

January 8, 1938

Mr. Bliss Moore, President
Northwest Mining Association
Spokane, Washington

Dear Mr. Moore:

A copy of a resolution relating to the Securities and Exchange Commission passed by the Northwest Mining Association at its annual meeting of December 4, 1937, has been transmitted to me by Mr. Day Karr, our Regional Administrator at Seattle, Washington. I wish to express my appreciation of your courtesy and thoughtfulness in calling this action of the Association to our attention.

I observe from the preamble of the resolution that the Association "approves the objectives and intent of the Securities Act but deplors the delays and expenses of registration of small mining companies and the consequent diversion of funds that might be used in mineral development to mere speculation on stock exchanges with its consequent tendency to deprive mine workers of employment and inflate the valuation placed on listed securities".

The expression "small mining companies" contained in the resolution presumably embraces companies possessing properties in the exploration or development stage as well as those producing, and limited through controlling physical conditions to the production of, small tonnages over the life of the property. Although different considerations would apply to the various types of properties, and to properties of the same type in different stages of development, I assume that the Association was concerned generally with companies whose capital requirements, quite apart from the type of operation in progress or proposed, are relatively small. If this assumption be correct it is questionable whether a discussion of the problems of registration of securities issues of such companies is pertinent, in view of the fact

that the Commission has adopted rules pursuant to Section 3 (b) of the Securities Act exempting from registration requirements issues of \$100,000 or less upon compliance with certain conditions expressed in the applicable rules. The burden and expense involved in complying with the rule governing exemption are negligible, and the information required to be contained in the prospectus filed pursuant to the rule granting a \$100,000 exemption is no more than the managers of a sincere enterprise would voluntarily furnish to persons invited to participate in the venture. It is interesting in this connection to note that the Congress of the United States in adopting legislation authorizing the Reconstruction Finance Corporation to make loans to mining companies for development purposes set the maximum limits at \$20,000.

For capital issues in excess of \$100,000, the issuer is required to file a registration statement giving somewhat complete detail as to the history of mining operations, the relative contributions of various participants in the enterprise, and the nature of the property to be exploited, in order that the chances of the ultimate success of the venture may be gauged. Form A-O-1 was adopted specifically for registration of securities of new mining companies. Prior to its adoption the Commission circulated the form widely among mining men and groups of men interested in mining in its various phases. Suggestions received by the Commission from these persons are responsible to a substantial degree for the structure of the form as finally adopted, both as to general and detailed make-up. Finally, it was the consensus of opinion at the time Form A-O-1 was adopted that the information required did not extend beyond that which a reasonably competent mine management would collect in the ordinary course of operation or investigation.

As a basis for discussion of the specific recommendations, I assume that the resolution of the Association does not involve criticism of the Commission for exercising its statutory powers to prevent or suspend the effectiveness of registration statements which contain material misrepresentations or omit material information essential to an investor in the formation of a judgment as to the merit of a given security. On this basis, I

shall comment somewhat briefly upon the recommendations in the order of their appearance in the resolution. First, "that a mining unit be established in the Securities and Exchange Commission to the end that registration statements of mining companies be examined by persons familiar with the mining industry, thus avoiding the piecemeal amendment of registration statements and the annoying succession of twenty-day delays". It is almost impossible to discuss the time element involved in the taking effect of registration statements unless the facts of a particular case are under review. Based on my knowledge of the history of filings by mining companies I am of the opinion that those registration statements which contain the material information concerning a particular enterprise presented in accordance with the requirements of the form upon which the statement is filed become effective without undue delay. As the Commission is charged with the duty of taking affirmative steps in connection with registration statements containing material misstatements or omitting material facts, any delay in their becoming effective seems self-explanatory. As to the other phase of this recommendation that a mining unit be established, I can only say that competent mining experts among the Commission's staff participate in the consideration, examination and disposition of mining registrations. Experience teaches that unit isolation leads to lack of uniformity of treatment and engenders delays as well as inequalities of administration.

The second recommendation appearing in the resolution, that the regulations relating to advertisements in newspapers and periodicals be simplified, is a matter to which the Commission has given, and continues to give, extensive study. We should welcome submission of detailed suggestions along this line by, or in behalf of, your group.

In connection with your third recommendation, "that the so-called 'twilight zones' between exempt and non-exempt securities, and public and private offerings, be quickly removed by more exact definitions of such terms as 'public', 'intrastate', 'material', and other words and phrases not now defined in the statute", I should like to point out that the Commission has on various occasions, both formally and informally, furnished interpretations involving these questions. May I say, in this regard, that the staff of the Commission is

willing at all times to assist any issuer or any member of the public in ascertaining the meaning of any provision of the statute or the rules and regulations.

The objectives of the statute, which we have sought conscientiously to attain, seem coincident to the expressed objectives of your Association. I, and my associates on the Commission, should appreciate suggestions directed to our treatment of specific cases and application of principle to specific cases deemed by your group to be discouraging of our common aim.

Yours faithfully,

William O. Douglas
Chairman

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