

**SECURITIES AND EXCHANGE COMMISSION  
AND THE MINING INDUSTRY**

**Address of**

**Edward N. Gadsby  
Chairman  
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Washington, D. C.**

**before**

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Sponsored by  
The Colorado Mining Association  
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Mr. Chairman; Gentlemen:

This is my first trip to Denver since becoming Chairman of the Securities and Exchange Commission, and I am most grateful to you for providing the occasion. In fact, it is my first visit at any time to your fair city. I remember some years ago reading an article by the now Senator Neuberger, who was then a civilian writer out in Oregon. Mr. Neuberger's theme was that the Nation's Capital should be removed from the miasmatic banks of the Potomac and relocated in Denver. I was at that time living near Boston in my home State of Massachusetts, and I must admit that, despite Mr. Neuberger's eloquence, I was not much impressed. It was my reaction that, if anything, it should be returned to Boston, where it began. However, now that I have visited this delightful and most hospitable city, I can see what inspired his proposal. It would be interesting to know whether Mr. Neuberger, now that he has spent several years in the District as a Senator, still sticks by this intriguing idea.

However, so long as most of the rest of our Federal Government has its headquarters in Washington, I suppose our Securities and Exchange Commission will stay there, too. But I hope this does not give you the feeling that we are remote from and not interested in the welfare and problems of the vast region whose economic capitol is this beautiful city. As tangible evidence to the contrary, we have located one of our principal regional offices in Denver under the competent direction of Milton J. Blake. This office is responsible for a large part of our activities in the States of North and South Dakota, Nebraska, Wyoming, Utah, and New Mexico as well as Colorado itself. This is a lot of territory for Mr. Blake to cover with his staff of about 30 attorneys, accountants, and investigators, and they are busy men. To ease the load and improve our service, several years ago we set up a branch office in Salt Lake City where Charles T. Kappler has been doing a most able job.

To complete the picture of the administrative arrangements we have made to service the territory from which most of you gentlemen come, the States of Montana, Idaho, Oregon and Washington are under

the jurisdiction of our regional office in Seattle, where Mr. James E. Newton is in charge. Jim Newton opened that office some 20 years ago and he is still there, and still doing a most excellent job. California, Nevada, and Arizona are under our office in San Francisco, with the able Arthur E. Pennekamp as regional administrator. He has a branch office in Los Angeles headed by Charles R. Burr. To round out the circle, Kansas, Oklahoma, Arkansas, and Texas, as well as the western half of Louisiana, are under the incomparable Mr. O. H. Allred. We will soon create a branch office for Mr. Allred in Houston.

I hope this information and these names are already common knowledge among you. I call your attention to these offices not to impress you with the long arm of the law and the pervasiveness of federal interference, but rather to impress upon you the fact that you needn't always come to Washington to do business with the S.E.C.

This is not the first nor, indeed, the second occasion upon which the S.E.C. has felt it desirable to send out emissaries to this region to explain its functions. Last year at this time my colleague, Commissioner Orrick, had the privilege which I now enjoy. At a regional meeting of the American Bar Association held in Denver in May of last year, Commissioner Earl F. Hastings of Arizona, a registered mining engineer, and some of our staff participated in a discussion of some of your problems. My staff and I spent yesterday in a symposium designed for the benefit of the members of your organization, among others, on the so-called Regulation A issues. This symposium was organized since many of us in Washington have felt that perhaps there was a great deal of misunderstanding among small business in general both as to the purpose and philosophy of the S.E.C. and also as to the mechanics of ~~registration~~ *FILING*, particularly under Regulation A.

First, let me utter a couple of truisms that will bear constant repetition. The S.E.C. does not intend to impede in any way the free flow of capital. In fact, we feel it to be our function to expedite such activity to the extent that we can do so under the law. In a very real sense, our business is to help business.

It is really not my place to be unduly immodest, yet I cannot fail to point out to you as an indication that some members of your

industry appreciate our policies in this regard, the statement contained in the Declaration of Policy adopted by some four thousand delegates to the American Mining Congress meeting at Salt Lake City last September. These men there stated that:

"We commend the constructive position taken by the Commissioners of the SEC in their approach to problems of mine financing during the past year."

As we are anxious to help business, a fortiori, we are anxious to be helpful to small business organizations. Under the powers given us by Section 3 of the Securities Act of 1933, we have drawn up special rules for filings calling for less than \$300,000 of new money. The provisions of these rules, known as Regulation A, are, of necessity, carefully phrased in what might be considered to be almost too exact legal terminology. They look a great deal more complex, however, than they actually are, and if your lawyers have any difficulty in understanding them, our local office is more than happy to spend with them whatever time is required. This is not intended as a reflection upon the competency of your counsel or your own analytical ability. We are sincerely and honestly anxious to be of service, and we are placing at your free disposal a local staff of men who have had much experience and who are considered to be experts in this field. They are completely familiar with these proceedings and we think they can show you how simple and how expeditious it really is to clear a security issue through the S. E. C. for offering. Please don't hesitate to put your problems before them. That's what the taxpayers are paying them for.

Gentlemen, I realize that I am speaking to you at a time when your industry is having serious difficulties. The prices of non-ferrous metals are down, employment among miners is down, and foreign competition is severe. Prices, tariffs and unemployment are, I am happy to say, not matters within my official responsibility as Chairman of the Securities and Exchange Commission, but that does not prevent my having a strong sympathy with your problems as a fellow citizen of our great country. We in the states not endowed with such natural wealth know the importance of your industry, not only to the welfare of your own region but also to our whole economy as it struggles with the heavy demands of our national defense efforts. For both reasons I hope, as do all Americans, that your problems can be overcome so that the western mining industry can continue to flourish and expand with the wholesome vigor it has shown so often in the past.

While metal prices and foreign competition are beyond our jurisdiction at the S.E.C., we do of course have an intimate concern with your financing activities. This concern is not directly with the prices your securities attract, nor do we have funds to lend or otherwise to invest. Our interest is rather with the methods and procedures by which you seek to raise capital from the public. I should like to discuss with you for a few minutes what has been going on in this area as we see it.

Our records show that the mining industry as a whole has continued to raise cash from the sale of securities at an impressive rate. Though down from the peak calendar year, 1954, when over a half-billion dollars of new capital was raised by your industry from public and private sources, it continued well over \$400,000,000 in 1955 and 1956. Total funds raised for the entire calendar year 1957 are estimated at about \$330 million compared with \$450 million in 1956. The bulk of this new financing represents types of financing requiring filings with the Commission. In 1956, \$321 million or over 70% of the total consisted of issues either requiring full registration or filing under Regulation A. The remaining 30% represents issues placed directly with insurance companies or other institutions. In 1957 there was materially less new financing by the smaller and newer mining companies, so that most of the new financing was accounted for by the larger and seasoned companies. The smaller amount of new issues, that is, those covered by our Regulation A, was due to the sharp drop in volume of uranium issues.

To illustrate with a few more figures, the number of Regulation A issues filed in the Denver office by mining companies other than uranium companies has declined only slightly, being 13 in calendar year 1955, 15 in 1956, and 11 in 1957. The number of uranium issues out of the Denver office, on the other hand, has fallen from the high of 361 in 1955, to 107 in 1956, and 17 in 1957. Taking the mining industry as a whole (excluding coal and aluminum) there were 78 Regulation A filings in 1957 for an aggregate of \$14,300,000. I should point out that when I give total dollar amounts of securities registered, the total cash actually raised must be assumed to be somewhat less, since all issues, especially in the Regulation A category, are not always entirely successful.

Another indication of activity in the mining industry is obtained from our statistical release on plant and equipment expenditures. Our

study indicates outlays by the mining industry for the first quarter of this year at an annual rate of \$1.2 billion, a decline of 8 percent from the record outlays of 1957. Although a decline is indicated for this year, it should be pointed out that current expenditures on plant and equipment are still at a very high level and exceed 1955 by more than one-fifth. I do not pretend to be an economic prophet nor do I wish to appear to minimize your troubles. I mention these figures because I should think they would be of interest to a conference concerned with industry-wide developments.

It is not, as I have stated, any part of our job to increase or decrease the amount of public financing conducted by the mining or any other industry. It is our duty to enforce the law requiring adequate disclosure of relevant and material information to prospective purchasers of your securities and to stamp out, as best we can, fraudulent and unlawful selling and trading practices. As Commissioner Orrick said when he spoke to you a year ago, it seems to us self-evident that our success in this respect is of immediate interest and benefit to all of you. No industry can raise capital if its financing practices become so tarnished in the public mind that there is a lack of confidence in the integrity of the industry. Every time an investor gets "burned" in buying a worthless mining stock makes it that much harder for you gentlemen, who are responsible and honest and experienced, to raise needed capital.

Even though I have been with the Commission only a relatively short time, nothing distresses me more than to hear it said, as I occasionally do, that the S.E.C. is against the mining industry and especially against speculative promotions. There is no truth to this. We are not that stupid. We know the importance of the mining industry and we are aware of the crucial role which is played by the process of discovering and developing new ores. We know that in the nature of things, and despite all the advance in geology and engineering, a new mining venture is all too often a speculative and uncertain thing. And yet new ores will not be found and worked unless men are encouraged to take such chances and unless the investor is willing to put up the grub stake for the prospector, at least where required.

We are not against this process. We are all for it. Our function is to prevent any attempt to persuade an investor to put up his money

without giving him all the facts -- honestly and fully -- so he can evaluate the chance he is taking and make an intelligent decision. His decision may be wrong and he may lose his shirt. But if he knew all there was to know about the undertaking and went in with eyes open, then any bad luck he has must be written off simply as bad luck. Many investors, even the small fry, are willing to take a calculated risk in the hope of substantial gains. Consequently, it is generally unnecessary to conceal the risk in order to sell the security. The complaints and the bitterness that sour the market come when the investor is led to believe that his speculation is in reality a sure thing.

I am sometimes told that our interference in this area goes against the spirit of the West; that out here a man looks out for himself; that if a man is fool enough to let himself get fast-talked out of some money, it's none of the Federal Government's business. Or at least that the Federal Government should not pester the entire industry just to protect a few dupes who cannot look out for themselves.

It will come as no surprise to you that this position is not consistent with the Federal securities laws. The statutes make no pretense of protecting the fool against his folly, and do not interfere with the selection of investments and decision as to quality. The Federal Government makes no attempt to tell an investor where he should put his money. But it is the collective judgment of our government that, with a country as large and an economy as complex as ours, self-reliance is not enough when it comes to the matter of adequate information. This conclusion has been reached not just out of tenderness for the investor, but out of a desire to preserve a system of private capital healthy enough to serve the needs of our expanding economy:

Whether or not, and how, to invest one's savings is still an act of individual free will. If a man can scrape something together out of his earnings after Uncle Sam and his employer or union get through with their deductions and his wife and children get through with theirs, he can invest it in anything he chooses -- stocks, bonds, real estate, savings accounts -- or he can put it in a sock in the bottom drawer or place it, quarter by quarter, in Nevada's one-armed banks. But he is not going to put it into stocks unless he feels confident that he will get a fair shake, and that means fundamentally that he has been told the whole story as to what he is buying. It is from such persons

that most of your equity capital must come. The New York Stock Exchange now estimates that over 10,000,000 individual persons in this country own stocks in private corporations. The number has grown rapidly since World War II. There are many reasons for this, but one of the main ones surely is, that we at the S.E.C. have helped generate and maintain a certain basic confidence in honest treatment. If this confidence disappears, savings will start going into the old sock instead of into securities. Then equity capital for development will tend to dry up, or the Government must take more direct measures to provide it -- something none of us wants.

Mining stocks cause special problems for several reasons. One reason is the geographical remoteness of the physical properties from the average investor. Another is the technical nature of the studies and reports upon which the investor must base any intelligent judgment as to the chances of success in any given promotion. The ordinary prospective investor cannot conveniently visit the properties, and he wouldn't understand what he saw if he did. Added to these factors is the heady atmosphere of romance that still surrounds your industry in the mind of the common man. The western mining industry still appears as one of our last remaining frontiers where chances must be taken but where, with a little luck, great fortunes can be made overnight. All of these factors make it painfully easy for the unscrupulous promoter to sell a dream often based not even on an honest hope. We at the Commission are, I'm afraid, somewhat unromantic as regards financial matters, and perhaps that is one reason we tend to be unpopular in this area. We insist upon applying the same disclosure standards to mining stocks as we do to others. Essentially, that standard requires that all of the information which an average prudent investor should have before purchasing a security must be fully and accurately disclosed.

Applying this broad, basic standard to mining registrations or offering circulars, it is only reasonable that we carefully scrutinize the bases for ore reserve estimates, since these often are the heart of the property description. Where the estimates are not reasonably supported by sample-assay data or economic data, or involve practices not accepted by responsible persons in the mining industry, we regard the use of such estimates as misleading, and we take steps to see that they are not used in securities sales. Other forms of exaggerations or omissions or opinions based on mere conjecture can be materially misleading and we object to their use.

Examples of such misleading exaggerations or omissions are easy to find. In addition to glowing estimates as to proven or probable ore based on completely inadequate testing and sampling, we have had one statement which failed to include the pertinent fact that the property to be exploited was several hundred miles beyond the nearest rail head. Another reported estimate turned out to have been based upon selected, non-representative samples taken from property not owned by the would-be issuer or even close to its property. In fact the issuer's property was a raw prospect in an area where no uranium -- this was a uranium issue -- had been found and where no one else was actively exploring. We have no reason or desire to stop persons from investing in such raw prospects, but they ought to know it. Another statement failed to disclose that the property to be exploited was encumbered with a heavy tax lien which would exhaust most of the proceeds of the issue, leaving insufficient funds for proper development. I recall one recent case where our inquiries disclosed that the parties had been bamboozled by one of the oldest gags in history -- the property had been salted by ore samples imported from Mexico.

Our files are unfortunately full of such examples. These are the things which Congress has told us to compel registrants to disclose to possible investors, and I think you will agree that they should be so informed. We are confident that if we succeed in compelling such disclosure of all material information as well as in preventing outright frauds, we will make our greatest contribution to the financial health of the mining industry.

In closing, I would like to turn our attention away from the careless and corrupt and speak for a moment about the financing in which you gentlemen engage. Many years of experience of our staff in the administration of the securities laws shows that they are primarily a burden only to those who are not willing to make a bona fide effort to comply with the full spirit of the law. We are proud of our record of cooperation with those who come to us in good faith and who make an earnest effort to understand what we are trying to do. I venture to say that, once you approach us in that attitude, you find us helpful and efficient in joining with you in the hectic process of finally getting a public offering to market. As an administrative agency rather than merely a police force, it is this activity which gives all of us the greatest satisfaction and feeling of accomplishment. We are glad to explain our requirements, to help work out knotty problems, to meet your deadlines, and to reestablish a partnership between us designed for the common good of us all.