

**NEWS**

**SECURITIES AND  
EXCHANGE COMMISSION**

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REMARKS TO  
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"THE SEC DISCLOSURE PROCESS  
IN A CHANGING ENVIRONMENT"

By  
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1.

MUCH OF THE DEBATE I HEAR CONCERNING SEC DISCLOSURE POLICY SEEMS MORE APPROPRIATE TO THE TEMPLE THAN THE MARKETPLACE. I SOMETIMES WONDER WHETHER I AM AMONG THEOLOGIANs RATHER THAN BUSINESSMEN AND GOVERNMENT OFFICIALS. BUT THE COMMISSION'S MANDATE TO PROTECT INVESTORS BY COMPELLING PUBLIC COMPANIES TO MAKE FULL DISCLOSURE IS ECONOMIC, POLITICAL AND PRAGMATIC. IN MY VIEW, OUR POWERS SHOULD BE EXERCISED IN ORDER TO ASSIST CAPITAL FORMATION AND STRENGTHEN THE PUBLIC SECURITIES MARKETS. THEY SHOULD NOT BE EXERCISED MERELY FOR THE SAKE OF REGULATION OR IN ORDER TO IMPOSE ON THE BUSINESS COMMUNITY GOVERNMENTAL JUDGMENTS AS TO HOW CORPORATIONS AND THEIR MANagements SHOULD CONDUCT THEIR BUSINESS AFFAIRS.

SINCE I BECAME A COMMISSIONER I HAVE DEVOTED A GREAT DEAL OF TIME AND ENERGY TO UNDERSTANDING THE WORKINGS OF THE DIVISION OF CORPORATION FINANCE. I HAVE DONE SO IN ORDER TO ASSIST THAT DIVISION TO IMPROVE ITS EFFECTIVENESS AND ADAPT ITS WORK TO CHANGING TIMES. I HAVE DONE SO BECAUSE I BELIEVE THAT THE CONTINUED NEED FOR A GOVERNMENT MANDATED DISCLOSURE SYSTEM IN ORDER TO PROTECT INVESTORS IS AT LEAST AN OPEN QUESTION. ACCORDINGLY, AS A SITTING COMMISSIONER I FEEL AN OBLIGATION TO DEMONSTRATE THAT THE BUREAUCRACY (AS OPPOSED TO THE MANY TALENTED AND DEDICATED INDIVIDUALS WHO TOGETHER COMPRISE THE STAFF) IS

CAPABLE OF THE RESILIENCE AND CREATIVITY WHICH ANY INSTITUTION NEEDS TO SURVIVE CHANGING TIMES.

DURING THIS YEAR, THE DIVISION HAS BEEN UNDERGOING A VERY HEALTHY PROCESS OF SELF-REVIEW FROM WHICH IT IS EMERGING WITH SOME PLANS FOR THE FUTURE WHICH I BELIEVE YOU SHOULD FIND OF INTEREST. I AM ENTHUSIASTIC ABOUT THESE PLANS BECAUSE THEY DEMONSTRATE A SENSITIVITY TO CONSTRUCTIVE CRITICISM WHICH HAS BEEN MADE OF THE SEC'S DISCLOSURE SYSTEM AND THE DEMANDS OF AN ERA OF REGULATORY REFORM.

THE COMMISSION'S DIVISION OF CORPORATION FINANCE IS CHARGED WITH ESTABLISHING REQUIRED DISCLOSURES FOR AND THEN REVIEWING VIRTUALLY ALL THE FILINGS MADE WITH THE COMMISSION PURSUANT TO THE SECURITIES ACT OF 1933 ("1933 ACT"). SUCH DOCUMENTS ARE GENERALLY OCCASIONED BY THE INITIAL ISSUANCE OF SECURITIES TO THE PUBLIC. THE DIVISION LIKEWISE SETS POLICY FOR AND REVIEWS FILINGS UNDER THE SECURITIES EXCHANGE ACT OF 1934 ("1934 ACT"), WHICH GENERALLY PERTAINS TO PERIODIC AND OTHER DISCLOSURES WHICH MUST BE MADE BY COMPANIES ONCE THEY HAVE PUBLICLY ISSUED SECURITIES. 1/

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1/ FILINGS BY INVESTMENT COMPANIES, HOWEVER, ARE HANDLED BY THE COMMISSION'S DIVISION OF INVESTMENT MANAGEMENT.

THE DIVISION OF CORPORATION FINANCE CURRENTLY HANDLES ITS REVIEW WORK THROUGH 15 BRANCHES, UNDER FIVE ASSISTANT DIRECTORS. THE FLOW OF FILINGS IN THE DIVISION, WHICH INCLUDES PERIODIC REPORTS, IS FORMIDABLE. IN 1962, THE DIVISION RECEIVED SOME 18,000 FILINGS. IN 1968 THE FIGURE WAS 38,000, AND IN 1979 IT WAS 52,000. 2/

IN ADDITION TO THE INCREASED FLOW OF FILINGS, FOUR MAJOR FORCES HAVE OPERATED TO CHANGE THE COMMISSION'S OUTLOOK ON THE WORK OF THE DIVISION. FIRST, CORPORATE FINANCIAL TRANSACTIONS AND RELATIONSHIPS HAVE BECOME INCREASINGLY COMPLEX. THERE HAS BEEN A PROLIFERATION OF CONGLOMERATE COMPANIES CREATED IN LARGE PART BY MERGERS AND TAKEOVERS. THE FINANCIAL MARKETS HAVE BECOME MORE COMPLICATED AND SOPHISTICATED, BOTH NATIONALLY AND INTERNATIONALLY.

SECOND, COMMUNICATIONS AND DATA ANALYZING TECHNOLOGY HAS PROGRESSED TO A POINT OF MAGNITUDE SUPERIOR TO THAT AVAILABLE JUST BRIEF YEARS AGO. ALTHOUGH THESE DEVELOPMENTS HAVE AUGMENTED THE COMPLEXITY AND EFFICIENCY OF THE PRIVATE FINANCIAL SECTOR, THE SEC HAS NOT ENJOYED ALL THE BENEFITS OF THIS IMPROVED TECHNOLOGY.

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2/ FIGURES SUPPLIED BY THE COMMISSION'S OFFICE OF REPORTS AND INFORMATION SERVICES AND DIVISION OF CORPORATION FINANCE.

A THIRD FORCE FOR CHANGE IN THE DISCLOSURE PROCESS HAS BEEN CHANGING ACADEMIC THEORIES ABOUT THE MARKETPLACE, COUPLED WITH SOME SIGNIFICANT SEC STUDIES. INTRIGUING THEORIES ABOUT THE EFFICIENT MARKET, NEW METHODS OF ANALYZING CASH FLOW AND RISK, AND OTHER ANALYTIC TOOLS HAVE BEEN APPLIED TO WIDELY EXPANDED EMPIRICAL KNOWLEDGE OF THE FINANCIAL MARKETS. ACCOMPANYING THE NEW ECONOMICS HAVE BEEN SUCH FORMAL STUDIES OF THE GOVERNMENT-MANDATED DISCLOSURE SYSTEM AS THE WHEAT REPORT OF 1969, <sup>3/</sup> THE INSTITUTIONAL INVESTOR STUDY OF 1971, <sup>4/</sup> AND THE REPORT OF THE ADVISORY COMMITTEE ON CORPORATE DISCLOSURE OF THE SEC. <sup>5/</sup>

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- <sup>3/</sup> DISCLOSURE TO INVESTORS: A REAPPRAISAL OF ADMINISTRATIVE POLICIES UNDER THE '33 AND '34 SECURITIES ACTS, MARCH, 1969.
- <sup>4/</sup> SEE, E.G., INSTITUTIONAL INVESTOR STUDY REPORT, H. R. DOC. NO. 64, 92D CONG., 1ST SESS., AT XIII, 400 (1971) (PERTAINING TO THE EFFICIENT MARKET HYPOTHESIS AND THE CAPITAL ASSET PRICING MODEL).
- <sup>5/</sup> REPORT OF THE ADVISORY COMMITTEE ON CORPORATE DISCLOSURE TO THE SECURITIES AND EXCHANGE COMMISSION, COMM. PRINT 95-29, 95TH CONG., 1ST SESS. (PRINTED FOR THE USE OF THE HOUSE COMM. ON INTERSTATE AND FOREIGN COMMERCE).

THE FOURTH IMPETUS FOR CHANGE AT THE COMMISSION IS THE REGULATORY REFORM MOVEMENT. THERE ARE RIGHT NOW, BY MY OWN COUNT, AT LEAST TEN MAJOR REFORM BILLS WHICH HAVE BEEN INTRODUCED IN THIS SESSION OF CONGRESS. 6/ THESE BILLS REPRESENT BASIC POLITICAL SENTIMENTS WHICH HELPED BRING THE CARTER ADMINISTRATION INTO OFFICE, AND I THINK THESE SENTIMENTS WILL ENDURE REGARDLESS OF THE OUTCOME OF THE COMING ELECTION YEAR. MANY OF THESE BILLS CONTAIN SIMILAR PROPOSALS. THE MOST IMPORTANT OF WHICH MAY BE CATEGORIZED AS (A) LEGISLATIVE VETO, (B) SUNSET--ON SPECIFIC REGULATIONS AS WELL AS ON WHOLE AGENCIES, (C) COST/BENEFIT OR ECONOMIC IMPACT ANALYSIS, (D) MORE EFFICIENT ADJUDICATIONS, AND (E) PUBLIC INTEREST REPRESENTATION. MOREOVER, UNDERLYING THIS LEGISLATIVE TREND IS THE INCESSANT PUSH OF THE OFFICE OF MANAGEMENT AND BUDGET, AND THE CONGRESS, FOR REGULATORS TO DO MORE WITH LESS. IN FACT, NOTWITHSTANDING THE EXPLOSION

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6/ H.R. 1306, "SMALL BUSINESS IMPACT STATEMENT ACT OF 1979" (REP. SCHULZE); H.R. 1745, "SMALL BUSINESS REGULATORY RELIEF ACT" (REP. IRELAND AND 84 COSPONSORS); H.R. 65, "LEGISLATIVE OVERSIGHT ACT OF 1979" (REP. DERRICK AND 41 COSPONSORS); S. 445, "REGULATORY REFORM ACT OF 1979" (SENATORS PERCY AND ROBERT BYRD); H.R. 2364, "REGULATORY REFORM ACT OF 1979" (REP. ANDERSON AND 40 COSPONSORS); S. 262, "REFORM OF FEDERAL REGULATION ACT OF 1979" (SEN. RIBICOFF AND 17 COSPONSORS); S. 755, "REFORM OF FEDERAL REGULATION ACT OF 1979" (SEN. RIBICOFF AND 17 COSPONSORS); S. 1291, "ADMINISTRATIVE PRACTICE AND REGULATORY CONTROL ACT OF 1979" (SENATORS KENNEDY, METZENBAUM AND RIBICOFF); S. 2, "SUNSET ACT OF 1979" (SEN. MUSKIE AND 62 COSPONSORS); S. 382, "COMPETITION IMPROVEMENTS ACT OF 1979" (SEN. KENNEDY).

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OF FILINGS THE SIZE OF THE DIVISION'S STAFF HAS REMAINED RELATIVELY CONSTANT SINCE 1962, A LEVELLING-OFF NOT WHOLLY COMPENSATED FOR BY EFFICIENCIES OF COMPUTER-BASED AUTOMATION.

LET ME NOW LIST THE CHALLENGES WHICH THESE FOUR FACTORS AND RELATED DEVELOPMENTS PRESENT TO THE OPERATIONS WORK OF THE DIVISION OF CORPORATION FINANCE. AS A RESULT OF THE VOLUME OF FILINGS AND THEIR COMPLEXITY, A STAFF OF THE SIZE OF THE DIVISION CANNOT SCRUTINIZE EVERY FILING WHICH COMES IN. FURTHER, WITH DECENTRALIZATION IN MANAGEMENT IN ORDER TO HANDLE THE WORKLOAD, THERE HAS BEEN TOO GREAT A RISK OF INCONSISTENT COMMENTS AMONG THE 15 REVIEWING BRANCHES.

IN ADDITION, THERE IS A NEED FOR MORE RAPID RESPONSE IN ASSIMILATING THE OVERALL TRENDS IN DISCLOSURE AND IN PROMPTLY DISSEMINATING NEW POLICIES BOTH WITHIN THE DIVISION AND, WHERE APPROPRIATE, TO THE PUBLIC. THE ALTERNATIVE, OF WHICH I DISAPPROVE, IS RELIANCE ON CASE-BY-CASE DETERMINATIONS. DESPITE THE NEED FOR ADVANCE CLASSIFICATION AND RESOLUTION OF PROBLEM AREAS, THE DELUGE OF REVIEW WORK DETRACTS FROM THE REFLECTIVE AND ANALYTICAL TIME NEEDED TO FORMULATE NEW RULES AND PROMPTLY TO REVIEW AND ELIMINATE OBSOLETE EXISTING RULES.

ALSO, FILINGS WITH THE COMMISSION NEED TO BE BETTER INTEGRATED AND FURTHER DISSEMINATED BY THE SEC. FILINGS UNDER THE 1933 AND 1934 ACTS ARE STILL UNNECESSARILY DUPLICATIVE. MORE WORK MUST BE DONE TO INTEGRATE DISCLOSURE UNDER THESE TWO STATUTES SO THAT ANY ONE FILING CAN SERVE THE MAXIMUM PROPER REGULATORY PURPOSES.

FINALLY, THE FILINGS COLLECTED BY THE DIVISION ARE NOT AS WIDELY USED BY EITHER THE PUBLIC OR THE STAFF AS THEY MIGHT BE. CONSIDERING THE POTENTIAL VALUE OF THE FILINGS, INDIVIDUALLY, OR WHEN ARRAYED AND ANALYZED IN A CUMULATIVE MANNER, MODERN TECHNOLOGY SHOULD BE PUT TO GREATER USE IN THEIR DISSEMINATION.

THIS IS AN IMPOSING LIST OF CHALLENGES, AND RESPONDING TO THEM COULD TAKE THE COMMISSION IN DIFFERENT DIRECTIONS. I THINK THERE ARE TWO TRENDS RUNNING THROUGH THESE CHALLENGES WHICH NEED TO BE RECOGNIZED AND RESOLVED. THE FIRST TREND IS THE INCESSANT, PROBABLY ACCELERATING, PACE OF CHANGE. SUCH CHANGE IS PRESENT IN FINANCIAL AND CORPORATE BUSINESS TECHNIQUES, IN RELEVANT ACADEMIC KNOWLEDGE, IN DATA PROCESSING TOOLS, AND, FROM TIME TO TIME, IN CONGRESSIONAL REGULATORY PRIORITIES. IT IS THEREFORE CLEAR THAT THE DIVISION OF CORPORATION FINANCE MUST HAVE AN ORGANIZATIONAL DESIGN THAT ADAPTS QUICKLY TO CHANGE.

THE SECOND TREND IS THE PRESSURE FOR PRODUCTION, IN THE BUSINESS SENSE, OF THE CONTINUOUS, UNIFORM, AND HIGH QUALITY PROCESSING OF A LARGE FLOW OF INPUT, NAMELY THE INFLUX OF SOME 52,000 FILINGS A YEAR. GIVEN THE NUMBER OF FILINGS TO BE PROCESSED, THE DIVISION MUST HAVE AN ORGANIZATIONAL DESIGN THAT INCORPORATES A MAJOR REVIEW CAPABILITY IN WHICH PERSONNEL REMAIN INVOLVED LONG ENOUGH TO ACQUIRE THE NECESSARY KNOWLEDGE AND PERSPECTIVE TO PROVIDE SUCH REVIEW AND IN WHICH THERE IS EFFECTIVE MONITORING FOR UNIFORMITY OF EXCELLENCE AND APPROACH. RESPONDING TO THESE TRENDS IS A DIFFICULT, FUNDAMENTAL MANAGEMENT TASK.

IN A RECENT SPEECH, Z/ THE COMMISSION'S CHAIRMAN HAROLD WILLIAMS, OUTLINED A PLANNED REORGANIZATION OF THE DIVISION OF CORPORATION FINANCE DESIGNED TO MEET THOSE CHALLENGES. I HOPE TO ELABORATE UPON HIS REMARKS AND FURTHER EXPLAIN THIS REORGANIZATION TODAY. THE APPROACH OF THE PRESENT DIRECTOR OF THE DIVISION, ED GREENE, STARTS WITH THE PERCEPTION THAT THE PRODUCTION WORK - FILINGS REVIEW - IS THE HEART OF THE DIVISION'S PUBLIC SERVICE. HE THEREFORE HAS ALLOCATED 80% OF HIS DIVISION'S RESOURCES - MONEY AND MANPOWER - TO A NEWLY DESIGNED OPERATIONS SECTION OF THE DIVISION, UNDER BILL WOOD, THE ASSOCIATE DIRECTOR FOR OPERATIONS.

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Z/ WILLIAMS, "COMMUNICATION OF CORPORATE INFORMATION: AN UPDATE," ADDRESS TO THE 10TH ANNUAL NATIONAL CONFERENCE, NATIONAL INVESTOR RELATIONS INSTITUTE, WASHINGTON, D.C., OCTOBER 19, 1979.

IN ORDER TO HAVE THE FLEXIBILITY TO RESPOND TO CHANGE, THE DIVISION UTILIZES A SYSTEM OF AD HOC TASK FORCES, IN WHICH PERSONNEL FROM OPERATIONS AND OTHER OFFICES IN THE DIVISION MEET TO ADDRESS SPECIFIC PROBLEMS, FOR EXAMPLE, THE FORMULATION OF A NEW RULE. IN EFFECT, THE DIVISION NOW IS IN WHAT PRIVATE SECTOR CORPORATE MANAGERS CALL A "MATRIX" ORGANIZATION. SUCH AN ORGANIZATIONAL STRUCTURE IS VISUALIZED AS A TABULAR PRESENTATION WITH VERTICAL HEADINGS BY LINE ASSIGNMENT AND HORIZONTAL HEADINGS BY TASK-FORCE ASSIGNMENT, THEREBY FORMING A MATRIX OF CELLS OF WORKERS WITH THE COMPOSITION OF CELLS AND INDIVIDUAL ASSIGNMENTS CHANGING FROM TIME TO TIME. AS CORPORATE EXECUTIVES YOURSELVES, YOU MAY FIND IT INTERESTING TO NOTE THAT THIS DYNAMIC APPROACH HAS BEEN OBSERVED BY BUSINESS SCHOOL RESEARCHERS AS WELL-SUITED FOR ORGANIZATIONS WHICH FIND THEMSELVES IN TENSION BETWEEN A HIGH VOLUME OF SOPHISTICATED PRODUCTION AND A RAPIDLY CHANGING ENVIRONMENT. 8/

THIS DESIGN SETS THE FRAMEWORK FOR THE DIVISION'S RESPONSE TO THE CHALLENGES OF THE 1980s. WITHIN ITS ORGANIZATIONAL FRAMEWORK THE DIVISION CURRENTLY IS PUTTING INTO PLACE SEVERAL MAJOR ELEMENTS TO CARRY OUT ITS OPERATIONS STRATEGY.

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8/ PAUL R. LAWRENCE AND JAY W. LORSCH, DEVELOPING ORGANIZATIONS: DIAGNOSIS AND ACTION 42-48 (1969) (HARVARD BUSINESS SCHOOL, ADDISON-WESLEY).

PERHAPS OF GREATEST IMPORTANCE IS THE FRANK REGULATORY ACKNOWLEDGMENT THAT NOT ALL FILINGS CAN BE REVIEWED. WITH RESPECT TO SOME FILINGS THE DIVISION WILL SHIFT TO A MODE IN WHICH SCREENING AND SELECTION TECHNIQUES WILL BE USED IN ALLOCATING STAFF TIME. KEY FILINGS SUCH AS INITIAL REGISTRATIONS ON FORM S-1 AND "GOING-PRIVATE" PROXY STATEMENTS WILL CONTINUE TO BE FULLY REVIEWED. BUT, FOR EXAMPLE, EMPLOYEE STOCK PLANS ON FORM S-8 WILL BE THE SUBJECT OF A CONTEMPLATED RECOMMENDATION UNDER WHICH THERE WILL BE NO PRE-EFFECTIVE REVIEW. THE MAJOR RESULT OF THIS APPROACH WOULD BE TO FREE RESOURCES. STAFF TIME COULD THEN BE CONCENTRATED UPON FIRST, THE FULL REVIEW OF FILINGS WHICH HAVE BEEN IDENTIFIED AS CRITICAL AND, SECOND, THE DETECTION OF AND RESPONSE TO THE NEED FOR CHANGE OR ELIMINATION IN DISCLOSURE RULES.

I BELIEVE THAT A "SUNSET" ANALYSIS OF THE COMMISSION'S FORMS AND GUIDES SHOULD BE CONDUCTED TO THE EXTENT FEASIBLE, AND I AM HOPEFUL THAT THE DIVISION'S REORGANIZED STRUCTURE WILL MAKE SUCH A REVIEW POSSIBLE. ONE EXAMPLE OF SUCH AN ANALYSIS MAY BE AN ANTICIPATED PROPOSAL SIGNIFICANTLY TO REDUCE AND STANDARDIZE THE EXHIBITS REQUIRED IN FILINGS. ANOTHER EXAMPLE IS THE RECENTLY ANNOUNCED REVIEW OF GUIDES 3 AND 61, RELATING TO BANK HOLDING COMPANIES. 9/

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9/ SECURITIES ACT REL. No. 6115 (AUGUST 30, 1979)

OF COURSE, THE RICHEST GROUND FOR A REGULATORY REFORM ELIMINATION OF DUPLICATIVE FILINGS IS IN THE INTEGRATION OF 1933 AND 1934 ACT DISCLOSURE. ONE IMPORTANT TASK FORCE WORKING ON THIS PROBLEM IS ADDRESSING WAYS TO SIMPLIFY THE 10-K ANNUAL REPORT AND TO ADAPT ITS PARTS FOR INCORPORATION BY REFERENCE IN OTHER FORMS. ANOTHER TASK FORCE IS ADDRESSING THE GENERIC ISSUE OF HOW BEST TO SHIFT THE EMPHASIS OF OPERATIONS WORK FROM REVIEW OF 1933 ACT FILINGS TO REVIEW OF 1934 ACT FILINGS. OUR OBJECTIVE IS TO MAKE THE STREAM OF INFORMATION IN 1934 ACT REPORTS THE HEART OF ALL 1933 AND 1934 ACT DISCLOSURE. THIS APPROACH TAKES INTO ACCOUNT THE EFFICIENT MARKET HYPOTHESIS THAT MUCH PAST DISCLOSURE IS ALREADY REFLECTED IN A SECURITY'S PRICE.

A THIRD MAJOR ELEMENT IN THE PLANNING OF THE DIVISION OF CORPORATION FINANCE IS THE ADDITION OF A NEW OFFICE IN OPERATIONS, TO OVERSEE THE TRAINING AND UNIFORMITY OF WORK AND EXCELLENCE AMONG THE LINE BRANCHES. THIS OFFICE WILL HELP SPOT AND RESPOND TO THE NEED FOR CHANGED RULES. THE OFFICE ALSO WILL ENDEAVOR TO AVOID INCONSISTENT OR NIT-PICKING COMMENTS ON FILINGS.

(SINCE I BECAME A COMMISSIONER I HAVE SOMETIMES HEARD ABOUT THESE INCONSISTENT AND NIT-PICKING COMMENTS. I SHOULD NOTE, HOWEVER, THAT AN INCONSISTENT COMMENT IS OFTEN SOMETHING

YOUR COMPETITOR GOT AWAY WITH THAT YOU COULD NOT; AND A NIT-PICKING COMMENT IS OFTEN SOMETHING ISSUER'S COUNSEL PERSUADED UNDERWRITER'S COUNSEL WAS NOT MATERIAL BUT REALLY IS.)

IN ADDITION, THE SIZE OF THE CURRENT LINE BRANCH IS GOING TO BE INCREASED TO A SIZE THAT WILL PERMIT THE BRANCH'S ONGOING REVIEW WORK TO BE DONE BUT ALSO FREE SOME BRANCH PERSONNEL FOR TASK FORCE WORK. THIS WILL BE ACHIEVED BY TAKING THE PERSONNEL IN THE EXISTING 15 BRANCHES, THREE UNDER EACH OF FIVE ASSISTANT DIRECTORS AND CONSOLIDATING THEM INTO 10 LARGER BRANCHES, TWO UNDER EACH OF THE FIVE ASSISTANT DIRECTORS. WHAT MAKES THIS FEASIBLE IS THE SWITCH TO THE "AUDIT MODE" OR SELECTIVE REVIEW AS A GENERAL APPROACH, SO THAT EACH BRANCH HAS A REALISTIC WORKLOAD.

THE OPERATIONS INNOVATIONS DO NOT STOP WITH THIS STAFF SHUFFLE. PERHAPS OF GREATEST IMPORTANCE TO MEMBERS OF THIS AUDIENCE IS THAT THE CURRENT ASSIGNMENT OF FILING COMPANIES TO BRANCHES WILL CHANGE SIGNIFICANTLY. NOT ONLY WILL THERE BE ONLY TEN INSTEAD OF THE OLD 15 BRANCHES, BUT COMPANIES IN EACH MAJOR INDUSTRY WILL BE CENTRALIZED TO THE EXTENT POSSIBLE, PROBABLY OVER THE COMING YEAR, INTO ONE BRANCH, WITH ROUGHLY SEVEN INDUSTRIES PER ASSISTANT DIRECTOR. THIS WILL PERMIT THE DIVISION TO FOCUS ON THE PARTICULAR NEEDS AND CHARACTERISTICS OF WHOLE INDUSTRIES, IN RECOGNITION OF THE EMPIRICAL EVIDENCE THAT A SUBSTANTIAL PART OF SECURITIES RISK LIES IN INDUSTRY-WIDE OR MACRO-ECONOMIC FACTORS.

WITH REGARD TO DATA MANAGEMENT, THE OPERATIONS SECTION OF THE DIVISION IS EMBARKED ON AN EFFORT WHICH, GRADUALLY, SHOULD RESULT IN THE ENHANCED AVAILABILITY, IN GENUINELY USEFUL FORM, OF FILINGS TO THE PUBLIC. EXAMPLES OF SUCH WORK ARE CURRENT CONTRACTS WITH A PRIVATE COMPANY FOR PROVIDING TO THE PUBLIC MICROFICHE COPIES OF FILINGS AND TIME-SHARED COMPUTER ACCESS TO COPIES OF FILINGS. SIMILARLY, THE OPERATIONS SECTION IS ENGAGED IN AN EFFORT TO BETTER AVAIL ITSELF OF MODERN DATA PROCESSING TECHNOLOGY. ONE PLANNED PHASE OF THIS EFFORT IS ENHANCEMENT OF THE AUTOMATED DETECTION OF LATE OR OMITTED FILINGS.

THE FINAL ELEMENT OF THE DIVISION'S STRATEGY FOR ADAPTING THE DISCLOSURE PROCESS TO A CHANGING ENVIRONMENT WILL BE AN INCREASED EFFORT TO PROMULGATE DISCLOSURE POLICY PROSPECTIVELY, SO AS TO AVOID, WHERE POSSIBLE, THE MORE SEVERE AND COSTLY AVENUE OF POST HQC ENFORCEMENT PROSECUTIONS.

I FIND THE FOREGOING STRATEGY, WHICH HAS BEEN OVER A YEAR IN THE MAKING, TO BE QUITE SWEEPING. MANY OF YOU ARE NO DOUBT WELL AWARE OF SOME OF THE CHALLENGES IT ADDRESSES. PERHAPS YOU HAVE LEARNED OF SOME OF THE ELEMENTS IN THE PLAN AS WELL, AND NO DOUBT AS YOU DEAL WITH THE COMMISSION IN THE FUTURE YOU WILL COME TO APPRECIATE THE CHANGES THIS PLAN WILL CAUSE. I KNOW THAT THE PRESENT LEADERSHIP OF THE

DIVISION OF CORPORATION FINANCE HAS FORMULATED THIS PLAN FOR THE FUTURE WITH CARE, ATTEMPTING TO INCORPORATE MUCH OF THE LEARNING OF THE LAST DECADE. IT DEMONSTRATES A THOUGHTFUL AND CONSCIENTIOUS RESPONSE TO A CHANGING AND COMPLEX BUSINESS WORLD IN A PERIOD OF POLITICAL CONFUSION ABOUT THE PROPER ROLE OF THE INDEPENDENT REGULATORY AGENCY IN REGULATING THE MARKETPLACE. IT CAN PROPERLY BE VIEWED AS AN EFFORT TO ACCOMPLISH REGULATORY REFORM.

HOWEVER, THE PRESSURES FOR REGULATORY REFORM RAISE THE ULTIMATE QUESTION: IS THERE A NEED, AS WE ENTER THE 1980s, FOR A GOVERNMENT-MANDATED DISCLOSURE SYSTEM FOR SECURITIES? PERHAPS NO ONE POSES THE ISSUE AS THOROUGHLY BUT SUCCINCTLY AS DOES PROFESSOR HOMER KRIPKE IN HIS NEW BOOK, THE SEC AND CORPORATE DISCLOSURE: REGULATION IN SEARCH OF A PURPOSE. <sup>10/</sup> PROFESSOR KRIPKE'S OWN ANSWER APPARENTLY IS THAT A GOVERNMENT MANDATED SYSTEM HAS NOT BEEN SHOWN BY EVENTS TO BE

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<sup>10/</sup> LAW & BUSINESS, INC., HARCOURT BRACE JOVANOVICH, PUBLISHERS, 1979.

UNNECESSARY. 11/ HOWEVER, HE DOES CALL FOR SIGNIFICANT REFORMS, MANY ALONG THE LINES EMBODIED IN THE PLANS WHICH I HAVE JUST DISCUSSED. 12/

MY OWN IDEAS AT THE PRESENT TIME ARE THAT ALTHOUGH DRASTIC REGULATORY REFORM IS NEEDED, A TOTAL ABANDONMENT OF GOVERNMENT MANDATED DISCLOSURE FOR PUBLIC COMPANIES WOULD NOT BE POLITICALLY FEASIBLE OR SOUND. GIVEN THE PRESENT REGULATORY FRAMEWORK UNDER THE 1933 AND 1934 ACTS, IT IS PLAIN THAT THE MAJOR INITIATIVES IN THE DIVISION OF CORPORATION FINANCE ARE NEEDED. WHETHER THE INITIATIVES I HAVE DESCRIBED TODAY WILL BE SUFFICIENT REMAINS TO BE SEEN, BUT THEY ARE A GOOD START IN THE ABSENCE OF ANY NEW CONGRESSIONAL DIRECTIVES.

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11/ Id. at 106 (INTRODUCING A SECTION ENTITLED "THE EFFICIENT MARKET HYPOTHESIS REQUIRES RECONSIDERATION OF THE ROLE OF MANDATED DISCLOSURE, BUT NOT ITS ABANDONMENT"). I HAVE PERIODICALLY ADDRESSED THE SAME ULTIMATE ISSUE. SEE, E.G., "THE TENSION BETWEEN THE FIRST AMENDMENT AND THE FEDERAL SECURITIES LAWS" (ADDRESS TO THE AMERICAN FRIENDS OF THE HEBREW UNIVERSITY, GREATER NEW YORK LAWYERS DIVISION, NEW YORK CITY, SEPTEMBER 14, 1979); "CURRENT DEVELOPMENTS IN FINANCIAL REPORTING: THE SEC -- WHAT IS GOVERNMENT'S ROLE?" (ADDRESS TO THE CONFERENCE BOARD, NEW YORK CITY, FEBRUARY 14, 1979); "DISCLOSURE POLICY AND THE PUBLIC INTEREST" (ADDRESS TO THE NEW YORK REGIONAL GROUP OF THE AMERICAN SOCIETY OF CORPORATE SECRETARIES, NEW YORK CITY, JANUARY 17, 1979).

12/ KRIPKE, NOTE 11 SUPRA AT 282-83, 285-86.

WHETHER COMPELLED DISCLOSURE BY PUBLIC COMPANIES TO SHAREHOLDERS AND THE MARKETPLACE IS WORTH A LEGISLATIVE MANDATE IS PLAINLY A MATTER OF PUBLIC POLICY. IT SEEMS TO ME THIS ISSUE CANNOT AND SHOULD NOT BE RESOLVED BY ECONOMIC MODELS ALONE. THE PERTINENT ECONOMIC ANALYSES, AS IS OFTEN THE CASE, IN FACT ARE ILLUMINATING BUT AT TIMES CONTRADICTORY. 13/

ONE ECONOMIC PERCEPTION WHICH IS SIGNIFICANT TO ME, HOWEVER, IS THAT DISCLOSURE IS THE LOW-COST REGULATORY OPTION. STANDARD SETTING, OR MERIT REGULATION, IS NOT ONLY MORE COSTLY TO BOTH BUSINESS AND GOVERNMENT IN TERMS OF DOLLARS SPENT BUT IT IS MORE COSTLY TO SOCIETY BECAUSE IT KEEPS NEW PRODUCTS WHICH MAY BE WORTHWHILE OFF THE MARKET.

WHEN PRESIDENT ROOSEVELT SIGNED THE 1934 ACT, HE STATED:

... THE MERCHANDISING OF SECURITIES IS REALLY TRAFFIC IN THE ECONOMIC AND SOCIAL WELFARE OF OUR PEOPLE. SUCH TRAFFIC DEMANDS THE UTMOST GOOD FAITH AND FAIR DEALING ON THE PART OF THOSE ENGAGED IN IT. IF THE COUNTRY IS TO FLOURISH, CAPITAL MUST BE INVESTED IN ENTERPRISE.

BUT THOSE WHO SEEK TO DRAW UPON OTHER PEOPLE'S MONEY MUST BE WHOLLY CANDID REGARDING THE FACTS ON WHICH THE INVESTOR'S JUDGMENT IS BASED.

THIS WAS NOT MERELY AN ECONOMIC STATEMENT. IT WAS A DECLARATION OF AN INTENT TO HOLD CORPORATE AMERICA ACCOUNTABLE TO THE AMERICAN PUBLIC WHICH WAS DEEMED TOO IMPORTANT TO BE

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13/ SEE, E.G., KRIPKE NOTE 11, SUPRA, AT 96-97.

LEFT SOLELY TO MARKET FORCES. AMERICAN BUSINESS, WHILE CAPABLE OF SUBSTANTIAL SELF-REGULATION, FROM TIME TO TIME AND IN CERTAIN COMPANIES, NEEDS A FIRM STATUTORY REMINDER OF SOCIETY'S EXPECTATIONS IN ORDER TO MAKE SUFFICIENT DISCLOSURE ABOUT ITS AFFAIRS TO MAINTAIN ITS LEGITIMACY.

FURTHER, A DISCLOSURE ENVIRONMENT IN WHICH THERE WERE NO GOVERNMENT MANDATE PROBABLY WOULD BE UNACCEPTABLE TO AMERICAN BUSINESS. THIS UNIFORMITY NOT ONLY BRINGS SOME PREDICTABILITY TO THE PUBLIC SECURITIES MARKETS, BUT IT IS USEFUL IN MAKING OTHER BUSINESS AND POLITICAL JUDGMENTS.

BUT I FRANKLY HAVE TO ADMIT THAT INVESTOR PROTECTION IS ONLY ONE AMONG MANY SOUND REASONS FOR A SYSTEM OF GOVERNMENT MANDATED DISCLOSURE BY PUBLIC COMPANIES. THEREFORE, WHILE I BELIEVE ALL WE CAN DO AT THE SEC IS TO USE OUR PRESENT STATUTORY TOOLS IN A SENSIBLE, REFORMED WAY, I INCREASINGLY WONDER WHETHER OUR STATUTORY FRAMEWORK IS VALID.

THE REASON SO MANY DISCUSSIONS ABOUT SEC DISCLOSURE POLICY ARE SO THEOLOGICAL IS THAT SUCH POLICY IS USED FOR A MULTIPLICITY OF PURPOSES. INDEED, WITH THE INCREASING INSTITUTIONALIZATION OF THE PUBLIC SECURITIES MARKETS, THAT PUBLIC INVESTOR THE SEC IS MANDATED TO PROTECT IS IN DANGER OF BECOMING A LEGAL FICTION. AND IF THE CONTINUED

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NEED FOR A GOVERNMENT MANDATED DISCLOSURE SYSTEM FOR PUBLIC CORPORATIONS IS FOR REASONS OTHER THAN OR IN ADDITION TO INVESTOR PROTECTION, SUCH A JUDGMENT SHOULD BE MADE AND ARTICULATED BY ELECTED OFFICIALS WHO ARE DIRECTLY ACCOUNTABLE FOR THE POLICIES OF GOVERNMENT.