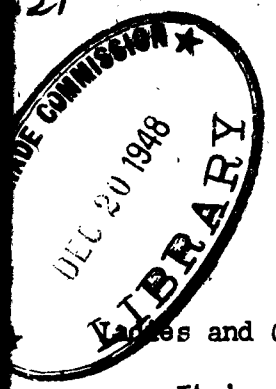

Remarks of Honorable Ewin L. Davis, Member of the Federal Trade Commission, at the Opening of the Trade Practice Conference for the Mail Order Insurance Industry at the Stevens Hotel, Chicago, on December 8, 1948.

Ladies and Gentlemen:

It is my pleasure to welcome you to this trade practice conference. The Federal Trade Commission, I can assure you, greatly appreciates this effort on your part to voluntarily eliminate and prevent, on an industry-wide basis, unfair and unethical trade practices in the sale and offering for sale of your insurance policies.

The commanding role of insurance in our economic life is evidence of the foresight and thrift of our people and their faith and confidence in the insurance industry generally. As pointed out by Justice Black in the famous Southeastern Underwriters Association case (322 U.S. 533) "perhaps no modern commercial enterprise directly affects so many persons in all walks of life as does the insurance business. Insurance touches the home, family, and the occupation or the business of almost every person in the United States."

The mail order insurance industry, for which this conference is being held, is composed of those persons, firms, corporations, and organizations, engaged in that type of insurance business in which the sale of the insurance is promoted and effected through the use of the mails or other interstate communication or facility without the employment therein, within the State of the purchaser or prospective purchaser, of personal solicitation by licensed agent of the insurance company. Thus, it is to be understood, that the fair trade practice rules established through these proceedings will not have application where the insurance is sold by duly licensed resident agents of an insurer. Such restriction of the trade practice conference proceedings and rules so established is not, however, to be regarded as delineating the jurisdiction of the Commission.

On July 5, 1944, the Supreme Court reversed a line of decisions which had held for 76 years that insurance was not commerce, stating that "no commercial enterprise of any kind which conducts its activities across State lines has been held wholly beyond the regulatory power of commerce under the commerce clause. We cannot make an exception of the business of insurance." Congress, faced suddenly with this new situation, in 1945 passed what is generally referred to as "Public Law 15." This law was amended in 1947 and it expressed the intent of Congress with respect to regulation of insurance business and provided that after June 30, 1948, the Sherman Act, the Clayton Act and the Federal Trade Commission Act "shall be applicable to the business of insurance to the extent that such business is not regulated by State law." Thus it is the obligation of the Commission to administer and enforce the Federal Trade Commission Act and certain sections of the Clayton Act with respect to the business of insurance.

It may be that many of you are attending a trade practice conference for the first time and I therefore think it appropriate for me to explain briefly the nature and objective of such proceedings and the benefits that may reasonably be expected to ensue therefrom both to the industry and the public.

A trade practice conference for an industry looks toward the promulgation by the Commission of fair trade practice rules designed to protect both the industry and the public. It is of the essence of the undertaking that observance of laws administered by the Commission be obtained and maintained on a fair and equitable basis. This often can be accomplished through cooperative effort on an industry-wide approach with avoidance of much of the time and expense involved in individual case proceedings.

With two exceptions, namely, the Civil Service Commission and the Interstate Commerce Commission, the Federal Trade Commission is the oldest independent agency of the Federal Government. It is an administrative body exercising quasi-judicial functions, created during the administration of President Woodrow Wilson. Congress gave to the Commission in the Act creating it a mandate to prevent those subject to the Act "from using unfair methods of competition in commerce." It was also empowered to make investigations in broad economic fields at the direction of The President, The Congress, upon the request of the Attorney General, or upon its own initiative. Legislative enactments have been enacted through the years affecting the jurisdiction of the Commission. In one way or another these are designed (1) to protect the public from those who would deceive in the marketing and distribution of commodities, and (2) to protect both industry and the public from the unwholesome effects of unfair competitive methods.

Quantitatively speaking, the greatest portion of the Commission's work is carried on under Section 5 of the Federal Trade Commission Act. This section, as originally enacted, declared that "unfair methods of competition in commerce are unlawful," and empowered the Commission to prevent them. Under the Wheeler-Lea amendment the language of the section was broadened to read "unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful." The use of such broad terms was deliberate. Congress realized that the changing economic significance of business practices, as well as any gradual general improvement in ethical standards of doing business, should be taken into account in the determination of what was to be considered as unfair and harmful. It wisely did not attempt to enumerate the practices to be interdicted, contenting itself with what might be regarded as a statement of policy, and leaving it to the administrative agency and the courts to determine as to what practices are to be deemed violative thereof.

In general, the trade practice conference procedure on voluntary application may be summarized as follows: An industry group or trade association, seeking clarification of laws administered by the Commission as they apply to its trade practices, petitions the Commission for a conference. If upon preliminary examination it appears that constructive results may be achieved, an industry-wide conference is authorized by the Commission. The conference is scheduled in the city located centrally with respect to the majority of the members of the industry, all of whom are invited to attend and participate.

This is the procedure which has been followed with respect to our meeting here today. At the conference trade practice problems of the industry may be thoroughly thrashed out, and a set of proposed rules may be formulated or introduced by members in attendance at the conference. The Commission takes such industry recommendations under advisement and, after a study, releases proposed rules, and schedules a public hearing thereon, at which not only members of the industry but also consumers and other interested parties may submit, either verbally or in writing, their views, suggestions, or criticisms. The Commission then gives consideration to all suggestions and information received, and if found appropriate then promulgates the rules in final form, sending a copy to each member of the industry with an acceptance form card which the industry member may sign if he so desires.

Under the plan, problems are to be worked out in a friendly, cooperative proceeding where the best thoughts of all may be pooled without reservation, in contrast to the compulsory method of dealing with individual concerns or parties in adversary proceedings.

Rules promulgated by the Commission by industries under this procedure are classified into two groups, known respectively as Group I and Group II. The great bulk of the rules usually fall under the Group I classification.

Group I rules are those which condemn, as unfair and unlawful, practices which are deemed to be violative of the laws administered by the Commission as such laws have been interpreted by it and the courts. They constitute particularization of such laws as applied to the respective industry's trade practices. When it is considered to be in the public interest complaint proceedings will be initiated by the Commission against those who violate them. They may thus be considered as expressive of requirements of the law.

Such rules impose no new or additional requirement not already applicable under the laws which the Commission administers, and the Commission will not permit placement in the Group I classification of any rule which goes beyond such laws, regardless of how salutary may be its objective.

The Group I rules clarify for the industry the existing laws applicable to it. They lend concreteness and meaning to such general terms as "unfair methods of competition" and "unfair or deceptive acts or practices" appearing in the Congressional Acts.

Practices which are the subject of Group II rules are not in and of themselves violations of law. In general they are expressions of the industry's views on the desirability or undesirability of practices and condemn that which the industry considers harmful or unethical and encourages practices which the industry considers beneficial to itself and the public. They may be regarded as the wholly "voluntary" rules. Group II rules proposed by an industry which purport to sanction any practice which is contrary to law, such as price fixing or unreasonable restraint of trade, will not, of course, be accepted by the Commission.

Thus there is afforded by Group II rules, the opportunity for an industry if it so desires, to raise its ethical plane, on a voluntary basis,

above the requirements of positive law. As Chief Justice Hughes stated in the Sugar Institute Case (297 U.S. 553):

> "Voluntary action to end abuses and to foster fair competitive opportunities in the public interest may be more effective than legal process. And cooperative endeavor may appropriately have wider objectives than merely the removal of evils which are infractions of positive law."

An important advantage in having rules established for an industry lies in the fact that they afford definite guidance so that members of the industry are not compelled to guess with respect to the lawfulness or unlawfulness of their activities.

The trade practice conference procedure has performed for industry and the public a great educational service, and its value in eliminating and preventing unethical practices and cutting the cost of law enforcement cannot be over-estimated.

Businessmen are glad, as a rule, to lend their support to voluntary and simultaneous abandonment of bad practices. The overwhelming majority are unwilling to stoop to unfair tactics. At times some may feel that they must do so in order to meet in kind the unfair or unethical competition of less scrupulous competitors. Many concerns, as is often the case, would like to abandon their use of unfair or unethical methods if they can but be assured that their competitors will likewise stop and not take advantage of the situation. The trade practice conference procedure affords a means whereby this can be accomplished in a substantial and gratifying degree by having the rules placed in effect on a day certain, when by simultaneous action each may turn over a new leaf and make a fresh start on the same fair basis of competition.

Yours is a business deeply affected with a public interest. It is my earnest hope that you will at this meeting recommend to the Commission rules which the Commission can approve and accept -- rules which will serve to eliminate and prevent all unfair or deceptive acts or practices in the sale of your insurance policies and contracts. This is a real opportunity to elevate the ethical plane of business in your industry and I trust that you will take full advantage of it.