

Securities Act of 1933

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The mortgagor is benefited because the acts have given him a new lease on life, a breathing spell, and has reduced his liability on his bond by giving him the advantage of having the full value of the property set off against the debt on foreclosure.

It is respectfully submitted, however, that the relief granted is only temporary and is not in full solution of the problem. It is not likely that real estate values and the property owner's financial condition will have so improved by July, 1934, that he will be able to pay off the mortgage loans. It is the writer's opinion that the acts should be extended for at least another year so that the full benefit thereof may be realized.

JOSEPH POKART.

SECURITIES ACT OF 1933.—Like any other history, the history of finance repeats itself. Since the beginning of our present financial structure, there have been innumerable periods of unsatiable speculation and expansion, followed by periods when investors begin to realize that they have been deceived by the former prevailing illusion of an indefinite and unbroken expansion of business.¹ After an era of economic madness, men begin to realize that debts have been incurred in a much greater proportion than wealth and income has warranted.² The financial bubble then bursts and theoretical fortunes disappear. Those who are the most affected by this situation are the investors who purchase securities of corporations, the obligations of which have been increased to such a degree that they are not adequately secured by either the assets or the income of the concern. They are usually induced to purchase these securities by bankers and issuers, who are at times prone to publish vague and untrue statements regarding the financial responsibility of a concern in order that they might sell the securities to their personal gain.³

¹ CHAMBERLAIN AND EDWARDS, *THE PRINCIPLES OF BOND INVESTMENT* (1927) 11; WORMSER, *FRANKENSTEIN, INCORPORATED* (1931) cc. I, II, p. 21. "Those familiar with the operation of Blue Sky Laws today will appreciate that if ever they were needed it was in England in the early Eighteenth Century, for we find organized at that era such projects as companies 'for importing jackasses from Spain,' 'securing perpetual motion,' 'making salt water fresh,' 'an undertaking which should in due time be revealed.' These were rarely incorporated. Most of them were joint stock companies. The inevitable reaction came. The bubble burst. The house of cards fell down." The first two chapters of this book give a comprehensive summary of the history of finance both in Europe and in the New World. WARSHAW, *THE STORY OF WALL STREET* (1931); CLARK, *THE INTERNAL DEBTS OF THE UNITED STATES* (1933) c. I; WOODWARD AND ROSE, *INFLATION* (1933).

² *Ibid.* In the most recent period of so-called prosperity in the United States, the long-term debt increased from a pre-war debt of 37 billion dollars to a post-war figure of 134 billion dollars. The debt, before the war, was 20% of our national wealth. This increased to 45% after the war.

³ *Ibid.*

To do away with these unhappy periods of depression and economic panic we must limit the periods of expansion to realities and not permit them to become periods of gambling and uncertainty. This may be done by making it incumbent upon issuers and underwriters of securities to disclose all the material and pertinent facts connected with the loan, so that the investor may ascertain, before it is too late, whether his loan is secured by actual value or merely hope.⁴

In an attempt to do away with the aforementioned abuses, Congress, in the unprecedented session of 1933, passed the Securities Act.⁵ In its preamble the Act states that it is "An act to provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and through the mails, and to prevent frauds in the sale thereof, and for other purposes."

The Act provides that on or after June 27, 1933, all new issues of securities, except those classes which are expressly excepted, if sold by means of oral solicitation or written or printed prospectus, and by use of the United States mails or instruments of interstate commerce, and not the securities of a resident or domestic firm or corporation, sold locally in a single state, are required to be registered under the Act before sale.⁶

The registration statement must contain, together with other information, the following data:⁷

1. Names and addresses of underwriters, directors, chief executive, financial and accounting officers, partners and, in the case of a business less than two years old, of promoter.
2. Names and addresses of owners of record, or beneficially, of more than 10% of any class of stock, or of aggregate stock of the issuer outstanding as of a date within 20 days before filing.
3. Amounts of securities of the issuer held by the persons specified in 1 and 2 above, as of a date within 20 days before filing and, if possible, as of one year prior thereto; also any amount of securities to which they have subscribed.
4. Business of issuer.
5. Full details of stock capitalization, including rights and powers of different classes.
6. Details of options, if any.

⁴ *Ibid.*

⁵ SECURITIES ACT OF 1933, approved May 27, 1933.

⁶ *Ibid.* §5; see also §18 which refers to state control of securities.

⁷ *Ibid.* §7, Schedules A and B.

7. Amount of capital stock of each class issued or unissued, in the proposed offering.
8. Full details of funded debt and purpose of this issue.
9. Remuneration in the past year and current year of :
 - (a) Directors;
 - (b) Officers and other persons, with names, if individual remuneration is over \$25,000.
10. Net proceeds of issue.
11. Offering price.
12. Commissions and discount paid.
13. Expenses of issue to be borne by issuer.
14. Amount paid promoters within two previous years or intended to be paid promoters, and consideration for such payment.
15. Details of property to be acquired, not in the ordinary course of business, with all or part of proceeds of the issue.
16. Full particulars of nature and extent of interest, if any, of directors, principal executive officers, stockholder holding over 10%, in property acquired not less than two years previously, or proposed to be acquired.
17. Names and addresses of counsel passing on legality of the issue and a copy of the opinion.
18. Balance sheets not more than ninety days old, prepared according to the provisions of the Act and the rules promulgated by the Commission.
19. Profit and loss statement on the same basis for the fiscal year and two years preceding.
20. Similar profit and loss statements and balance sheets of any business to be acquired, with any proceeds of issue.
21. Copies of agreements with underwriters, all material contracts, articles of incorporation or partnership articles, and copies of underlying agreements and indentures of all stocks, bonds or debentures offered or to be offered.

The securities excepted from the requirements of the Act are:⁸

1. Securities of the United States Government, states, municipalities and quasi-municipalities.

⁸ *Ibid.* §3, subds. a and b.

2. Securities of National, State or Federal Reserve Banks.
3. Short-term paper not running over nine months.
4. Securities of eleemosynary corporations.
5. Building and Loan and similar securities, where the issuer receives not over 3% of the face value by way of commission or fee.
6. Securities of farmers' co-operative associations.
7. Common carrier securities issued under Interstate Commerce Commission regulations.
8. Receivers' certificates, insurance policies and similar securities, which are under supervision of some other boards or courts.
9. Issues of less than \$100,000, if excepted by the Commission in its discretion.

The transactions which are exempt from the provisions of the Act are⁹ those made by anyone other than an issuer, underwriter or dealer, or where an issuer sells to a banker for a private account. Transactions by brokers executed on any exchange or open market, without solicitation, are also exempt, as are exchanges by an issuer with existing security holders, where no commissions are paid and the issuance of securities in reorganizations under court supervision.

Those jointly and severally liable in a civil action under the Act, where the registration contained an untrue statement of a material fact, or omitted to state a material fact required to be stated, are:¹⁰

1. Every person whose signature appears upon the registration statement.
2. Every director of or partner in the issuer at the time of registration.
3. Every person who, with his consent, is named in the statement as being a partner or director.
4. Every professional person whose profession gives authority to anything which he may prepare or certify to in connection with the preparation of the statement.
5. All underwriters with respect to the security.

All may, however, be exempt from liability if it is proved that, at the time of acquisition, the purchaser knew of the untruth or

⁹ *Ibid.* §4.

¹⁰ *Ibid.* §11, subds. a, b, c and d.

omission, and anyone but the issuer may defend on the ground that "he had, after reasonable investigation, reasonable ground to believe, at the time such part of the registration statement became effective, that the statement was true and that there were no omissions of material facts required to be stated therein or necessary to make the statements therein not misleading," or that he took the other precautionary actions in the Act.¹¹

The purchaser can recover the price for the security, plus interest, upon tender back of the security if still owned, or damages if the person suing no longer owns the security. But, states the Act, "In no case shall the amount recoverable under this section exceed the price at which the security was offered to the public."¹²

All the information required by the Act to be in the registration statement, except certain documents, must be included in the prospectus. Such information, however, may be condensed or summarized, and need not follow the order required in the registration statement. Any prospectus used more than thirteen months after registration must not contain accounting information more than twelve months old. It is within the discretion of the Commission, however, to permit the omission from a prospectus of any of the required information which it designates as not being necessary or appropriate in the public interest or for the protection of the investors.¹³

Literature or advertising, other than a prospectus, under the terms of the Act, may be used in the sale of securities, if sent to persons who have already received a prospectus or if it does no more than identify the security and state the price.

The Federal Trade Commission is given authority to administer the Act, and can require or permit the filing of statements, hold investigation, bring Federal Court action to enjoin temporarily or permanently any illegal practices, and obtain writs of mandamus to enforce compliance with the Act or rules and regulations relating thereto.¹⁴

The Act has, at times, been the subject of severe criticism; it has been blamed for the recent lull in long-term financing. The critics, however, have failed to take into consideration the unstability of the dollar today and the general feeling of uneasiness as to the business outlook. Certain provisions have been called ambiguous. This is true of practically all new laws and time must be given to the Federal Trade Commission to issue authoritative interpretations. Some critics say that it is within the power of the courts to reverse these interpretations after they are given. While this may be done, it is believed

¹¹ *Ibid.* §11, subd. f.

¹² *Ibid.* §11, subds. e and g.

¹³ *Ibid.* §10; see §12 in connection with civil liabilities arising in connection with prospectuses and communications.

¹⁴ *Ibid.* §§19, 20, 21, 22.

by the writer that the courts will be more apt to follow these interpretations than cause their reversal.¹⁵

The Securities Act, it is true, is not a panacea for all the ills and abuses of the present financial system—this would be impossible. It does, however, insure the investor against certain aforementioned fraudulent practices of issuers and underwriters and also enables him to obtain the true and complete statement of condition of the corporation in which he is to invest his money.

ALFRED HECKER.

BANKING ACT OF 1933¹ (GLASS-STEAGALL BILL).—No bill with the possible exception of the National Industrial Recovery Act, that has been passed by the last Congress, has met so varied a reception as the Glass-Steagall Bill. It is condemned by the American Bankers' Association as a high mark in legislative intermeddling, yet other informed circles entertain serious doubts as to whether it has gone far enough in seeking to protect American industry from a recurrence of the cycles of business depression largely referable to uncontrolled credit expansion and contraction. While Senator Glass and the administration fear that certain features, notably the deposit insurance provision, are bound to react unfavorably upon the Act itself and even upon the Federal Reserve System upon which it is based, while powerful member banks threaten liquidation and secession from the System because of the insurance feature, nevertheless, the majority of Congress feels with Representative Steagall that "this bill rests upon the theory that banking which is unsafe for the depositors ought to be prohibited by law. Banking is not the individual right of a citizen and when we charter an institution to engage in banking to receive the deposits of the public, it is the duty of the government to see that deposits of the public are protected."²

These divergent views are presented merely to point out that at the next session of Congress we can expect vigorous onslaughts upon the bill in an effort to eliminate or at least to considerably alter various provisions, and indeed, movements are already under way toward that objective.

Before we enter into any consideration of the bill itself, it would be best to ascertain what forces brought it about. The bill sought

¹⁵ See article in the New York Times of October 15, 1933, by Arthur H. Dean; see also a copy of the address by Mr. Dean, delivered at the Financial Advertisers Association Convention, New York, on the economic and legal aspect of the Securities Act.

¹ Act of June 16, 1933, c. —, 48 Stat.

² See N. Y. Times, June 25, 1933, §VIII, p. 3.