

May 9, 1934

Hon. Francis T. Maloney,
House of Representatives,
Washington, D. C.

My dear Mr. Maloney:

I was delighted at your speech on the Stock Exchange Bill. You are dead right on the matter. The bill should not be allowed to be further emasculated nor delayed. I do not think the Exchanges will develop overnight the necessary social consciousness to govern themselves. Some supervision is necessary. I hope the bill as passed will give the Commission adequate administrative powers to cope with the situation. The lack of such powers respecting the Securities Act is the chief defect of that law.

I am somewhat disturbed at the proposed amendments of the Securities Act recommended by Senator Fletcher. As you know I have given that Act a lot of thought and attention. Some of the amendments proposed are merely clarifying ones and cannot be said to alter the basic features of the Act. But in two respects these amendments are bad.

In the first place they purport to bring back into the Act the element of reliance and make it necessary for an investor to prove he relied on a misstatement or omission in the registration statement when he bought the security. This is all but impossible for the average investor to do. Nevertheless he may be injured by the untruth. For example, people advising his on investments, such as investment counsel, banks, etc., will give those statements weight and importance. Such statements will condition and determine the advice which these advisers give the investor. Or even though he buys in the open market he will be buying at a price influenced by the statements in the registration statement. Yet in none of such cases can it be said that the investor relies on the statement, since usually he will never see it. Hence great injustice will be done. The best feature of the Act will be demolished.

In the second place the amendments hardly touch the fundamental problem of control over security issues. That problem is to control their issuance. Under the Act and under the amendments the Commission has very few powers of control. We are never going to make much progress in protecting investors unless we have the power to control the market at the access. The Commission should have the power to prevent certain things being sold, to allow certain securities to be marketed only on prescribed conditions, etc. etc. Telling suckers the truth about bum securities is not going to protect them. Under the Securities Act the same old game can be played on the American public. Low grade types of securities are soup and nuts for issuance now.

I have had a lot to say about the Securities Act. But my criticism has largely been due to the fact that the Act is too conservative and too insistent upon reparation and compensation and sadly lacking in preventive features.

Yours faithfully,