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ADDRESS* OF HARRY A. McDONALD, Chairman
Securities and Exchange Commission

As I see it, this talk today, in a sense, is my public debut as Chairman of the Securities and Exchange Commission. It is, I believe, traditional for a new chairman to use such an opportunity to deliver what might be called a "get acquainted" talk. My election as chairman, like that of President Truman's was a complete surprise to many, including myself. However, once offered the post, I quickly accepted the nomination.

Those of you who know me, know pretty well what I stand for. I hope I bring to the chairmanship a working knowledge of the securities business. I have a very deep conviction that your industry has, and does, play an extremely important role in the economy of this great country of ours. Please believe me when I tell you - - I have a humble and definite sense of my opportunity to serve and I shall strive to so do, to the utmost. The Securities business, like every other competitive business, needs elbow room in which to work and to develop. The fundamental good sense of the laws under which the Securities and Exchange Commission regulates the securities business, is that those laws assume your value. If these laws are fairly and properly administered, they can give you, in keeping with public confidence and the public interest, a full opportunity to develop and to profit, through honest personalized service to the investor. Regulation, at best, is not very pleasant to those who are regulated - - I know from my own person experience. What we must do is make regulations as palatable as possible.

I firmly believe that -- Those who sit in judgment over a regulatory body should have a sense of realism, -- They should have maturity and a sympathetic attitude. Experience should be a prime requisite.

Today I do not intend to preach -- I do not intend to scold, to admonish or advise you, nor will I speak in high sounding platitudes, I choose only to talk to you, to express views so that you might appraise commission thinking. I shall also discuss some of our very mutual problems. You, of the investment fraternity, are certainly entitled to know my thinking, and as far as I can reflect it, the thinking of the other commissioners.

Your industry has been regulated for some 15 years - - to go all over the history of how regulation came into being, would not only be repetitious, but boring - - We, as well as you, assume its permanency and accept its principles -- The Congress, back in 1933 and 1934, of course, spoke and dictated the statutes. We, of the Commission, possess great latitude and discretion in the administration of some of the sections of the statutes and very little in others. Of course, where the commission is given discretion is where the greatest trouble comes. Regulation, properly conceived, and administered is an enlargement of the old accepted principle of Law and Order. Facetiously, we are sometimes reminded of the old adage that -- "Most people believe in Law and Order so long as they are laying down the law and giving the orders".

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At the Commission, we run the gamut of the financial world. We go from the problem of the investment adviser, who forecast by the stars and the aid of comic strips -- . When Orphan Annie handed someone a nickel for a newspaper, his "code" told him this meant something was happening in International Nickel; or if she should happen to trip on a rock, rock is a stone and that was a reference to Stone and Webster. Incidentally, some of you may want to learn his code. Because in 1946, believe it or not, he predicted every major market turn almost to the day, including the September 3rd break. Our work runs from these crackpot schemes to the Tucker dream-car which cost American investors $26 million, - - right on to such fundamental problems as to how the United States Steel pension plan can be properly reflected in a balance sheet or in a proxy statement. Were corporations today, who have signed a pension contract with a labor union to show their true and immediate past service liability without considering the continuing entity of the corporation could easily wipe out their entire surplus. This is a problem with which the accounting profession is working feverishly and in the very near future the commission will have to adopt a formula that will govern.

They are our problems and they are also your problems. Naturally, some of you are, at times, disappointed at commission decisions. A different result would not be natural. Each one of you is intent upon the prosecution of your own personal business -- and in such cases self interest always comes into play -- In that connection I am reminded so many many times when the various points of view of problems are presented, of the wise old adage expressed by Abe Lincoln, when he stated, "The opinion of men depends upon whose ox is being gored."

Of this you may be sure, it is the definite desire of the commission to see to it that your needs are as promptly and properly met as humanly possible.

After my election as chairman of this commission, the newspapers quoted me as saying that I wanted the Securities and Exchange Commission to be considered the best place in town to do business. I mean that. I want the public, and particularly you in the industry, to get the best treatment possible, fair -- courteous and expeditious.

With the amount of public utility securities handled by your group, there is no doubt in my mind that you would like that I refer briefly to the public utility holding Company Act of 1935. Except, possible, for the Taft-Hartley Act, there has never been another piece of legislation which excited so much public controversy. The prophets of doom and the counsel of despair were everywhere. And yet, now that the smoke has cleared, what do we find? A public utility industry enjoying the finest financial health in its entire history. A utility industry able to serve consumers because investors are willing. And when I say willing, I mean that they are anxious to buy the securities of good operating companies. For example, The Florida Power & Light Company, which serves the area in which we are now visiting. The Florida Power & Light Company, according to the American Power & Light Company Plan, will be dividended out to stockholders sometime in January. It will be an independently owned, independently operated and financed electric utility. -- (My good friend and President of the Florida Power & Light Company, McGregor Smith happens to be in attendance with us this morning. I am not going to ask him to state whether or not his Company prefers to be

an independent, as I can draw upon the examples of many others who have expressed themselves, and I do not mean to embarrass him.

Furthermore, as unnecessary holding companies are eliminated, hundreds of millions of dollars of choice operating company securities are being released to the public. The result is that the investment fraternity is busy doing its assigned job, which is selling securities. Few were able to foresee all these benefits back in 1935. Everyone is happy to accept them now. But in between, there has been more than a decade of careful, prudent, judicious administration of the statute. If time permitted and I would recount them, you would be amazed at the number of supposedly insurmountable obstacles which were overcome in the administration of the Holding Company Act. There are, of course, many problems still pending, awaiting solution.

Now I want to speak upon a very pertinent subject and I am going to speak frankly -- that is about Rule U-50, which as you know, is the competitive bidding rule, following that I am going to talk about negotiated deals and compulsory competitive listing of utility stocks.

I don't think there is any longer much doubt about the legality of the competitive bidding rule. There is still much argument over the wisdom of the rule and its application in particular cases, although even here I think the Commission has treated requests for exemption very realistically. The discussion these days, seems to be more on the subject of the technique employed where the Commission has granted a requested exemption and permitted a negotiated underwriting, on condition that competitive conditions be maintained.

Now just what do we mean by the maintenance of competitive conditions and how do you achieve competitive conditions? This is a situation which has given me no end of trouble. Of course, in considering it you must take into consideration the statutory background.

In all matters affecting the Commission's activities, we must always go first to the statute controlling. After all, that is the law. The law is the basis of the Commission's powers.

Congress found, according to Section 1 (b) of the '35 Act, that the public interest may be adversely affected.

> " (2) when subsidiary public utility companies . . . enter into transactions in which evils result from an absence of arms-length bargaining or from restraint of free and independent competition;" and further
>
> " (5) when in any other respect there is . . . lack of economies in the raising of capital."

Congress attacked these problems first, in Section 7, by requiring the Commission to pass on the reasonableness of price and spread, and secondly, by Section 12 (d) which provides that

> "It shall be unlawful for any registered holding company . . . to sell any security . . . in contravention of such rules and regulations or orders regarding the consideration to be received for

such sale, maintenance of competitive conditions, fees and commissions, accounts, disclosure of interest, and similar matters as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers."

You who have lived through this know how the Commission has struggled with this responsiblity given it by Congress. For a number of years the Commission actually passed on each case, one at a time, and tried to determine if the statute was met. That proved utterly impracticable. The next approach was a rule which prohibited any compensation to an affiliate. That proved impracticable too, and only resulted in a lot of litigation.

Finally, in 1941, after a full and careful study, the competitive bidding rule was adopted.

The Securities and Exchange Commission has no exclusive on competitive bidding. As you know several State Commissions require competitive bidding for utility issues to a greater or less degree. The District of Columbia adopted its competitive bidding rule over 20 years ago.

The I.C.C. has required competitive bidding for equipment trust certificates since 1926, and in 1944 it applied the competitive bidding rule to most senior railroad securities.

The Federal Power Commission requires competitive bidding in individual cases, and you of course know, that municipals were always sold on that basis.

The shopping around technique was suggested by the industry as a substitute for sealed bidding when an exemption is permissible, but the Commission still has to be sure competitive conditions are being maintained.

We have never laid out a blueprint on this. The Commission has never said just how it had to be done.

We have, to a large extent, depended upon you of the industry to come up with the ideas. The Commission has only said that certain things could not be done.

The result has been that, the technique employed is confusing. In the recent Ohio Edison deal, which is currently being offered, it is very difficult to distinguish what took place from what would have taken place under full competitive bidding.

These techniques may not necessarily be the best way of financing where you have an exemption. I want to make it clear that we, on the Commission, are not pleased with this procedure. The Staff is not pleased. We feel that the industry has in a large measure developed these techniques. Our concern is, first, last and always that the minimum standards of the statute be met. Some say and I know you have heard it that in the case of a negotiated deal where the so-called shopping around process is employed, it then becomes a case of the best liar winning. We appreciate the significance of this and I think I can speak frankly for the commission -- we are not for it. But at the present time, the mechanics of such a proceeding are in such a state as to make this reference somewhat in order.

Much criticism of the commission has resulted. I personally, and I feel that I can speak for the commission would welcome any practical suggestion from the industry that would help clarify this situation and would allow the commission to stay safely within the meaning of the statute.

There is another problem which I think has given a number of you some concern in recent weeks. I refer to compulsory listing of portfolio stocks. This is a matter which sometimes falls within the discretion of the Commission. If the Company which is liquidating has filed a Section 11 plan which calls for the voluntary listing of portfolio stocks, being either sold or dividended out, to be listed, then the commission has no problem. If the stock, however, of the holding company being liquidated is listed on an exchange and the plan does not provide for voluntary, immediate or delayed listing, then the Commission, of necessity, must decide, in deference to the requirements of the investor whether or not listing should be required, either immediate or delayed. In which case, the Commission might require that the plan be amended to provide for such listing. --

We at the Commission have been accused of taking sides as to whether or not a security can be better served over the counter or listed, or vice versa. May I assure you that the Commission has studiously avoided trying to interfere with the interests of either party. From my own practical experience, I am convinced that to list a security which does not have all the qualities necessary for listing and does not lend itself to listing, is bad, not only for the company, but for the investor. On the other hand, we must admit that listing has its advantages as well. I came across a short article in the Investment Dealers Digest, entitled "Premature Listings of Utility Stock," and I think that it expresses a very important point of view.--- I will read it. --

"PREMATURE LISTINGS OF UTILITY STOCKS

"Representatives of both the investment fraternity and the utility industry have expressed concern about the recent SEC insistence on prompt listing of utility common stocks coming into the hands of the public for the first time. This concern seems well warranted for if a new stock is immediately listed it loses the benefit of the fine distributing powers of the dealers who handle securities in the over-the-counter market. This sort of distribution is a tremendous contribution to seasoning. A number of utility stocks which have been prematurely listed have had a tendency to become 'lost in the shuffle' and have never attracted the following they deserve.

"We believe that the SEC might not be so adamant on this issue if they could see the problem through the eyes of the investment men and the utility management. We would, accordingly, like to urge the president of the I.B.A. and the president of the Edison Electric Institute to make jointly an appointment with the SEC to talk this problem over in person. We believe that if the matter were thus approached, the SEC might better understand why listing of stock too early may be very much of a handicap to a company in its financing and a disservice to its stockholders.

"Compelling supporting data are readily available. SEC Commissioners are always available and, based on our own observations, are always open to conviction. Messrs. Dewar and Lindseth command respect, are persuasive. Much could perhaps be won by such a meeting."

Now let us take a look at another problem upon which the Commission's attention has been focused for some time. It is Section V. of the '33 Act, or better known still, as the "gun jumping act". The unworkability of the present techniques established in the statute has been apparent for years. Since 1941 we have talked about -- a mutual program between the Commission and representative members of the industry for amending the section. But just how far has this so-called "mutual" program come in almost nine years. Not very far -- we must admit.

The industry, unable to agree among themselves as to an amendment program, is still compelled to, what is sometimes called, "live in sin". For years, distributors have complained that the restrictions on offering before effectiveness are artificial; and, because these restrictions do not take into account the natural competitive and risk factors of the business, that it is difficult to obey them. On the other hand, we have had to recognize that the prospectus has not lived up to the purpose intended for it. In many cases, it is a lawyer's nightmare rather than a piece of plain talk, and, under present practice condoned by the law, it gets to the investor, not only too late to be of any use, but in such form as to be hardly understandable.

It has long been my feeling and contention that, if you will reach into the industry and pick out that which the high purposed and ethical houses do, in actual practice, and make it law, you will have something which will protect the investing public in accordance with the intended purpose of the '33 Act.

Something needs to be done about restrictions in the waiting period in recognition of the competitive and risk factors of the business. Something must be done about the expense and trouble of preparing, printing and distributing a prospectus that is often useless to investors. That, in basis terms, is the problem we face. What are we going to do about it?

It has been may constant belief that one of the primary benefits of registration is that it screens out the frauds that would wither in the light of publicity and that it affords to the distributor himself more information about the issuer than he has ever had before.

I am indebted to my good friend, Mr. Arthur Dean, of Sullivan and Cromwell, for calling to my attention a statement made by Justice Brandeis and recorded in his memoirs, which is apropos here-- "No regulation or law can be enforced which is not, in itself, reasonable".

For myself, if I have any foremost objective for my administration as Chairman, it is to work out Section 5 in a manner satisfactory to you who have to live with it, and to the Commission that has to administer it in the interests of investors.

I definitely ask your help.

When the Congress convenes next month your industry and the Securities and Exchange Commission will probably be confronted with another problem of significant proportions. I am referring to the bill introduced by Senator Frear of Delaware at the last session to extend the protective provisions now given to security holders in listed companies to the larger unlisted

companies. This proposal has naturally aroused a good deal of controversy for it touches on a problem we have all known existed for many years but have been reluctant to face.

Most everyone will agree that the rules of full disclosure should apply to any corporation in which the general public has any significant interest. You yourselves no doubt have many times sought reliable information on a company in which a customer had expressed interest, only to be told that nothing was available. How often have you felt that management insiders were up to something but that you were helpless to protect the customers you had in good faith put into the stock? These are the things which Congress for the most part, corrected back in 1934 as to all listed companies. The Frear Bill would similarly apply to unlisted companies with widely distributed securities.

I daresay that we all agree as to the principle and the objectives of the bill. As a matter of fact, in all the discussion I have heard about the bill : : : and there has been a good deal - in all this discussion I have never once heard the stated objectives of the bill criticized.

What is being criticized about the bill is the obvious fact that the imposition of these standards is bound to inject into the existing distribution of business among the several different markets, a disturbing element of unknown proportions.

Mixed right into the middle of this situation is Section 12 (f) (3) of the Exchange Act, which gives the Commission power to extend unlisted trading privileges at the request of an exchange or other person under certain circumstances. This power, as you know, has been used in only a handful of cases. Perhaps this is the section which can provide the key to the controversy over the Frear Bill.

We cannot dispose of the concern over the Frear Bill as expressed by the industry by labeling their claims as selfish. They are real and must be considered. I would think it most inappropriate for the Commission to appear in hearings in support of the bill without having considered fully all of the problems which it creates in the possible reallocation of securities among the various markets. The various segments of the industry have a similar responsibility. Our objective should be a result that produces harmony and well-being among all markets in the best interests of the public.

We, at the Commission, do not, and we must not take the position of determining which is the better market for a security -- We must look at the problem as a whole -- as a nation-wide problem.

I desire to comment briefly about the Staff of the Commission and the part they play in the over-all administration of the statutes. As you know, there is such a tremendous amount of items of work which is done by the Commission as a whole, that it is impossible for the Commission themselves to get anything, other than the contested cases and decide policy. The other items are handled by the Staff. Now this is where you, as an industry come in.

If you do not like what the staff is requiring of you, you should tell us about it. We would like to know. In many cases, that is the only way we can find out. In those situations where you are entitled to relief, you will get it.

Let me end my talk on this hopeful note -- The Securities business is not "all thru".

The Securities business has gone through a transitional period . . it may still be in it, but it is not gone.

Last year there were $6\frac{1}{2}$ billions of new industrials offered for sale. --

There were almost $3 billions of new municipals. In addition to which, there were countless millions of equity capital plowed back into industry as a result of retained earnings.

Does this sound like an industry that has nothing to do?

I know you, individually and as an industry, are worried about many things. You are worried about price and spread, which directly affects profits. I assure you that the Commission cannot help you in solving such problems --. This, to me, appears to be an operating problem fraught with the usual ravages of competition. It is fraught with over-anxiety, -- You are concerned about private placements, and ever increasing costs of doing business.

As the chairman of the Commission which regulates your industry I would like to give you the assurance not only of myself, but I am sure of the other commissioners that it is our keen and firm desire to help in the problems of an industry which, as I stated before, plays such an important part in supplying capital to that great institution called American Business.

As our civilization gets more complicated, we are bound to have more regulation. When I was a boy there was just one umpire in a ball game, and he stood behind the pitcher. Today there are five of them, in fact they are all over the place. I daresay it hasn't spoiled our enjoyment of the national sport.

I attended a football game in Washington on Sunday, and I think I counted nine or ten officials, including the linesmen. Were these officials not present the players might resort to all sorts of devices known best to them. However, I am not advocating additional umpires for your game, but I am saying that some type of regulation was needed when it came into being, and I doubt if your industry itself would now voluntarily dispense with it.

In a sense the Securities and Exchange's function is to serve as financial umpire. I want the Securities and Exchange Commission to be more than a policeman for the industry. I want it to be an affirmative influence in the financial world. Our objective is regulation without persecution. - - - I thank you for inviting me here to address you. -- I salute you as representatives of a great industry. -- I salute you -- each one of you, as a factor in American business, seeking to preserve our way of life. -- I thank you for your good attention.

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