DIVISION OF CORPORATION FINANCE

TRAINING PROGRAM LECTURES

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Subject: Stop-order Proceedings and Investigations
Administrative Procedure Act

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MR. BLACKSTONE. Perhaps the first question to ask about stop-order proceedings is what are the circumstances under which the Division of Corporation Finance will recommend to the Commission that a stop-order proceeding be instituted.

As you probably know, a stop-order proceeding can be commenced prior to the effective date of a registration statement, or after a registration statement becomes effective. First let's look at the circumstances that would prompt us to recommend a stop-order proceeding prior to the effective date. During that period, of course, the section is engaged in analyzing and reviewing the registration statement. Certainly we do not recommend a stop-order proceeding in every case of a deficient filing. What we try to do is to pick out those filings which on their face seem to be so poorly prepared and so completely hopeless from the standpoint of making full and fair disclosure that it appears to us that a good faith attempt was not made to comply with the disclosure requirements of the Act. Naturally, that is a very difficult decision in some cases. During the course of examining some registration statements it may be found that the company is attempting to conceal material facts, the disclosure of which would make it difficult to sell the securities. In those cases stop-order proceedings are always recommended to the Commission.

There may be situations where you are not sure whether it was simply a matter of willfulness or whether it was a matter of an attorney never having done this work before so that he was just confused to the point of making excusable and innocent mistakes. But in discussing our recommendations for stop-order proceedings the Commission is always interested in our evaluation as to whether or not the deficiencies we are attacking are willful and appear to be fraudulent. That decision is an extremely difficult one because you cannot always tell in advance whether a person had fraud in his heart, and all we can do is to look at the objective

circumstances. If the filing really looks bad to us and seems to be hopelessly prepared, we have no alternative but to conclude that there was a willful non-compliance with the Act.

Our experience has demonstrated that when we come across one of these hopelessly deficient filings, it is not very satisfactory to try to handle it in our ordinarily informal method of furnishing a deficiency letter. The attorney representing that type of company is apt to be the kind that is argumentative, will begrudgingly make half-way amendments in response to a deficiency letter, and will seek endless conferences with us in order to get by with just as little compliance with our suggestions as possible. We often find that if we don't ask the right questions, we don't get the right answers. Experience has shown that that kind of filing which on its face is scrambled and confused, where perhaps even the plan of business is not understandable, it seems to us to be better not to use the informal deficiency letter route but to recommend a stop-order proceeding.

What should we do? Should we go to the Commission and recommend a stop-order proceeding for that type of filing without giving any notice to the issuer that we plan to do that? That is a difficult question. Perhaps fairness suggests that we should in every case advise the registrant by letter that unless he withdraws the filing we will recommend a stop-order. Sometimes we refer to that type of letter as the "bed bug" letter, the idea of which is that we say to the registrant the we recommend the withdrawal of the filing because it is so deficient that we cannot really comment on it, and unless it is withdrawn we will have no alternative but to recommend that the Commission initiate stop-order proceedings. Generally, if that type of letter is sent out, the company withdraws the filing and makes it unnecessary for us to proceed with stop-order proceedings.

I am not too much in favor of that technique and I would reserve it for the kind of case where one is really sure that the deficiency arose from a lack of understanding by the people who prepared the filing, and I would certainly not follow that technique where you feel that here is a fast operator trying to put something over on us or the public.

I should like to give you an illustration of why I am not too impressed with this "bed bug" letter technique. A filing was made by a company called Stardust, Inc. This company was organized under the laws of Nevada and promoted by a notorious gambler by the name of Tony Cornero whose associates were members of the gambling profession and the underworld. The filing was hopelessly deficient. They proposed to raise about $6,000,000 to construct an elaborate resort and gambling casino in Las Vegas. We objected to it not only because of the failure to disclose the background of Cornero, but also because their estimates of the construction costs were extremely low and they lacked any real plans with which to proceed. We followed the "bed bug" letter technique and advised Cornero to withdraw the filing or we would begin stop-order proceedings. It was finally withdrawn. Cornero then decided to sell the stock anyway. He did this by claiming an intrastate exemption and

sold stock to people all over the United States by having them appoint him their agent. Purchasers made out checks to him as their agent in Nevada. He turned the checks over to the company, took the stock and mailed it out. It is not clear to anyone why he thought that procedure entitled him to an intrastate exemption under Section 3(a)(11) of the Securities Act. But it wasn't until he had sold about $6,000,000 of stock that we were able to catch up with him and bring an injunction suit. That is an illustration of a case where the person who is determined to promote his project will not be stopped by withdrawal of a registration statement. I frankly think that in that case it would have been a much greater protection to the public if we had commenced stop-order proceedings and not permitted Cornero to withdraw. Certainly there would have been full publicity given in our administrative proceedings to his background and his plans, and I seriously doubt that the public would have been burned the way it was as a result of his violating Section 5 of the Securities Act. Incidentally, the company is now in Chapter X proceedings under the Bankruptcy Act.

I might give a couple of examples of cases where we did proceed immediately with stop-order proceedings without using the "bed bug" letter--without giving any notice at all. In these cases we justified our action from the filing itself, which showed a willful non-compliance with the disclosure requirements and something in the nature of a scheme to defraud. The first was a company called Uranium Properties, Ltd. This was a joint venture begun by two young men in California, both of whom had had a little flying experience, and their project was to explore for uranium by air. They were offering to the public interests in the joint venture at $25 per unit. They stated in the prospectus that out of every $25 invested by the public they would take $18.75 and buy a Series E Government bond. The remaining $6.25 would be used to defray the cost of exploration for uranium by aircraft. It was represented that the investor couldn't lose his money. He was putting in $25, he was getting a Series E bond which in ten years would be worth $25. So it was represented that the investor couldn't possibly lose anything in the venture. Without that tie-in arrangement they had no hope at all of persuading the public to invest in the venture. That was certainly a stock-selling gimmick. The failure to disclose that a person was, in fact, standing to lose $6.25 out of each $25 invested impressed us as a clever scheme to defraud. There didn't seem to be any point in giving notice to these people to withdraw, so we simply went to stop-order proceedings. The facts developed at the hearing made it clear that these two promoters had not even the faintest idea where they were going to begin to explore for uranium, how to do it, or any of the planning that you would expect businessmen to engage in before going to the public for money. So that resulted in a stop-order.

The second case involved another Nevada company called San Soucie Hotel. It had a little motel operation going. They were seeking capital to build a gambling casino. There were all kinds of wild statements made in the prospectus about the growth of Las Vegas and the fortune to be made in the gambling business. They were completely confused as to what their program was. It appeared that they themselves were not going to engage in gambling. They were simply going to build the facilities but who was going to operate

the casino wasn't clear. The promoter was to get one share free for every two shares sold to the public for no conceivable consideration. The certified financial statements on their face were grossly misleading, including fantastic write-ups of assets, and the balance sheet reflected a substantial amount of good will which did not represent cash acquisiton. The entire filing was so absolutely hopeless that the Division decided that this was simply a fancy scheme to defraud. We were not sure of the underlying details, but we could tell from looking at the filing that something was going on that should be stopped, and that the deficiency letter technique probably wouldn't accomplish very much. So in that case we immediately began a stop-order proceeding. Again the testimony taken at the hearing revealed that the people themselves had not thought the situation through, they had no really good, concrete ideas of how they were going to proceed, and no idea at all as to how they were going to operate a gambling casino.

After the effective date of a registration statement we, of course, will begin a stop-order proceeding any time that we obtain evidence that there has been a false and misleading statement made in the prospectus, or that there has been a serious omission of a material fact--so serious as to make the statements that were made in the prospectus materially misleading. Occasionally this type of proceeding turns on something in the financial statements themselves, where the certifying, independent accountant has not used proper auditing standards and has failed to see something that was basically wrong in the company that should have been discovered by a proper audit. Naturally we cannot tell that in advance. We don't have the staff to make audits, and in passing the Securities Act, Congress provided that certain financial statements included in registration statements shall be certified by an independent public or certified accountant. We accept the certified financial statement as being a fair representation of the financial condition of the company, where on their face or upon a review of documents contained in the filing, there is nothing which would cause us to question their accuracy. The Coastal Finance Company case is a very good example of the type of situation that sometimes arises after the effective date. The company included certified statements in its filing which gave no clue to the inaccuracies which later developed. Although the Coastal case involved a Regulation A filing, the principle is the same. The accounting and financial practices used by this company could have been discovered by a sound auditing program. As a result the inaccuracies were not discovered and the financial statement completely overstated income. An earned surplus was shown where in fact there was a deficit. When it came to our attention that the financial statements probably were false the filing was made the subject of a suspension order proceeding.

MR. WORTHY. Section 8(d) of the Securities Act relates to stop-order proceedings. Section 21 of the Act requires that all hearings shall be public and may be held before the Commission or an officer designated by the Commission.

We find cases, however, where we are not absolutely certain as to whether or not htere has been a willful attempt to file a registration statement which contains false and misleading statements. Moreover, we

need to make further inquiries with respect to the industry itself, and the financial condition of the company as portrayed in that financial statement. We also may believe that it would be unfair to conduct a public hearing and indicate to the public that we think the filing contains false statements or omits material facts.

Under such circumstances we have two routes or procedures that we can follow. The examining staff may have reached certain conclusions but there perhaps are many facts about the registrant that they do not know. We then determine whether or not we should perhaps follow the route of making a private investigation under Section 20(a) of the Act, which permits us to take testimony under oath. That is, of course, done by order of the Commission. On the other hand, you will notice that Section 8(e) of the Securities Act provides for an examination to determine whether a stop-order should issue. So in certain cases where there is doubt in our minds as to whether or not a public hearing should be held, we follow one of those procedures. We arrange for an 8(e) examination. Usually those examinations are conducted in private before a hearing officer. However, such examinations are not required to be conducted privately and at times they have been conducted publicly. The statute does not require that they be conducted before a hearing examiner and I will discuss that later.

To give you an example of a situation of that kind: In one case which had become effective the financial data became questionable because of results of subsequent operations. The company's financial statements were certified for the year and period, and the company furnished its statements to a period within 60 days prior to the filing date. The company's summary of earnings indicated that it had earnings of some $50,000 within the latest three-month period reported. Later, however, we found that there were serious questions as to whether or not the costs of sales were understated and indicated, in fact, that the company, rather then having earned some $50,000 during that three-months period, was not in fact losing substantial amounts. We conducted a private examination under Section 8(e) and learned that the financial statements furnished by the company, particularly the earnings summary, were false. We then recommended stop-order proceedings.

In stop-order proceedings we bring all of the facts out publicly so that investors who have purchased the securities and those to whom the securities may be offered in the future will have the benefit of the information in attempting to appraise or determine whether or not they should purchase or whether they may have a right of action against the company and its officers and directors.

Let me now get down to the matter of the preparation for these investigations, examinations and hearings. The preparation for an 8(e) examination or an 8(d) hearing is substantially the same. First of all the examining staff and the attorney involved must determine what it is we are trying to find out. What is it we wish to explore? Informal discussions have been had and certain conclusions have been reached. We then prepare a notice. We send a telegraphic notice to the designated agent for service in each case saying that we question certain items, and specify those items by

number in the telegram. In addition to that, we furnish what we call a statement of matters. That statement of matters is, in effect, a bill of particulars of the questions that we have and the matters to be explored. Our statements of matters are designed for the purpose of informing the company and its officials of the things about which we intend to inquire.

In Section 8(e) examinations, as distinguished from the Section 8(d) hearings, we are raising questions as to whether certain things are true. In our Section 8(d) stop-order case we affirmatively allege that certain statements are materially false or that there are material omissions. In our stop-order case, we must have at the time it is recommended sufficient grounds to believe that there are false statements or omissions, both of which must be of material facts. So in our statements of matters in stop-order proceedings we allege that certain items are untrue, or that certain statements are untrue, or that the registration statement omits material facts required to be stated or necessary to make statements made not misleading. Have no hesitation to spell out explicitly what you mean in a statement of matters, and where appropriate the reason or basis for the charge. The registrant will know then exactly what it is they have to meet. A registrant can file a motion for a bill of particulars, but if your statement of matters is sufficiently clear, the Commission is not going to require us to furnish in a bill of particulars recitals of the evidence which we have and we may avoid charges throughout a hearing of not having challenged certain statements or of being unfair. If you would like to see samples of statements of matters, we have them in my office for you to see.

In our stop-order proceedings the statute requires that telegraphic notices be submitted 15 days prior to the date of hearing. We then schedule the hearing, either in Washington or at the places most convenient for the Commission and all parties concerned. The case must be handled before a hearing officer because all public hearings must be held before a Commissioner or an official designated by the Commission.

The trial examiner in effect sits as a judge. He rules on the evidence, its relevancy, and we attempt insofar as possible to follow the usual rules of evidence followed in the District Courts.

After your notice has gone out, you have decided at that time how you are going to prove your case. You know what it is that you are trying to prove, but you have to have ways and means of getting the people to appear.

Frequently registrants are cooperative and will send anyone we wish or send any records we want. But to be certain we usually subpoena those we wish to appear. Have your subpoena served. We like to have them served, if possible, at least 10 days in advance and give people notice that they are going to be required to be present on a certain day. Where possible, we attempt to make it as convenient as possible for the company officials by not requiring all of them to be present on the same day. Stagger your subpoenas so that you will have one man in today, another one tomorrow, etc.

Let's talk about the service of these subpoenas for a moment. Your

subpoena must, of course, be signed by the hearing officer. After he signs them, they can be served either by personal service or by registered mail. In the latter case, send them registered mail return receipt requested by the addressee only. There are times, however, when that procedure is not advisable and it may be better to have them served personally. Where service may be contested it should be made in person by a U.S. Marshal, or we can have it done by people in our field offices. We have used all of those procedures.

At the opening of a stop-order proceeding, it sometimes is advisable to make an opening statement and advise the hearing examiner and those present in summary fashion what the case is about. Some of the hearing examiners, however, have preferred that that not be done because they may wish to give a brief statement of the case and the issues involved. Counsel for the Division of Corporation Finance determines how he will proceed and usually waives the right to make an opening statement. However, there is no objection if it is believed that such a statement will clarify any matters for the hearing examiner or the respondents. We handle those on a case to case basis, depending on the circumstances at the time.

Let's go back for a moment to the preparation for one of these proceedings. One of the big difficulties some have is a tendency to overlook the fact that a stop-order proceeding is to determine whether a registration statement contains false statements of material facts or omits material facts. Be certain that you have completely analyzed your case. Ask yourself, "What is it that I have to prove and how am I going to prove it?" Once you know what it is you have to prove and how you are going to prove it, I like to see those working on a case prepare a trial brief, so to speak, of the issues. Such a procedure helps you to know your case and may bring to mind defenses or answers which you should be prepared to meet.

In asking yourself, "How am I going to prove various things?" first consider what you can prove out of the mouths of the company officials. Then consider to what extent it is necessary to bring in other witnesses.

Occasionally on some of these cases you can work out a stipulation of facts without going into a great deal of testimony. That is preferable, if it can be done. I said "occasionally" because our experience has been that it is difficult to work out satisfactory stipulations, particularly where counsel thinks it possible to avoid the entry of a stop-order without making admissions in a stipulation which may make it a certainty.

Normally we conduct a stop-order proceeding and an examination under Section 8(e) in the same manner--we follow exactly the same procedure: we permit cross-examination in an 8(e) examination, we permit the company to put in any relevant testimony that it desires in defense of any of the issues. The reason for so conducting an 8(e) examination is that following the examination the staff takes the record and makes a recommendation to the Commission as quickly as possible as to whether or not a stop-order proceeding should be initiated. If you have followed the procedure in an 8(e) examination that you normally would in a stop-order proceeding, thereafter if

stop-order proceedings are authorized there is nothing to do other than stipulate the entire record into evidence. Counsel for the respondent usually is willing, under the circumstances, to stipulate the record rather than go through several days of repetitious testimony.

As I said earlier, Section 8(e) does not require a hearing examiner to preside over such examinations and we are not required to furnish anything more than a formal notice. Because of the increasing number of administrative proceedings we intend to conduct some of these examinations in a less formal manner when we believe that to do so will expedite the investigation and permit us more quickly to make a recommendation to the Commission.

In conclusion, let me cover very briefly the post-hearing procedure, which I think fits in with what Mr. Ferber is going to talk about. Before the hearing is over you must have an understanding with counsel and the hearing examiner as to whether or not there is to be a recommended decision by the hearing officer. If there is to be one, then we and company counsel prepare requested findings of fact supported by briefs. Those are filed with the hearing officer. Theoretically the rules provide that the requested findings must be filed within five days and brief ten days thereafter. Where you have a long record, it is practically impossible to do it within that period of time and the Commission has been lenient in granting extensions for both parties in filing requested findings and briefs.

After receiving those from both sides, the hearing officer prepares his recommended decision. Thereafter exceptions may be taken by both sides and the Commission will hear argument. If prior to the conclusion of the hearing a hearing examiner's recommended decision is not desired and it is agreed on the record that it is waived, the other provisons of Rule III(e) of the Rules of Practice must be considered and an agreement reached on the questions whether or not there is to be a recommended decision by some other responsible officer of the Commission and whether the Corporation Finance Division of the Commission can participate in the preparation of the Commission's opinion. If recommended decisions are waived, much time can be saved, but that procedure must be agreed upon by all the parties before the examiner on the record prior to closing the record.

Before closing let me say this: after your post-hearing procedure has been followed, assuming you have received a hearing officer's report, you may file appropriate exceptions, and request oral argument before the Commission. When appearing before the Commission on oral arguments, bear in mind these points: (1) Outline your case very briefly. Tell the Commission what the registration statement says or omits about the principal points to be discussed; (2) tell them what the evidence in the proceeding has shown; (3) confine your argument as to what is required in the registration statement, wherein it is untrue because of false statements of omissions, and what the record shows in support of your position. Be as brief as possible and do not belabor your argument. If you follow this procedure, it makes it clear for the Commission, and makes it much easier for the opinion writing group to use the transcript of the oral argument during the preparation of an opinion.

I shall now turn the session over to Mr. Ferber.

ADMINISTRATIVE PROCEDURE ACT

MR. FERBER. I don't know how familiar most of you are with the Administrative Procedure Act. It is a statute which is applicable to administrative procedure with which we must be as familiar as with the Acts we administer and it affects us just as much.

The Administrative Procedure Act was passed in 1946. In the previous decade or so most of the administrative agencies that we have today had sprung up. There had been much criticism with respect to the way these agencies acted. Some of it was justified, some was not justified. But it was certainly a new concept to have a single body act in a particular case, such as in a stop-order proceeding, as both the prosecutor and judge. This bothered a great many people and it was alleged that this was contrary to the American tradition and was unconstitutional. Various procedures were worked out by the courts as to what was due process and what was not, but there was still a great deal of pressure for an overall act, defining, in effect, what should be minimum safeguards.

The reforms were suggested over a period from the late 30's until the Administrative Procedure Act was passed. Their object was to erect safeguards against the dangers inherent in any situation where a single agency had both the prosecutory and decisional functions under Acts which it administered.

Other efforts were made along the line of having uniformity of procedures throughout the various administrative agencies. There were other strong groups pushing for the right to have comments by private interests on any rules before they became effective--rules that would affect them in their business or otherwise. There was criticism that there was not sufficient publicity of what agencies did--that they operated in camera, so to speak. It was felt in some instances that the amount of judicial review was insufficient. It also was felt that people who wanted to settle matters informally did not always have an opportunity to do so. I would say that those were the major lines of comment that led ultimately to the Administrative Procedure Act.

There were various bills under discussion introduced in the late 1930's and early 1940's. The President had the Attorney General appoint a committee to investigate these various positions. The Attorney General's report came out in 1941 and it is a very fine volume on the history of administrative procedure. It indicated that there was a definite need for administrative agencies; that such agencies constituted the best way of preventing undesirable things from happening that had yet been devised. However, it was clear that there were certain protections that should be afforded. There were majority and minority reports on this bill, each recommending a specific procedure act for administrative agencies. Then the War came along and everything was delayed for several years. The American

Bar Association then introduced the forerunner of what became the Administrative Procedure Act.

Among the members of the bar there were some, perhaps, who didn't like the kind of law that the agencies were administering generally, and I think that perhaps some persons were intentionally attempting to put in provisions that they thought would hamstring the agencies in getting their jobs done. There were a lot of other people, though (and I think the bulk of them), who were honestly concerned that individuals might be improperly deprived of their rights and for this reason felt that it was imperative that some action be taken and that some uniform Act be passed.

In any event, the Bar Association bill was introduced, and all of the agencies were asked to comment on it. If you have any problems under the Act or questions of law to look up, you should get our comments which are available.

The Solicitor-General was asked by the House and Senate committees to take over and to work out something so that there would be a bill that would pass and which would not hamstring the agencies. The matter was examined very carefully and consultations were had with all of the people who had prepared the comments of the various agencies, and they finally worked out the present Act.

Like many other Acts this was a compromise. As such it is by no means perfect. On the other hand, it is an Act under which most of the agencies can do their jobs, and it does provide certain minimum protections. This bill, which is applicable to all agencies, suffered to some extent because there are so many different kinds of proceedings throughout the different agencies, and here they were trying to lay down a few general principles applicable to all. Even within this Commission we have proceedings that range from a Section 19(a)(4) proceeding under the Securities Exchange Act, where the Commission suspends trading without giving anyone a hearing because it has to be done on an immediate basis, to certain Holding Company Act proceedings which have required hearings that in some cases have gone on for several years. So, to have the same principles applicable to all created quite a few problems.

I should like to point out before getting to the provisions of the Act that in the legislative history there are very full House and Senate reports on the bill (almost identical) except that in the Senate report they also append the report of the Attorney General. In the Senate it was made clear that the Attorney General approved the bill and that the agencies went along with it in the form which was passed; hence his report must be given a lot of weight.

The major provisions of the Administrative Procedure Act are in line with the objections that had been raised before--provisions that the agencies must publicize its organization and procedures, found in Section 3 of the Act; provisions stating the requirements of the various forms of administrative proceedings, and the various limitations on the powers of the agencies.

(Those are generally found in Sections 4, 5, 6 and 9 of the Act.) And in Sections 7 and 8 are the specific procedural requirements for formal administrative hearings. Finally, there are provisions for judicial review found in Section 10.

I should like to spend the balance of my time in giving you the Commission's approach to the Act, as passed.

The Act first starts out with definitions. These are not by any means clear. They were written in part to take care of the many difficulties that the various agencies had when the bill was originally drafted. For example, until the Administrative Procedure Act it was not much of a problem here as to what was a rule and what was an order. A rule was generally considered to be a general statement that we adopted which would normally affect numerous persons, and an order was where we acted in an individual case after a hearing with respect to an individual company or group of companies. However, when we pointed out to those working on the matter in the Office of the Solicitor General that certain of the procedures which were applicable in adjudication (which would result in an order) just wouldn't fit certain of our procedures, they said they would take care of that by calling these procedures rule-making. One of the big differences normally between the situation where you have rules and where you have orders is that in the proceeding leading to orders, there are problems of conflict of evidence. That is a typical function of a judge or jury--to decide between two conflicting stories. In many of our hearings, however, you don't have a problem as to evidentiary facts. You may frequently go to the company's books and get all the information there and no one argues what the books say and what actually happened. The real argument is concerning how this should be interpreted. What is the policy consideration? What do the aims of the Statute require the Commission to do in this type of case? A trial examiner's report, for example, in a Holding Company Act proceeding is usually wholly unnecessary. It would just result in delay. We pointed these things out and they said they would broaden the concept of rule-making to include proceedings of this sort.

They ended up with a rule-making definition which said, "A rule is the whole or any part of any agency statement of general or particular applicability" (that <u>particular</u> was something new to all of us here) "and future effect, designed to implement, interpret or prescribe law or policy." It "includes the approval or prescription for the future of rates, wages, facilities, appliances, services or allowances therefor, or evaluation, cost or accounting, or practices bearing upon any of the foregoing." That is rule making.

Now "adjudication" is "the whole or any part of the final disposition of any agency in any matter other than rule-making, but including licensing." Licensing "includes the whole or any part of any agency permit, certificate, approval, registration, statutory exemption, or other form of permission."

I give you that background to show you what the Commission was faced with when the APA was passed. There were some here who thought they had to

go through every Act and look at every proceeding to define what was rule-making and what was adjudication in order to follow the formalities of the APA requirements. In rule-making, for example, you have to wait 30 days after the end of the proceeding before the rule becomes effective unless the Commission makes a finding that it is necessary not to do that. In an adjudication you have to have a trial examiner's report, except in certain instances. So someone did go through the 1933 and 1934 Acts and did make a chart. It was a tremendous thing.

On the other hand, some of us felt that going along with that would simply give a person a second crack at the Commission on appeal. So to safeguard against that the Commission adopted a functional approach. We didn't classify any of our proceedings. We didn't classify the things that looked most clearly to be adjudicatory, like a broker-dealer proceeding. Instead, we decided to ask the parties what procedures they wanted, and if the staff agreed, everybody would have waived everything else and that would be it. That way, they will all have what they want, and we will certainly have complied with the whole spirit of the APA as well as the letter because the Act contemplates waivers of any of these requirements. So we have Rule III(e) of our Rules of Practice, which specifices that when the proceedings is to begin or before it is concluded, the moving party is to point out what procedures he thinks are necessary, and specifically he is to spell out whether he feels, for example, that a trial examiner's report is necessary, whether he feels that the staff should be able to assist the Commission in preparation of the Commission's decision, or whether he feels that there is any requirement for a 30 day waiting period after the decision is adopted.

You might wonder why people would be willing to give up these rights. The principle of many lawyers is to claim every right that is available. The reason that we don't have much trouble with that is because usually the person is very anxious to get the proceeding over with quickly. So the parties have their choice. If they want speed, they cannot get speed with all of these safeguards, so they have to decide what safeguards are to be given up. As far as the staff is concerned, they are not too concerned about the procedure selected by the other parties to the proceedings. If they want time, give them time. If they want speed, we will give them speed, but then, of course, we cannot give them the safeguards. As a result, the Commission has very rarely had to make any determination in these proceedings as to whether or not they are involved in rule-making or adjudication. Occasionally they have.

I am sorry time does not permit me to continue.

Adjourned.