For IMMEDIATE Release Tuesday, August 10, 1954

S.E.C.

SECURITIES AND EXCHANGE COMMISSION
Washington, D. C.

President Eisenhower signed into law today the Administration's bill (S. 2846) to amend the Federal securities acts. The amendment will go into effect on October 10, 1954.

The bill had been passed unanimously in both the Senate and the House.

The act represents the first amendments of the securities acts in many years. Many previous efforts to improve the acts over the past thirteen years have proved abortive. A year of intensive work by the Senate Banking and Currency Committee and the House Interstate and Foreign Commerce Committee and the SEC has gone into this legislation.

An important provision of the amended law will permit wider use of offering prospectuses for new issues of securities, particularly short-form summary prospectuses, during the so-called waiting period after the registration statement has been filed with the SEC but before it has become effective. Normally this is 20 days. The SEC is presently drafting rules to implement this provision of the new law. Information will be more readily available to the investor before he actually buys the securities.

The amendments also permit greater use of newspaper advertisements during the waiting period. This should make it easier for small investors all over the country to invest in new issues of securities, whose distribution has up to now tended to be concentrated in a few cities having large capital markets.

Other provisions of the new law

(1) reduce from one year to 40 days after distribution of a new issue of securities has been completed the period during which dealers must deliver prospectuses in trading transactions;

(2) simplify the information required in a prospectus used in an offering that lasts more than 13 months;

(3) reduce from six months to 30 days after distribution of a new issue has been completed the time when a dealer can extend a customer credit on the new securities;

(4) clarify the SEC's rule-making authority on "when-issued" trading;

(5) eliminate from prospectuses summaries of certain trust indenture provisions which have heretofore been required, thus permitting simplified, more readable prospectuses for debt issues; and

(6) provide simplified procedures for registration of securities of investment companies, the so-called "mutual funds."

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U-173

October 22, 1953 *

MEMORANDUM NO. 6.

TO: Senator Capehart and Senator Bush

FROM: Joseph P. McMurray

SUBJECT: Informal conference with SEC Commissioners on proposed changes in SEC policies and procedures.

Senator Bush, Mr. Donaldson and myself met informally with the five members of the SEC and their staff to discuss proposals for changes in SEC policies and procedures recommended by various segments of the security industry, which would or might require legislative action.

The purpose of the meeting was primarily exploratory and educational.

Twelve proposals were considered. For the most part they are technical changes which, based on experience with the administration and operation of the Act, are intended to improve the administration of the Act.

1. Permit continuous and simplified registration of Investment Companies.

This is intended primarily to meet the problem of open end investment companies that continuously offer shares. Successive registrations are required, since the 1933 Act limits the registration to the number of shares presently proposed to be offered, and the rules of the Commission require a new registration each time the number of shares offered is increased. The industry suggests as a possible solution that the Commission change its interpretation and its regulation so as to permit additional units to be registered by amendment. However, the Commission has for some years taken the legal position that a registration cannot be amended post-effectively to increase the number of shares offered.

Related to this is the industry proposal for a change in Section 10(b)(1) of the 1933 Act. This section requires that when a prospectus is used more than 13 months after the effective date of the registration statement, the information contained therein shall be of a date not more than 12 months prior to such use. The actual effect of the section is to require audits under certain circumstances more than once a year.

A change in Section 10(b)(1) so as to provide that when a prospectus is used 9 months (instead of 13) after the security is first offered the information therein must be of a date not more than 16 months (instead of 12) prior to such use, and providing that the period can be shortened or lengthened as the circumstances may justify. It was believed this would fulfill the purpose of the

section adequately, eliminate the unnecessary expense of double audits and in many instances result in more current data on the prospectus. This change would require legislative action.

The question is whether this change in Section 10 together with an amendment to Section 6 to permit increasing the number of shares offered by amendment to the registration statement, preserving and extending the liabilities accordingly, while not going as far as some of the groups recommended, would not maintain the intent of Congress and yet eliminate unjustified red tape in the registration of additional shares.

2. Reduce from one year to 30 days the period during which prospectuses must be delivered on the sale of new issues.

Section 4(1) of the 1933 Act requiring delivery of prospectuses for 1 year is too long a period in terms of the actual time required for distribution in practically all cases. The one year was an arbitrary period that seemed safe in 1933. It works a particular hardship on dealers in the case where they are selling securities, the new issues of which are indistinguishable from outstanding shares. The section is violated widely.

After some discussion of alternatives it was wondered whether an amendment to 4(1) of the 1933 Act providing a 40 day period for delivery of prospectuses would not be fair and adequate. Delivery of a prospectus would still be required in the case of unsold allotments or subscriptions.

3. Simplify registration and prospectus requirements for high grade bonds.

It is argued by the security industry that the trouble and expense and time incident to registration has caused, in large part, the shift to private placements of high grade issues. Where such securities enjoy an excellent market reputation, the industry maintains that the same amount of detailed information should not be required as in the case of equity securities or lower grade bonds.

The discussion indicated that the problem is not as simple as it appears. However, the Commission felt that under its present authority it could go a long way toward a solution of the difficulty by tailoring the standard for its registration statements for a security to the reputation a security enjoyed in the market, and by greatly simplifying the prospectus requirement for such an issue. There was no disagreement that this could be done by administrative action, rather than by legislative action as some of the industry segments inferred or suggested.

4. Restore "broker exemption" as provided in section 4(2) in 1933 Act.

Until the Ira Haupt decision it was believed that brokers under section 4(2) were exempt from the prohibition against use of the mails in interstate commerce in connection with securities the seller of which had complied with the registration statement or prospectus requirements of the 1933 Act. Since it is often impossible for a broker to know if he is selling for a person having a control relationship with the issuer, it is believed that a broker, even if he is selling for a controlling stockholder, should be exempt if the sale is unsolicited and the broker receives only the customary commission.

Since the language of the statute seems fairly clear, it was thought that the Committee may, after considering the problem, clarify the Congressional intent by emphasizing that the controlling fact is whether the sale was solicited or not.

5. Registration of shares on a Stock Purchase Plan should not apply to outstanding and listed stock and only in modified form to listed stock.

It is argued that an employee stock purchase plan of listed stock is an accommodation for the employee, since he is free to purchase the same security on a national exchange without an additional registration and since he should be at least, if not better, informed on the condition of his employer's company, and, therefore, that such stock purchase plans should be exempt from the registration requirements of the 1933 Act.

It is also argued that Form S-8 (an abbreviated Registration Form for Employee Stock Purchase Plan) should be restricted to basic data relating to the offering and should not be contingent on certain conditions being met, e.g., extent of employee participation, right of withdrawal, etc.

Since this proposal is potentially controversial, consideration should be given to whether it would not be better to expand by administrative action the application of Form S-8 to employee purchase plans, simplify the requirements thereunder and then review the operation under the simplified form after a year's experience.

6. Limit recovery under Section 16(b) of 1934 Act to profits actually realized.

Section 16(b) provides that any profit realized by a 10% stockholder, officer, or director of an issuer whose security is registered on a national stock exchange, from purchases and sale (or sale and purchases) of any equity security of such issuer within a period of 6 months, is recoverable in an action by, or on behalf of the corporation.

Because of a court interpretation that such profits should be calculated on a "lowest price in," "highest price out" basis, rather than on profits actually realized, the effect of the statute can be to impose a liability on a covered person who, although he sustains a net loss on his total transactions, makes a profit on part of his transactions.

Since this section applies to listed but not unlisted securities, it is contended that it is a determent to listing of securities on a national exchange. In opposition to this it is argued that because of the limited market for an unlisted security as a practical matter "insiders" would find it difficult to trade.

The Court interpreted the statute "very stiff" and indicated that it was intended to impose the very highest standard on those in control.

Any amendment to this section of the Act, it appears, would be controversial.

7. Amend 1933 Act to exempt from registration all securities which have been registered under 1934 Act and dealt in for more than 3 years on a registered national security exchange: exempt additional issues of such securities.

This exemption proposal goes much further than proposals (1), (3) and (5), discussed above. Since the Commission feels that the disclosure and liability provisions of the Security Act are an essential protection to the investor, this proposal would be controversial. The administrative changes in the registration and prospectus requirements and other simplification in requirements will meet the problems for which this proposal is intended.

8. Exempt from prospectus requirements of 1933 Act brokerage transactions of listed securities when the sale is made on an agency basis and the agent's compensation is disclosed to and paid by the buyer.

This goes much further than the solution in proposal (4) above, which would exempt a broker's unsolicited transactions from the requirements of the 1933 Act. This suggestion would exempt a broker even where he solicited a sale, so long as he disclosed his commission and it was paid by the buyer whether on an exchange or on the over-the-counter market. It is feared that by putting all dealers on an agency basis, the prospectus requirement of the Act could be avoided in the actual distribution of listed securities.

It appears to be a controversial amendment.

9. Amend 1934 Act so that extension of credit by a broker-dealer to a customer on a new issue would be prohibited only if he sold the securities to the customer or purchased the securities for the customer on a solicited order, and only while the broker-dealer was engaged in the distribution of the securities and for four days thereafter.

Section 11(d)(1) of 1934 Act prohibits a person who is both a broker and a dealer from extending credit to a customer on any security which is part of a new issue where within 6 months he participated in a distribution of such issue as a member of a selling syndicate or selling group. It is proposed to reduce the period during which extension of credit is prohibited from 6 months to 4 days after the end of the distribution.

Since it would appear that 4 days may be rather short and 6 months too long, a possible compromise that would take care of admitted hardships is an amendment changing the period from 6 months to 30 days.

10. Amend Section 12 of 1934 Act by reducing waiting period from 30 days to 10 days on additional issues of listed securities, and remove restrictions on when-issued registration, or for securities to be issued or sold in connection with a reorganization under the Public Utilities Holding Company Act or the Railroad Reorganization Act.

While the Commission has the power and virtually always grants acceleration in the case of additional shares of a listed security, the issuers and underwriters cannot be absolutely certain that acceleration will be granted, and this makes it difficult to arrange time schedules. The Commission, it is contended, has the authority to state by rule that acceleration would be given in every case. It appears to be relatively a minor and purely technical matter, and there should be no practical objection to a reduction in the waiting period to 10 days.

It is admitted that the SEC rule making power could stand clarification.

With respect to second part of the proposal on when-issued registrations, it is recommended that trading of securities of listed companies be permitted at the same time when-issued trading is permissible in the over-the-counter markets -- when a plan or reorganization, recapitalization, merger or consolidation is authorized by a Board of Directors, or where a utility or railroad reorganization plan has been approved by the SEC or ICC. This is primarily a technical amendment.

11. Amend 19(b) of the 1934 Act to require the Commission to proceed by an "order" rather than rule if the Commission changes an Exchange rule, thus giving the Exchange the right to a court appeal.

The Commission believes this is a purely legal question relating to SEC power over rule making of registered exchanges. As a practical matter, there is excellent cooperation between the Exchanges and the SEC, and only once has an order been issued, and no rule has ever been adopted relating to a change in Exchange rules. Since whether there is a reviewable order is a question of substance rather than form, and since it would possibly involve questions relating to the Administrative Procedures Act and other agencies' powers under it, the question is raised whether it is worth prolonged consideration by the Committee.

12. Amend Investment Advisers Act of 1940, so as to permit general use of title "Investment Counsel" by investment advisers.

Section 208 of the Act forbids the designation of "Investment Counsel" to those not primarily engaged in the business of "giving continuous advice as to the investment of funds on the basis of the individual needs of each client." A firm which also acts as broker, dealer, or underwriter in addition to giving investment advice cannot describe a department of the business as "Investment Counsel."

The Act establishes no educational or other qualification for registration as an "Investment Counsel" nor any inspection power over them, which it is contended makes the Act ineffective so long as it is not strengthened. This is largely a dispute between segments of the industry. It is a question whether its practical importance is worth the time that it could involve.