

ADDRESS

OF

HON. JOSEPH P. KENNEDY

CHAIRMAN OF

SECURITIES AND EXCHANGE COMMISSION

AT

MEETING OF THE BOSTON CHAMBER OF COMMERCE

NOVEMBER 15, 1934



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Address of Hon. Joseph P. Kennedy, Chairman of Securities and Exchange Commission, at meeting of the Boston Chamber of Commerce, November 15, 1934

My friends, here in Boston I am home. This is "my own country"—the place where my parents lived, where I was born and educated, where I was married, and where I made my entry into business. Under the gospel of the good neighbor I felt that my discussion of the activities of the Securities and Exchange Commission, over which I have the honor to preside, should be in answer to your warm invitation. And under that gospel I ask your help—the help that government needs from every man and woman: support unqualified and whole-hearted in the good we are trying to do and suggestions and criticism of how that good may be made better. There is real work to be done, and we want your aid in doing it.

With the exception of a brief outline of policy I made before the National Press Club in Washington shortly after I was sworn in, I have made no speeches. My own preference would be to make none now. I prefer to let our record speak. That record is in the making. It is far from completion, but it is far enough along to show clearly one thing: There is no right or left in the processes of the Securities and Exchange Commission. All we are trying to do is to go forward.

I shall direct my words to the end of having you see the vista as we see it—a road down which you can travel without difficulties.

The Commission was established by an act of Congress "to provide for the regulation of security exchanges and over-the-counter markets" and "to prevent frauds in the sale of securities." That is a charter to which we feel you can subscribe.

It has been asserted that the security business is "the most important branch of business in the country from the standpoint of direct and indirect influence * * * upon the welfare of our population." I stated publicly 3 months ago that the 16,000,000 security holders who came into existence indirectly as a consequence of the Liberty Loan campaigns had a direct claim upon their Government—a definite right to be protected from improper financial practices. I said then, and I say now, that no man dare assert that these investors are not entitled to the governmental supervision they have sought and are even now seeking in seemingly endless communications to the Commission.

It is to business men like yourselves that the investor and the Government which seeks to protect him must look. In our complicated economic structure the business corporation is the vehicle through which the trade and commerce of the country is carried on. Those business corporations, or joint-stock companies, are owned by millions of security holders. And I think it will interest you to know that a recent study of 75 American business corporations revealed the fact that 88.8 percent of all the stockholders own less than 100 shares each. The average American stockholder obviously is a man of such small means that he needs governmental protection.

The real economic revolution in this country in recent years has been the change from the days of the closed corporation, when only a few hundred thousand people owned securities, to the existing situation wherein 1 person in every 10 and 1 family in every 3 has a direct stake in the Nation's business corporations. Often the real owners of a corporation do not control it.

It has been demonstrated that in the case of many of the largest corporations in this country complete control of the entire property is held by persons owning less than 1 percent of the stock of the company. Very often, through the use of holding companies, complete control of a large operating unit can be maintained by an ownership interest equal to a fraction of 1 percent of the property controlled. These situations necessitated governmental supervision. So that it comes to this: You members of business organizations and we members of the Securities Commission must protect the public's interest in our corporations.

As you know, our Commission has the obligation of enforcing and interpreting two statutes of Congress—the so-called “Securities Act of 1933” and the “Securities Exchange Act of 1934.” Officially, our duties began on September 1 of this year.

In its first weeks the Securities and Exchange Commission registered the various security exchanges of the country and the securities traded thereon. After only a preliminary examination it was found necessary to close one exchange entirely. Other exchanges are being examined so that they may be better able to insure the safety of the investing public. The Commission is engaged in setting up forms for corporate auditing and accountancy which will insure to the investing public the fullest possible disclosure concerning the corporations whose securities are registered. We are grateful for the cooperation of the vast majority of exchange officials who sympathize with the social aims of the exchange act and desire to cooperate in our efforts to sanitize the security markets.

In my last address I spoke particularly about the regulation of exchanges. With your permission I shall address myself more specifically to the problems of the securities act.

When the Securities Act of 1933 was approved by President Roosevelt, he stated the social evil and the hopes of this legislation in the following language:

If the country is to flourish, capital must be invested in enterprise. But those who seek to draw upon other people's money must be wholly candid regarding the facts on which investors' judgment is asked. To that end this bill requires the publicity necessary for sound investment. It is, of course, no insurance against errors of judgment. That is no function of government. It does give assurance, however, that within the limits of its powers the Federal Government will insist upon knowledge of the facts on which judgment can be based. The new law also will safeguard against the abuses of high-pressure salesmanship in security flotations. It will require full disclosure of all the private interests on the part of those who seek to sell securities to the public.

Now, gentlemen, the Securities Act does not put the Government into business as a judge of values. It does not advise; it does not approve. What does it do? you may ask. The act provides a department with which must be filed information submitted by corporate officers in answer to required questions. Before you can be asked to invest your money in a business, there must be a record in Washington of the important facts which should guide your judgment. And at the time of a prospective sale the law requires that you be furnished a copy of these important statements. The truth of these facts cannot be guaranteed. There will always be people to whom an oath is meaningless. There will always be problems of bad management. However, in the usual case these statements will be reliable guides upon which the value of a security can be judged and by which the investor may decide with prudence whether or not he shall entrust his money to such an enterprise. But little reflection is required for you to appreciate that in a country as vast and complex as ours no government could supervise the investment business to the extent that it would guarantee the truth of every statement made in the course of a capital issue. The act now makes deception more difficult and more perilous, detection more likely, and conviction more certain. It imposes upon the dishonest corporate official the burden of civil liability which should act in most cases as a deterrent to fraudulent sales of securities.

I cannot be too insistent in impressing upon your minds the magnitude of the task of preventing fraudulent transactions. For years the crafty security salesman has operated with marked success throughout the land.

The latest reports of the securities division of this Commonwealth for the year ended November 30, 1933, showed that during that period \$204,437,688 par value of securities were denied sales privileges in this State. Since the passage of the securities act in Massachusetts a total of 2¾ billion of questionable securities have been

similarly prohibited (Aug. 26, 1921–Nov. 30, 1934). Your Better Business Bureau here estimates that the annual loss in this State of Massachusetts is approximately \$50,000,000. And the conditions cited are not peculiar to New England.

But I say to you, as one practical business man to another, that where local laws neither hold a securities dealer to effective responsibility nor require proof of merit in each security registered, and where stock exchanges can be utilized by dishonest dealers to facilitate the peddling of their wares off the exchange but on the strength of the exchange quotations in the security, the community thus exposed to fraud and manipulation should welcome the Securities and Exchange Act of 1934 and the Commission it created.

The danger is not that we will interfere too often but that we may act too late. That is why I appeal so frankly to you business men. You can help us. The protection of the investor in your midst is at least to your interest. To us it is a "congressional mandate." But our job will be better done and your interest will be better protected if, by alert and vigilant cooperation, you business men share our task.

The cooperation we ask of you we ask likewise of every other community in the country. But with respect to you in particular, we feel that our record of performance in this community (of encouraging and facilitating reputable transactions and of hindering, delaying, and stopping the disreputable) entitles us to your support.

Have no fear that Government supervision will destroy honest enterprise. I realize that it is human to fear change. From the beginning to the end of a man's life instinctively he resists changes that confront him as the years unfold. It is so in business and in public life. The creation of the Interstate Commerce Commission control of railroads in 1887 would, it was feared, convert trans-continental railroads into "streaks of rust." The creation of the Federal Reserve Board in 1914 would, it was feared, destroy banking initiative. The safeguarding of life insurance was fought as being dangerous.

Yet the fact is that the period of greatest railroad prosperity occurred under the regime of the Commerce Commission and certainly the banking business had never known such an era of prosperity as in the decade following the establishment of the Federal Reserve System. The general feeling is that recent banking troubles resulted from too much individual banking initiative. And the great insurance companies now are thankful for the laws they once opposed.

The same kind of baseless fears arising from antipathy to change greets this formative phase of the work of the Securities and Exchange Commission. These fears are unworthy of mature minds.

I urge you to disregard them. This Commission will destroy nothing in our business life that is worth preserving. You are warranted in having confidence in our plans and purposes—confidence, as I have said, "that if business does the right thing it will be protected and given a chance to live, make profits, and grow, helping itself, and helping the country." Honest business needs nothing more; the Commission promises nothing less.

Perhaps it is safe to say that the Securities Act may be looked at from two important and distinct business points of view: First, from the viewpoint of the honest business man seeking new funds for his enterprise; and, secondly, from the point of view of the dishonest promoter. As to the latter, the regulations can't be too strict. Almost any strict control is warranted by the evil sought to be stamped out. But it is from the reputable people in the community that one hears many complaints about this legislation. Many alarmists say that the capital issues business has been destroyed by this act and will never revive under the present law. What are the specific charges hurled against this legislation? Let me enumerate them. First, it is said that the act imposes liability upon directors and corporate officers with unwarranted severity; secondly, registration under the act entails excessive and burdensome expense; thirdly, the act requires information, the securing of which entails disproportionate effort and that much of this information is irrelevant to the investor; and, fourth, the delay caused by the act between the first corporate action toward floating an issue and the final clearance of the Commission operates adversely to the corporation.

Let me consider these matters one by one. It should be remembered that on the score of liability the act is much like the present English law. The liability arises when the registration statement contains "an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading." Directors, officers, underwriters, and experts may avoid liability if they can sustain the burden of proof that they exercised the standard of care and investigation of reasonable persons under the circumstances. In a word, negligence and dishonesty are penalized. Most of our everyday conduct, no matter what our walk of life may be, carries a risk of damages for negligence or dishonesty. The act was amended at the last session, when Congress felt that the burden had been too severe. The present standard is fair and offers danger to no one deserving protection. Under the law of most of our States, directors are liable to stockholders if they are dishonest or if they are negligent, and this liability grows out of no statutory provision but is deeply rooted in Anglo-American law. Directors are required to direct,

and when they seek the money of their present or prospective security holders, is it not a minimum requirement that they be careful and that they be honest?

As to the second reason, much has been charged but little has been proven. You will be interested to know that I have caused an examination to be made of the costs of registration and sale and distribution of 10 large issues of securities floated in this country since July 30, 1933.

These issues vary in size from \$5,000,000 to \$55,000,000. The gross proceeds aggregated \$126,000,000 representing 30 percent in dollar value of all the issues, excluding investment-trust issues registered with the Federal Trade Commission, or the Securities and Exchange Commission, since July 30, 1933.

You will be interested to learn that the total costs of selling and distribution, excluding commission or discounts paid to bankers, amounted to \$923,000, or less than 1 percent of the total gross proceeds of the financing involved. Those items which might be attributed wholly or in part to the new legislation accounted for only \$482,700, a little more than one-half of the above costs and less than one-fifth of commissions and discounts paid to bankers for underwriting these issues. Furthermore, the total items of expense which, by any stretch of the imagination, can be chargeable to new legislation amounts to thirty-eight one-hundredths of 1 percent of the gross proceeds of the finances involved, and there can be no doubt that an appreciable part of legal and accounting expenses which are included in the above costs would have had to be incurred even if there were no Securities and Exchange Commission and no registration.

Indeed, the costs above recited are relatively less than the costs prevailing prior to the securities act legislation. It has been found, for instance, that 10 issues picked at random in years prior to 1933 aggregating approximately \$60,000,000 or gross proceeds involved legal and auditing expenses of \$311,000, or one-half of 1 percent of the total capital raised as against less than three-eighths of 1 percent in the 10 issues above recited which were made under the terms of the securities act. The total expenses which may be charged wholly or in part to the new legislation amounts to less than one-fifth of the underwriting commissions paid to bankers and to less than one-half of 1 percent of the dollar value of proceeds to the corporations obtaining new capital. In any event, I can assure you that the Securities and Exchange Commission is confident that it can remove many of the technicalities in the administration of the 1933 Securities Act which are said to be burdensome to the securities business.

Remember the act is new—the Commission is learning. The bar, the accountants, and the engineers are as yet supercautious. As the

Commission functions with a view to assisting business, the practice will grow more established, the routine will be more widely understood, and large expense either for lawyer or accountant will be less and less justifiable.

To the third objection in regard to the burdensome questionnaires, I shall be frank and state that undoubtedly, due to the pressure of implementing a new and important piece of legislation, the forms may have been in some instances imperfect. But remember that many of the complaints come from persons out of sympathy with the act. Their attitude explains the apprehension felt on this score. I am far from contending that the act or its administration is perfect. Both are human products and therefore fallible; but never forget that we are learning by experience. Other and briefer forms are in process of preparation which are more suitable to special classes of business. One of the most prominent lawyers in the field of corporate finance, who was an outstanding critic of the original act, has stated categorically that when the few proposed amendments to our forms and rules have been adopted, there will be nothing in the way of inconvenience or expense which should deter the American business man from seeking new capital in accordance with the requirements of the act.

And now the last criticism about the delay. This criticism, I venture to state, is grossly exaggerated. The largest financing under the act—all of you gentlemen have heard of it—the Edison Electric Light Co. public offering, required but 20 days between the original application and the final clearance permitting flotation. I would also in this connection leave a thought with you. Speed in itself is not a virtue. Only yesterday how many prominent issues collapsed to the costly and sorrowing experience of the American public? Many of them founded largely because of the speed of issuance. Deplorable loss was the consequence of ill-considered conception, preparation, and execution. We don't want the staccato tempo of much of the frenzied financing of the late twenties. Too often pyramided investment trusts, among other forms of financing, in feverish fashion, sought the funds of the public to whip the froth of values. Mind you, we plan to expedite in every possible way, but in this field the warning of the philosopher has a distinct appeal. "How much better it is when a thing is done from sound reason and not from necessity." In financing, the necessity of speed is often not real but artificial, not dictated by the events themselves but by the selfishness of promoters. In a word, we pledge ourselves to insure that established enterprises shall be able to solicit the public without undue delay, without unnecessary toil, and without excessive cost. The act, gentlemen, is part of our fundamental law, and insofar as it is humanly possible it shall be made workable.

So much for the specific criticisms. Now for the general charge that the act has dried up our capital markets.

Of course, the first quarter of 1933 included the bank holiday and for that reason might not furnish a fair basis of comparison. But in the second quarter of 1934 capital issues were actually twice as large as during the same period a year earlier. And this is true despite the fact that there was every inducement for bankers and brokers "to jump the gun" and get out their issues before the Securities Act became effective.

The record supports me in the statement that this act is not an important factor causing the present inactivity of the capital market. Since the Securities Act became a law the total of new capital issues in the United States (excluding Federal financing) has actually increased. For instance, during the first 9 months of 1934 capital issues were twice as large as for the same period of 1933.

There has been no new security legislation in Great Britain, and yet the British figures show that new capital issues during the first 9 months of 1934 were practically no larger than a year earlier and totaled only one-half the dollar value of new financing in the United States of the same period.

Bear in mind that in this country numerous governmental agencies have, during the past year, assumed the role formerly occupied by the private banker, furnishing funds that ordinarily would have been raised in new issues of securities. Yet, over and above the financing of private corporations provided by agencies like the Reconstruction Finance Corporation, there has been a substantial capital-issues business in this country—a business which totaled in the first 10 months of 1934 almost \$2,000,000,000, or more than twice the estimate of new financing in Great Britain during the same period.

I am quite aware of the limitations of these statistics—that the dollar volume would indicate quite clearly the relative insignificance of our capital issues during this period in comparison with previous years. But I mention these figures in order to point out the loose thinking of many critics who assail the act. The real obstacle is not legislation. Corporations in a position to borrow long-term money did not see the opportunity of employing it profitably. Corporations which did wish to borrow long-term money were in no position to convince investors that they were safe risks. There have been other and more fundamental reasons connected with the general state of business, circumstances not peculiar to this country but finding counterpart in every other land, for all are equally affected by world-wide depression.

Let me give testimony from a source which is clearly impartial. I quote from an article from the Midland Bank Monthly Review (London), July-August 1934:

At a time, then, when the private investor himself is depressed and uncertain, more heavily taxed than he was and probably less well off in respect of income, it seems doubtful whether, apart altogether from the Securities Act, available funds would at present flow freely into private investment.

Thus, in actual effect it is not true that a major reason for the reduced volume of new security business in this country during the past 12 months has been the existence on the statute books of the Securities Act.

You will recall that I mentioned how the act affects two classes of business men. As for the second class—that is, the rogues who seek to live by deception—let me again repeat, the act is like all legal rules, subject to the limitations of effective legal action. Unfortunately, scoundrels will capitalize the registration requirements and may seek to sell you a security on the theory that mere filing indicates approval by the Commission. Beware of any such argument. The act itself makes such a representation a distinct criminal offense. On the other hand, Mr. Average Man, not troubling to read carefully or have explained the law under which the Commission operates, may be lulled into a false sense of security by the misconception that Uncle Sam is now every man's financial adviser. More than ever before is there need for vigilance and for caution on the part of our people, most of whom are unknowing in the ways of finance. Losses in this manner would be at an appreciably lower figure if the average man kept in mind that he is being sold a piece of paper and that if he is to assure himself that he gets more than its intrinsic value as paper, he should ask himself, Who sells me this, and what is his business reputation in the community?

Our short experience as to this legislation prompts me to sound a note of warning, particularly to you, my friends of the radio audience. Each and every one of you is a prospective or actual member of a "sucker" list, and when the stranger calls you on the phone to interest you in the purchase of securities, beware. Unless you have confidence in the integrity of the sponsors you ought to take special precautions before you sign on the dotted line or surrender your cash or the securities you now own. Over the country from time to time springs up the promoter with a worthless issue, a tip-sheet to lure you, and a battery of telephone salesmen to close the deal, to your misfortune. Be on your guard. The Commission cannot in the very nature of things police every transaction in America. Where it has evidence, rest assured it will strike.

We have the tremendous task of educating the American public to protect itself against high-pressure salesmanship. No law has ever been devised or administered which successfully eradicated crookedness. The Federal Government, however, hopes to fill a much-needed want, hopes to be a vigorous factor in the relentless war on stock frauds.

Let me stress with all the sincerity at my command the earnestness of our purpose. We of the Commission are neither coroners nor undertakers. We seek to create and to restore in order that enterprise and confidence may be reestablished.

We are not prosecutors of honest business, nor defenders of crookedness.

We are partners of honest business and prosecutors of dishonesty.

We shall not prejudice, but we shall investigate.

Necessary, legitimate, useful, profitable enterprise will be encouraged. Only the senseless, vicious, and fraudulent activities will be curtailed, and these must and will be eradicated.

The initials S-E-C, we hope, will come to stand for Securities Ex-Crookedness.

We have two major objectives in our work. One is the advancement and protection of decent business; and the other—even more important—is spiritual, and I do not hesitate to employ that word in connection with finance. We are seeking to re-create, rebuild, restore confidence. Confidence is an outgrowth of character. We believe that character exists strongly in the financial world, so we do not have to compel virtue; we seek to prevent vice. Our whole formula is to bar wrongdoers from operating under the aegis of those who feel a sense of ethical responsibility. We are eager to see finance as self-contained as it deserves to be when ruled by honor and responsibility. Success is not the success of one; it is the success of all. No man can live off the pack without being lived off by the pack.

The groundwork of our social and economic system is the latitude of reason—not the restriction of fear; it provides for free activity within limits that should be self-imposed. When abuses occur, checks and corrections arise. But the application of these processes is not the death hand that some proclaim it to be. Instead, it is the assurance of life and strength when honesty and intelligence are present. We have been brought into being to help you as part of the public which erects government for its service. But you best can help yourselves. You can make the investing of money honest. Then you will truly become your brother's keeper. And to me that is to acquire merit.