statement process itself has been felt to have a hampering effect upon the free flow of capital into industry. The newly constituted Commission will view sympathetically new procedures which can be developed to simplify registration statement forms, reduce, so far as the law permits, the so-called 20-day waiting period for new issues whose qualities may be deemed, broadly speaking, to partake of an investment rather than a speculative flavor, and in general simplify procedures so the legitimate financing of industry can be made more expeditious and flexible and the administration of the laws more efficient and economical.

I do not, by what I have said, mean to suggest that in streamlining registration techniques for legitimate financing of industry we propose to relax our vigilance for the types of fraud and overreaching against which the SEC was intended to protect the investor. We notice, for example, in administering the revised Regulation A for issues under $300,000 in amount, that the offering circulars coming in present much more of an opportunity for misrepresentation and fraud than the regular filings under the 1933 Act.

Another approach to problems in the securities industry which the newly constituted Commission is following is in line with the basic philosophy of the new Republican Administration which believes in the fundamental importance of government on a local level, and questions the necessity that all regulation must emanate from Washington. In short, we think there are areas which can be just as satisfactorily regulated by the states. This is particularly true where there is good and effective state regulation already in operation, as, for example, in the public utility field, where there is often overlapping jurisdiction of the state commission and the Federal Securities and Exchange Commission on matters such as the issuance of securities. The Public Utility Holding Company Act indeed, in a section that has been very little used, specifically provides for an exemption where an issue is subject to state commission jurisdiction.

An examination and study of the regulations under these laws by the Commission's staff could not in and of itself assure the success of the policy of the new Administration. We are fortunate as we start out on this task in having the support and backing volunteered to us by the principal industry associations in this work. You will be glad to know that the Commission has met in the last several weeks with the representatives of the Investment Bankers Association, the National Association of Securities Dealers, the Association of Stock Exchange Firms, the New York Stock Exchange, and others in the industry, and these organizations are expected to submit to us comprehensive suggestions for changes and improvements in the regulatory procedure. These suggestions are to be submitted within the next month, and I must impress upon you, who are in the industry, that I believe most strongly that our success in reorienting the SEC will depend to a considerable extent upon the intelligent backing and support for the program of the new Administration which we receive from the industry. If you have suggestions, please feel free to let us know what they are. They will receive careful attention and will be welcomed, and we, in turn, invite your backing and support in this study which we are making.

Now above and beyond the administrative machinery there is another study which we also propose to undertake, and this we do, not as the prime mover, but merely as a catalyst for others who have the

primary responsibility. I am referring to legislative changes needed after all these years in these laws. Let me give you a very simple illustration.

The Securities Act provides in effect that no public offering of a security may be made unless a registration statement is in effect and unless at the time of the offering or at the time a sale is confirmed a copy of the prospectus is delivered to the offeree or the purchaser. A year ago a subcommittee of the Committee on Interstate and Foreign Commerce of the House of Representatives held extensive and exhaustive hearings on the subject of the SEC. One of the things gone into at some length in these hearings was the matter of the use of the prospectus. A former Chairman of the Commission and a former head of the Commission's Division of Corporation Finance testified that about 80% of the new issues brought out were offered to the public by verbal offer; that is, before a copy of the prospectus was made available to the investor. If the copy of the prospectus is delivered to the investor with the confirmation of sale, it would seem that it fails to some extent in its purpose, as the prospectus is intended by the Act to give the prospective purchaser facts about the issuer upon which to make up his mind before, rather than after, he has agreed to buy the security.

Another phase gone into at the hearings before the House subcommittee was the restrictive effect of the Act in not permitting an issuer or underwriter to feel out the market, so to speak, before a registration statement is effective. This lack of flexibility has led, it is felt, to the tremendous increase in the volume of securities of prime issuers sold to institutional investors outside the scope of the Act. Effective sampling of the market before an issue is brought out in many cases is not only necessary but desirable in order that the issuer and underwriter may determine with some relevance to market conditions a fair price to be paid to the issuer if it is a negotiated deal or a price which an underwriter could reasonably bid and an issuer reasonably accept in the case of a competitive bidding deal.

The desirability of another legislative change has been suggested to us by representatives of the industry. As you know, under the interpretations of the Securities Act a broker or dealer is required to deliver a prospectus with every confirmation of sale of a security within one year after there has been a public offering of such security even though the initial distribution has been completed. This bears particularly hard on issues which are traded on the exchanges and it is felt, at least by the industry representatives, that the one year's period could be shortened without endangering the public interest.

Now I don't want anybody to misunderstand what I am getting at by these observations about the Securities Act. The SEC as presently

constituted believes sincerely in the principles of the Act requiring a registration statement and prospectus. I am sure these principles are approved by the public and, although it is not for a person in my position to say so, I doubt if any effort to dilute or abandon these principles would receive favorable consideration by the Congress. After all, the philosophy of making a registration statement effective and preparing and delivering a prospectus to the purchasers of new issues of securities goes to the very heart of the "truth-in-securities" technique. I don't pretend to know what the solution of these statutory problems should be, but I do know it will take the best brains of Congress, the industry and the Commission working in harness together to evolve a satisfactory solution.

In connection with the Administration's legislative program, as it may emerge, we are fortunate in having two very fine Committees of Congress paying particular heed to the problems of the Commission. The first is a subcommittee, headed by Senator Bush of Connecticut, of the Senate Committee on Banking and Currency, which in turn is under the able leadership of Senator Capehart of Indiana. The second is the House Committee on Interstate and Foreign Commerce of which Congressman Wolverton of New Jersey is Chairman. Both of these Congressional Committees have had long experience in considering problems affecting the SEC and some of the studies which the new Commission is inaugurating now were suggested by hearings held before and the report of a subcommittee of the House Committee last year.

I just want to mention two other things before closing. The conditions in the securities business and in the public utility business that led to the great reforms instituted by these laws are conditions which the Commission would hate to see return. I don't want you to think by anything I have said that we plan to relax or diminish the effort to eliminate the frauds and abuses which represent a minor part of the securities industry and the utility industry, but which so blackened the name and reputation of these industries in the 20's and 30's. Now I say this because what I am about to say givesme great concern. The budget of the SEC goes about 93% toward salaries. I can't think of anybody more sympathetic than I am to the objectives of the new Administration in getting the budget under control. In this connection the appropriation of the SEC was cut from $5,245,000 in fiscal 1953 to $5,000,000 in fiscal 1954. One of the first tasks I had as a member of the SEC was to participate in the release to other callings of about 35 members of the Commission's staff, and we are under instructions from the Bureau of the Budget, with which we are making every effort to comply, to trim expenses in the next few months below appropriation levels to help get through this "debt limit" period and also to submit a budget request even further trimmed, if possible, for fiscal 1955. I am not here to plead for the SEC budget, because I think a great deal can be

done in terms of efficiency, reorganization and streamlining of these regulatory and administrative tasks. I am hopeful that with the staff as reduced this year we can accomplish as much, if not more, than in previous years. But I do call your attention to the danger that may exist if the fraud and the unlawful practices which a few individuals, always on the fringe of the industry, engage in which are now to some extent stopped or diminished by the work of the SEC, the danger that would exist to the industry if those practices and conditions should, because of the failure of the SEC brought on by inadequate staff, rise up to haunt you in the industry and haunt us in the new Administration. The reputable and the legitimate investment banker, broker and dealer and the reputable, honest and able segments of the utility industry should not, I believe, be made to suffer again what they suffered in the 30's by reason of a failure on our part to carry out the purposes of the laws which the SEC administers in the public interest and for the protection of investors and consumers.

I want to conclude by saying a word or two about the Commission itself. As you may be aware, the SEC is made up of five members, no more than three of whom are permitted by law to be of the same political party. The Chairman is designated by the President from among the five. This meant that because of two vacancies and the expiration of one member's term, it fell to President Eisenhower to appoint, with Senate confirmation, three new Commissioners. One of the things that has been particularly gratifying to me is the fine qualifications and high caliber of the other four Commissioners and the harmonious and energetic way each is addressing himself to the problems that lie ahead. This augers well, I think, for the success of the first Republican Administration of the Securities and Exchange Commission since the Commission was established. I can assure you that much as I miss Chicago and all my friends here, it is a real privilege to serve in Washington under such circumstances with the new Administration. Thank you, Senator Dirksen, and gentlemen, very much.