

Dr. Gourrich:
Nathan Sameth
October 18, 1937.

Re: Replacement of Bearer Bonds by Registered Bonds, Thereby Assuring Proper Circulation of Notices of Reorganization, Rights, Conversions, etc., Necessary to be Distributed for the Adequate Protection of the Investor's Interest.

Attached is a clipping from yesterday's "Times", which contains the suggestion that the SEC might use its influence to make registered bonds as negotiable as bearer bonds, thereby encouraging the general use of this type of bond issue. The advantages of registered bonds are readily apparent: We have seen several cases, in the past year, where losses to bondholders have followed from their ignorance of the existence of rights exercisable only for a limited period. Moreover, there is little reason why interim and annual reports should be regularly mailed to stockholders, while no such reports go to other investors in the company who happen to be bondholders.

The article indicates – and Weisbrodt tells me the same – that the matter of negotiability of one type of bond as against another type of bond is fixed by the individual states' Negotiable Instruments Laws. To effect equal negotiability, therefore, would require the Commission to exert its influence on each of the states having contrary regulations. In the last paragraph of the article, there is a reference to a change in the "Federal statutes", but just what "Federal statutes" are referred to are not stated.

At any rate, it seems to me that the Commission should strive toward the elimination of the bearer type of security altogether – rather than for the equal negotiability of the registered bonds – for just as long as you have bearer securities which may be purchased by investors, you will perpetuate the attendant disadvantages.

The Commission might effect the adoption of registered bonds by requiring all national securities exchanges, from now on, to certify for listing only such bond issues as are of the registered type. If this should transpire, there would be an immediate movement on the part of state legislatures (without any Commission propaganda or influence) to change their Negotiable Instruments Laws to give registered bonds prime negotiability.

The explanation of the wielding of Commission power through listing requirements of national securities exchanges is contained in an attached memo. It was in connection with the search of a means of effecting the adoption of registered bonds, that the availability of Sec. 19 (b) of the 1934 Act was noted.

October 18, 1937

To: Paul P. Gourrich

From: N. Sameth

Re: New approach to the problem of eliminating undesirable practice and situations.

The 1933 Act merely requires that there be no omission or misstatement of a material fact in the Securities Act registration and the same criteria hold for registration statements under the 1934 Act. Except, then, for exercise of certain negative powers (refusal to accelerate) the Commission appears to be more or less powerless to control the types of securities being registered.

The Commission, however, may be able to influence the kind of securities that may be listed by the individual registered exchanges. While the Commission's direct powers are more or less restricted by the language of the two acts, there are no such rigid limitations on the powers of the individual exchanges insofar as their private requirements for listing are concerned. And it appears to me that under the provisions of Section 19(b)(3) 1/ of the 1934 act, the Commission is authorized to alter the rules of registered exchanges insofar as "listing or delisting of any security," if such changes in rules "are necessary or appropriate for the protection of investors."

If this interpretation is legally correct the Commission may be able to write out a bill of particulars governing the future listing of securities by registered exchanges. This bill would take care of all the undesirable situations and practices over which the Commission has no direct discriminative powers.

The efficacy of this attack will depend to the greatest extent on the over-the-counter regulations – for unless they are made equally stringent the securities which have been refused listing would merely drift to the easier medium.

1/ Section 19(b) The Commission is further authorized, if after making appropriate request in writing to a national securities exchange that such exchange effect on its own behalf specified changes in its rules and practices, and after appropriate notice and opportunity for hearing, the Commission determines that such exchange has not made the changes so requested and that such changes are necessary or appropriate for the protection of investors or to insure fair dealing in securities traded in on such exchange or to insure fair administration of such exchange, by rules or regulations or by order to alter or supplement the rules of such exchange (insofar as necessary or appropriate to effect such changes) in respect of such matters as (3) the listing or striking from listing of any security