PRACTICAL ASPECTS OF PREPARING AN ISSUE FOR MARKET

Address by
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Commissioner Sargent,
Former Chairman Demmler,
Gentlemen:

You have heard from Ralph Demmler concerning some of the practical aspects of preparing an issue for market--of the collection and organization of the information to be contained in a registration statement and prospectus--and the preparation of these documents for filing with the Commission.

I will try to explain our approach in reviewing a registration statement after it has been filed, to outline briefly the standards employed by the Commission in the discharge of its functions under the Acts, and to make a few suggestions which may minimize some of your problems and ours.

The reporting and disclosure provisions of the various Acts are administered for the Commission by the Division of Corporation Finance. If the operations of the Division were to be described in terms of ultimate responsibility, I would say that we are preoccupied constantly with the same three basic considerations which concerned Mr. Demmler's team in the preparation of his issue for market--timing--the disclosures required by the statute and the rules and regulations--and materiality.

I mention "timing" first because the Commission and the Division have always recognized the importance of "time" to issuers and underwriters in financial transactions. Subject, of course, to the compliance or apparent compliance with requirements, it is our policy to meet any reasonable time schedule if that be possible. As late as the briefing conference in San Francisco in September, 1957, I was able to state that "We are rather proud of the fact that very rarely does it occur in a well-prepared case that an issue fails to meet a market schedule because of inability of the staff to make deadlines. That is not to say that counsel, corporate executives and underwriters may not be subjected to considerable nervous strain, and sometimes become a little frantic in the process, but by and large the system produces." Since then, unfortunately, there have been periods when we have not been able to meet time schedules as we would like. In fact, last December, just before Christmas, it became necessary to write a letter to approximately thirty-five issuers advising them that the examination of their registration statements then pending would be delayed--an action rarely and most reluctantly taken.

Approximately 70-80 per cent of all the work done by the Division is performed under some time schedule established by the statutes or the rules or requested by the parties. During the course of a year--when economic activity is at levels experienced in recent years--somewhere between 900 and 1000 registration statements for issues aggregating fifteen to eighteen billion dollars are filed under the Securities Act. Every year approximately 2000 proxy statements are filed under the Commission's proxy rules. As you know, both types of filings tend to fluctuate seasonally and to increase substantially in the late winter and early spring of each year. The

Commission of course has no control over the flow of this work, and the surges which occur, because of swings in market prices or other business factors, make the maintenance of schedules extremely difficult. For example, during December of 1958--a month which normally is not too active--ninety-nine new registration statements were filed.

Delays in the handling of the work at the Commission involve more than mere inconvenience to practitioners, issuers and underwriters. In less busy times, when events followed the procedures to which practitioners and underwriters had become accustomed, our letter of comments could be expected after ten or twelve days, and promptly thereafter preliminary prospectuses giving effect to changes suggested by our comments or otherwise would be circulated among dealers and others. When our letter is not forthcoming until the sixteenth or eighteenth day after filing, the distribution of the preliminary prospectus occurs so late as to reduce substantially the time available prior to the effective date for the circulation of the prospectus and the opportunity for prospective buyers and sellers to become familiar with the issue. This development, which was mentioned as a subject for discussion by your Advisory Committee, is one which we at the Commission deplore On the other hand, there is very little that we can do to remedy the situatio under existing conditions.

There are three principal reasons why we may not act as quickly as you would like in the processing of the registration statements and proxy statements filed with us--first, the sustained high volume of filings; second, our staff is now going through a transitional period, the arrival of which could long be foreseen but for which government personnel and budget policies have limited our ability to prepare. Thirty-six per cent of our professional staff of 131 people have been with the Division less than two years and thirty-six per cent of our examiners have been with the Division for less than one year. It is no reflection on these new, young, relatively inexperienced lawyers and analysts--they are willing and hard-working--that in our business as in yours speed comes only with experience, training and know-how, and finally, the staff of the entire Commission--not just our Division--has been engaged to a degree not experienced for many years in a series of complex, difficult investigations of cases involving securities frauds and violations--cases which tie up the Commission as well as the staff and make more difficult the disposition of the regular work.

It seemed to me that if you were advised of the problem--it is yours as well as ours--there might be many instances in which you could perhaps modify your schedules without any real inconvenience. In any event, it is important for me to echo and emphasize the advice given you by Mr. Demmler. When you have determined upon the time schedule you or your underwriters wish to follow, communicate that information to the Commission's staff as early as possible. It will help us to help you if we are forewarned and have an opportunity to determine whether we can adjust our schedules to meet yours.

Another aspect of the time problem should be mentioned. We are not equipped to give prefiling examinations of proposed registration statements, proxy statements or other proposed filings. We have neither the time nor personnel to spare from the cases actually before us to review material in advance of filing. We do, however, encourage issuers, counsel and accountants to submit, in advance of filing, specific problems the resolution of which in advance may avoid last-minute disruption of schedules. The Chief Counsel and Chief Accountant of our Division spend a great deal of their time in prefiling conferences concerning specific problems recognized as potential obstacles to the expeditious disposition of a case. Not infrequently these problems require consideration by the Chief Accountant or General Counsel of the Commission or the Commission itself. Obviously, it is better to have such a problem explored and, if possible, resolved before you reach the final stages of preparing an issue for market. We make one exception to this policy of refusing prefiling examinations. In situations involving foreign issuers where translation and communication problems complicate the normal amendment process, we try to assist counsel and the accountants by prefiling reviews.

It seems to me that little need be said in a conference such as this as to the specific requirements of the statutes or of the Commission's regulations. Over the years the rules and registration forms have been revised in a fairly continuous process for the purpose of providing the maximum guidance to the practitioner and the staff as to the Commission's views concerning the subjects or facts required to be disclosed. Under our practice and procedure, no rule or form can be adopted without action by the Commission. It rarely occurs that any rule or form is adopted or amended without first submitting the proposed action for public comment and criticism. Frequently, public hearings are held as an aid to thorough consideration of the policy or problem involved.

In this field of financial reporting and disclosure, the basic problem always has been and doubtless always will be the making of judgments as to "materiality."

In the two principal areas of our work--registration statements and proxy statements--there are two quite different powers available to the Commission to compel enforcement of the statutory standards. Under the Securities Act the Commission is authorized to hold administrative proceedings and to issue stop orders under Section 8(d) if the circumstances warrant. The Commission has no similar power in the proxy field where, on the civil side, the ultimate action by the Commission is to seek an injunction in the Federal courts.

I mention proxy statements because the practical problems to be met in preparing proxy material are similar to those encountered in the preparation of registration statements. Or to put it another way, the techniques which avoid trouble under the Securities Act will be equally conducive to an absence of friction in complying with the proxy rules and indeed all financial reporting.

Since we have an abiding interest in your avoidance of trouble, perhaps a few observations drawn from our experience will be of assistance.

The Commission's opinions are a rich source of authoritative advice on this subject of avoiding trouble. I am convinced that many practitioners and most businessmen fail to realize the extent to which their particular problem has been dealt with by the Commission in some earlier case and the Commission's views on the subject made a matter of public record. We have pondered why, after twenty-five years of the Securities Act, we have had more stop-order proceedings than we have had in many years and why we continue to meet the same basic disclosure problems in our handling of cases informally by letter or conferences, notwithstanding the thousands of cases which have been processed by the Commission during this long period. I suppose all law enforcement agencies at some point are baffled by the same question. Our own very real problem of how to teach a new staff what to do with a registration statement after it has been filed suggests at least a partial answer.

The changes in our own staff and our experience with the cases impress upon us the fact that we are growing old. We find that we are working with a new generation of practitioners and businessmen, some of whom never knew or have forgotten the early years of the securities acts and the problems which gave rise to particular rules or the provisions of registration forms. Those of us who have worked closely with the Securities Act for many years have come to know the principles which guide us, and many things have become so ingrained that we tend to forget how they got that way or when they began.

As of the close of last year, 15,685 registration statements had been filed with the Commission under the Securities Act. In slightly over two per cent of these cases (348), the Commission issued stop orders under Section 8(d) of the statute. In most cases the order was accompanied by an opinion. These opinions generally describe the facts and problems involved and reflect the Commission's views as to the meaning of the statute.

How can you convey to a new staff in a short time the fundamentals, the warnings, the advice and the experience reflected in over three hundred opinions under the Securities Act? How realistic is it really to expect busy practitioners to know or remember that a particular case decided perhaps twenty years ago is the key to a current problem? Furthermore, not all of these would be helpful from the point of view of general application. The holdings in some opinions have been translated into specific rules. Some deal almost entirely with procedural matters. Others discuss particular fact situations from which it is difficult to draw a general principle. Many, on the other hand, state propositions which are timeless in their pertinence and relevance to disclosure problems generally and continue to serve as a frame of reference for those of us who review your work. It is the practitioner who carelessly, willfully or unknowingly departs from these principles who gets into trouble. Staff members cannot properly do their job until they learn them and learn to follow them.

I have been convinced that someone--in or out of government--familiar with the field could perform a real service by publishing in handbook form a careful analysis and summary of the principles expressed in or to be drawn from these stop-order opinions. There have been twenty such opinions published by the Commission in the last four years. Some of them are of limited usefulness because they deal with particular factual problems. A few of them contain statements or conclusions which are of general application and which clearly reflect a Commission policy as to certain types of disclosure problems. More important, you will find that in them the Commission refers to earlier cases and in so doing, reminds us that the vitality of principles applied in an earlier period has not diminished with the passage of time.

In March, 1934, the Federal Trade Commission issued its decision in its first proceeding under Section 8(d) of the Securities Act in the matter of Charles A. Howard, et al.1/ This opinion contains an important declaration of administrative policy as well as a pronouncement of the Commission's philosophy as to meaning of the statutory test of materiality:

> "The Commission's jurisdiction to issue a stop order under Section 8(d) relates to deficiencies arising out of statements of material facts contained in the registration statement, or omissions to state material facts required to be stated in the registration statement or necessary to make the statements therein not misleading. It will thus be seen that a condition precedent to the issuance of a stop order is the existence of deficiencies relating to statements or omissions of material facts. Deficiencies not relating to material facts do not give ground for the issuance of a stop order. They may, however, be included in a notice to show cause why a stop order should not be issued, and the stop order may embrace in its terms such deficiencies, although it must have as a basis for its issuance a deficiency relating to a statement or omission of a material fact."

The Commission went on to say that no question had been raised in that proceeding as to whether any of the deficiencies related to a material fact--in other words "a fact which if it had been correctly stated or disclosed would have deterred or tended to deter the average prudent investor from purchasing the securities in question."

Today you will find in Rule 405 of Regulation C under the Securities Act a definition of the term "material," which reflects this early decision. Substantially the same definition is to be found in Rule X-12B-2 of the General Rules and Regulations under the Exchange Act.

In the day-to-day operation of the Division, most cases are handled informally and whatever we have to say concerning them is conveyed by correspondence or by conference. In the informal as well as in the formal procedure, it has been our custom to comment on matters which perhaps standing alone would not support a stop order. You may have questioned this procedure.

1/ 18 F.T.C. 626 and 1 S.E.C. 6

Our staff has been instructed not to raise immaterial deficiencies, nor to clutter up your files or ours with unimportant or merely technical matters. If, however, there is some point of substance to be made in a case, an effort is made in the interest of the maintenance of some reasonable degree of uniformity in disclosures to bring to your attention other matters which may serve the end result of clarity or the correction of oversight or error. The point I wish to make is that this procedure is rooted in a Commission decision as to a general policy which has always been followed. You doubtless are aware of the position--you may not have known of its origin.

In this same case the Federal Trade Commission went on to say with respect to another item--"But the half-truth embodied in the registrant's answer is the very type of untruth to which the language of the Securities Act relating to omissions of material fact has reference. In the language of Mr. Justice Avory, the registrant's statement is 'false in a material particular in that it conveyed a false impression.' Rex v. Kylsant [1932] 1 K. B. 442, 448."

A few months later--May, 1934--the opinion of the Federal Trade Commission in the matter of Commonwealth Bond Corporation[2/] was promulgated. In this case the Commission touched on a problem which always presents difficulties. I mention it because of the frequency with which it continues to occur. The opinion states--"The prospectus of the company implied that the cash return to depositing bondholders would be more than that of non-depositing bondholders, when the evidence establishes that no cash would be available for distribution to those who deposited."

In referring to this aspect of the disclosure problem in the case, the Commission said--"These statements are rather in the nature of prophecies rather than statements of present fact. But a prophecy known to be untrue as of the time it is made is to be regarded as an untrue statement of fact inasmuch as it misstates the mind of the person making the prophecy."

Some day the Commission may be faced with a case in which it must consider whether an economic prophecy can ever satisfactorily meet the tests of the Securities Act. The prophet can hardly support the burden of showing that the prediction is not untrue or misleading when he cannot know whether it is or is not.

A year later--in September, 1935--the Securities and Exchange Commission published an opinion in a stop-order case involving National Educators Mutual Association, Inc.[3/] At that time the Commission's rules required the filing of a registration statement the contents of which were required in part to be restated or summarized in a separate prospectus. The rules as to the form and content of a registration statement have been changed in the intervening years, but one of the basic holdings in the Educators case is still applicable and deserves repetition:

2/ 18 F.T.C. 635, 1 S.E.C. 13
3/ 1 S.E.C. 208

"The registration statement seeks to ascertain certain very definite particulars of a registrant. In many instances, answers to these may be technically adequate when viewed item by item. The combination of these items, especially those required to be set forth in the prospectus, generally reveal the character of the offering being made and the nature of the security the investor is being solicited to buy. But it may frequently be true that the cumulative effect of these individual items is carefully and intentionally concealed by their segregation in the prospectus, with the result that the impression left upon the reader by the prospectus is fundamentally untrue and misleading. The challenge of the Commission can thus under the Act be not only to individual items in the registration statement and prospectus as such, but upon the broad basis that the general effect of the prospectus as an entirety is to create an untrue and misleading picture in the minds of prospective investors." Two years later the Commission cited the Educators case where it observed in its opinion in the Bankers Union Life case,[4/] "We have often stated that an untrue impression created by the use of misleading facts printed in large bold type cannot be cured by a truthful explanation of the true facts in smaller type in other parts of the instrument."

Again, in June of 1935, the Commission concluded as follows in a stop-order opinion relating to a registration statement filed by Plymouth Consolidated Gold Mines, Ltd.:[5/]

"It is obvious that the enterprise projected by this registration statement is primarily to extract gold and silver from investors in this country for the benefit of the promoters and only incidentally to extract gold and silver from mines in distant Mexico. The entire corporate structure of this registrant demonstrates that even though the mines should prove in some degree to realize the predictions of their romantic engineers, the return to the investors would still be negligible. So much is siphoned away by the promoters from the money contributed by investors, that an almost negligible equity is the return for the cash contributed by the public. When that situation occurs and is concealed by the way in which promoters, selling property to themselves through the fiction of a corporation, acquire huge blocks of salable stock for property for which they paid little or nothing, the type of full disclosure demanded by the Securities Act calls for an adequate and succinct disclosure of the <u>effects</u> of these strange and curious proceedings to the investor. To insist upon less than this, would be to fail to fulfill the mandate of that Act and to allow it to be perverted to the uses of fraud rather than to its prevention."

This is but another way of saying that although we cannot and should not, as an instrument of the Federal Government, pass upon the merits of ventures or the methods being employed by business in its endeavors, we do and must attempt to seek the revelation of the material factors which will illuminate the merits for the prospective purchaser, remote from the business and whose information in most cases can only come from the prospectus.

4/ 2 S.E.C. 63
5/ 1 S.E.C. 139

In the Haddam Distillers Corporation case[6/] the Federal Trade Commission announced a principle and policy subsequently adopted and followed in many cases by the Securities and Exchange Commission.

Amendments to the company's registration statement had been filed following the stop-order hearing which it was contended cured the deficiencies found by the Commission to exist. In commenting upon the amendments it was stated in the opinion--

"The Commission in stop-order proceedings can in its discretion consider the situation as of the time of the issuance of the order and not limit itself to a consideration of the record as of the time of the notice of initiation of the proceeding. But the circumstances attendant upon the present case clearly give no warrant to the Commission to exercise its discretion in order to permit the registrant to escape the consequences of a neglect and folly that approaches fraud. Trusteeship of other people's money, which the registrant in offering its securities to the public seeks to assume, demands under the present Congressional mandate embodied in the Securities Act some warrant of open, fair and careful dealing. The registrant has twice failed to meet that criterion. Now that the deficiencies have been called forcibly to its attention it hopes by curing them to regain its right to sell securities. But it should certainly not acquire that right under these circumstances when this Commission has the power to transmit generally to the public this evidence of the registrant's disregard of fundamental business ethics and this evidence of unconscionable pretense of scientific method by an appraisal company. A nation of investors deserves, at least, this slight protection."

In another early opinion[7/] the Commission commented upon a technique still employed occasionally in registration statements or Notifications under Regulation A. The quotation from the opinion is more eloquent than any commentary I could make:

"The three and one-half page discussion of the geology of the property fails, we think, to meet the requirements of intelligibility. For example, the following is quoted:

"'Massive tufaceous andesitic and ryolitic of various thickness also form a part of the Devonian formation.

"'After the formation of the fissure the solvent-bearing hot subterranean waters and steam filled the fissure * * * caused by the fracturing * * * of this dynamic force.

"'At or near the close of this period in which the gouge was erupted and before the volcanic action had entirely ceased its geyseritic and fumerolic formation, fissuring of this contact zone was formed.'

6/ 1 S.E.C. 37
7/ 1 S.E.C. 285, Franco Mining Corporation

"While no proper objection can be made to a report because couched in technical terms, it is difficult for us to find sense in these statements and to decide whether they are more than meaningless, high-sounding, pseudo-scientific phrases designed principally to impress the uninformed."

As recently as October, 1956, the Commission had occasion in another stop-order opinion to deal with a similar effort to impress the unwary and uninformed by the employment of technical and scientific terms as applied to a frozen-food storage warehouse.8/

National Invested Savings Corporation filed a registration statement in which much was made of a list of prominent citizens identified with the issuer as a "General Committee of National Founders." In issuing a stop order in November, 1936,9/ the Commission observed, " . . . the prospectus, after displaying directors' portraits and biographies, follows with four pages setting forth the members of this general committee of national founders. The purpose of a display of this character is not difficult to penetrate. It gives the impression to innocent investors that this group of well known and presumably successful persons is giving its time and effort to building a highly worthy enterprise and that some safety to investors springs from that fact. But the record illustrates that this was far from the truth. The use of these names in this manner is thus misleading."

This type of window dressing appears from time to time and was in part the reason for the issuance of a stop order in 1957 in the case of a promotional insurance company.10/

The write-up of assets for balance-sheet purposes became the subject of a somewhat cautious probing of a troublesome problem in the Consolidated Mines Syndicate case11/ in May, 1957. After reviewing the facts, the Commission in its opinion stated:

"The above examination of the figures for unrealized appreciation reveals that the figures chosen partake more of the character of a wish than a careful estimate. Unrealized appreciation is essentially an estimate of the difference between the cost of a property and its present real worth. Since it is dependent on valuation, inaccuracy in such valuation will inevitably invalidate the appreciation figure. From the above analysis of registrant's valuation figure it is apparent that the unrealized appreciation claimed by the registrant is without any basis in sound valuation and is, therefore, misleading. We do not find it necessary at this time to decide whether the inclusion in the balance sheet of unrealized appreciation, even if supported by a proper valuation, is proper."

8/ Beta Frozen Food Storage, Inc., Securities Act Release 3699
9/ 1 S.E.C. 825
10/ American Investors Corporation, Securities Act Release 3771
11/ 2 S.E.C. 316

The opinion in the case of Income Estates of America, Inc.,[12] produced two conclusions by the Commission which our experience suggests should have wider circulation and understanding by industry and the bar:

"The Securities Act of 1933 prescribed no specific order or arrangement for prospectuses, and this Commission has exercised sparingly the broad power given it by the statute to prescribe their form and content. In the absence of such definitive tests, a registrant is permitted an almost unlimited choice of method of presentation, within the general requirements of fair disclosure set by the statute itself. In several instances, however, we have found that the statutory standard has been violated through artful arrangement of presentation, notwithstanding all the essential facts have been presented at some point or another within a prospectus. This has been the case not only where untrue statements made at one point have been sought to be cured by subsequent contradictions elsewhere but also in situations where the failure to limit or qualify an inexact statement at the very point where it was made was held to render the prospectus deficient, notwithstanding the statement was susceptible of correction from information supplied elsewhere in the prospectus."

The Commission goes on to comment as to a relation between supplemental sales literature and a prospectus:

"The passages from the sales literature, already set out in footnotes in the course of discussion of deficiencies in the prospectus, are likewise of bearing on the inadequacy of the disclosure in the prospectus itself. Sales literature is not <u>per se</u> properly subject to the issue of stop order, unless it is filed as part of the registration statement, for Section 8(d) of the Act is restricted to deficiencies in the registration statement. But where the sales literature seriously misrepresents the facts it increases the materiality of any parallel deficiencies in the prospectus by predisposing the reader to accept the statements of the prospectus in an interpretation consistent with the sales literature.

"Any doubts which we might otherwise have with respect to the materially deficient character of this prospectus must, therefore, be resolved against the registrant in the face of the complexity of the offering, its unfair collateral presentation, and the inexpert type of investor at whom it is specifically directed."

A not unexpected progression in the Commission's views on the subject of "arrangement" of disclosures is to be found in an opinion issued in the Woodland Oil & Gas case in July, 1958:[13]

12/ 2 S.E.C. 434
13/ Securities Act Release 3942

"The hearing examiner, while finding that the registration statement as filed did not accurately disclose the speculative nature of registrant's business, was of the opinion that it had not been established as a matter of law that such speculative features must be discussed in a separate section of the prospectus. He concluded that registrant should be given an opportunity to present disclosures as it sees fit and that a requirement of a separate section should be imposed only if after such presentation it appears that adequate disclosure cannot be effected thereby.

"As we stated in Universal Camera Corporation,[14/] a registrant is under a duty to describe the speculative features of an offering in the registration statement and the prospectus 'so clearly that they will be plainly evident to the ordinary investor,' . . .

"In our opinion, the nature and significance of the disclosures regarding the speculative features of registrant's securities and its business in this case are such that disclosures dispersed among the different sections of the prospectus would not so present the facts as to make the essential characteristics of the securities 'plainly evident' to the ordinary investor. We conclude, therefore, that full and accurate disclosure requires that the speculative features of registrant's business and securities be set forth in summary fashion in one place in the early part of the prospectus under an appropriate heading."

The conclusions thus expressed were repeated and emphasized in the opinion in the Mon-O-Co Oil Corporation opinion issued in February of this year.[15/]

These opinions which I have mentioned do not of course begin to deal with all the specific problems of disclosure which may arise. But the Commission in disposing of these cases gave expression to principles of general application and policy which have been applied repeatedly in the intervening years.

But why--you ask--do you speak to us of stop orders? Those are for the mining and other promotions, the speculative enterprises and those who seek to defraud the public. As reputable members of the bar and the business community, we do not have these problems.

All I can say is that you all do have these problems--they are not limited to promotional ventures nor are they experienced only by the uninitiated.

14/ 19 S.E.C. 648
15/ Securities Act Release 4024

A recent experience illustrates the point. A well-known established company, represented by experienced counsel, proposed to file a registration statement. The company had made a substantial investment in the securities of another large company which in turn owned more than a majority of the stock of a third large company. The registrant through its counsel argued that none of this was sufficiently material to justify disclosures covering the business and affairs of the second company and its subsidiary. This matter was presented to the Commission and the Commission ruled that disclosures should be made.

In arguing with the Commission, counsel was able to say plainly that sixty per cent of the voting stock of the subsidiary was owned by the second company. This simple statement of fact was translated in the registration statement into a couple of inches of printed text from which it could not be determined without making several calculations after much cross-referencing what the percentage of control was. We suggested that the percentage of control be stated, thus making calculations by the reader unnecessary. This was done by amendment by adding to the unenlightening text. In this fashion are your cases delayed. By such means are efforts to achieve clarity and simplicity of disclosures defeated. The obvious result is to lengthen a prospectus rather than to shorten and simplify it.

Concealment or blurring of fact or effect by dispersal, footnotes, or fine print, prolixity, ambiguity or omission seems to be continuing, never-ending problems in this business of disclosure. These techniques by whomever employed and whether employed deliberately or by inadvertence complicate our procedures and thereby rob you of time.

They complicate your timing problems whether they are employed by you or whether they are employed by others. They impede the conduct of all business before the Commission. They on occasion threaten your good reputation and the public confidence in and acceptability of corporate securities even though in your own case no particular problem is presented.

I can offer you a few suggestions which might help everyone.

A not infrequent cause of trouble has been a pair of scissors. Many a registration statement and a proxy statement have been put together by taking an old case or several of them and working them over with scissors and gluetube to construct a new one.

I should hasten to add that there have been instances in which the government-issue version of the scissors has caused embarrassment to us. We discover sometimes that one of our examiners has devised a deficiency letter by the same process. The practice is not a good one by whomever practiced.

Then there are those who definitely are not of the "do it yourself" school. Their technique is to file a registration statement and prospectus with the expectation that the Commission "will tell us what to put in it and fix it up."

We encounter situations in which counsel finds himself employed to prepare a registration statement or proxy statement and discovers to his chagrin that his client has failed to make available to him or has deliberately withheld basic data essential to the proper discharge of his obligations.

Always, of course, there are a certain number of cases which on analysis turn out to be stock-jobbing deals and these by their very nature are troublesome and time-consuming.

In recent years we have observed a tendency for practitioners and management to abdicate their functions and responsibilities to public-relations experts. While I have no desire to bring down upon myself or the Commission the wrath of this profession, we have developed rather positive convictions that the basic objectives of the securities acts are incompatible with the practice of their persuasive art.

Finally, I should mention that many practitioners approach the securities acts as though they were concerned with a fairly simple legal problem. This approach can be quite a snare. In the usual case I don't believe that the legal questions under the disclosure provisions of the statutes are particularly difficult. Basically, the problem is an economic and financial one. Disclosures, whether in the proxy area or in the raising of capital, relate to business and financial transactions. Competence becomes a matter of good, sound financial analysis in most cases. If you fully understand the business and financial events with which you deal, it should be fairly easy to employ the lawyer's skill to achieve clear, concise expression and fair description. It would be my observation that it is the practitioner who fails to probe until he fully understands the economic and financial factors with which he deals who creates a legal problem where none should arise.

One final word on procedures. The Commission acts on every registration statement in making it effective under Section 8. Each Commissioner is supplied with a memorandum on every case before that case is presented for action. Staff members are expected to know the facts and to explain and comment on problems encountered. Our job at staff level is to dispose of the cases within the limits of Commission policy as that has been determined on a case-by-case basis. You are free to raise with the staff and with the Commission, if you wish, any matter as to which you believe an improper or unfair decision or result is being reached. There's no need for formality in that event--you may request the staff to submit a question to the Commission, and that will be done, or you may ask to be heard by the Commission. It has been my experience that the Commission has been most generous in its response to such requests.

This policy in the long run operates for the good of all of us. Generally, the position of the Commission has been that the policies, standards and procedures to be followed should be those which will assist legitimate business to conduct its affairs with a minimum of unnecessary interference and with full awareness of the importance of time.

In following that policy, however, we are confronted with the never-ending dilemma faced by every law-enforcement agency--how is it possible to prevent the unscrupulous and the negligent from turning to their own advantage a system designed to aid and further the legitimate objectives of those who willingly comply with the statutory requirements?