



OFFICE OF  
THE CHAIRMAN

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON 25, D. C.

JUN 23 1966

BY SPECIAL MESSENGER

Honorable Wilfred H. Rommel  
Assistant Director for  
Legislative Reference  
Bureau of the Budget  
Washington, D. C. 20503

Attention: Mrs. Garziglia

Re: Enrolled Bill S. 1160, 89th Congress

Dear Mr. Rommel:

This is in reference to your request for this Commission's comments on Enrolled Bill S. 1160. The purpose of this bill is to require greater public disclosure by the various agencies of the government. The Commission is, of course, a firm supporter of the principle of public disclosure. Indeed, the statutes which the Commission administers are directed toward the public disclosure of matters that are likely to affect the securities markets. Our study of S. 1160 convinces us, however, that our activities to protect public investors may be seriously hampered if the bill becomes law.

The Commission has followed the progress of this and similar bills and has submitted memoranda to the appropriate committees objecting to these proposed amendments of Section 3 of the Administrative Procedure Act. See Hearings on S. 1160, S. 1336, S. 1758, S. 1879 Before the Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary, 89th Cong., 1st Sess. 285, 293 (1965). While certain changes, as reflected in the Enrolled Bill, may ameliorate some of our difficulties, we believe the bill may still cause substantial difficulties in our activities on behalf of public investors.

It is not at all clear, for example, that the exemption in subsection (e)(4) from public disclosure of "trade secrets and commercial or financial information obtained from any person and privileged or confidential" will permit the Commission to withhold from the public financial and business information submitted to it by persons and

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organizations seeking the Commission's advice and assistance to facilitate compliance with the federal securities laws. The Commission pointed out in its comments on H.R. 5012:

"[P]remature and unplanned disclosure of contemplated business transactions which are discussed with the Commission could affect the markets for the securities of the companies involved and afford an opportunity to overreach the investing public to those persons who first gained access to the information." (Hearings on S. 1160, S. 1336, S. 1758, S. 1879 Before the Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary, 89th Cong., 1st Sess., 295 (1965)).

The Senate Report adopted a limited view of the scope of this exemption by which the disclosure of prospective business transactions communicated to the Commission would probably be required. S. Rep. No. 813, 89th Cong., 1st Sess. 9 (1965). On the other hand, the House Report adds to the Senate view the comment that:

"[This exemption] . . . would also include information which is given to an agency in confidence, since a citizen must be able to confide in his Government. Moreover, where the Government has obligated itself in good faith not to disclose documents or information which it receives, it should be able to honor such obligations." (H.R. Rep. No. 1497, 89th Cong., 2d Sess. 10 (1966)).

This language indicates that business information submitted to the Commission with the understanding that it will be held in confidence need not be made public under this bill. The failure of the Senate Report to propound this interpretation, however, the failure of the statutory language to reflect this view, and the explicit provisions of subsection (f), which provides that only those items of information specifically exempted in subsection (e) may be withheld from the public, indicate that a court could disagree with the House Report's view.

In addition, subsection (e)(3) exempting material "specifically exempted . . . by statute" from disclosure has not been changed nor interpreted to permit the Commission to avoid disclosure of Commission action where disclosure might unfairly injure members of the public, such as in certain proceedings to determine whether to revoke the registrations of

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brokers and dealers. While the Commission believes that such proceedings should usually be public, it sometimes is of the view that this would be unfair, and the American Bar Association has urged that such Commission proceedings should normally be non-public. See Resolution IV, February 17, 1964, House of Delegates, American Bar Association.

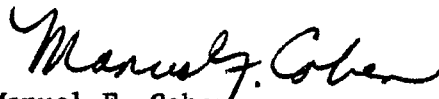
With respect to staff manuals and instructions to the staff (subsection (b) (C)), while there has been some relaxation of the provisions of an earlier draft of the bill, it is not clear whether and to what extent such manuals and instructions must be shown to the public. We fear that this provision might provide a blueprint for law violators in escaping sanctions, as well as interfere with the proper training of personnel.

In addition, under the bill the standards by which requested documents are identified are vague or nonexistent. While there is some discussion in the committee reports, these reports leave the applicable standards in confusion. Senate Report, pp. 2, 8; House Report, p. 9.

Finally, the lack of clarity in the various provisions of the bills discussed are especially serious in the light of the fact that the bill would appear to encourage litigation. Subsection (c) permits a person seeking records to compel disclosure through court decree. The language of this subsection and the language of the Senate Report (unlike the House Report, p. 9) do not even indicate that an individual will be required to exhaust his administrative remedies before seeking judicial enforcement.

For the foregoing reasons the Commission is troubled that the bill may be construed, despite the language of the House Report, in such a manner as to have an adverse effect upon the administration and enforcement of securities legislation, particularly since there is no assurance that courts would interpret the bill in accordance with the interpretations in the House Report, and that, in any event, the bill could in some situations result in unfairness to registrants who are the subject of disciplinary proceedings.

Sincerely,



MANUEL F. COHEN  
Chairman

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