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Practical Effects of the Securities Act

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By Ralph T. Crane

In attempting to discuss the practical effects of the securities act of 1933, one is impressed with the comparatively small number of such effects for a piece of legislation so vast in its scope, so far-reaching in its provisions and relating to so essential a branch of our economic structure. This is not saying that such effects are not of great importance and import. On the contrary, they are materially important, but they are not great in number.

The advent of this law was not altogether unexpected. The possibilities and even the advisability of a law of like purpose had been discussed by many for a number of years. Various suggestions had been made to and by members of congress. Some suggestions were incorporated in bills introduced in congress. Investment bankers had made some very specific suggestions for national legislation, which they then believed and still believe would have been effective and workable. Although all of these suggestions were advanced in perfect good faith and with nothing other than the highest motives back of them, they seemed to fall on inattentive ears until President Roosevelt, in harmony with platform pledges, made specific recommendations to congress and set the drafting machinery in motion.

In the early stages of the presentation of proposals for the law it became apparent that provisions of the law proposed were being drafted by persons wholly unfamiliar with the accepted and practical methods employed in the issuance and distribution of securities, as well as with the legal aspects of formulating a security issue, the technique of secondary markets and other important phases of the business. This, although possibly needlessly, caused anxiety and suspicion as to ultimate intent, not easily removed even though not justified. Corporate officers, financiers, investment bankers, already preoccupied with very specific individual problems incident to the depression, carried these anxieties over to the time of the actual enactment of the law and then found provided in the law new requirements entailing great and unusual expenditures, new rules of procedure and, particularly,

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new standards of possible or contingent liabilities and new rules as to allowable defenses. There was then and for a considerable time thereafter a rather definite and general feeling that the anxieties of pre-enactment days were well founded.

Corporate officers and corporate management were fearful of their freedom of action in any financing, new or refunding, involving any element of interstate transactions. This, of course, applied to the great majority of the substantial industries, a number of which were sorely in need of readjustments which would normally have been possible under the cheap money conditions.

Dealers in securities and particularly underwriters were confronted with new rules of conduct, new requirements and new responsibilities not easy of interpretation and, in some instances, difficult of definite determination.

Accountants found requirements for material changes in some of the theretofore accepted practices—not necessarily adverse or unwarranted changes, but changes nevertheless. This required careful thinking and careful determination of their future course and procedure. Above all, they were faced with liabilities, contingent at least, apparently mandatory, which those of responsibility would not assume.

Lawyers, acting on the side of safety for their clients, were slow in giving opinions as to legal effects of a number of the provisions of the law and ultimately hesitated to give assured interpretations as to a number of the phrases and clauses. The best legal minds cited certain important provisions which they insisted were susceptible of two or more interpretations.

There is no doubt in the minds of men close to the situation that all these things materially contributed to the very definite slowing down of overdue readjustments and refinancing at a time when they should have been accelerated. Since, in the emergence from a depression, new financing must necessarily follow the readjustment period, to the extent readjustments were delayed new financing was also delayed.

Strange as it may seem, the enactment of the law, by reason of the publicity of discussions incident to its consideration and the all-too-frequent assertions about the alleged past misdeeds of corporation officers, financiers and investment bankers and of business in general, coupled with the generally known fact that corporate directors, bankers, dealers and accountants were loath

to assume the liabilities under the law, weakened rather than enhanced the public confidence in business and in investments.

The amendments of 1934, plus a somewhat changed official attitude toward corporate management and investments and, especially, the high character of the administration of the law have relegated most of these effects into the temporary class.

Cost is always a major item of business. Likewise it is a major effect of this law—permanent, so far as we can see. It is too early to attempt any comparison between cost and benefits, especially dollar costs and dollar benefits. Neither is it possible to state the whole item of cost in any concrete form. We do know, however, that the item of cost is considerable and must be passed on to some branch of the public. Whether this is in the form of reduced dividends, increase in production or operating costs, ultimately to be reflected in sales or service price or by taxation to cover costs of administration, is immaterial.

Through the registration provisions the law has definitely placed on file in a public place all the material information, and more, relating to all new issues not exempt under the law. The essentials of this information in turn must be incorporated in the prospectus made available to every investor. No one now can even allege there is no opportunity for finding out the facts. There is no longer any cause for complaint at not being able to judge a given security on the basis of fact according, solely, to one's ability to read and understand the facts.

The resultant value of these requirements is not so clear. Normally one might expect the investing public to be benefited by the new as against the old method. But, is it? We hope so. Experienced investors, investors of or with considerable means received or got all essential facts prior to the new methods. Other investors with knowledge of their inexperience placed their dependence in others of known qualifications for guidance. Others, wholly uninformed and inexperienced and without ability adequately to inform themselves, then, as now, invested blindly, under impulse, according to some dream idea or in a spirit of gamble, catch as catch can.

We must not rest here, however, and say there are no resultant benefits to investors. It is more by indirection than by direction that beneficial effects have reached investors. The requirements of the law as to detailed information, the placing of this information on public file subject to almost universal, to say nothing of

official, scrutiny, and without regard to civil or criminal liability, have slowed down the tempo, encouraged extreme care and caution, tempered reports and factual statements to even greater conservatism. In addition to this broader dissemination of information, the investor is furnished a most comprehensive prospectus, which, even if he does not read, he is privileged to file away for future reference should any occasion arise. This is well known to the issuer and dealer and may be an incentive to greater precaution in salesmanship.

There has been much discussion of the twenty-day-waiting-period provision of the law. While there are differences of opinion as to the effects of this provision, it has definitely tempered and materially reduced so-called high pressure salesmanship. An equally clear but contrary result has also occurred. No inconsiderable number of investors, most of them experienced and informed, impatient with any delay of opportunity to make a desirable investment, insistently approach dealers in securities for definite commitments on an allotment of forthcoming issues well in advance of the twenty-day expiration and bring high pressure to bear on the dealer for a commitment, which would amount to a sale in direct violation of the law. The investor may and frequently does apply his pressure under threat of transferring all his business to another, who, if a less scrupulous observer of the law, materially profits by satisfying the investment needs as well as the demands of the customer through a transaction which violates the securities act. It is easy to see the penalty against the one and the premium available to the other.

The application of sections 17 and 20 of the law, commonly referred to as the anti-fraud and injunction sections, of recent months have been productive of noticeable material and beneficial effects. Section 17 makes it unlawful to employ any fraudulent scheme or device in the sale of securities through any instrumentality of interstate commerce; while section 20 grants the power of injunction against any such schemes or devices. Heretofore unscrupulous operators in securities transactions have sought to cloak themselves with immunity against state laws on the plea that their activities were interstate. In many instances local authorities were quite helpless, and, there being no national authority outside the overburdened postal inspectors to check such frauds, this group of underworld operators in the business carried on to the detriment of the investing public and the goodwill of

the business. The securities and exchange commission, through its agents, has very wisely energetically attacked these practices at several points. This activity is having telling effect for good. If persisted in soundly, the effects should be definitely wholesome.

It will certainly be a great step forward if some plan can be devised for coördination of the several efforts and activities relative to the interstate sale of securities, whereby there will be greater uniformity in activities by the federal and the respective state agencies, thus materially decreasing the financial and kindred burdens of the present necessary compliance with a multiplicity of laws and regulations.

There is now a disposition on the part of issuers, officers and stockholders to be less fearful of publicity of facts heretofore regarded as strictly confidential, publicity of which might or would be detrimental to the private interests of such persons. Whether the public is profiting or may profit through this publicity of personal and confidential information, the future alone will tell. This law should, and if the present high character of administration is continued will, I believe, bring about some future mutual consideration of the problems involved by administrative agencies, members of congress and representatives of those whose businesses are directly affected by the law, resulting in betterments and material simplifications. Like most other laws of this character, the majority of the requirements laid down in the law and through the regulations under the law are more regulatory for legitimate business than against fraudulent practices.

I can not too strongly stress the effects of the administration of the law, which are apart from the law itself. I can not speak in too high terms of the character of the personnel of the commission as presently constituted. With a less fair-minded, intelligent and coöperative attitude, the effects might have been and in all probability would have been materially different. With an equally capable and conscientious personnel of the commission in the future and with the proper and, in my opinion, very appropriate spirit of coöperation, any adverse effects should be constantly reduced and beneficial effects amplified.

The recently announced plan for the appointment of a committee to act as a consulting or conference committee with the commission is, in my opinion, a great step forward and should result in much good for both the investment banker and the public.