The President's securities bill has been criticized in these columns by Mr. Eustace Seligman. His criticisms raise such fundamental issues and reflect such a typically conservative philosophy as to challenge the attention of those interested in a better ordered financial structure.

After praising the parts of the bill which require full publicity of all facts respecting the issuance of securities and full disclosure of bankers' profits, he proceeds to criticize it in several aspects. Two of these are of major importance.

(1) The first of these is the power given to the Federal Trade Commission to forbid the issuance of securities if in its opinion the business of the corporation is in an "unsound condition" or "not based upon sound principles." He concludes that the effect of this proposal would be to give to the Commission "the power of a dictator over American business." He adds that such provision will hardly commend itself to "American public opinion." That it may not commend itself to certain vested interests who are more interested in making a profit than in selling sound securities is apparent. But that it introduces an undesirable element in American finance cannot be granted.

It is apparent from the history of the last decade that the policy of "let the individual investor take care of himself" has no longer any place either in our law or in our business. He needs protection which bankers have not and will not give him. The reputable bankers are no exception. Even they have been known to cut corners and to be governed by the hysteria of bull markets. The curb on them has been largely self imposed and dictated by their professional reputation. But when profits are alluring and buyers not discriminating, the dictates have been too often not of judgment and conscience but of what the market will stand. And in case of less reputable bankers the self imposed restraint of professional prestige has been conspicuously absent.

There is a need for some agency to step in between the persons who get the money and those who supply it and to fulfill the role of protector for the latter. The bankers and the issuing corporations can take care of themselves. But the ideal of "rugged individualism" when applied to investors has no longer any place in the program for American high finance. If we are to avoid the blowing of financial bubbles which burst with disastrous consequences, we need exactly some such restraint.

To be sure the question of when a corporation is in an "unsound" position is a matter of judgment, as Mr. Seligman indicates. He has not suggested, nor can there be devised, a workable rule of thumb expressed in legislation which can automatically ascertain "unsoundness." There exist too many imponderables which defy reduction to a formula. Yet the insistent demand in American finance is for a preventive measure which will eradicate at the source the evils which have honeycombed the financial structure in the past. If that function would be performed by the issuing corporations or their underwriters, well and good. But it has not been and will not be.

Whether or not the Commission could effectively employ the power remains to be seen. It is clear that the exercise of the power by some independent, disinterested agency is necessary if the fundamental evils of our present system are to be remedied.

(2) Mr. Seligman also objects to that portion of the bill which imposes upon directors, in case the statement filed with the Commission is false in any material respect, a liability to any purchaser of the securities whether or not the purchaser relies upon the representations. He predicts that if the measure becomes law "the inevitable effect would be that

every director of any responsibility would resign his directorship and that boards of directors would be entirely made up of dummies." Assuming this to be the correct interpretation of the bill it may be decried as "revolutionary," but it cannot be so summarily dismissed. Who is going to be responsible for misrepresentation of "material" facts if directors are not? Mr. Seligman further objects to investment bankers being guarantors of the reliability of information supplied them by foreign governments. It seems evident he would likewise object to making them generally liable as guarantors. To provide (as does the bill) for rescission against the corporation and to make that the sole remedy (as the bill does not) is to create a highly tenuous form of relief. What kind of remedy would it be against an insolvent corporation?

The fact of the matter is that too many directorships have become social badges or advantageous trading posts. The call is for a return of responsibility to the office of directorships consistent with the magnitude of the interests at stake. Such provision doubtless will drive many directors out. That in itself will be highly commendable. But that it will result in office boy management of corporations is but a cry of "wolf, wolf."

It does mean that an element of conservatism previously too frequently absent will be injected into financing. Yet one who is acquainted with the law on the subject cannot predict that this liability is going to be so wholly stupendous as Mr. Seligman thinks. The background of this statute will be the extremely conservative attitude of the judiciary towards directors. What is a "material" fact will be left for the courts to decide. It cannot be expected that that word will escape its strict common law interpretation.

That the investor need not rely on the statement is also a sensible addition. A corporation lawyer need not be told of the great difficulty of proving reliance under modern methods of financing. The fact of injury without reliance on specific statements has been all too frequent. To give the investor the advantage of this presumption is a step forward.

Courts need no advice on how to deal with nuisance strikers looking for a windfall. But the bona fide investor will under the bill receive a protection and guaranty long needed and for all practical purposes lacking.

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