

October 19, 1934

Comptroller General of the United States
General Accounting Office
Washington, D. C.

Dear Sir:

Section 4 of the Securities Exchange Act of 1934 (Public - No. 291 - 73d Congress) created the Securities and Exchange Commission. Section 210 of that Act provides:

"Upon the expiration of sixty days after the date upon which a majority of the members of the Securities and Exchange Commission appointed under section 4 of title I of this Act have qualified and taken office, all powers, duties, and functions of the Federal Trade Commission under the Securities Act of 1933 shall be transferred to such Commission, together with all property, books, records, and unexpended balances of appropriations used by or available to the Federal Trade Commission for carrying out its functions under the Securities Act of 1933. . . ."

The Federal Trade Commission and this Commission have been unable to agree on the basis upon which the "unexpended balances of appropriations used by or available to the Federal Trade Commission for carrying out its functions under the Securities Act of 1933" shall be determined and upon the amount of money that shall be transferred to this Commission. It is requested, therefore, that you investigate and decide the basis upon which the amount to be transferred from the Federal Trade Commission to this Commission shall be determined. There are attached hereto copies of all correspondence between the Federal Trade Commission and this Commission with reference to the matter.

Shortly after the Securities Act of 1933 was passed, an appropriation of \$250,000 was added to the fourth deficiency bill for the Federal Trade Commission for the administration of the Securities Act of 1933. The Bureau of the Budget requested that there be no request for increases in appropriations for the following fiscal year. The Federal Trade Commission, in accordance

- 2 -

with this request of the Bureau of the Budget, asked for the same amount of money for the fiscal year ending June 30, 1935. The amount asked for the Federal Trade Commission for that year thus included \$250,000 net (see page 4 of letter from Federal Trade Commission dated October 11, 1934) for the administration of the Securities Act.

During the fall and winter of the year 1933, representations were made to the President by at least two members of the Federal Trade Commission, with the knowledge and consent of the other members of the Commission, that its appropriation was inadequate, especially with reference to carrying on the work under the Securities Act of 1933. At least one other member of that Commission also saw the President and discussed with him, in addition to the work under the Securities Act, the possibility of further work in connection with the public utilities investigation. With the President's consent, following these conferences, an additional sum of \$500,000 was asked for by the Federal Trade Commission. The break-down of this \$500,000 submitted to the Bureau of the Budget and to the Congressional Committees carried in it a sum of \$309,350 for the Securities Division of the Federal Trade Commission, \$10,000 of which was for expenses other than salaries; \$29,500 for the Chief Counsel's Office of that Commission, primarily for work in connection with the utilities investigation and work resulting from NRA; \$36,350 for the Economic Division of that Commission, primarily in connection with the utilities investigation and work resulting from NRA; \$102,450 for the Examining Division of that Commission, primarily in connection with NRA enforcement work; Chief Trial Examiner, \$29,000; Trade Practice Conference Division, \$4,500; and Administrative Division, \$28,350. The latter amount included some additional personnel and equipment for the work resulting from the administration of the Securities Act. The above figures, of course, are gross, and amounted to \$500,000 net. Of this \$500,000, \$150,000 was to be immediately available, of which approximately \$90,000 was for the Securities Division of the Federal Trade Commission. A very small portion, if any, of the amount immediately available for the Securities Division was expended during the last fiscal year.

- 5 -

On the floor of Congress it was stated that the prime reason for the additional \$500,000 requested by the Federal Trade Commission was the need of the Securities Division of the Federal Trade Commission.

Following the appropriation of this additional sum, the Federal Trade Commission requested Presidential authorization for the creation and filling of numerous positions in the Securities Division which could not have been created and filled without this additional money. Presidential authorization was given. Not all of the positions, however, for which authority was obtained, were filled by the Federal Trade Commission before the administration of the Securities Act was transferred to the Securities and Exchange Commission. The Federal Trade Commission, in some instances, filled positions in other divisions upon the authorization obtained from the President for the Securities Division, but always with the recognition and statement that it was a position borrowed from the Securities Division and which would be returned to it when authorization for a similar position in another division was obtained from the President.

Shortly after approval was given by the President for the filling of these positions, the Congress began the consideration of the Securities Exchange Act, and the question of whether that Act and the Securities Act should be administered by the Federal Trade Commission or by a new commission arose. After this question came up the Federal Trade Commission became more reluctant about making appointments to its Securities Division until the question should be determined, and when it was finally decided to place the administration of the Securities Exchange Act and Securities Act of 1933 in a newly created commission, the Federal Trade Commission decided to make no additional appointments in connection with the administration of the Securities Act of 1933 except upon the specific request of the Securities and Exchange Commission. It made no further appointments except in accordance with that policy. A large number of recommended appointments, which were never made, were pending before it when this policy was decided upon.

The appropriations for the Federal Trade Commission were

- 4 -

not earmarked by Congress so as to make any particular sums available to any particular divisions of that Commission or for any particular work.

It again should be pointed out also that there was requested by the Federal Trade Commission and made available to it funds other than those required for salaries in its Securities Division for the administration of the Securities Act, because the administration of that Act required additional personnel in several of its other sections, notably the Docket Section, the Publications Section, and the Stenographic Section of the Administrative Division.

Up to the first of this fiscal year the other activities of the Federal Trade Commission had not required the expenditure of greater sums than were estimated originally, due largely to the fact that the money required in connection with its assistance in the enforcement of codes adopted under NRA was obtained from the National Recovery Administration. Had the administration of the Securities Act remained with the Federal Trade Commission, the sums referred to above which were requested for the administration of that Act, would have been available for and would have been used in connection with the administration of that Act.

The contention of the Federal Trade Commission is that it should transfer to the Securities and Exchange Commission only the sum of money computed upon an annual basis which was being expended by it in connection with the administration of the Securities Act of 1933 at the time of the transfer, September 1, 1934, of the administration of that Act to the Securities and Exchange Commission.

If the contention of the Federal Trade Commission is correct, it could have absolutely controlled the amount of money to be transferred to this Commission through its control over the personnel of the Securities Division during the two months' period between the creation of this Commission and transfer of the administration of the Securities Act from the Federal Trade Commission to this Commission. It could have transferred to other divisions or released any of the personnel of the Securities

10/19/34

- 5 -

Division. It is submitted that this was not the Congressional intent.

The Securities and Exchange Commission contends that the sums requested from the Bureau of the Budget and from Congress for the special work of administering the Securities Act of 1933 are the sums which, under Section 210 of the Securities Exchange Act of 1934, are "used by or available to the Federal Trade Commission for carrying out its functions under the Securities Act of 1933," and that, therefore, the Federal Trade Commission is required to transfer the unexpended balances of these sums to the Securities and Exchange Commission. This principle did not, as you will note from the attached correspondence, underlie the determination of the sum of \$264,377.80 which the Federal Trade Commission contends is the amount due this Commission.

Yours very truly,

Joseph P. Kennedy
Chairman

BED:MLB