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ADDRESS
OF
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Commissioner, Securities and Exchange Commission

before the
COLORAD MINING ASSOCIATION

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Mr. Chairman and Gentlemen:

I consider myself fortunate to be here in Denver with you this afternoon. I am particularly pleased to have the opportunity to discuss with you some things of interest to all of us.

Although I have had no mining experience I have always had a great interest in the industry. Furthermore, problems arising in connection with the financing of mining properties are of great interest to the Commission. We recognize the importance of mining to the nation's economy and security.

We members of the Commission have been eager to learn, through direct contact, the point of view of representatives of various industries which must, from time to time, obtain public financing. We know that each industry has its special problems in connection with financing. Informal meetings and discussions of this kind give us an opportunity to think together, and to consider some aspects of these problems.

You know the Congress has declared that securities transactions have to be regulated to protect our national economy and to insure the maintenance of fair and honest markets in securities. No one interested in the public welfare, the securities industry, or any other industry which depends upon the public offering of securities for any part of its finances, any longer questions the fundamental correctness of this position.

The Securities Act of 1933 is intended to provide full and fair disclosure of the character of securities sold in interstate commerce and through the mails, and to prevent frauds in their sale. Manipulation and dishonesty thrive upon mystery, misrepresentation and concealment. The Act was intended to prevent these. Disclosure is obtained through filing with the Commission registration statements which contain information necessary to arrive at an informed judgment whether to buy the securities. The Act requires the delivery of a prospectus to investors to whom the securities are offered or sold, and this prospectus must contain in summarized form the important information in the registration statement.

Without departing from the fundamental purpose of the act to afford certain protection to investors, the Commission has strived to make it possible for issuers of securities, and for those who sell them, to finance their enterprises and to engage in their activities with the least possible interference. We have a long established practice of consulting with those who have an interest in the effective functioning of the Acts which we administer. Even proposals which originate within the Commission are submitted to interested persons in the industries affected, to the securities industry, and to others so that we may obtain the benefit of their suggestions and experience before the proposals are adopted. We are continually trying to eliminate requirements which experience may indicate are unnecessary for the protection of investors. We are always trying to simplify our procedures, and to make compliance with the Acts we administer as simple and as inexpensive as possible.

In furtherance of this policy, in March 1945 the Commission adopted Form S-11 for the registration of shares of exploratory mining corporations. This form dispenses with the requirement for the certification of financial statements by independent accountants, items have been eliminated or shortened, maps and engineering reports are not generally required, and other simplifications have been made. A booklet was designed for use in connection with the form, and to aid registrants in preparing registration statements. It contains a digest of pertinent matter taken from the Commission's formal opinions which bear on problems that may arise under the Act in connection with small mine financing.

Regulation A, which permits an issuer to offer up to \$300,000 of securities in any one year, can be used to offer the securities issued by most mining corporations. Assessable stock may be offered under this regulation if the assessments legally leviable on the stock are limited so that the aggregate offering price of the stock and the assessments cannot exceed \$300,000. No prospectus need be used in connection with this offering, and the letter of notification required to be filed can be prepared quickly and without expense. The use made of this Regulation should not be underestimated. Many small mining ventures, by complying with this Regulation, have been able to obtain financing quickly and without registration under the Securities Act. In the calendar year 1946 there were nearly 200 such filings covering an aggregate offering of approximately 19-1/2 million dollars of mining securities. In March 1945 the Commission also adopted Regulation A-M to provide an exemption from registration for offerings of assessable shares of mining corporations to a maximum of \$100,000 in one year.

These progressively simplified forms and methods of compliance with the requirements of the Securities Act were, as you know, adopted only after consultation with the representatives of the mining industry. In many cases, as in the case of the adoption of Regulation A-M, many of the provisions of the form and of the regulations had been urged by various members of the mining field. The Commission has always benefited from the suggestions of various mining men, mining organizations, and others, interested in the sale of mining company securities, who were furnished draft copies of the forms and rules for review and criticism.

As you know, the Commission has recently announced resumption of the program, interrupted by the war, for joint study, with interested groups, of the provisions of the Securities Act and the Securities Exchange Act. Serious effort is now being made to discover ways and means of arriving at a common agreement as to changes desirable in the public interest, and consistent with the protection of investors. Among the major problems to be considered will be some simplification of the registration process, and methods of making more generally available to prospective investors the information in a registration statement.

It is hoped that appropriate and workable proposals will be submitted to the Congress in the near future. Since the Commission is interested in the views of all persons who feel that they can contribute helpful comments, I urge you to cooperate with us and to present your views and suggestions.

Our constant effort to find ways to simplify our registration processes and to make more generally available the conditional exemptions permitted by the Securities Act must, as I have mentioned, be fitted within the fundamental purposes of the Act: to provide full and fair disclosure of all pertinent information, and to prevent fraud in the sale of securities. These two ideas of disclosure and fraud prevention are not unrelated. They are complementary concepts fitting within the same pattern. Of course the Act provides penalties for using any device, scheme, or artifice to defraud, or for willfully misstating a material fact in connection with the sale of a security. But it goes beyond this. It is intended not only to punish the violator, but to protect the investor. It is the purpose of the disclosure requirements to stifle fraud before it occurs.

We know that those persons who have dedicated themselves to making the mineral resources of this great nation available to the people, and to the industries which need them, frequently face many obstacles before their efforts are successful. We must remember, however, that some of these arise from the fact that mining financing possesses characteristics which differ from those of ordinary industrial financing. One important difference is the increased speculative element frequently arising from the continuing need to find new sources of metal. While this factor may not be so great in the developed enterprise, it is always necessary to consider it.

If the public is to retain sufficient confidence to invest in mining enterprises, investors must be able to get a reasonable amount of information; sufficient to make an informed judgment whether they want to take whatever risk may be involved. They should ordinarily have information concerning the property, the management, the program, the uses to which funds will be put, the promotional features of the transaction, and the costs of distributing and underwriting the securities being offered. It should not be possible for the unscrupulous promoter to use speculative nature of some mining enterprises as a means of developing his own schemes to promote the securities rather than the mines.

For example, it is important for the investor to get a short but clear story of the circumstances surrounding the promotion of a new company. The facts on this frequently determine whether the projected enterprise is a promotion of mining or merely of stock.

The Act, of course, does not authorize the Commission to determine what promoters shall take for their services. No one at the Commission wants the power to make decisions of this kind. However, it is important that the promoters' contributions and rewards be fully disclosed, and that no false statements be made in regard thereto. If a registration statement and prospectus are to contain adequate disclosure, both the nature of the promoters' contribution and his compensation for it must be set forth clearly and not be buried beneath a mass of complicated transactions between the promoter and the corporation during the stage when the corporation is but the promoter under a different name. A promoter's services may be very valuable to the corporation, or they may be worth nothing at all. The potential investor must be in a position to determine this question for himself from all the facts.

The agency which administers the Securities Act has no power to substitute its judgment for the judgment of issuers, underwriters, or others, in determining whether an issue should be offered or sold. It is not our function to take any action which could be construed as approving or guaranteeing that the securities being offered are sound, or that they will earn a profit. No one at the Commission wants the power to decide what securities may be offered or sold, or at what price. No one wants the power to dictate business policy. I believe that as government administrators it is our function to be impartial referees who keep our eyes on all the players to make sure that the rules we are required to apply are applied fully, fairly, and sensibly to carry out the purposes which the Acts we administer were intended to accomplish.

However, we must all realize that the Congress has given us at the Commission the duty to make sure that the distribution of securities in interstate commerce or through the mails meets the minimum safeguards for the protection of investors set up under the Securities Act. The Congress, in effect, has declared that the protection of their interests is one of the cornerstones on which a sound national economy must rest. We at the Commission must enforce and administer our Acts so as to honor this mandate. We believe that this legislation represents no startling departure from accepted American standards of fairness and honesty. We urge your cooperation in maintaining these standards.