

FOR RELEASE UPON DELIVERY OF SPEECH

**"Registration of Mining Securities
under the Securities Act of 1933"**

ADDRESS

of

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Before the

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I wish to thank you on behalf of the Commission for this opportunity to discuss with you some of our common problems.

As was so clearly stated by the Chairman of the Commission in his address to you last year, the Commission is fully aware of the great importance to American business life of the mining industry of the country, and of the necessity that the proper financing of that industry be not unduly impeded.

Undoubtedly, your chief interest in regard to the work of the Commission lies in the incidence of its work upon the issuance of securities of mining companies. The speech of Mr. Landis last year clearly explained the basic policy of the Commission in regard to that class of securities. In consequence, I shall not attempt to restate that general policy but beg leave to refer you to that address.

Since the time of that speech, however, a new form for the registration of mining securities has been adopted by the Commission, and it seemed to me that it might be mutually profitable for us to discuss in some detail the requirements contained in that form.

In order, however, to give a general picture of the present requirements of the Act and the rules of the Commission, I should like to recall that there are at present rules exempting from registration securities the offering of which amounts to less than \$100,000. The conditions by which such exemption is obtained are simple and easily applicable. The requirements which we shall presently discuss, therefore, have relationship only to larger issues. This must be borne in mind in any consideration of the incidence of those requirements upon the mining industry in general. You will doubtless recall that consideration was at one time given to a proposal to modify the above exemption rules in the sense of imposing only the condition

that the state laws in which the securities are to be offered be complied with, in order to entitle to the exemption. Since that time, however, it has been decided to preserve basically the present exemption rules. Experience has shown, nevertheless, that those exemption rules need some change and amendment. Study as to the nature and extent of those modifications is presently under course. I shall not, therefore, attempt to discuss those exemption rules at the present moment.

Before undertaking to discuss the requirements for registration under the Securities Act, I should like to say a few general words concerning the statute and its general administration.

As you recall, the Securities Act was adopted for the purpose of regulating the interstate traffic in securities. Experience had demonstrated the necessity for such regulation. The loss by the American public in securities offered in interstate channels of commerce was so great that it can fairly be said that industry was losing a large part of its life blood, namely, capital. Capital was being drained in part from its proper use--the building of factories and the exploiting of natural resources--to the hands of persons who were interested solely in profits made upon the creation and flotation of securities.

Few, if any, persons now criticize the basic objective of the statute. It is realized that the inconvenience that may be suffered by the honest man is more than outweighed by the conservation of his raw material, capital.

It cannot too often be recalled also--since there has been a general misapprehension in this regard--that the Securities Act is not a Blue Sky law. In other words, in order for a security to be registered no approval of the merits of the security is requisite. In point of fact, registry does not import either quality or pedigree. In order that securities may be registered it is solely necessary that a full and frank disclosure be made of the facts

by which an investor can make a judgment as to the investment value of the security. It is the clear duty of the Commission to see that such a disclosure is made.

Some people have been under the impression that securities of new mining companies are not looked upon with favor by the Commission as being *speculative*. I would like to disabuse you of that idea, if you have it. As above stated, the Commission is not empowered to pass upon the merits of securities. If it should attempt to thwart the issuance of speculative securities it would be committing an abuse of authority. Indeed, all investment is *speculative*, there being only differences of degree. There is yet to be discovered a place where your money can be put and where you can be sure it will be when you go to get it. All that registration requires, in the case of speculative securities, is that the terms of the gamble be fully disclosed. It does not impose requirements as to the nature of the odds. I think you will agree with me, however, that the Commission by its rules should attempt to require a clear disclosure of the terms of the chances. In point of fact, if such were not obtained the Commission would fail in its duty.

It is in view of the task so imposed upon the Commission to obtain full and frank disclosure of the pertinent facts that I would ask you to consider the requirements for registration.

I shall address myself particularly to Form A-O-1 as being that which particularly interests you. This was the form which was adopted last year and which expresses the policy of the Commission as to what should be furnished by a new mining company seeking a relatively large amount of capital from the public.

Before detailed discussion, I should like to present to you some of the general problems presented to the Commission in the preparation of such a form. In so doing, I think I will make clear to you the reason for some of the provisions which otherwise might not be apparent.

In the first place, the form is to be used by all new mining ventures, wherever they may exist. There are registered with the Commission securities for mining ventures in Canada, in the various states of the West, in Mexico, in South America, and in the various states of the East. The practices of setting up securities and organizing companies in these different localities are quite different. It is necessary, therefore, that the form be directed not only to practices of a single locality, but, as it were, to all of them. In consequence, the difficulty of the form for any one registrant is not to be judged by its word length, since quite a number of its provisions will be inapplicable to the particular registrant, as directed to modes of business or corporate structure existing in other localities.

It must also be borne in mind by those seeking to make a judgment as to the incidence of the requirements that the securities are generally being offered in a community or communities far distant from that in which they take their creation. Securities of a Colorado corporation may be offered to investors in Pennsylvania. The language and terminology used must be comprehensible both to the promoter of the corporation and to the investor for whom the information is obtained. Unfortunately our financial language has not had too precise a usage, so that some financial terms have varying meanings in different parts of the country and in different industries. I mention this matter because terminology has been one of the sources of difficulty in the Commission's work. Some people have not understood what was required. On the same account any new form, such as A-0-1, during its period of introduction, must bring about a certain amount of difficulty until its language has become fully understood. To obviate as many of these difficulties as possible, certain basic terms have been defined. The unavoidable misapprehension, above described, although annoying and vexing to the registrants at the beginning, will certainly soon vanish as more experience is gained and better study of the requirements has been made. As the Germans say, "All beginning is difficult."

To make the requirements as precise as possible, the form is accompanied by an instruction book. The purpose of this instruction book is to act as a manual in the preparation of the statement. For example, there are set forth definitions of basic terms such as "proven ore" and "promoter", so that the difficulties which exist in regard to those terms may be obviated as far as possible. Unfortunately, in the filings which had been made, these instructions sometimes have been overlooked, or not carefully examined.

I shall now briefly discuss the major contents of the form. After several general questions asking for the state and date of incorporation, date of termination of the charter, name of any person controlling the corporation, and a statement in general terms of the character of the business of the registrant, there are a series of items relating to the promotion of the registrant.

Before discussing these items, I should like to direct your attention to the definition of "promoter" contained in the instruction book. This definition is as follows:

- "(a) Any person or persons taking initiative in founding and organizing the enterprise.
- (b) Any person who in consideration of services has received or is to receive ten percent or more of any class of securities of the registrant.
- (c) Any person who in consideration of property has received or is to receive ten percent or more of any class of securities of the registrant, unless such person has not taken a significant part in founding and organizing the enterprise.
- (d) Any person for whom any promoter is acting in a representative capacity with respect to the registrant."

After considerable consultation this definition of "promoter" was adopted as being the one most consonant with general usage and the purposes of the form. Some persons, however, have been accustomed to use the term with a different connotation. In consequence, they have been led to misunderstand the exact requirements.

It is patent that for a registrant which has no fiscal history the manner of its creation and the persons responsible therefor are of vital importance. It must be borne in mind, as stated above, that the form is drawn for securities to be offered, in a number of instances, far from the locality in which the mine is located. There is no personal knowledge by the investor of the persons responsible for setting up the company. Certain information, therefore, has been asked concerning the past experience of the promoters. Thereafter questions are directed to the securities to be held by the promoters, the nature and amount of rewards of any kind to be received by them, their material contracts with the registrant and the arrangements, if any, whereby the promoters are to obtain any portion of the discounts and commissions in the sale of securities.

Since the public investing cash is entering into a joint venture with the promoters, it would seem clear that a full and frank disclosure of the stake and interest of the promoters is necessary in order for the formation of a business judgment.

The next items are concerned with the basis upon which the company has issued or is to issue securities in consideration of property or services, or has acquired or is to acquire property, other than in the ordinary course of business, for any other consideration. A statement is required as to the method of valuation of such property and, if acquired by the registrant from a person who has an inside relationship to the registrant, as to the cost of

the property to such person. Since the registrant has no fiscal history, it is manifest that such a picture must be given of the mode of its capital structure and the basis upon which securities have been issued, in order to obtain a clear comprehension of the business transaction involved.

The next series of questions is concerned with the method by which the securities are to be distributed. For example, a general statement as to the underwriter; a statement whether the issue has been firmly committed; a table showing the spread, or profit to the underwriter, involved in the distribution; discounts and commissions to be received by dealers; information as to whether a market is to be maintained for the securities; information as to material underwriting arrangements.

The materiality of this information can not be questioned. Its value for investment judgment is presently universally recognized.

There is next required to be set forth clearly the effective price paid for the securities of the registrant by the several parties engaged in the common venture; namely, the promoter, the underwriter, and the public. In case securities have been acquired for other than cash, the cost of the securities is required to be set forth, other than in certain cases, on the basis of cost price to the respective party of the consideration for which the securities were issued to him.

Thereafter is required a general description of the property, giving its location, means of access thereto, its history, an indication of the title thereto, a description of its present condition, and the equipment thereon, if any. If held by lease or option, a description of the terms of the lease is required.

A brief description of the proposed program of exploration, development and operation is then asked for.

Following a statement as to any metallurgical tests and a description of the sampling, if any, a statement is required as to whether any ore bodies have been sufficiently developed to justify designation as "proven" or "probable" ore. "Proven" and "probable" ore are defined in the instruction book as follows:

"*Proven* ore - The term 'proven ore' means a block of ore so extensively surrounded by sampled faces that the risk of failure in continuity is reduced to a minimum."

"*Probable* ore - The term 'probable ore' means ore as to which the risk of failure in continuity is greater than for proven ore, but as to which there is sufficient warrant for assuming continuity of the ore."

There then follow questions relating to any body of "proven" or "probable" ore. It is to be noted that these items need not be answered if there is no claim that there is "proven" or "probable" ore. If claimed, however, the amount of "proven" and "probable" ore and the respective constituents of the ore bodies are to be given; and, in such case, an estimate of cost of recovery.

An indication of the three principal markets in which each commercial constituent is to be sold, in case it is not to be sold for its gold, silver or other metal content is then required. For companies mining only gold, silver or metallics, this information need not, of course, be given.

There is then required the material provisions of any marketing contract. Manifestly, if there is no such contract, a statement to that effect will suffice.

An opportunity is accorded to make a statement concerning ore which is other than "proven" or "probable" ore.

The next series of questions is concerned with the proceeds and the application thereof. Since the public is asked to put up cash, it should have, manifestly, a clear statement as to the use of that cash. Investment judgment cannot be made without the possession of knowledge as to how the money is to be used. Such a requirement may well serve to direct more money to the ground. It is asked what use will be made of the proceeds if a sufficient amount is not obtained to accomplish the program previously described; and whether an escrow arrangement has been made for the funds, if sufficient securities are not sold in order to undertake the proposed program.

There is then required an indication of the officers and their contemplated salaries and the securities held by them, and of the persons holding more than ten percent of any class of voting securities, and the securities held by them.

The next questions require a description of the securities of the company; for example, dividend rights, voting rights, etc.

Then follow several miscellaneous questions calling, for example, for a resume of material contracts and material litigation.

This completes the registration statement proper. In addition the registrant is asked to file certain schedules showing its financial condition, namely:

- I. Current Assets and Current Liabilities.
- II. Liabilities Other Than Current Liabilities.
- III. Amounts Due To and From Promoters, Underwriters and other Persons Connected With The Registrant.
- IV. Assets (other than current assets) and Capitalized Expenses.
- V. Table of Capital Stock and Related Items.

No balance sheet is required.

In addition, there is required to be furnished a statement of Cash Receipts and Disbursements since the inception of the company.

To complete the registration, there is required a certain number of exhibits, the most important ones being as follows: charter and by-laws; copies of material contracts; a copy of any report concerning the property, if such report is referred to as the source of any fact, or as the basis for any conclusions; and copy of the district map or maps showing the location of each mining property.

There are also required Plans and Sections, under certain conditions, which are essentially as follows:

Plans and Sections - If there are only surface workings, only a surface map need be filed.

If there are undersurface developments, plans and sections are to be filed. Such plans and sections must show the approximate location of all shafts, tunnels, stopes, and other excavations and openings. The extent to which mine workings are at present inaccessible is to be indicated, if practicable. If ore blocks are claimed, but not otherwise, the outlines of all ore blocks, suitably labeled, are to be made on such plans and sections.

If the registrant has sampled ore exposures that are still in place, and only if such sampling has been made, the exhibits above indicated are to be so prepared as to contain the pertinent sample and assay data derived from such sampling.

There are also required: a list of names and addresses of all assayers or smelter companies who have issued certificates substantiating the sample values shown; copies of all calculations of weight or volume and value of proven or probable ore; an opinion of counsel as to the legality of the issue of the securities of the registrant.

In addition, if securities have been or are to be issued for property or services, a statement signed by the majority of the board of directors is required relating to the basis of valuation and the cash value of the property or services. A further statement is required in regard to securities issued at a discount.

Such are the requirements for registration. I think that you will agree that there is no information therein required which is not necessary for investment judgment, and that the Commission in the performance of its duty could not ask for less. Indeed, I think you will agree that any registrant should have in hand the information required even before filing. The form before its adoption was submitted to a large group of experts in various parts of the country, and all their comments and criticisms were given the most careful consideration in the final determination of the requirements. Experts of distinction and high reputation have stated that they are just and reasonable.

It can hardly be questioned that the requirement that the basic information above described furnished will tend in the long run to conserve capital for investment in mining securities, since thereby will be impeded the issuance of that class of mining securities which all deplore who have the interests of the mining industry at heart, namely, those securities, the proceeds of which vanish before they reach the ground.