

February 25, 1936

122-2 Byrnes, Sen.
Johns 7

Dear Senator Byrnes:

Following the suggestion you made when we met this morning, I shall outline briefly the legislative recommendations of the Commission, explained this morning by Mr. Landis.

A security is said to have unlisted trading privileges when it has been admitted to trading, not on application of the issuing corporations but on the application of an exchange. The recommendations deal with four categories of such unlisted securities.

(1) The first consists of all stocks and bonds which had unlisted exchange trading privileges prior to March 1, 1934. The Securities Exchange Act, in its present form, terminates such privileges on July 1, 1936.

The Commission recommends that this trading be allowed to continue indefinitely. None of these unlisted securities meet the standards required by the Act for exchange trading privileges but, as a practical matter, the Commission believes that, in practice, the maintenance of the status quo will be in the public interest. Termination of these privileges would deprive thousands of investors of the market to which they are accustomed and would reduce, often by disastrous proportions, the business of the smaller exchanges.

(2) The second category consists of securities fully listed on one or more exchanges. The question here is - shall other exchanges, to which the issuing corporations have made no listing application, be allowed to admit these securities to unlisted trading privileges?

The Commission recommends that if the security has sufficient distribution and trading in the vicinity of the exchange which applies, such privileges

shall be granted. Since all the necessary information has been made public by the listing on one or more exchanges, the Commission does not feel that the issuer's failure to apply for listing on another exchange should necessarily be a barrier to trading.

(These two recommendations cover the great majority of securities which would be affected by the Commission's proposed legislation.)

(3) The third category consists of securities which are listed nowhere but which have been issued by corporations which have another class of securities listed. For instance, the preferred stock of Corporation A might be listed nowhere while its common stock was listed on the New York Stock Exchange.

The Commission recommends that such securities be eligible for unlisted trading, since the listing of the "broader" security usually gives the public all the information necessary.

(4) The fourth category is not now existent. It consists of securities not listed on any exchange and not issued by a corporation which has any listed securities outstanding but regarding which full information is available through "registration statements and periodic reports", etc., filed with the Commission.

The Commission hopes such a group may be created by the registration of over-the-counter securities and the Commission believes that such securities should be eligible for unlisted trading.

If no effective means can be found of effecting this purpose, the recommendation is without significance. As a tentative suggestion to bring this about, Mr. Landis this morning offered a rough draft of a bill requiring corporations, whose issues are widely distributed, to undertake the furnishing of periodic earning reports and other data as a condition of offering new securities publicly.

In its first recommendations, the Commission is guided entirely by practical considerations. In the other three, it suggests implementing the policy that if an exchange market is desirable for other reasons it should

not be blocked solely by the issuing corporation's failure to seek listing.

In line with carefully expressed standards, the Commission, in the proposed legislation, is given power by rule and regulation and by order to make the recommendations fully effective.

I am not a lawyer, my terminology is necessarily loose and an exact description of the unlisted trading problem would be much longer than the letter you suggested. I hope, however, that this may give you a very rough idea of the Commission's attitude.

If you wish further explanation or information, please let me know.

Respectfully yours,

Honorable James F. Byrnes
United States Senate
Washington, D. C.

SECURITIES AND EXCHANGE COMMISSION

DOCKET, MAIL AND FILES SECTION

File No. 122-2 BYRNES, JAMES F. (SEN)

CROSS REFERENCE

Date 4-25-35

4-26-35

From or To: XXX

Subject: Advising that Committee to Audit and Control the Contingent expenses of the Senate will have a meeting 4-29-35. Also, advising that the committee will have under consideration, Senate Resolution #71 and several members of the Committee are desirous of having Chairman Kennedy present.

Correspondence or documents

filed under File No. 122-3 COMMITTEE TO AUDIT AND CONTROL THE CONTINGENT EXPENSES OF THE SENATE.