SEC REORGANIZATION

HEARING

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH CONGRESS

SECOND SESSION

ON

S. 2135

AN ACT TO AUTHORIZE THE SECURITIES AND EXCHANGE COMMISSION TO DELEGATE CERTAIN FUNCTIONS

MAY 29, 1962

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Committee on Interstate and Foreign Commerce

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SEC REORGANIZATION

TUESDAY, MAY 29, 1962

House of Representatives,
Committee on Interstate and Foreign Commerce,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., room 1334, New House Office Building, Hon. Oren Harris (chairman of the committee) presiding.

The Chairman. The committee will come to order.

This morning the committee is meeting for the purpose of making a record of hearings on S. 2135.

Without objection, a copy of the bill along with the agency reports may be printed at this point in the record.

(The bill, S. 2135, along with agency reports follows:)

[S. 2135, 87th Cong., 1st sess.]

AN ACT To authorize the Securities and Exchange Commission to delegate certain functions

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) in addition to its existing authority, the Securities and Exchange Commission, hereinafter referred to as the "Commission", shall have the authority to delegate, by published order or rule, any of its functions to a division of the Commission, and individual Commissioner, a hearing examiner, or an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter: *Provided, however*, That nothing herein contained shall be deemed to supersede the provisions of section 7(a) of the Administrative Procedure Act of 1946 (60 Stat. 241), as amended: *And provided further*, That nothing herein contained shall be deemed to authorize the delegation of the function of rulemaking as defined in the Administrative Procedure Act of 1946, as amended, with reference to general rules as distinguished from rules of particular applicability, or of the making of any rule, regulation, or order pursuant to section 19(b) of the Securities Exchange Act of 1934.

(b) With respect to the delegation of any of its functions, as provided in subsection (a) of this section, the Commission shall retain a discretionary right to review the action of any such division of the Commission, individual Commissoner, hearing examiner, employee, or employee board, upon its own initiative or upon petition of a party to or an intervenor in such action, within such time and in such manner as the Commission shall by rule prescribe: *Provided, however*, That the vote of one member of the Commission shall be sufficient to bring any such action before the Commission for review: *And provided further*, That in the event action at a delegated level (1) denies any request for action pursuant to section 8(a) or section 8(c) of the Securities Act of 1933 or the first sentence of section 12(d) of the Securities Exchange Act of 1934; (2) suspends, denies, or revokes a broker-dealer registration pursuant to section 15(b) of the Securities Exchange Act of 1934; (3) suspends, denies, or withdraws any registration or suspends or expels a member of a national securities exchange pursuant to section 19(a) of the Securities Exchange Act of 1934; or (4) suspends trading on an exchange pursuant to section 19(a) of the Securities Exchange Act of 1934, a person or party adversely affected by such action shall be entitled to review by the Commission.

(c) Should the right to exercise such review be declined, or should no such review be sought within the time stated in the rules promulgated by the Commission, then the action of any such division of the Commission, individual Commissioner, hearing examiner, employee, or employee board, shall, for all purposes, including appeal or review thereof, be deemed the action of the Commission.

SEC. 2. In addition to the functions transferred by the provisions of Reorganization Plan Numbered 10 of 1950 (64 Stat. 1265), there are hereby transferred from the Commission to the Chairman of the Commission the functions of the Commission with respect to the assignment of Commission personnel, including Commissioners, to perform such functions as may have been delegated by the Commission to Commission personnel, including Commissioners, pursuant to section 1.

Passed the Senate September 1, 1961.

FELTON M. JOHNSTON,
Secretary.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., February 8, 1962.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Bureau of the Budget on S. 2135, to authorize the Securities and Exchange Commission to delegate certain functions.

S. 2135 would authorize the Commission to delegate its functions, with certain exceptions, to a division of the Commission, an individual Commissioner, a hearing examiner, or an employee or employee board. The Commission would retain a discretionary right to review any action taken under delegated authority, and the vote of one member of the Commission would be sufficient to bring any such action before the Commission for review. If an action is not reviewed by the Commission under any of the alternative procedures provided in S. 2135, the action of a delegate would, for all purposes, be deemed the action of the Commission.

Reorganization Plan No. 1 of 1961 had the same objective as S. 2135, namely to enable the Commission, through appropriate delegations of responsibility, to provide for more effective administration of the laws for which it is responsible. The reorganization plan was approved by the House of Representatives on June 15, 1961, but was rejected by the Senate on June 21, 1961, because the authority to delegate which it would have conferred was deemed to be too broad. S. 2135 has met the objections of the Senate, while retaining provisions which would permit accomplishment of the basic objectives of the reorganization plan.

The reports of the Securities and Exchange Commission and the Civil Service Commission have proposed revisions in S. 2135 which the Bureau believes to be desirable and consistent with its basic intent.

You are advised that enactment of S. 2135, including the proposed revisions mentioned above, would be consistent with the administration's objectives.

Sincerely yours,

(Signed) PHILIP S. HUGHES,
Assistant Director for Legislative Reference.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., February 12, 1962.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
New House Office Building.

DEAR MR. CHAIRMAN: This is in further reply to your request of September 15, 1961, for the view of the Civil Service Commission on S. 2135, a bill to authorize the Securities and Exchange Commission to delegate certain functions.

The purpose of this bill is to provide greater flexibility in the handling of business before the Securities and Exchange Commission by permitting the delegation of functions which are reserved to the Commission as a whole. This

appears to be an internal matter over which the Civil Service Commission has no jurisdiction. We do not object to enactment of this legislation, but we suggest that one change in language be made.

According to the provisions of this bill, hearing examiners, among others, could be delegated any of the functions of the Securities and Exchange Commission "including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter: *Provided, however*, That nothing herein contained shall be deemed to supersede the provisions of section 7(a) of the Administrative Procedure Act of 1946 (60 Stat. 241), as amended * * *." Section 7(a) designates agency officials who may serve as presiding officers at hearings.

Section 11 of that act concerns itself specifically with hearing examiners. In describing their functions, it specifies that examiners "shall perform no duties inconsistent with their duties and responsibilities as examiners." Since no reference is made to this section in the bill, it is conceivable that within the broad delegation of functions authorized under S. 2135, a hearing examiner might be delegated duties inconsistent with the duties of his position. Therefore, to assure that hearing examiners continue to serve in a completely impartial environment, we suggest that "or section 11" be added after "section 7(a)" on line 1, page 2, of S. 2135.

The Bureau of the Budget advises that there is no objection to the submission of this report, and that enactment of S. 2135, including the addition of the language suggested on line 1, page 2 of the bill, would be consistent with the objectives of the administration.

By direction of the Commission.

Sincerely yours,

JOHN W. MACY, Jr., *Chairman.*

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., February 26, 1962.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice concerning the bill (S. 2135) to authorize the Securities and Exchange Commission to delegate certain functions.

S. 2135 would authorize the Securities and Exchange Commission to delegate its functions, with certain exceptions, to a division of the Commission, an individual Commissioner, a hearing examiner, an employee, or an employee board. The Commission would retain a discretionary right to review the action of any delegate, but upon the vote of one member of the Commission review would be mandatory. Likewise, with respect to certain designated types of action, a party or person adversely affected would be entitled to review by the Commission. If the Commission declines to exercise its right to review, or if no review is sought within the time stated in Commission rules, the action of a delegate would, for all purposes, be deemed the action of the Commission.

Reorganization Plan No. 1 of 1961 was submitted to the Congress by the President on April 27, 1961, to accomplish essentially the same purposes as S. 2135. The plan was rejected in the Senate on June 21, 1961, following hearings before the Securities Subcommittee of the Banking and Currency Committee, at which opposition was expressed to certain of its provisions. (See S. Rept. 776, 87th Cong., p. 1.) S. 2135 represents an attempt to preserve the purposes of the plan and meet the objections raised to it.

This measure relates to the internal administration of the Securities and Exchange Commission. The Department of Justice defers to the views of that Commission as to whether its enactment is desirable.

The Bureau of the Budget has advised that there is no objection to the submission of this report, and that enactment of S. 2135 would be consistent with the Administration's objectives.

Sincerely yours,

BYRON R. WHITE,
Deputy Attorney General.

SECURITIES AND EXCHANGE COMMISSION,
Washington, D.C., February 13, 1962.

Re S. 2135, 87th Congress, 1st session.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives,
Washington, D.C.

DEAR CHAIRMAN HARRIS: Enclosed herewith are six copies of a momorandum of comment on S. 2135. The Bureau of the Budget has advised that the enactment of S. 2135, including the addition to section 1(c) which is recommended in the Commission's memorandum, would be consistent with the administration's objectives.

Sincerely yours,

BYRON D. WOODSIDE, *Commissioner.*

SECURITIES AND EXCHANGE COMMISSION—COMMENTS ON S. 2135, 87TH CONGRESS, 2D SESSION

To the Committee on Interstate and Foreign Commerce, U.S. House of Representatives:

GENERAL NATURE OF THE BILL AND ITS BACKGROUND

S. 2135, as passed by the Senate at the 1st session of the 87th Congress and now pending before this committee of the House of Representatives, would give the Commission broad power to delegate its functions to one or more members of the Commission or to the staff. Prior to the introduction of this bill, the President had submitted to the Congress Reorganization Plan No. 1 of 1961 under which the Commission would have been granted even broader power to delegate its functions but the Senate disapproved that plan. Senate passage of S. 2135 at the same session of the Congress indicates that the features of the plan that the Senate deemed objectionable are not present in the bill now under consideration.

During the course of Senate and House consideration of the plan and the bill at the 1st session of this Congress the Commission on four occasions appeared at committee hearings, made statements before committees, or filed written comments on either the plan or the bill. Thus, Commission views were expressed in one form or another before the Senate Committee on Banking and Currency, both on the plan and on the bill, and before both the Senate and the House Committees on Government Operations with respect to the plan. Although this is the Commission's first occasion to comment to this committee, you are no doubt aware that the Commission is in favor of the basic concept of authority to delegate Commission functions and all of its prior comments have expressed general approval of the manner in which that concept was set forth in both the plan and the bill.

BASIC FRAMEWORK OF S. 2135

Section 1(a) of the bill would authorize the Commission, "by published order or rule" to delegate "any of its functions to a division of the Commission, an individual Commissioner, a hearing examiner, or an employee or employee board," with certain exceptions which are discussed later. Section 1(b), subject to certain limitations and restrictions, would require the Commission to "retain a discretionary right to review" delegated action within a time and in a manner to be prescribed by rule. Section 1(c) would provide that delegated action becomes final action if the Commission declines review or if no review is sought within the time specified by rule.

Section 2 would expressly authorize the chairman of the Commission to name the particular persons, including Commisisoners, who are to perform functions once the whole Commission has determined that those functions are to be delegated.

From this brief summary of the basic structure of the bill, it is apparent that it would provide the broadest possible power to delegate, subject only to the limitations which we next discuss.

DELEGATION IS SUBJECT TO SECTION 7(a) OF THE ADMINISTRATIVE PROCEDURE ACT OF 1946 (APA)

The first proviso in section 1(a) would expressly limit the power to delegate by making that power subject to section 7(a) of the Administrative Procedures Act.[1] Briefly, section 7(a) requires that hearings on all rulemaking where notice or hearing is required by the "basic" statute (the one which confers the rulemaking power) and on all adjudications required by the basic statute to be determined on the record after opportunity for an agency hearing, shall be presided over by the agency itself (the Commission), one or more members of the agency or a hearing examiner appointed in compliance with the APA. Thus under this first proviso in section 1(a) of the bill the Commission could not delegate the function of conducting hearings of the type just described to staff personnel, but only to Commissioners or to hearing examiners.

In view of the importance and intricacy of hearings of this kind in this agency, we would not be disposed to delegate them to anyone other than Commissioners or hearing examiners and we therefore have no objection to this limitation.

GENERAL RULEMAKING NOT DELEGABLE

Under the second proviso in section 1(a) the function of general rulemaking, as distinguished from rules of particular applicability, may not be delegated to anyone. Omitting technical ramifications, general rules may be described as those which are adopted for prospective application to all parties whose proposed conduct would come within their ambit. Particular rules are rules or orders which determine whether, and if so on what terms and conditions, a particular applicant may do or refrain from doing things which are within the scope of the laws administered by the Commission.

The power to delegate all rulemaking, as well as all adjudication, was questioned at the hearings which preceded the Senate defeat of Reorganization Plan No. 1 of 1961. We stated at those hearings and reiterate now that we would not contemplate delegation of general rulemaking, even if we were granted the power to do so, but we do regard the application and order type of rulemaking, as to particular situations, as an area in which delegation could properly and profitably be employed in at least some instances. We accordingly have no objection to this proviso.

COMMISSION-SPONSORED CHANGES IN STOCK EXCHANGE RULES

Under the second proviso in section 1(a) the Commission could not delegate its authority under section 19(b) of the Securities Exchange Act of 1934. Section 19(b) permits the Commission, subject to certain standards and procedures, to make changes in the rules and practices of any national securities exchange which is registered under the Securities Exchange Act of 1934. As with general rulemaking, the Commission has no thought of delegating its power to compel changes in the stock exchange rules and practices. It accordingly takes no exception to this provision.

LIMITATIONS ON DISCRETION TO REVIEW

Section 1(b) contains six limitations on the Commission's discretion not to review delegated action. The first one was contained in the original Senate version of the bill; the second one was suggested by the Commission when the bill was before the Senate Committee on Banking and Currency; and the remaining four were suggested by the New York Stock Exchange.

REVIEW ON REQUEST OF ONE COMMISSIONER

The first proviso in section 1(b), which was in the original draft of the bill, would make review by the full Commission mandatory if one of the five members requested review either on his own motion or on a petition by a party. Reorganization Plan No. 1 would have required a minimum of two Commissioners to compel a review.

[1] Sec. 12 of the APA provides in substance that provisions of that act may not be modified or superseded by any subsequent legislation except legislation which does so by express terms.

It was pointed out at one of the hearings on the plan that with a five-member Commission the requirement of two votes to compel review was tantamount to saying that there would be no review unless half of the Commission favored it at any time when illness, absence, or personal disqualification of even one Commissioner, or a single vacancy in office, might force the Commission to act on a four-man basis. This was perhaps too restrictive. At any rate, we would be disposed to review whenever even one Commissioner favored review, whether required to do so or not. We accordingly do not object to this provision.

DENIAL OF ACCELERATION OF REGISTRATION STATEMENTS AND OF EFFECTIVENESS OF POST-EFFECTIVE AMENDMENTS

The next proviso in section 1(b) would compel the full Commission to review, upon request, whenever acceleration of a registration statement under section 8(a) or effectiveness of a post-effective amendment under section 8(c) of the Securities Act of 1933 was denied at any delegated level.

This proviso was sponsored by the Commission at the Senate hearings in recognition of the fact that denial of acceleration as a practical matter might in many instances cause a renegotiation of financing terms or loss of an underwriting. Under these circumstances, it is our view that no one short of the full Commission should have the power to deny finally. The reverse, of course, is not true. If acceleration or effectiveness is granted at a delegated level, that ends the matter. The proviso is accordingly cast in terms of denials only.

The remaining provisions of section 1(b) of the bill were suggested to the Senate by the New York Stock Exchange. These provisions cover for the most part areas in which the Commission contemplates delegation, if any, only to a limited extent. In any event it would expect to grant review whenever requested by an adversely affected party. The Commission accordingly does not object to these provisions which at any rate do not prevent delegation, but only require that a review of delegated action be granted if an adversely affected party requests it. A brief description of these four provisions follows without further statement of Commission position thereon.

DENIAL OF ACCELERATION ON AN EXCHANGE LISTING

Under section 12(d) of the Securities Exchange Act of 1934 an application for registration of a security to be listed on any registered exchange becomes effective 30 days after the Commission receives certification from the exchange, unless the Commission accelerates the effective date. The proviso in section 1(b) of the bill would compel full Commission review if a party adversely affected by denial of such an acceleration requested it.

REVOCATION OF BROKER-DEALER REGISTRATION

The next proviso in section 1(b) would require full Commission review whenever requested by a person adversely affected by any delegated action which suspends, denies, or revokes a broker-dealer registration pursuant to section 15(b) of the Securities Exchange Act.

WITHDRAWAL OF STOCK EXCHANGE REGISTRATION AND EXPULSION FROM STOCK EXCHANGE MEMBERSHIP

The next proviso would grant mandatory review by the full Commission to any party adversely affected by any delegated action which suspends, denies, or withdraws the registration of a stock exchange or which suspends or expels a member of such an exchange pursuant to section 19(a) of the Securities Exchange Act.

SUSPENSION OF TRADING ON AN EXCHANGE

Finally, any delegated action which suspends trading on an exchange pursuant to section 19(a) of the Securities Exchange Act would have to be reviewed by the full Commission if an adversely affected party so requested.

FINALITY OF DELEGATED ACTION UNDER SECTION 1(C)

Section 1(c) provides that if no review is requested or if the Commission declines review, "then the [delegated] action * * * shall, for all purposes, including appeal or review thereof, be deemed the action of the Commission."

We would have no difficulty with this provision if it means that when an adversely affected party does not make a timely request for review by the full Commission, the delegated action is final in the sense that such a party cannot thereafter go to court because he has not exhausted his administrative remedy before the full Commission. We believe, however, that this wording might be interpreted to mean just the opposite, namely, that the delegated action is "deemed the action of the Commission" in the sense that it may be used as a basis for "appeal or review thereof" in court, even though it has not been reviewed by the full Commission. This latter construction would seem to be more in harmony with the APA provisions which presently govern initial decisions by hearing examiners.[2]

The Commission raised no question about the wording of section 1(c) at the Senate hearings during the first session of this Congress because at that time it appeared unlikely that the Commission would delegate in this area except in routine and uncontested cases. Looking ahead and taking account of the intervening continued rise in workload, we now foresee that at some point the Commission might consider more extensive use of initial decisions by hearing examiners. But, in view of the intricacy and importance of this agency's matters which would come within the scope of the initial decisionmaking process, we doubt that the Commission could safely delegate in that area to an extent which would be at all helpful in relieving its workload burden, under the present wording of section 1(c). If this bill is to be of any real value to the Commission in its possible future delegation of decisionmaking to hearing examiners, the Commission believes that section 1(c) should be amended to require that parties adversely affected by hearing examiners' initial decisions must request review by the full Commission before they may petition for court review.

The Commission accordingly suggests that this committee add a proviso at the end of section 1(c) worded substantially as follows: "*Provided, however*, That a party adversely affected by any delegated action which is within the scope of section 7(a) of the Administrative Procedure Act of 1946 (60 Stat. 241), as amended, must seek timely review thereof by the Commission under the published orders or rules promulgated pursuant to section 1(a) hereof, before taking an appeal to or petitioning for review by any court. To the extent that this proviso supersedes or modifies any provision of the Administrative Procedure Act of 1946 it is hereby declared to do so expressly within the requirement of section 12 there of (60 Stat. 244)."

IMPLIED AUTHORITY TO DELEGATE

The Securities Exchange Act of 1934 which created this Commission contains no provision expressly permitting or prohibiting delegation of functions. That act was preceded by one other act and followed by four other acts which the Commission now administers. A Commission of five members could not personally or as a body perform all of the functions specified in these acts. The view has long prevailed at the Commission that it now has implied authority to delegate in some areas, particularly in respect to routine and uncontested matters and matters which by their nature do not adversely affect the public interest or the interest of any party.

The Commission has from time to time delegated on a de facto basis in certain limited areas in which it was felt that parties would not be adversely affected. This has been compelled by the sheer pressure of the work in recent times. In such cases the Commission has provided for review whenever anyone requested it.

ERRATA

The copy of the bill which was submitted to the Commission for comment contains no designation of "Section 1" which apparently starts on line 3 on page 1.

The word "and" in line 7 on page 1 of the bill should be "an".

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[2] Thus sec. 8(a) of the APA provides, in substance, that in the absence of an appeal to an agency or review on the agency's own motion, the hearing examiner's initial decision shall then "become the decision of the agency." Sec. 10(c) provides that any agency action which is otherwise final shall be reviewable in court "whether or not there has been presented * * * any application * * * for an appeal to superior agency authority." In view of sec. 12 of the APA which purports to prohibit "indirect" amendment (see footnote 1, above), it would be difficult to urge that sec. 1(c) of S. 2135 calls for a different result than these two sections of the APA.

CONCLUSION

If S. 2135 were to become law, the Commission believes that it could make effective use of the power thus expressly provided and thereby free considerable time which the Commission as a body sorely needs to devote to other important matters.

We appreciate this opportunity to express our views on this subject.

SECURITIES AND EXCHANGE COMMISSION FURTHER COMMENTS ON S. 2135, 87TH CONGRESS, 2D SESSION, MAY 29, 1962

To the Committee on Interstate and Foreign Commerce of the U.S. House of Representatives:

In the original memorandum of comments to the committee with respect to S. 2135 the Commission proposed an amendment to section 1(c). That section provides, if no review is requested or if the Commission declines review, "then the [delegated] action * * * shall for all purposes, including appeal or review thereof, be deemed the action of the Commission." As expressed in our original comments, the Commission was concerned that this section might be interpreted to mean that a party could seek court review of a delegated action without first having sought Commission review. Accordingly, the Commission recommended that S. 2135 be amended to explicitly prohibit this result.

Upon reconsideration, we believe that our proposed amendment is unnecessary and would like it withdrawn from consideration. The Administrative Procedure Act contemplates that a party must seek Commission review prior to appealing an initial decision to the courts, if the Commission so provides by rule. Section 8(a) of the Administrative Procedure Act states that, in the absence of either an appeal to the agency or review upon motion of the agency, an initial decision shall, without further proceedings, become the decison of the agency. Moreover, section 10(c) of the Administrative Procedure Act—which defines reviewable actions—states as follows:

"* * * Except as otherwise expressly required by statute, agency action otherwise final shall be final for the purposes of this subsection whether or not there has been presented or determined any application for a declaratory order, for any form of reconsideration, or (unless the agency otherwise requires by rule and provides that the action meanwhile shall be inoperative) for an appeal to superior agency authority."

The effect of section 10(c) is to make initial decisions final for purposes of appeal to the courts without a request for agency review, unless the agency otherwise requires by rule and provides that the initial decision shall be stayed during the appeal process. The Senate report supports this conclusion:

"The last clause, permitting agencies to require by rule that an appeal be taken to superior agency authority before judicial review may be sought, is designed to implement the provisions of section 8(a). Pursuant to that subsection an agency may permit an examiner to make the initial decision in a case, which becomes the agency's decision in the absence of an appeal to or review by the agency. If there is such review or appeal, the examiner's initial decision becomes inoperative until the agency determines the matter. For that reason this subsection permits an agency also to require by rule that, if any party is not satisfied with the initial decision of a subordinate hearing officer, the party must first appeal to the agency (the decision meanwhile being inoperative) before resorting to the courts. In no case may appeal to superior agency authority be required by rule unless the administrative decision meanwhile is inoperative, because otherwise the effect of such a requirement would be to subject the party to the agency action and to repetitious administrative process without recourse. There is a fundamental inconsistency in requiring a person to continue exhausting administrative processes after administrative action has become, and while it remains, effective."

Nothing in S. 2135 derogates from these principles; section 1(c) of the bill appears to be no more than a restatement of section 8(a), previously alluded to. This interpretation is corroborated by section 12 of the Administrative Procedure Act which directs that no subsequent legislation shall be held to supersede or modify the Administrative Procedure Act except to the extent that it does so expressly; nothing in S. 2135 contains any express modification of that act.[1]

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[1] Senate report on S. 7, 79th Cong., 1st sess., S. Rept. 752, p. 27.

Therefore, since the Commission has the power by rule to require that a party seek Commission review of an initial decision prior to taking an appeal to a court, we should like to withdraw our proposal to amend S. 2135.

The CHAIRMAN. This bill would authorize the Commission to delegate certain functions to a division of the Commission, an individual Commissioner, a hearing examiner, or an employee or employee board.

The Commission would retain discretionary right to review any action taken under the delegated authority and the vote of one member of the Commission would be sufficient to bring any such action before the Commission for review.

If an action is not reviewed by the Commission under any of the alternative procedures provided in S. 2135, the action of a delegate would, for all purposes, be deemed the action of the Commission.

It may be remembered that Reorganization Plan No. 1 of last year, 1961, had the same objective as this bill; that is, to enable the Commission through appropriate delegations of responsibility, to provide for more effective administration of the laws for which it is responsible.

The reorganization plan was approved by the House of Representatives on June 15, 1961, but was rejected by the Senate on June 21, 1961, because the authority to delegate, which it would have conferred, was deemed to have been too broad.

My understanding is that this bill has met the objections while retaining the provisions which would permit the accomplishment of basic objectives of the reorganization plan.

I would like to say for the record here, that this is another of the of the reorganization plans, either by submitting a proposal to the President under the Reorganization Act or by legislation from this committee, of the six major regulatory agencies that come under our jurisdiction.

Personally, I think this is a tremendous record for this committee. After 3 years of study and investigation of the agencies and the administration of the laws, we have found there were many things that were needed for the improvement of the administration of these highly important programs. The committee, in accomplishing improvements for each of these six major regulatory agencies within its scope, it seems to me, that this is a very fine record for the committee and a very great service to the American people.

I, for one, as far as I am concerned, am quite proud of this record.

In view of the fact that other programs, either by the reorganization plan or by action of the committee of the House, or Congress, have been accomplished, it seems to me that this one should have little difficulty of being approved and for that reason we set hearings this morning.

Mr. Chairman, we have invited you on behalf of the Commission to the committee and make a record on the bill so that this would enable the committee from this record to give it consideration.

We are glad to have you here for this purpose and we will be glad to have your statement.

Proceed.

STATEMENT OF HON. WILLIAM L. CARY, CHAIRMAN, SECURITIES AND EXCHANGE COMMISSION; ACCOMPANIED BY COMMISSIONERS J. ALLEN FREAR, JR., BYRON WOODSIDE, JACK M. WHITNEY II, AND ASSISTANT GENERAL COUNSEL DAVID FERBER

Mr. CARY. Thank you, sir.

Mr. Chairman and members of the committee, I am William L. Cary, Chairman of the Securities and Exchange Commission and I have with me today my colleagues, Byron Woodside, Commissioner, Commissioner Whitney, and Senator Frear. My fifth colleague was not able to attend.

The CHAIRMAN. Let me say, Mr. Chairman, that we are glad to extend a welcome to the other members of the Commission. We are glad to have them here with you and they are not any less welcome to the other members, but specifically we are glad to see our old friend, Senator Frear, back with us.

Mr. FREAR. Thank you, sir.

Mr. CARY. I also have with me our General Counsel, Peter Dammann; Associate General Counsel, David Ferber; and George Michaely of the General Counsel's staff, as well.

I am here today to testify on S. 2135, a bill to authorize the Securities and Exchange Commission to delegate certain functions. The Commission strongly supports this bill.

At the request of this committee, the Commission has previously submitted a memorandum of comment on the bill. With your permission, Mr. Chairman, I would like to offer a copy of that memorandum to be included in the record, together with a supplement which has been recently prepared.

The CHAIRMAN. Let it be included in the record along with a copy of the bill at the appropriate place.

(The documents referred to appear on p. 4 and p. 8.)

Mr. CARY. Since our memorandum discusses the bill in some detail, I shall confine my statement today to the highlights of the bill, and to such remarks as may be necessary to supplement the comments in our memorandum.

I. The purpose of S. 2135 is to permit greater flexibility in the handling of business by the Commission (that is, by the Commissioners themselves as distinguished from the staff). This flexibility would be attained by permitting the Commission to delegate its functions, with certain exceptions, to a division of the Commission, an individual Commissioners, a hearing examiner, or an employee or employee board. Explicitly nondelegable are the functions of:

1. General rulemaking (applicable prospectively to whole classes of persons) as distinguished from certain actions involving specific persons and practices (which are also defined, technically, as rulemaking under the Adminstrative Procedure Act).

2. The making of any rule, regulation, or order pursuant to section 19(b) of the Exchange Act which permits the Commission to alter the rules or practices of any registered national securities exchange.

The bill would require the Commission to retain a discretionary right to review delegated action within a time and in a manner to be prescribed by rule. In addition, the bill provides that the vote of one

Commissioner shall be sufficient to bring any delegated action before the Commission for review, and provides that in certain situations a person or party adversely affected by delegated action shall be entitled to review by the Commission.

The bill also provides that delegated action shall become the action of the Commission for all purposes, including review by the appellate courts, if no Commission review of the delegated action is sought within the time specified by rule, or if the Commission declines review.

Finally, the bill would transfer to the Chairman of the Commission the function of assigning personnel to perform such functions as may have been delegated by the Commission.

II. Prior to the introduction of S. 2135 in the Senate, the President had submitted to the Congress Reorganization Plan No. 1 of 1961. Hearings on the plan were held before the House Committee on Government Operations, and a resolution to disapprove the plan was rejected in the House of Representatives on June 15, 1961. However, after hearings before the Senate Committees on Government Operations and on Banking and Currency, the plan was disapproved by the Senate on June 21, 1961.

Shortly afterward, S. 2135 was introduced in the Senate. The features of the plan, which apparently had been objectionable to the Senate, are not present in this bill. It was subsequently passed by the Senate on September 1, 1961.

III. Although the general purposes of S. 2135 are the same as those of Reorganization Plan No. 1, there are certain differences between them. I should like to comment briefly on those differences.

1. Although the plan imposed no restrictions on the matters which could be delegated, S. 2135 does not authorize delegation of the functions of rulemaking with reference to rules of general application, or of the making of any rule, regulation, or order pursuant to section 19 of the Securities Exchange Act of 1934. As mentioned earlier, that section relates to registered national securities exchanges.

2. Both the plan and the bill would require the Commission to retain a discretionary right to review delegated action, either upon the Commission's own initiative or upon petition of a party to or intervenor in such action. Under the plan, the vote of two Commissioners would have been required to bring such action before the full Commission for review. Under this bill, however, the vote of one Commissioner is sufficient.

3. The bill provides that any person or party adversely affected by delegated action shall be entitled to review where the delegated action (1) denies any request for accelaration of a registration statement or posteffective amendment thereto; (2) suspends, denies, or revokes a broker-dealer registration; (3) suspends, denies, or withdraws any registration, or suspends or expels a member, of a national securities exchange; or (4) suspends trading on an exchange. No such right to review by the Commission in these areas was provided for under the plan.

The Commission has no objection to those provisions of S. 2135 which differ from Reorganization Plan No. 1. In the first place, the Commission has never contemplated delegating its general rulemaking function or its rulemaking power over exchanges. Moreover, with respect to the basis of Commission review of delegated action,

we would be disposed to grant review in any event whenever one Commissioner favored it. We so stated in the hearings upon the plan. Furthermore, it is our belief that Commission review is appropriate in those matters for which the bill now specifies review as a matter of right.

IV. We regard the bill as helpful to us in achieving greater flexibility in the handling of business before the Commission. It will provide an additional basis for relieving the Commissioners of the necessity of dealing with matters of lesser importance and thus allow them to devote more time to consideration of major matters of policy and planning. It is particularly important at this time that the individual Commissioners be relieved, insofar as possible, from the sheer weight of routine business which has shown a tremendous upsurge. This is evidenced, for example, by the dramatic increase in the number of registration statements filed with the Commission. In fiscal 1961, there were 1,830 statements filed—an alltime high; as of April 30 of this year, 2,039 statement have been filed. In light of the marked increase of such routine matters, their appropriate consideration should require some delegation.

More importantly, the Commission is presently engaged in the first extensive study of the securities markets in over 25 years. This has required a tremendous commitment on our part, and will continue to do so, if we are to submit a responsible report to the Congress and then to act on the report through legislative recommendations and rule proposals. During this process, the Commission believes it absolutely essential that it devote as much time as possible to the study, and other broad inquiries which are being conducted, without being overly burdened by the increasing flow of routine and minor matters.

I should like to point out that the enactment of the bill will not in any way relieve the agency's general workload problems. The intended purpose of the bill, as I have discussed, is to assist the Commissioners in the handling of their business. The staff, on the other hand, will still have its present heavy obligations in addition to taking on those new responsibilities delegated by the Commission.

The Commission contemplates that delegation to individual Commissioners or the staff will be appropriate in numerous areas. I should like to list a few of these.

1. Orders for private investigation in routine cases.

2. Rulings on applications under the Public Utility Holding Company Act of 1935 and the Investment Company Act of 1940 for exemptions from certain provisions of these acts in uncontested cases involving routine matters.

3. The qualification of trust indentures under the Trust Indenture Act of 1939 for routine and uncontested cases.

4. Action upon various applications under section 12 of the Securities Exchange Act of 1934 which deals with listing and delisting of securities on national securities exchanges.

5. Acceleration of the effective date of certain registration statements under section 8(a) of the Securities Act of 1933; orders permitting withdrawal of exhibits, amendments or an entire registration statement; and, in repeat cases, orders authorizing confidential treatment of certain documents. These actions will be devoted to meeting the Commission's mounting problem of dealing with the processing of registration statements, to which I have previously alluded.

6. Acceleration of routine applications for registration under the Investment Advisers Act of 1940 and routine cancellations of those registrations.

7. Acceleration of the registration of broker-dealer applications under the Securities Exchange Act of 1934 and the cancellation of routine registrations.

V. In our memorandum of comment we suggested an amendment to section 1(c) of the bill. Upon reconsideration, we should like to withdraw that suggested amendment.

Our concern was that section 1(c) might be interpreted to permit parties to appeal from delegated decisions directly to a court of appeals without first having the case considered by the Commission. Further analysis compels us to conclude that the Administrative Procedure Act expressly contemplates that full Commission review must be sought in such situations and that we can meet this problem by rule.[1] Accordingly, we should like to withdraw our proposal to amend this bill.

The Commission considers it important that a plan of delegation be established in order that we may fully direct our attention to the many major matters of policy and planning now confronting us. Accordingly, we strongly urge the passage of S. 2135.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Chairman, for your statement.

May I inquire, is the Commission unanimous in its decision?

Mr. CARY. The Commission is unanimous in its decision; yes, sir.

There are four of us here and as to the fifth, I can speak for Commissioner Cohen.

The CHAIRMAN. Mr. Woodside, do you agree with the statement?

Mr. WOODSIDE. Yes, Mr. Chairman.

The CHAIRMAN. Commissioner Frear, do you agree with that statement, too?

Mr. FREAR. Yes, Mr. Chairman.

The CHAIRMAN. Mr. Whitney?

Mr. WHITNEY. Yes, Mr. Chairman, I do.

The CHAIRMAN. Are there any reservations on the part of either of the Commissioners with reference to this counterplan?

Mr. CARY. I do not think there are, but perhaps you might want to have them speak for themselves, sir.

The CHAIRMAN. Well, I give them an opportunity now.

Mr. WOODSIDE. None whatever.

The CHAIRMAN. The fifth member?

Mr. CARY. I am authorized to speak for him. Commissioner Cohen could not be here. There are no reservations at all on his part.

The CHAIRMAN. Invariably there arises, in connection with these matters, a question as to whether or not the Commission is unanimous in its feeling as to the need for these things, and that is the reason I wanted to get this on the record so we may be able to advise the House, in addition to having it for our own information, that this is a unanimous request by the Commission and there is no reservation on the part of any member.

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[1] See sec. 10(c); sec. 12 of the Administrative Procedure Act.

I want to get that on the record.

Mr. FREAR. Mr. Chairman, I think the Chairman of the Commission has been very patient with the other members of the Commission and with the work that we have been doing on this bill. I think it is only natural that there would arise questions and answers during such a discussion and I think they have been answered to the satisfaction of all of the members of the Commision.

The Commission feels, I believe, unanimously, that if this bill is enacted it will help the administration of the Commission of the statutes which they are given authority to administer. They do not feel, however, that this may be the end of all of the problems of the Commission, but it is certainly a step in assisting in that direction.

The CHAIRMAN. Thank you, Senator, for that statement.

There is one other thing. This bill reserves to the Commission the right as a Commission to make final decisions?

Mr. CARY. That is correct.

The CHAIRMAN. That, in my judgment, is a very good policy.

Mr. CARY. As I noted, any one Commissioner can bring a matter up before the Commission. Under those circumstances, if there is a single disagreement of one person——

The CHAIRMAN. I think that is a slight departure from some other reorganization programs we have had.

Mr. CARY. Yes, sir.

The CHAIRMAN. But that satisfies me and is perfectly all right with me.

Mr. Moss, do you have any questions?

Mr. MOSS. No.

The CHAIRMAN. Mr. Springer?

Mr. SPRINGER. No questions.

The CHAIRMAN. Mr. Dingell?

Mr. DINGELL. Mr. Chairman, do you know of any opposition to S. 2135?

Mr. CARY. At this time, Congressman Dingell, I know of none. There was at the Senate stage some opposition and indeed some of the amendments that were made and are represented in this bill were largely at the suggestion, for example, of the New York Stock Exchange. Therefore, I believe at this time they express no opposition to the bill in this form.

Mr. DINGELL. Maybe I had better yield to the chairman now.

The CHAIRMAN. Yes, there is some general opposition to these plans. We have seen that in the consideration of reorganization plans and proposals like this affecting other Commissions. There are those who feel that this gives the Commission authority to delegate too much power and decision to an employee or employee board. We have seen that from our experiences in the past, but I think the overwhelming sentiment is favorable to this kind of a program in order to permit these agencies to more expeditiously assume their responsibility and render service to the people.

From my own observation and experience over the last year, it has proved to be true but whether the opposition is as great now as it was a year ago, I do not think any of us know that yet.

Mr. CARY. Mr. Chairman, I am sorry. I did not mean to say that there was not some general opposition. I merely meant there was no

concrete, specific person opposing this bill, as distinguished from other bills.

The CHAIRMAN. The New York Stock Exchange sent in a letter which indicated their opposition heretofore about it. That was when the reorganization plan was considered over there. I do not believe they expressed such opposition to our committee or to the House Government Operations Committee, when we were considering it before. I am not sure about that. Maybe they did. I do not recall.

Mr. Moss?

Mr. Moss. I do not recall either.

The CHAIRMAN. Anyway, I do not think it was expressed over on this side of the House but they did in the Senate. However, we have a letter from the president of the New York Stock Exchange on this particular bill in which they say they have reviewed carefully their position on the bill and are satisfied that it will facilitate the work of the Commission without unduly limiting the right to review without granting the right to delegate rulemaking powers.

We will put the letter in the record at this point.

(The letter follows:)

NEW YORK STOCK EXCHANGE,
New York, N.Y., May 24, 1962.

Hon. PETER MACK,
Chairman, Subcommittee on Commerce and Finance, Interstate and Foreign Commerce Committee, House of Representatives, Washington, D.C.

DEAR CHAIRMAN MACK: We have received your notice of public hearings on S. 2135—Securities and Exchange Commission reorganization bill—to be held at 10 a.m. Tuesday, May 29, 1962.

Last year when the Senate was considering this bill, we corresponded with Senator Harrison A. Williams, Jr., expressing our reservations concerning a limitation on an affected party's mandatory right to review by the Securities and Exchange Commission of an agency action at a delegated level. We suggested the bill be changed to afford mandatory review by the Commission to persons subject to the life-and-death powers of the Commission. These powers are exercised by the Commission under sections 8(a) or 8(c) of the 1933 act and under sections 15(b), 19(a) and (19(b) of the Securities Exchange Act of 1934.

Accordingly, after consultation between the Securities Subcommittee in the Senate and the Securities Exchange Commission, the bill was amended to meet these objections and was passed in that form. Copies of the correspondence on this matter are contained in the Senate Committee Report No. 776 of the 87th Congress, 1st session, which accompanied S. 2135.

We have carefully reviewed again our position on S. 2135 and are satisfied that it will facilitate the work of the Securities and Exchange Commission without unduly limiting the right to review and without granting the right to delegate important rulemaking powers. This being the case we have no objections to present to the committee and I wish to take this opportunity to endorse S. 2135 as passed by the Senate.

We are presenting this letter to be included in the record in lieu of an appearance.

Sincerely,

G. KEITH FUNSTON.

Mr. DINGELL. Mr. Chairman, I will be happy to yield to any member of the committee for further questions.

The CHAIRMAN. Proceed.

Mr. DINGELL. Mr. Chairman, I note on page 6 of your statement, you say, "I should like to point out that the enactment of the bill will not in any way relieve the agency's general workload problems. The intended purpose of the bill, as I have discussed, is to assist the Commissioners in the handling of their business."

I would like to discuss this whole subject with you for a while, the workload of the Commission.

As you recall, I have been somewhat interested in this.

Mr. CARY. Indeed, yes.

Mr. DINGELL. From the standpoint of the fact that it was not infrequently the regulatory commissions being literally due processed to death. This will somewhat ease the workload of the Commissioners themselves, will it not?

Mr. CARY. That is correct.

Mr. DINGELL. This is one of the substantial bottlenecks of the Commission in policing the various statutes they are supposed to, and in conducting regular affairs they are supposed to conduct on behalf of the people?

Mr. CARY. I would not say that there are too many bottlenecks at the Commission level. The point is, Mr. Dingell, that if we devote our time to these routine matters, we do not have enough time to think about where we ought to go on major policy problems. In other words, we do not have time to think about the general issues with which the Commission is concerned.

I believe that our opinions could be speeded up and other things could be accelerated if we have power to delegate minor routine matters which at the present time take a good deal of our time at Commission meetings.

Mr. DINGELL. The point I am making is that the Commission, as almost any other responsible office of Government, finds it is too big in terms of time required to appropriately handle every problem before the Commission; am I correct?

Mr. CARY. That is correct. We meet almost 4 hours a day.

Mr. DINGELL. That is right, and that is the reason, or perhaps the principal reason, for the suggested amendments; am I correct?

Mr. CARY. That is correct.

Mr. DINGELL. I note in reading certain language on lines 21 and 22 of the bill, page 2, and following on down through and I assume this has to do with a reservation of powers or with regard to a reservation of specific areas where the Commission must review; am I correct?

Mr. CARY. That is correct, in general.

There are two points where you refer to page No. 2. The first one is an amendment to permit any single member of the Commission, whereas in the reorganization plan it was two members, to bring anything up to the Commission level.

Secondly, the further amendment to which you refer, beginning at the top of page 3, which starts with the words, "*And provided further*" at the bottom of page 2, specifically provides that in the event action delegated at a certain level does certain things, or affects certain people in certain ways, then the party who is adversely affected shall be entitled to his right to review. These matters are apparently in response to objections raised to Reorganization Plan No. 1 where it was alleged that there should be review as a matter of right in certain areas. This amendment provides for that.

Mr. DINGELL. I notice in this specific area there are certain particular situations set forth where the Commission must review?

Mr. CARY. That is correct.

Mr. DINGELL. You indicated in your previous comment these were to meet objections of specific groups and individuals; am I correct?

Mr. CARY. That is correct, sir.

Mr. DINGELL. Has this absolved all of the objections we found was the position of the national exchanges?

Mr. CARY. We do not know of any concrete objectors at the present time.

Mr. DINGELL. To this particular piece of legislation?

Mr. CARY. To this particular piece of legislation as amended.

Mr. DINGELL. As drafted at this moment and as embodied in S. 2135 before us?

Mr. CARY. That is correct. The amendments were for the purpose of satisfying the objections.

Mr. DINGELL. Can you point out to us what each one of the requirements for mandatory review means? The committee sometimes does not have as good an understanding of the ins and outs and highly technical parts of the Commission's regulations and statutory authority as it would like.

Start with the one at the bottom of page 22 and tell us a little bit about each one of these specific reservations of mandatory review under the bill.

I think this would be very helpful.

Mr. CARY. Yes, sir.

May I make it clear that when you say "mandatory review" we must, on the objection of any party affected——

Mr. DINGELL. Of any party affected? The decision of the person delegated authority will stand under the language of subparagraph (c) on line 13?

Mr. CARY. Yes, sir.

The four specific areas that were incorporated in this bill are contained in subpart (b) which starts at the top of page 3 of the bill and they are these four:

First, if for example we should deny acceleration of any registration statement—which means securities may not be publicly offered—a denial would be immediately subject to review by the Commission at the objection of the party affected.

The second is the suspension, denial, or revocation of a registration of a broker-dealer. This would involve putting a broker-dealer out of business or preventing him from going into business.

The third is the suspension, denial, or withdrawal of any registration of, or suspending a member of, a national securities exchange. In other words, any particular member, if he were suspended, or denied, registration.

Fourth, the suspension of trading on an exchange of a particular security pursuant to section 19(a) of the Securities Exchange Act of 1934.

Those are the four areas in respect of which any party objecting may immediately ask for a right of review by the full Commission.

Mr. DINGELL. I notice you mentioned section 19(a) of the Securities Exchange Act. Could you tell the committee something about that section?

Mr. CARY. Yes, sir.

Section 19 as a whole deals with the Commission's powers with respect to national securities exchanges and securities required on such exchanges.

Section 19(a)(2) provides that after appropriate notice and opportive date of, to suspend for a period not exceeding 12 months, or to withdraw the registration of a security, if the Commission finds that the issuer of such security has failed to comply with any provision of the Securities Exchange Act or the rules and regulations thereunder.

Section 19(a)(3), which is involved here, provides, among other things, that the Commission by order may suspend for a period not exceeding 12 months, or expel from a national securities exchange any member or officer thereof whom the Commission finds has violated any provisions of the Securities Exchange Act or the rules and regulations thereunder.

Section 19(a)(4) authorizes the Commission, if in its opinion the public interest so requires, summarily to suspend trading in any registered security.

I think that by outlining those, for example, I give you some idea of the nature of the powers the Commission has with respect to exchanges and to broker-dealer firms which are exchange members.

Mr. DINGELL. Mr. Chairman, just one more brief question.

This is going to expedite the handling of matters in the Commission, I assume, by eliminating some more or less routine housekeeping chores of the Commission from its consideration by delegation?

Mr. CARY. Precisely. It will reduce the number of papers coming up to us every day, but not anything of major importance.

Mr. DINGELL. Do you have any idea of how much this will expedite the handling of the workload of the Commission in terms of reducing the volume of routine matters coming across the Commissioner's desk? What percentage of the routine work of the Commisioners will be delegated, and how much will it expedite the handling of other cases?

Mr. CARY. It is a little difficult to fix it precisely. We meet about 4 hours a day at the present time. I would think under those circumstances either we would meet the same amount of time and handle some broader problems, or it would reduce the amount of meetings so we could get down to the matter of opinions and other things we have to engage in.

Mr. SPRINGER. I would like to ask unanimous consent to ask questions for 5 minutes.

The CHAIRMAN. Without objection.

Mr. SPRINGER. Mr. Chairman, I ask this in all sincerity, and I hope I can get the best answer you can give.

As you know, the stock market has been dropping recently, and I realize you do not control the stock market. However, I would like to have your opinion as best you can give it as to what you conclude the reasons are.

Mr. CARY. Mr. Springer, I cannot provide an answer to that. I really cannot in all candor give you any answer that would satisfy you.

As you know, our job is not really economic analysis. We do not have a staff of economists to analyze the market movement as such. We therefore are not experts on the questions of why and how markets go up and down. Our job, it seems to me, is the one of trying to pro-

vide for a free and orderly market. By that I mean a fully informed market in the sense of seeing that information with respect to securities is available, and further seeing that the market is free as much as possible of fraudulent activity.

It seems to me those are our basic functions, and we are really not equipped to give you an economic answer.

Mr. SPRINGER. Generally speaking, is the stock market subject to the question of confidence in the economic situation?

Mr. CARY. I would assume it is, sir. From every standpoint, the question of confidence is one that is referred to.

Mr. SPRINGER. Do you believe at this time that at least a part of this could be due to a lack of confidence in the present economic situation?

Mr. CARY. On that, sir, I do not have an answer. That is just one of a group of factors. I am not in a position to weigh those factors, as I said before.

Mr. SPRINGER. In the last few weeks there has been a great deal of uneasiness in the air about the future. I find that in talking with people in Washington, and it has been reflected in newspaper stories and editorials.

Do you believe there is any way we could restore confidence at this time in the stock market and the economic situation?

Mr. CARY. I would like to believe that really one of our jobs is to maintain confidence, to insure, if we possibly can, that we have an informed public and a free and orderly market. That is our job and we are trying our best to perform it.

Mr. SPRINGER. Have you attempted to make any study in the last few weeks as to why the market has dropped at such a rapid rate?

Mr. CARY. We are at the present time trying to assemble facts and undoubtedly we should be aware of the question, for example, of who or what groups are buying and selling and the status of special list accounts, and the like. At the moment, we do not have any study that would provide any answer at this time. We are looking into these facts.

Mr. SPRINGER. When do you expect to have a report on this?

Mr. CARY. We will not have a formal report, but we will have some information available, I would assume, over a period of the next few weeks.

Mr. SPRINGER. Mr. Chairman, I think it is of the utmost importance when the market has dropped as it has the last few weeks, a total of roughly $90 billion—and is that about right?

Mr. CARY. In a dollar figure, I am not sure I can give it as well as I can in terms of averages. I cannot speak to the exact amount of dollars.

Mr. SPRINGER. That is a lot of money.

Mr. CARY. Indeed.

Mr. SPRINGER. That is all, Mr. Chairman.

Mr. ROGERS of Florida. Mr. Chairman, I am concerned along the lines that Congressman Dingnell questioned on the time for a registration. What is your average time element?

Mr. CARY. At the moment, Mr. Rogers, it had lengthened out and it was somewhere between 50 and 60 days. Sometimes in the case of a tough one in respect to which no prior information was available, it might be longer than that.

Mr. ROGERS of Florida. Do you anticipate that the provisions of this bill will enable you to speed up this time element for registrations?

Mr. CARY. May I say this bill, as such, has really nothing to do with that.

Registration statements come to the Commission and are reviewed by it, but there has been no holdup there. They are reviewed in effect overnight by the Commission and have been regularly. This bill will not affect it.

I will say we have taken steps in the past month or two which have speeded up the registration process. I think at the moment we have it in hand and can generally assure that registration statements will come out faster than they have. We simply had to face the fact that the backlog was growing too fast and we had to take drastic steps in order to reduce it.

Mr. SCHENCK. I have greatly enjoyed Mr. Cary's general statement.

Mr. Chairman, is it your feeling that the new organization as proposed here will enable your Commissioners to operate more efficiently?

Mr. CARY. I think it will, sir. It will save us time definitely by not having to handle routine matters. In other words, in avoiding handling routine matters and thus giving us an opportunity to concentrate on the major issues.

Mr. SCHENCK. Mr. Chairman, will this bill take away or void any of the privileges and opportunities of complainants or others seeking certain permission to do things?

Mr. CARY. To the extent there is delegation, it means a matter will not come before the Commission as of right except in certain instances. It does mean, however, that if any one Commissioner feels a matter deserves Commission attention, it must come before the Commission. So if a person is a complainant and feels in some way he has been unjustly treated, even on the routine matters, if it is brought to the attention of any single Commissioner and he thinks it should come before the Commission, it will come.

Mr. SCHENCK. Mr. Chairman, is such a decision dependent upon the judgment of the individual Commissioner?

Mr. CARY. Of any one; yes, sir.

Mr. SCHENCK. And the complainant will not have a personal right of appeal over a decision made by a staff member to which this matter has been delegated?

Mr. CARY. It would not come before the full Commission unless one of the Commissioners—any one of the Commissioners—thought it should.

I might ask, if I may, if Mr. Ferber might have some further comment on that. He is an expert in this field of administrative procedure. I want to make sure there is added anything that should be added.

Mr. FERBER. I do not think so. I think the chairman fully stated the matter, except perhaps to point out that most of the routine matters are permissions and there is specifically in the bill when certain of these requests are sought, and if they are denied, the more important ones, they could go to the Commission on a denial even should there not be the single Commissioner that wants to take it up. I do not think there is anything of any great substance that could not be reviewable.

Mr. SCHENCK. As I understand it, Mr. Chairman, if a hearing examiner to which a question has been referred makes a report to the Commission which is approved by the Commission, then the individual has no right or opportunity to appeal that decision to the Commission.

Mr. CARY. May I make two comments on that:

First of all, in our Commission at the present time all decisions by hearing examiners are simply recommended decisions. That is the way we operate. There are no final decisions in effect by hearing examiners in our Commission as distinguished from other commissions at the present time.

So in answer to you on that, if a matter is before a hearing examiner, it will come before the Commission as a matter of fact, though perhaps not as a matter of right.

Secondly, as you may note, there have been these amendments in this Senate bill which pick out the crucial areas in respect of which it was felt someone might be hurt. In those four areas, the ones to which I referred when I was answering Mr. Dingell's question, there is an appeal as of right. One might say that the major crucial matters are ones in which an appeal as of right to the Commission is given.

Mr. SCHENCK. I would like to say that I think under the present personnel and operating procedures of the present Commission, the rights of everyone will be fully protected and observed, but I am wondering if you see any possibility of a future Commission making rule changes which would take away some of these rights under this legislation?

Mr. CARY. In our opinion, sir, there are enough safeguards here. There are automatic rights of review and any one Commissioner may bring a matter up for review.

Mr. Woodside has just reminded me of a point that I have not made before. Under the bill we have the authority to delegate, but we must do so by published order or rule, and therefore a proposed rule will go out and be subject to discussion before we issue the rule on the basis of this general power of delegation.

Mr. HEMPHILL. No questions.

Mr. KEITH. Pursuing the line of questioning Mr. Springer started a minute ago, is it possible that selling by foreign investors could be a big factor in the current selling?

Mr. CARY. Mr. Keith, without knowing the facts with respect to it, I do not have an answer. I do not have an answer as to the amount of foreign selling by foreign holders at the present time.

Mr. KEITH. Is there any way to identify foreign purchasers, or sellers?

Mr. CARY. I would say that information in some cases would be available. I am not sure it would be in total because I would assume that foreign holders could have, for an example, a custodian account in a New York bank and this could not be identified. It presents some problems of identification.

Mr. KEITH. Is there any role that any agency of Government should play in tracing the extent of foreign activity in our market? You mentioned earlier the need to have an orderly market and the need to have activities comprehended by those who are investing in the market.

Is there any need for a service which would identify in some way foreign purchasers and sellers?

Mr. CARY. Because I have only been here a year, I am not able to speak to that in terms of the history of the Commission. I would like to ask Mr. Woodside if he has any comments on that point.

I know there was at some point a discussion with respect, in particular, to Swiss holdings and the like. I cannot speak to that carefully now.

Mr. WOODSIDE. Mr. Keith, at various times in the past we have been concerned with whether transactions by foreign institutions were of significance, particularly in relation to proxy matters. I believe our New York office and the stock exchanges from time to time tried to inform themselves as to the volume and source of buy and sell orders. I do not believe there is any mechanism in existence which makes it possible for a rapid determination of that information on a current basis.

I am sure as a result of what has happened in the last few weeks that there will be an effort made to determine the principal sources of the selling and the buying power which has been disclosed. I do not think anyone, at least anyone in the Commission at this juncture, is in a position to speak on it.

Mr. KEITH. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Kornegay, who is just freshly back from a successful primary, with our congratulations.

Mr. KORNEGAY. Thank you very much, Mr. Chairman. I have no questions.

Mr. THOMSON. No questions.

The CHAIRMAN. Mr. Chairman, thank you very much. We are glad to have your testimony on this matter which will be brought to the attention of the committee at the first opportunity.

I do not have any request from anyone else to be heard, and, therefore, this will conclude the hearings on the proposed legislation.

Before we adjourn, I have a letter for the record signed by the Honorable Harrison A. Williams, Jr., chairman of the Senate Subcommittee on Securities, along with Senator Javits, the ranking minority member of that distinguished committee. We are happy to have this letter and, without objection, it will appear at this point in the record.

(The letter referred to follows herewith:)

U.S. SENATE,
COMMITTEE ON BANKING AND CURRENCY,
May 29, 1962.

Hon. OREN HARRIS,
Chairman, Interstate and Foreign Commerce Committee,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: We are writing to recommend that the House Interstate and Foreign Commerce Committee give favorable consideration to S. 2135, as amended, a bill which would both authorize the Securities and Exchange Commission to delegate certain of its functions, and provide for appeals of actions taken under such delegations.

On June 2, 1961, we introduced S. 2135. As the result of comments on this bill, amendments were adopted which met the objections raised at Senate

hearings and which are, nevertheless, acceptable to both the Securities and Exchange Commission and the Bureau of the Budget.

On August 24, 1961, S. 2135, as amended, was reported favorably by unanimous vote of the Senate Banking and Currency Committee. It was passed by the Senate on September 1, 1961.

This bill would carry out the basic objectives of Reorganization Plan No. 1 of 1961, to provide for greater flexibility in the handling of the business before the Commission, permitting its disposition at different levels so as better to promote its efficient dispatch. At the same time, S. 2135, as amended, meets the objections raised with respect to the delegation of the general rulemaking power and aggrieved party's right of appeal to the Commission as proposed in Reorganization Plan No. 1.

The Securities and Exchange Commission at present has a heavy backlog of work because of the increased activity in the securities market. S. 2135, as amended, would enable the Commission to achieve much greater utility from its present manpower. At the same time, this bill would free the Commissioners themselves from dealing with details of minor consequence, thereby enabling them to concentrate on the broad, more important aspects of the Commission's business. Thus, on the one hand, this bill would give the Commission the increased efficiency which it needs and, on the other, by relieving the Commissioners of onerous details, give them the necessary time to deal effectively with the many matters of policy which confront them.

We strongly urge that your committee give this bill favorable consideration.

Sincerely yours,

HARRISON A. WILLIAMS, Jr.,
Chairman, Subcommittee on Securities.
JACOB K. JAVITS,
Ranking Minority Member, Subcommittee on Securities.

The CHAIRMAN. The committee will stand adjourned.

(Whereupon, at 11:25 a.m., the committee adjourned.)

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