

April 11, 1935

104

Dear Senator Fletcher:

I beg to acknowledge your letter requesting my comment upon H. R. 7186, being a Bill to amend the Securities Act of 1933.

(1) An obvious error seems to be contained in this amendment inasmuch as its purpose would seem to indicate it is intended as an amendment to Section 3 of the Act rather than Section 4.

(2) The purpose of the amendment seems to be to avoid the necessity of registering issues whose distribution is of such a narrow range that public interest does not require their registration in accordance with the terms of the Securities Act of 1933. The terms of the amendment, however, go much farther than this obvious purpose. The amendment exempts issuance by corporations and other entities of securities provided that the stockholders or the members of these entities do not exceed twenty-five in number. Under such a provision a corporation whose stockholders were limited to twenty-five could nevertheless float, without regard to the registration provisions of the Securities Act, a bond issue of millions of dollars and offer it generally to the public. The same would hold good as to any other class of securities floated by such a corporation provided the nature of the security was such as to make its holder not a stockholder or member of the issuing entity. Such consequences, I should imagine, were certainly not desired by the proposers of this amendment.

(3) The objective of this amendment, namely, to eliminate from the registration requirements small issues of a non-national character, seems already adequately attained by the Securities Act. Section 3 (b) of that Act already authorizes the Commission to exempt from the registration requirements issues

of securities where the aggregate amount at which they are offered to the public does not exceed \$100,000. Under this provision the Commission has promulgated regulations of an extensive character which enable an issue of that type, provided that certain rudimentary principles of integrity in the nature of the offering are observed, to be floated without the necessity of registration. Secondly, the terms of the Securities Act, so far as the registration requirements are concerned, do not apply to private offerings as distinguished from public offerings. If the number of people that are to be invited to participate in a security offering is negligible and further distribution of this issue to the public by these participants is not contemplated, generally speaking, the registration of such an issue is not required. Thirdly, many small issues can also avail themselves of the exemption provided by Section 3 (a) (11) of the Act which extends to issues sold locally within a state to residents of that state by corporations incorporated by and doing business within such state. These three exemptions attain adequately enough, in my judgment, the objective sought to be achieved by the proposed amendment and without at the same time incurring the very grave dangers at present in the proposed amendment.

I wish to express to you my thanks for transmitting this proposed amendment to me for consideration.

Sincerely yours,

Joseph P. Kennedy,
Chairman.

Honorable Duncan U. Fletcher,
United States Senate,
Washington, D. C.