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ENDING UNCERTAINTY

An Address By

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During these two days you are going to be surfeited with expert discussion from many who are on the firing line where the technical issues of negotiated commissions are going to be thrashed out after May Day 1975 and, perhaps due to the consequence of recent price increases by leading firms in the industry, even before then. I am sure that all of you will at the end of these two days have much greater insight into this "brave new world" and will hopefully have been stimulated to think through some of the problems that you will individually confront in the weeks, months and years ahead.

There is little I can add in the way of technical insights to those that will be afforded to you by others on the program. The role of the Commission in all of this reminds me a little bit of the story that was told during the second World War about the correspondent who very urgently demanded to see General McArthur when the Japanese were in control of the western Pacific. After repeated importunings of the General's aides, the correspondent told the General he had developed a simple, sure-fire idea that would end the war in the Pacific. The General was intrigued. He eagerly asked the correspondent how that could be done. The correspondent stated it was very simple: simply spread oil all around the islands occupied by the Japanese and then ignite the oil, thereby making it impossible for the Japanese troops to be supplied. The

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General listened incredulously and then asked a host of questions: Where would the oil come from? How would it be ignited? How would the fire be controlled? How would it be put out? What were the dangers to American forces? and so on. After this torrent of inquiries the correspondent finally threw up his hands and said "General, after all I'm only the idea man. It's for you military guys to work out the details."

I think many people have the notion that the Commission was the "idea man" and that we left an intolerable host of questions for you "military men" to work out. I would not argue the charge, except to say that we were not oblivious, when we asked the exchanges to abandon fixed commissions on May 1, 1975, to the difficulties that would be posed by this decision, although we did not try to, and certainly we could not have, anticipated all of the difficulties. Rather we had considerable confidence that the imagination of the industry which in the past has been characterized by an abundance of that quality would be equal to the challenge, and beyond that, we were confident that we had all the power necessary to correct any intolerable distortions that might develop. Nothing since that decision was made on September 11, 1973 has caused us to change those opinions; if anything the evidence of industry flexibility in adapting to the future is more convincing now than ever.

I would like to state just a few general propositions before submitting myself to the interrogations of my fellow panelists. First of all, I will say for what I am sure must be the hundredth time by a Commissioner that the hope for any modification in our position with regard to the elimination of fixed commissions on May 1, 1975 is a vain, useless and energy sapping exercise. I personally cannot foresee circumstances that would fashion this result. It is often said that if the Commission on May 1, 1975, sees the industry in the state of disarray and suffering even more grievously than it is now, then it might be moved to restore fixed commissions. I think that is a gross over-simplification. Before taking such action as that I think the Commission would have to examine the reasons for the condition of the industry and it would have to be established that in some substantial fashion this was attributable to the elimination of fixed commissions and not other causes, such as the continuation of poor markets, continued inflation, high interest rates and the other circumstances that have been far more responsible than commissions in bringing the industry to its present plight. IF the increases that have been announced by leading brokerage firms are continued, and if these develop into something of a pattern in the industry, then quite obviously the argument that the fixing of commissions has resulted in economic detriment to the securities community will be a difficult one to make.

At the Commission we have had many from the industry suggest that we should act to bring about fully competitive rates sooner than May 1, 1975. Many feel they are psychologically oriented to this change and have the feeling, the sooner, the better. There is much to be said for this. Nature abhors a vacuum, businessmen abhor uncertainty. In this connection, it should be borne in mind that, barring failure to act on the part of the exchanges in response to our request of September 11, 1973, the Commission does not expect to have to act again on these matters other than by reviewing the rule changes that effect the elimination of fixed commissions. Consequently, the exchanges are completely free today to bring about negotiated commissions as quickly as their constitutions and bylaws permit.

I think they should - - if not today, then some time before the time when it would appear they acted only because they had to. In the eyes of many in Congress and many in the public the securities industry and particularly the exchange community are a web of restrictive practices that run contrary to the most basic premise of American economic life, competition, particularly in prices, for the favor of the consumer. Action by the exchanges now could, in my estimation, do much to persuade these audiences that the industry is indeed determined to do away with anti-competitive restraints and accept full competition, not as something imposed from without, but as a reflection of conviction that full competition will be good for the public and good for the industry. Frankly, the vision of this great industry being pulled into the economic mainstream of American life by a determined regulator is not a pretty or satisfying one to behold.

I think the great question is how the industry responds to this new climate. I think the first thing that any securities firm should do as it moves into the era of competitive rates is consult very closely with its antitrust attorneys. I may be accused of some partiality towards the economic welfare of the profession I practiced prior to last August, but I think that during the prelude to the early stages of the era of competitive commissions members of the industry should keep their antitrust lawyers close by their elbows. To one who has never had to concern himself with the subtleties and the mysteries of antitrust law they all seem terribly new and terribly perilous. I had enough familiarity myself during practice with antitrust problems to realize their pervading presence and the terrible price of overlooking them. Consequently I would strongly urge close communication between the experts in the field and those only newly exposed to the risks.

I think it is impossible for people who are involved in this transition to solve all their problems in advance and step through the curtain on May 1, 1975, or whatever an earlier date might be, with all answers pat and in hand. There is inevitably going to be a period of trial and error, uncertainty, experimentation, sometimes with good results, other times with bad results. Firms that maintain flexibility in the face of the problems that emerge in this new era will adapt quickly and in all probability profitably; those that are inflexible in their thinking, or unable to discern the trends as they develop or take swift action to undo mistakes will suffer.

I think firms will gradually deepen their realization of what all this means. I have been startled when people who had been public advocates of fully negotiated rates discussed industry problems with me in a manner that indicated to me very clearly they had not understood all the ramifications of this step. I think that when all the implications of negotiated commissions are thought through it will be realized that many of the difficult problems with which we have wrestled will, if not completely disappear, at least lose much of their importance: non-member access, institutional and foreign access among others.

The changes that are going to be made in industry practices as a consequence of competitive commissions are impossible to catalog. This conference will expose many of those, but a hundred conferences before May 1, 1975 cannot conceivably exhaust all of the potentials of the subject. The watch words must be alertness, agility, close observation and complete flexibility.

All of us fear the unknown. All of us fear uncertainties. But I suspect all of us have had the experience that an adventure into the unknown and uncertainties has frequently yielded satisfactions far beyond our expectations. I hope that a year from now, when all of us will be considerably wiser than we are now about competitive rates, and when we will have had more experience with them, we will be wiser, shrewder and, God willing, at least you will be richer.