

September 23, 1937.

My dear Bill:

I am very glad that the long controversy worked out as it did. I am also glad to remember that I went on record in favor of your Chairmanship when the question first came up and stayed right by it.

I rather imagine that Wall Street will be frightened, but I am used to their fright.

Unasked advice is not particularly interesting, but I have one thing on my mind. The extremely discretionary stage in the details of registration and the like ought, in my judgment, to be reduced to a minimum as soon as possible. It is literally too easy to have fundamental policy really rest in the hands of a sub-examiner; and the result in the long run will be to make the S.E.C. responsible for the details of every deal which goes through. I hope therefore that you can have the various divisions sit down with themselves, work hard and draw up in definite form the rules which have already crystallized; with a view to making them first standard procedure and eventually a part of an act of Congress. It is no advertisement for the S.E.C. that only six or seven registration agreements have gone through without deficiency letters. This would prove either that everybody trying to register was a knave or a fool; or else that the applicable law was too obscure to be understood. Ultimately it ought to be possible for anyone reasonably intelligent or reasonably honest to lay down a registration statement; it ought to be possible to limit deficiency letters and such proceedings to the 15% or 20% of people who are either hopelessly incompetent or trying to beat the game.

This would also dispel the feeling which is not wholly unjustified that the S.E.C. really wants a veto power on all business transactions. It very nearly has that power now and the power is extremely dangerous when you remember that three years from now there will be a new administration which may be anything from black reaction to a Farleyized Tammany with liberalism as a false front.

A way to do this is a clear-cut set of rules and a couple of enthusiastic follow-ups, tacking personal liability unto a few people for violation. I notice that the danger of personal liability will make the financial community do its own work more enthusiastically than anything else; and if the Commission can supply an occasional prosecution so that the liability is not left to a relatively impotent plaintiff, the result could be got with infinitely less danger and considerably more ultimate safety. I suppose I am hopelessly old fashioned in some things; but the more I see of government, the more I believe there is a good deal in the Massachusetts formula that a government should be a government of laws and not of men.

I believe there is a real duty on the Commission to tackle this job because to all intents and purposes the Commission's actions cannot be reviewed. Legally, of course, people can go to court. Actually no one who has any respect for his credit standing can or will do this. And, quite candidly, I hate to see the great Wall Street law firms who have really preyed on business for years collecting twice their usual tribute annually (as they now do) solely on the ground that they

and they alone can guide their people safely through the mazes of administrative rulings with substantially uncontrolled interpretation.

I know the job can be done and that the S.E.C. can do it. For instance, the rulings as to market manipulations which had been stewed over for months, came out a splendid job. In my judgment they were nothing more than declaratory of the common law brought into the federal law through the mail fraud statutes; but the mere statement accompanied by the realization that there may be remedy through damages or by injunction went far towards clearing up the whole situation.

Meanwhile the best of luck to you. I am putting out of my calculations the hope that we might indulge in a casebook on Corporation Finance for you will find the new job takes practically all your working hours.

With kind regards,

Sincerely yours,

Hon. William O. Douglas,
Securities and Exchange
Commission,
Washington, D.C.