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A PARTING LOOK AT FOREIGN PAYMENTS

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A PARTING LOOK AT FOREIGN PAYMENTS

By A. A. Sommer, Jr.*

In another dozen hours I shall have ended my time as a Commissioner of the Securities and Exchange Commission. I'm tempted, after the fashion of Eliza Doolittle's father in My Fair Lady, to sing a few bars along the lines, "There're just a few more hours, before the time is up". You may remember that doughty old gentleman saw as his challenge the need to drink all the whiskey and love all the women in London before his marriage the next morning. I have no such challenge - nor ambition - and I suppose that my only thought now is to express a few final, though still tentative, notions with regard to this enormously troublesome problem of foreign and domestic illegal, improper, questionable, sensitive - however you designate them - payments. During my time on the Commission - more than two and a half years - no matter has occupied more of the Commission's time as a Commission and no problem confronting the Commission has challenged and troubled me more. I reach the

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end of my time on the Commission with sharply increased concern about the role of corporations in American society, the attitude of the American people toward American corporations and American corporate leadership, the appropriate role of the Commission in situations like this, the ultimate outcome for the country of the disclosures which have occurred, and the consequences, both nationally and internationally, which have occurred in their wake.

First, I would like to make a basic position abundantly clear. I hold no brief whatsoever for corporations which have subverted the integrity of public officials in other countries, which have bought business with lavish outlays of money, which have built and maintained substantial segments of their business with payments that were patently illegal in the nations where made or which were so clearly improper that decent, self-respecting businessmen would not tolerate them. I intend to describe by these terms such as those cases involving bribes of government officials directed or countenanced by top executives, but I would not include every instance where a corporation has made questionable payments in the quest for business or to counter a competitor. Major malefactors should be exposed and, unfortunate as it may be for their shareholders, the conduct of the corporations, which really has been the conduct of their top executives, should be excoriated and condemned.

For some few corporations corruption seems to have been a way of life, an accepted mode of doing business, not an aberration in sharp contrast with otherwise legitimate and sound methods of doing business.

And I would have to say that in general, even apart from the scandalous cases that have caught the headlines, there is something deeply troubling to me when business is done in the manner in which it is apparently done in some countries. All of us have been schooled in the notion that competition in price and quality among sellers is the surest road to the most efficient use of resources and maximum benefit to consumers. When business is bought by payments to gain official favor, this desirable competitive process is, somewhere in the world, subverted. And while we in this nation may not be the direct victims of this, nonetheless, such activity runs contrary to our heritage, our ideologies, our modes of thinking, and we therefore feel constrained to condemn it wherever it occurs and no matter what justification may be asserted. I think all of us would much prefer if all business, not just that done by American companies, were done in accordance with high ethics and strict adherence to the law. Regretably, in some countries, apparently, the abortion of the competitive process is not seen as the evil that it is in this country and practices, repungnant

to us, but which are ancient in origin and woven into the very structure of society, are accepted ways of doing business. This cultural clash, this conflict of ideologies, is a part of a total reality we cannot ignore and it is one that I would suggest we have not yet begun to understand fully or deal with effectively. I reiterate, lest sight is lost of this: notwithstanding the misgivings I may express with regard to the manner in which this entire matter has emerged, the way in which the Commission has interpreted its mandate, the manner in which the Commission has exercised its powers, nothing I say should be construed as a condonation or approval of anything that has been disclosed with regard to the questionable manner in which some American corporations have done business abroad - or at home for that matter.

In assessing these problems, I think it is important for us to review some fundamentals about the Commission and the way in which it has dealt with similar problems in the past. The mandate of the Commission is quite clear in the statutes it administers and it has been confirmed historically by the fact that the Commission has exercised its powers without any suggestion from Congress that it has misconstrued or unduly narrowed that mandate. The charge to the Commission very simply is to carry out the desire of Congress that there be full and

fair disclosure with regard to matters of concern to investors in making investment decisions and in exercising their franchise as shareholders. This mandate is not to clean up all evil in the corporate system, except insofar as that evil interferes with full and fair disclosure; it is not to erect standards of legality or morality or propriety to which corporate executives must adhere in the administration of the affairs of their respective corporations unless the management misconduct transgresses the statutes the Commission administers and the rules it adopts; it is not to track down and punish corporate wrong-doers or violators of the laws of this country or abroad, except when the violations are of the federal laws and rules pertaining to securities matters.

Pursuing this limited, but nonetheless important, direction, the Commission over the years has elaborated and applied, skillfully and consistently, standards about what is material to investors. The word "material" is used repeatedly in the statutes administered by the Commission, but, to the best of my recollection, nowhere in them is the term defined. The Commission, however, has defined the term, wherever appropriate to do so, by rule, as (with some variation depending on context) "...those matters as to which an average prudent investor ought reasonably to be informed before buying or selling the securities registered."

The courts have wrestled repeatedly with the question of materiality. Some have construed it narrowly, and some broadly; at the moment, the issue is squarely posed anew to the Supreme Court (I say "anew" because it too has struggled with this problem previously) in the case of TSC Industries, Inc. v. Northway, Inc., which was argued on March 3 of this year and will undoubtedly be decided before the end of this term of the Court.

It is not my intent to engage in a close analysis of the concept or the process by which it has been elaborated; rather, I would simply remark that this word, this concept, has been central to the Commission's work of developing the mandates of disclosure pursuant to Congressional wishes.

As a part of its explicit requirements for disclosure, the Commission has for many years required that, in certain filings with it, including, notably, the forms for registration of securities for sale and the annual reports that must be filed with the Commission, there be a description of any material pending litigation and information concerning any material proceedings known to be contemplated by a governmental authority. To avoid the need for disclosure of every case pending in every municipal court, the Commission has stated explicitly that the only litigation which need be disclosed is that in which the amount at issue exceeds 10% of the current assets of the corporation. In the case of a large corporation, of course, a

suit would have to be of very significant proportions before disclosure would have to be made under this standard. Three years ago, the Commission departed from this standard of materiality, by requiring that there be disclosure of all governmental actions against a corporation alleging violations of environmental laws. The rulemaking process out of which this modification grew was attacked by environmental and other social activist groups, on both substantive and procedural grounds, and as a consequence of that attack, a little over a year ago the Commission had extensive hearings to determine whether it should make further rules with regard to the disclosure of environmental and socially relevant matters. Because of the unique requirements of the National Environmental Policy Act, the Commission determined that it should go further in requiring disclosure with regard to environmental matters. However, it rejected suggestions by innumerable other advocates that it expand its disclosure requirements with regard to socially relevant policies of corporations on the ground that generally those matters were not material in the traditional financial

or economic sense to investors. The Commission said,

> "The Commission's experiences over the years in proposing and framing disclosure requirements has not led it to question the basic decision of the Congress that, insofar as investing is concerned, the primary interest of investors is economic. After all, the principal, if not the only, reason why people invest their money in securities is to obtain a return. A variety of other motives are probably present in the investment decisions of numerous investors but the only common thread is the hope for a satisfactory return, and it is to this that a disclosure scheme intended to be useful to all must be primarily addressed."

Notably absent from the list of specifics contained in forms which the Commission has adopted concerning disclosure is any requirement that the corporation make disclosure about unasserted claims, violations of law that have not matured into action by, or consideration of action by, a government agency, and other skeletons buried deep in the closets of the corporation. The Commission in Regulation S-X has required the disclosure of "contingent liabilities". This has been fleshed out in Financial Accounting Standards Board Opinion No. 5, which, in addition to laying out the standards by which an accountant should determine whether to accrue against income or simply disclose the expected outcome of pending litigation, also stated a standard for the disclosure of threatened litigation and unasserted claims; the

standard is simply whether the claim is probable of assertion, and then it must be disclosed only if there is a reasonable possibility of an unfavorable outcome. Obviously, since the Commission in a sense acts as the enforcer of the opinions of the Financial Accounting Standards Board, by indirection, at least, the Commission requires then such disclosure in financial statements, although I would stress again that the Commission itself has no explicit requirement with regard to the disclosure of such matters.

To have a complete picture of the problem, one must bear in mind that the Commission has adopted rules applicable to virtually all the filings with the Commission that require, in addition to those matters which must be disclosed under the express terms of the various forms, disclosure of any information which is necessary to make the information disclosed not misleading.

This sets the stage for consideration of this terribly thorny problem of domestic political contributions, foreign illegal or improper payments, and, increasingly, domestic illegal or improper payments.

The Commission took its first steps in this area in a release by the Commission in March, 1974, which stated that where a corporation had been convicted of, pleaded guilty to, or had been charged with, violating the federal election laws, disclosure would have to be made regardless of the amount of the contribution or penalty; the release went on to say that where there had been illegal contributions which had not been the subject matter of charges, then management was in the best position to make a judgment as to whether the fact of such payment was material and should be disclosed. Thereafter in 1974, the Commission authorized an action against American Shipbuilding Corporation, not only because it failed to disclose its indictment and pleas, but because it failed to disclose that the corporation had indirectly made political contributions to the Committee to Re-elect the President in 1972, as well as other political contributions aggregating some $125,000, and had covered these up by recording them and treating them as bonuses to employees, who understood that they were to use the amount of the bonuses after taxes to make the contributions. The complaint in this case was a clear contradiction of the standard in the Commission's March release which regarded, not the payments, but the legal action following from them, as the material event. The Commission took a similar position with regard to other cases

involving domestic illegal political contributions and I think it is fair to say that it is clear from these cases that the Commission believes that, notwithstanding its March, 1974 release, the fact of such payments is material regardless of whether any action is brought against the corporation and responsible entities and almost without regard to the amount involved and that it no longer leaves to management the determination of when uncharged political contributions must be disclosed.

Conceptually, I think it is difficult to jibe these cases with the traditional standards of materiality which have been applied historically by the Commission. As I have mentioned, it was only with respect to environmental matters that the Commission adopted requirements in its forms requiring disclosure of suits brought by governmental agencies notwithstanding the amounts involved, and then only because of an apparent Congressional mandate. Nothing in the Commission's historic interpretation of its mandate has suggested that a corporation must disclose every charged violation of the law, every conviction that it suffered under domestic and foreign law or every violation of law or "proper" standards of conduct even if not the subject of a proceeding. Why then make this exception with regard to illegal political payments?

I suppose in a sense the Commission's judgment was a subjective one and perhaps, in some measure, it had a precedent, though not an explicit one, in the abandonment of traditional materiality standards with regard to environmental matters.

The Congress regarded the protection of the environment as so basic, so fundamental, so important to our society, that it charged all federal agencies to give a primacy to such considerations in the exercise of their power. While the Federal Corrupt Practices Act contains no such evidence of a Congressional determination of primacy, I think the Commission felt that the integrity of the nation's political processes and any efforts by corporations to subvert them were so important, and should properly be important to investors as such, not only as citizens, that even very small transgressions of that law should be the subject matter of disclosure. After all, it was the investors' money that was used in a manner inimical to the political processes of our country.

The domestic political contribution problem also introduced another dimension, for almost invariably these payments were disguised on the books of the corporations in some fashion. This was deeply troubling to the Commission, since the very foundation of our disclosure system is honest books, records and financial statements. Thus an additional aspect of these payments moved us to regard these payments as material: concern for the integrity of the corporate accounting process.

Another complication was introduced when the Commission discovered that these illegal political contributions had often been made from large pools of money that had been diverted from the normal channels of corporate accountability by such devices as Swiss bank accounts, phony subsidiaries, and other means

intended to deceive auditors and others who might have access to the corporation's books and records, and that these pools of money were used for illegal and questionable purposes overseas. Further firing the Commission's investigative fervor was the discovery, in the course of a routine investigation following the suicide of the chief executive officer of United Brands, that it had apparently made a substantial illegal payment to the head of a Central American country and had promised a further payment of an equal amount in return for preferential tax treatment.

At least in the initial stages of these inquiries, the question of materiality was central to the Commission's inquiries and judgments. The Commission was not concerned with the legality of the questioned corporate conduct as such; it was not concerned with the morality of it. Rather, it was concerned with whether the conduct discovered should, under appropriate standards of materiality, have been disclosed to investors.

The amounts of money involved in overseas payments were in most cases clearly not material in terms of the assets of the corporation, its revenues, its profits or its net worth. But the Commission quickly concluded that this was too narrow a view of materiality and that the relevant question was not the amount of the payments but rather the materiality of the amount of

business that might be adversly affected in some way because of the payments. In its simplest form, it seemed clearly material if the continued availability of a material amount of business, or an amount of business which contributed materially to the profits of the enterprise, depended upon the continuation of illegal payments or would be jeopardized if the fact of such payments became known. This unique application of the concept of materiality started in this somewhat narrow fashion, but gradually evolved into a much more simplistic and broader test: how much business was done in the countries where the illegal or questionable payments were made? It quickly became a matter of indifference whether such business depended upon a continuation of payments or would be jeopardized if the payments became known.

Another test, and to me a very troubling one, developed, namely, illegal and improper payments should be disclosed because such payments reflect adversely upon the integrity of management and investors are entitled to know information that has this effect. It is unquestionably true that in some cases a corporate practice of making illegal payments condoned or authorized by the top officers of a corporation does reflect adversely upon their integrity and it is information that should be made available to persons making investment or voting decisions. But increasingly I have realized that this is a danger-laden test, particularly when the alleged misconduct

did not involve top officers either as participants or as persons who had knowledge of the conduct. Furthermore, one can think of vast amounts of information that might relate to the integrity of management, but which certainly in the past the Commission has never ventured to suggest should be publicly disclosed. An officer who cheats on his income tax may be woefully lacking in the integrity that should characterize someone with substantial responsibilities in a publicly-held corporation, but it is only when such misconduct eventuates in a charge or conviction that the Commission requires disclosure. This integrity test is a perilous and dangerous one and I would hope that in the application of it the Commission would proceed prudently and cautiously, lest we find our disclosure documents heavily burdened with masses of personal data far removed from the economic life of a corporation.

A third test of materiality that emerged involved the falsification of books and records. I certainly believe that when top executives of a corporation falsify the books and records of a corporation, or permit it to be done with their knowledge, the investors are entitled to know this. But this tenable test has been steadily eroded as the notion of what constitutes falsification of books and records has been steadily expanded in case after case. It has been suggested in some cases that, for instance, the failure to clearly label a payment on the journals of the company as a bribe constitutes a falsification of books and records, even though the name of the person to whom the payment was made was clearly recorded.

As a result of the information which the Commission's staff developed in its investigations and inquiries, the Commission adopted several courses of action. First, in appropriate cases it filed enforcement proceedings, charging that there had been a failure to make appropriate disclosure with regard to illegal and questionable activities. Secondly, to some extent at my instigation, the Commission inaugurated a "voluntary" program under which companies which thought they might have had a problem with illegal or questionable overseas payments would undertake an internal investigation, report the results of that to the Commission's staff, and then develop with the Commission's staff an approach to disclosure that would satisfy the requirements of our statutes. At the present time, about fifty companies have availed themselves of the invitation to "come clean" and it appears that a number of others which have not consulted with the staff have nonetheless voluntarily undertaken to make disclosure of the findings of their internal investigations. The Commission has never given an assurance to companies which participated in a voluntary program that they would not become the subjects of an investigation or an enforcement proceeding, but only in rare cases has the Commission deemed it necessary to undertake such activity with regard to a company that has voluntarily undertaken an investigation and discussed with the staff its disclosure responsibilities.

These Commission activities have made information of unquestioned material significance available to investors in many instances. However, commendable as much of what the Commission has done may be, in my estimation the Commission has in one major respect failed terribly in carrying out its responsibilities: that is its failure to provide any significant guidance, other than that which can be gleaned from the complaints in enforcement actions that it has commenced and the disclosures which it has required of issuers under the voluntary program, concerning matters which must be disclosed with regard to illegal or questionable overseas and domestic payments. The Commission with regard to other matters has never been so reticent. As remarked earlier, the forms published and adopted by the Commission contain rather specific directions with regard to the litigation, among other matters, which must be disclosed. Furthermore, the Commission has stated at considerable length its conclusions with regard to the materiality of environmental and other social issues so that issuers have a reasonably concise notion of what they are required and what they are not required to disclose about those matters.

It is difficult to understand the Commission's reluctance to articulate the standards which it is applying, and proposes to apply, in this area. It is contended that the problem is a complex one, that there is an almost infinite number of variations of corporate conduct, that it is impossible to reduce this vast

complexity into meaningful categories. I would suggest that this is a totally unacceptable contention. One of the key functions of regulatory agencies is to assess complex situations and develop comprehensible rules to deal with them. Certainly the operations of the securities markets of this country are enormously complex, but that has not deterred the Commission from developing a number of rules, interpretations and guidelines which have been of significant assistance to those who wish to comply with the law and search for guidance in pursuit of that effort.

I have discussed this problem with innumerable businessmen, attorneys and accountants and their bewilderment, their confusion and their concern is deep and, in my estimation, sincere. One result of this unwillingness of the Commission to express itself in a meaningful fashion with regard to disclosure requirements about these matters has been that many companies have simply chosen to disclose every payment, no matter how trifling, that might in any way be questioned. Thus we have learned that huge multinational corporations made political and other questionable contributions in amounts as little as $100; in many instances, disclosure has been made of small payments which were clearly legal under the laws of the country where made and in other instances were at worst of questionable legality. All of

this reminds me of the sorry spectacle in Soviet Russia in the 1930's when erring bureaucrats almost literally fell over each other confessing various "crimes" against the State.

As a consequence of the Commission's unwillingness to provide guidance as it has in the past with regard to most other matters, in my estimation the credibility of the Commission and its standing among professionals and among business people has been seriously compromised. One of the remarkable strengths of the Commission in the past has been the confidence of these people in the Commission's integrity, its competence and its willingness to provide meaningful assistance in complying with federal securities laws. When the Commission adopts the posture, as it has in this area, that guidance must be gleaned from the ambiguous allegations in enforcement complaints and disclosure by participants in the voluntary program, little wonder that the unique reputation it has enjoyed in the past becomes grievously imperiled.

No one, not even someone who has been as close day to day with these problems as I have been, can give any reasonable assurance as to the adequacy or inadequacy of many disclosures about these matters. The problem is studded with ambiguities and uncertainties and there is no one, staff or Commissioner, who can state with assurance whether many proposed disclosures are material or not. What a sorry situation! It is true that

the factual situations are complicated, ambiguous and often studded with uncertainties and unknowns. But wouldn't it be helpful to know whether indeed there is an obligation upon management to trace to their ultimate destination commissions which at least appear on the face to be legal and proper? Wouldn't it be helpful to know whether the integrity of top management is impugned by the misconduct of the head of an overseas subsidiary? Wouldn't it be helpful to know whether indeed there is an obligation to disclose ostensibly illegal payments when they are really the results of extortion rather than a greedy grasping for business? Wouldn't it be helpful to know whether the obligation of disclosure is mitigated when it appears the only way the company would effectively compete against foreign competitors was by making questionable payments? Wouldn't it be helpful to know whether it is a disclosable matter when there is a violation of a foreign law which has never been enforced by the foreign authorities? Wouldn't it be helpful to attorneys to know the extent of their obligation when they learn about questionable conduct on the part of corporate executives? And similarly, wouldn't it be helpful for auditors to know whether they are now required to extend their audit procedures in a manner that would increase the possibilities of discovery of fraudulent bookkeeping and improper practices?

This gap in communication becomes increasingly troublesome as it appears the Commission may expand its investigations to include many matters in addition to illegal and improper payments abroad. Suggestions are made that any sort of illegal conduct, such as violations of currency restrictions, failures to pay taxes in countries where such a practice is epidemic, and the like, may be appropriate matters for disclosure. And increasingly the focus is shifting toward illegal or questionable trade practices in this country, such as those that previously we thought were within the bailiwick and domain of the Federal Trade Commission and the various regulatory authorities of the states. Increasingly, thoughtful and responsible people are asking the question, is the Commission to become in effect the enforcer of the world's legal system, not only federal laws, not only state laws, but foreign laws as well? Are we to end up with prospectuses and Forms 10-K and proxy statements that contain a section that begins, "Since the last report, this corporation has committed the following crimes against the laws of the countries and states indicated"? This may seem absurd, but it has been contended that any illegal payment, regardless of amount, is material per se: if that is so, certainly it is a very small step, if a step at all, to contend that any illegal act, of whatever nature, is material to investors and therefore should be disclosed.

What is occurring in my estimation has significance far beyond the immediate problem. The broader significance is the steady dilution, dilution almost to the point of extinction, of the notion of materiality. I find it increasingly difficult to understand why every peccadillo of a corporation committed overseas is of importance to investors, while the manner of corporate compliance with the laws relating to equal employment, air and water pollution, safety standards, and the like, need only be disclosed when the impact of non-compliance is material in economic and financial terms.

We are losing sight of the most fundamental question, what is really important to investors? I would suggest that there is room here for potentially gainful research to determine whether indeed significant members of investors are really concerned with these matters.

At one time, an accepted definition of a material fact was one which, when disclosed, would be reasonably expected to have a significant impact on the price of the issuer's securities. While this definition has been obscured of late, nonetheless it seems to me it would be a beneficial exercise to review the impact of these disclosures upon volume and upon movements in the prices of the securities of companies which have made disclosures about overseas payments. While there are obvious limitations to this sort of empirical research, nonetheless it seems to me the limitations are less confining than those which

attend determinations which have no more basis than the instincts of the staff and five Commissioners who have foregone securities decision-making (one way or another) for the term of their service as Commissioners.

This entire problem has been approached, perhaps, given the necessities of the moment, unavoidably, from the vantage point of a single social policy, that of the desirability of full and fair disclosure to investors in securities. I say "unavoidably" because the Commission could not sensibly delay conclusions about the materiality of some non-disclosures until a national debate would be concluded and because the Commission's mandate did not permit it to temper its judgments of what was material to investors because of foreign policy considerations or economic or political impacts abroad or in this country. In recent weeks it has become increasingly apparent that there are many more dimensions to this problem than simply the protection of investors. We have witnessed the development in a friendly Far Eastern nation of the gravest political crisis since the Second World War, with grave danger to the governing party and perhaps even to the whole political system. In a friendly, but financially troubled, European nation the disclosures with regard to substantial payments by American companies have threatened the present government and have perhaps hastened the accession of the Communist Party to a greater participation in power. In another friendly European nation, the very throne has been

imperiled and there is deep concern about the consequences of a possible change in the government there. Beyond these considerations, many are troubled by the possible impact of these disclosures upon the ability of American companies to compete abroad. In a recent article in The Wall Street Journal, it was clearly indicated that the principal beneficiaries of these dramatic disclosures will probably be foreign competitors of United States' companies, which, if true, may adversely affect the whole economy of this country, including levels of employment, our balance of trade, and our overall prosperity.

Perhaps dangers to friendly governments, adverse impact upon the American economy, and all the other collateral consequences of all this disclosure are not too harsh a price to pay for enhanced integrity of American corporate enterprise - and I am not at this point prepared myself to suggest the price being paid is excessive. Unquestionably, there has been lurking beneath the surface for many years a serious problem which the American people must confront and must resolve. But I would suggest it would have been far better if, when the problem first appeared, it had been dealt with as the multifaceted, complex problem that it is, rather than as simply a problem of assuring adequate disclosure to investors. Would it not have been far better, when we first learned that corporations had engaged in this reprehensible conduct, if an appropriate governmental body had undertaken to study the problem, measure its dimensions, study the impacts, balance the benefits and costs of prohibiting

questionable conduct overseas and then articulated a national policy that bore the imprint of these many considerations? I suggested last June that indeed the Congress was under our system of government the ideal body to make these determinations, to balance these interests, to weigh the consequences and determine the course we should follow. Since that time, various legislative proposals have been made, but none of them have moved very far toward enactment.

I would not be interpreted as suggesting that this problem should in any way be ignored. It is real. In a sense, it was emerging long before United Brands, American Shipbuilding, Gulf Oil or Lockheed. There was a rising concern, manifested in a number of books and magazine articles, about the problem of controlling the activities of multinational companies. The disclosures of recent months concerning overseas payments have simply accelerated the need for peoples all over the world to confront the question of how, in a political world made up of nation states, these economic goliaths can be effectively controlled. Unquestionably a high measure of international cooperation would be desirable, but there is no reason to believe that it will emerge quickly, at least in reality if not on paper. Hopefully, the recently-announced committee appointed by President Ford, and the Congress, will be able to appraise the many facets of this problem and develop a rational policy

that balances the needs of investors with the other concerns of the nation.

As a final word, I would renew my plea to the Commission to give careful thought to means of erasing the uncertainties that attend this problem in the minds of conscientious businessmen, lawyers and accountants. These people are not seeking "roadmaps for fraud" or relief from the necessity of exercising judgment. They are confused, they are uncertain. I cannot believe that a continuation of such conditions is desirable from the standpoint of investors in American corporations; I do not think it is desirable in terms of a sound disclosure system; I do not think it is conducive to confidence in a proud and historically great regulatory agency.

I do not think that it is the role of the Commission to clean up corporate corruption throughout the world and I think to suggest that the Commission can or should or will do that is to misconceive the role of the Commission. It is the task of the Commission to assure that investors have all the information that is material to their investment and voting decisions. Historically, the best way of assuring that has been to tell those responsible for the preparation of disclosure documents in unmistakable terms what must be disclosed and not play guessing games with them. The task of the Commission in these matters is

a great one; it is important that it not be confused with other purposes or objectives for the achievement of which the Commission is neither equipped nor manned. I would hope that in the weeks and months ahead the Commission will move quickly and surely to erase the confusion and consternation which it has created, albeit with a pure heart and a commendable zeal.

It may seem, on this my last day as a Commissioner, that I am judging harshly the Commission. Whatever I have said springs only from the profound respect I have for the Commission and its people. I want desperately for it to continue the amazingly proficient and dedicated job it has done for 42 years. It has earned the highest respect that the American people could possibly have for a governmental agency. It has stayed steadily true to its purpose and true to itself. I want it to continue to earn and merit that respect and that confidence and I view, to use a hackneyed phrase, with alarm anything that may imperil its standing. I have confidence that those who will remain behind when I leave will be true to the Commission and its mission.