November 28, 1960

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Dear Mr. Landis:

The announcement of your selection by the President-elect to make recommendations concerning the regulatory agencies naturally excited my interest. Your status as a lawyer and your past experience as a member of three agencies assures both depth and competence in your approach to the task. Because of my own two years' service as Chairman of the Securities and Exchange Commission and fifteen additional years as a relatively active practitioner in the securities field (plus fifteen earlier years in general practice), I feel it would not be out of place to pass along a few specific comments on the organization and problems of the SEC. The comments are neither philosophical nor partisan.

First. Under existing practices, the members of the Commission have too many matters to pass upon personally. Paul Rowen, the last years of whose service corresponded with my service, occasionally remarked that the Commission had too many statutes to administer with too many sections specifically requiring action by the Commission. Unless things have changed recently, the Commission must meet every day, most days for an aggregate of five hours. Many things passed on by the Commission could just as well be disposed of by the staff, e.g. (1) granting acceleration; (2) ordering formal investigations (in order to activate subpoena power); (3) ordering commencement of proceedings under Section 8 of the Securities Act or Section 15 or 15A of the Securities Exchange Act; (4) granting orders for confidential treatment; and (5) authorizing criminal references to the Department of Justice, (with possible appellate procedures under (1) through (4)).

The necessity of bringing a matter to the attention of the Commission does make for more thorough consideration by staff members since they must be prepared for questions. Moreover, the practice keeps the Commission well informed of what is going on. But, it has the effect of making Commissioners spend too much of their time as quasi-staff members and thereby deprives them of time to discuss and implement

basic policies and programs. A conscientious Commissioner will naturally not act as a rubber stamp when a specific matter of the above-described nature is brought up for discussion. When a conscientious Commissioner is multiplied by five, the time consumed by the super-staff function gets out of hand.

I am not prepared from memory to submit a list of matters which under the statutes, as written, could or could not be delegated. It may be that the Commission has devised procedures to eliminate some of this type of routine work. I think, however, that a study of the subject, followed if necessary by a few statutory amendments (possibly provision for rule-making power with respect to delegation of authority) could work wonders.

Second. I suggest that there is too much duplication of work between Washington and the regional offices. In my visits to regional offices I was impressed by the competence of the men in the field. They came up with sound recommendations with respect to investigations and initiation of proceedings. Nevertheless, the headquarters office usually made (and I believe still makes) an independent study with respect to a regional office's recommendation and then in turn presents the original or a modified recommendation to the Commission. This three-phased consideration could be reduced to a two-phased consideration and, indeed, to one phase if the Commissioners themselves were relieved of the responsibility of deciding whether to institute proceedings (e.g., broker-dealer sanctions) or to make a criminal reference to the Department of Justice. After all, under most federal criminal statutes, the local United States Attorney decides whom to prosecute.

The decentralization (and removal from Commissioners' personal consideration) of responsibility for instituting enforcement proceedings would eliminate the recurrent criticism about identity of judge and prosecutor. The National Labor Relations Act provides for a system analogous to that suggested above, through the separation of functions as between the National Labor Relations Board and its General Counsel.

As an example, during my tenure, the Commission passed to the regional offices practically full responsibility for processing offering circulars for small issues under Regulation A. Generally speaking, the regional offices have handled this responsibility adequately. Had primary responsibility for processing these offering circulars remained in Washington, examination of registration statements would now be delayed much more than it is.

stipulations. In addition, records in proceedings grow to inordinate length through too casual regard for the rules of evidence. In too many instances documentary evidence is received by the pound when a little firmness from the hearing examiner would compel the party to state what part of a particularly long document he is really offering.

Sixth. I believe that too little attention is paid to the possibility of disposing of contested matters by settlement under the provisions of Section 5 of the Administrative Procedure Act.

Finally, I doubt whether much can be done from inside the SEC or any other agency without a continuous roving task force operating out of the White House. Congressional studies, despite political overtones, are healthy on the whole, but they do not improve administrative techniques. Administrative improvements are hard to generate internally because the pressure of day-to-day work slows up the process. Enough experience has been developed in setting up administrative agencies in various fields and in operating them through the years under changing conditions that a small permanent force in the Executive Branch could be of immeasurable help in formulating, in consultation with agency heads, administrative policies and procedures based on the best samples available. This, I think, would be more productive of results than occasional studies of management consultants.

I have not commented on the securities laws themselves. My good friend, Louis Loss, and I have talked once or twice about the desirability of a kind of securities code which would integrate all the Acts administered by the SEC. Certainly in the present acts (keeping in mind the accidental sequence of their enactment) there are elements of duplication, inconsistency and obsolescence. The formulation of a code might be a project for the American Law Institute or some Foundation. I doubt whether it would ever come about otherwise. One must remember, however, that the acts contemplate legislative recommendations by the Commission to the Congress. Perhaps, if the "busy work" of the Commission were eliminated by adoption of some of the foregoing suggestions, the Commission could do more than it does in this area. On the other hand, the Commission has, since 1954, offered, and had adopted, a number of legislative recommendations.

This letter is too long, I know, but, as my predecessor, Don Cook, told me the day I entered on duty, there is something about the SEC that gets in your blood. The organization has been kept relatively strong and vital by the