

NEWS

**SECURITIES AND
EXCHANGE COMMISSION**

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A NEW MILESTONE

ADDRESS BY

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I have had the opportunity to participate several times at NASAA Conferences and want you to know that each time I consider it an honor to be with you. When a Commissioner of the Securities and Exchange Commission is requested to address your organization, the topic of coordination and cooperation of federal and state authorities invariably is addressed and I will not change that tradition today. This year has been a time of unprecedented achievement marked by our continued joint efforts in enforcement, compliance inspections, and training, and the new, much publicized interaction of state and federal rulemaking programs.

Although Regulation D and the real estate disclosure package have justifiably captured our imaginations and energies recently, day-to-day cooperative enforcement endeavors have also been nurtured and expanded. It has always been my view that enforcement is the keystone of securities regulation because it gives integrity to everything we do as regulators. In times of reductions in regulatory requirements and budgetary restraint, mutual assistance in investigations and the continuous sharing of enforcement information is not only desirable, it is essential for the efficient and effective protection of investors.

Joint federal/state examinations of broker-dealers and investment advisers and the communication of information regarding these entities have proven practical and cost effective. As you know, the Commission has a longstanding practice of sharing information such as deficiency letters, complaint files and information on registered representatives whose employment has been terminated for cause. In this regard, it would be helpful to have your input as to what other steps should be implemented to assist both you and the SEC in carrying out our respective functions. One possibility, for example, might be the automatic transmission of SEC deficiency letters to your offices.

Training is another function that has realized the benefits of a cooperative spirit. Although the focus of our enabling statutes may be somewhat different, the basic skills necessary to be a good investigator or compliance examiner, whether federal or state, are the same. For the past few years states and foreign governments have been invited to send their personnel to attend an extensive training program given annually for the new employees in our Division of Enforcement. Last Spring 19 states and 4 foreign countries were represented at the Enforcement Seminar in Washington. State employees involved in broker-dealer inspections have also been invited to Regional Office training sessions for our own compliance examiners.

The views expressed herein are those of the speaker and do not necessarily reflect the views of the Commission.

In addition, in 1979 an enforcement exchange program was instituted under the Intergovernmental Personnel Act of 1970. Closer ties and cooperation between our respective enforcement staffs is one of the program's primary objectives and state participants become integral members of the SEC staff in all respects.

In written critiques, those who have participated in the exchange program have described it as "valuable," a "unique opportunity," and "one without peer." In turn, the SEC staff has been impressed with the caliber of the participants. Aside from the training benefits received, the commingling of our enforcement staff members serves to remove "we-and-they" attitudes and affords a more coordinated and cost effective enforcement atmosphere. I encourage you to take advantage of these opportunities where personnel can be trained with the lowest possible cost and instilled with an ongoing appreciation for the effectiveness of federal-state coordination.

I believe the NASAA/NASD Central Registration Depository ("CRD") also provides significant opportunities for cooperation and coordination. Phase I is proceeding well, and Phase II is now underway with a major effort by the states, the SEC and the New York Stock Exchange to revise Form BD, the broker-dealer registration form, for use in the system. Phase III, involves the registration of offerings, and I understand that NASAA is considering the development of a computer program to assist in passing upon various securities offerings so that review resources may be more effectively allocated and issuers may receive the benefits of a more expeditious evaluation and comment process. With our Division of Corporation Finance being forced by limitations in budget to implement a selective review process, the Commission should consider the feasibility of participating in a system whereby the duty to review similar filings could be shared by the states and the SEC. A maturing CRD system should also encompass a means to access shared in-house data on issuers, broker-dealers, investment advisers, and various associated persons. It seems to me that, to the extent possible under federal law and confidentiality considerations, it would benefit the Commission, as well as the states, for information in the SEC's domain to be accessible to our state counterparts through a system such as CRD.

Additional projects aimed at commonality and uniformity of regulations should also be scheduled for CRD's future. Currently, as with broker-dealers, a very complex and fragmented system exists for the registration of investment advisers within different jurisdictions. Following the pattern being pursued with respect to Form BD, a uniform investment adviser form should be created that is acceptable to the states and the Commission. Perhaps we could achieve this by adding a new schedule to current SEC Form ADV which would include whatever additional information the individual

states chose to require. In the first phase of the program, Form ADV would be filed with the Commission and that Form plus the schedule would be filed with each state in which registration was desired.

Eventually, a central registration system for investment advisers could be created within CRD so that an adviser could file a single registration form indicating all the states in which it wishes to be registered. In order to further the development of such a procedure, our Division of Investment Management is beginning to compile information concerning the details of the various state regulatory processes. Systems such as this could be of great service to regulators and the investing public.

During the last year our joint activities expanded even beyond our national borders. Last fall I had the privilege of inviting the president of NASAA, Tom Krebs, to be a member of the United States delegation to the Sixth Interamerican Conference of Securities Commissions and Similar Agencies which was held in Canada. Because of the specific market environments involved, the experiences of state administrators are in some ways more relevant to foreign delegations than are those of the SEC. The Seventh conference is to be held next May in Washington. NASAA will again be represented on the U.S. delegation and, in addition, will be hosting a reception at the Capitol Building.

Now I turn to Regulation D, which I am sure will be actively discussed and analyzed this week. In my opinion, the publication of Regulation D is a new milestone in cooperation between NASAA and the Commission because it represents the first effort to coordinate federal securities law rulemaking with the states. Regulation D is an attempt, by state representatives and the Commission, to create a comprehensive system out of the various limited offering exemptions and, consistent with investor protection, to simplify existing requirements dealing with private offers and sales of securities.

To me, it was more than symbolic that Lewis Brothers of Virginia, a former president of your organization, was an active participant at the open meeting when the proposal was considered by the Commission. Because state securities laws differ significantly from each other and from federal laws in their content and approach to investor protection, the proposed rules represent many hours of hard work, discussion and negotiation with give and take by all involved. I believe the resulting proposals, as a whole, exemplify the regulatory process at its best. This is not to suggest, of course, that the proposals should not be subjected to the closest scrutiny by the public, state administrators, and the Commission. Only through such careful review, discussion and comment can balanced regulation be developed.

The balancing of regulatory requirements and benefits is not a new area of interest for federal and state regulators. Commenting on the bill which eventually became the Securities Act of 1933, one Congressman stated: "The purpose of the legislation I suggest is to protect the public with the least possible interference to honest business." This must be our primary goal not only for its deregulatory aspect, but also as a means of cost-effective management of limited government resources.

Congress specifically recognized the advantages of a coordinated federal-state rulemaking initiative when, as part of the Small Business Investment Incentives Act of 1980, new Section 19(c) of the Securities Act was created to authorize the Commission to work with state securities associations to effectuate greater uniformity in our requirements. This section sets forth a policy of maximum effectiveness of regulation, maximum uniformity, and minimum interference with capital formation. In particular, an avowed purpose of this Section is the development of a uniform exemption from registration for small issuers which can be agreed upon by the states and the federal government. I believe that proposed Regulation D is a project uniquely responsive to Congressional intent.

As with all legitimate deregulation, the most difficult challenge is to assure ourselves that the proper balance is achieved between coordination and simplification on the one hand, and investor protection on the other. Deregulation is a sensitive undertaking where unwise decisions could affect investor confidence and lead to the undermining of future opportunities to remove regulatory burdens. The task becomes monumental when it includes an attempt to satisfy various notions of investor protection and to balance the interests of the federal government with those of the states and among the states themselves.

Although differences as to approach and emphasis are expected, I urge you to give Regulation D a fair evaluation. Many of you have provided comments to your Subcommittee and I am sure that your suggestions were considered and are reflected in the version that the Uniformity Committee has recommended for your approval on Wednesday. As might be expected, reactions of some respondents to the initial drafts were not all positive. However, with more careful consideration, perceived problems were cogently outlined, specific issues were addressed, and concrete alternatives were offered.

Some of the areas of concern are ones about which, I, too, have questions which must be resolved before Commission adoption and on which I hope to receive some assistance from the public comment process. After observing the work of the joint SEC/NASAA task force, I am confident that what may initially appear as major obstacles to some, are really

manageable issues and that further discussion and coordination will lead to the adoption of a uniform exemption with which we can all be relatively comfortable. This does not mean that each of us will get everything we might want. That is not the nature of compromise. Rather it means that all views will have been given a fair airing and the final rules will reflect the melding together of different regulatory philosophies.

Substantial comment has been engendered by the proposed new categories of accredited investors, especially the proposal concerning a person whose most recent annual adjusted gross income exceeds \$100,000. Although such concepts are novel to the federal exemptive system, they are consistent with similar types of exemptions under state securities laws and were developed in consultation with your Subcommittee. As with any attempt to measure sophistication or financial experience, the figures suggested are necessarily arbitrary. At the open meeting we held on Regulation D, several of us voiced reservations about the sufficiency of such criteria and indicated that this would be an issue to consider carefully prior to adoption. The elemental question is whether any measure of wealth connotes knowledge and experience in financial and business matters. Objective tests are always desirable in rulemaking in order to create certainty and eliminate time-consuming burdens; but, they must be relevant to the attributes sought to be measured. In our proposing release the Commission specifically requests comment as to whether the new categories of accredited investors involving net worth and adjusted gross income are desirable and, if so, whether the requirements set forth are appropriate.

One of the strengths of Regulation D is that its structure distinguishes state and federal interests and provides opportunities for state regulation to tailor the exemptions to local needs. For example, under the proposal, the Commission would defer to the states for the regulation of offerings under \$500,000 that are in compliance with the minimal standards of Rule 504. Because of the limited nature of such offerings, both in amount and geographic distribution, greater emphasis on state blue sky regulation was thought appropriate and antifraud protection would be all that was applicable at the federal level. With regard to proposed Rule 505, which is contemplated as the replacement for present Rule 242, NASAA representatives developed a uniform suitability provision for non-accredited investors which could be adopted as an alternate formulation. It is my understanding that thought has also been given to other suitability standard options for non-accredited as well as accredited investors. Although it is possible for individual states to promulgate different suitability standards of their own, I urge you to consider fully the advantages of uniformity before doing so. A multiplicity of disparate regulation at both the state and federal level causes heavier burdens on small issuers and is

the very problem Regulation D is designed to resolve. The most positive and constructive approach, therefore, is to work within NASAA to assure that the final uniform suitability standards are acceptable for your state.

I am also aware that certain state administrators have voiced reservations about the adoption of Rule 506 because the rule would be applicable to offerings over \$5,000,000. It is understandable that jurisdictions which have not had a rule comparable to our Rule 146 would wish to gain experience with Rules 504 and 505 before further expanding their local exemptive schemes. We at the Commission have proceeded with carefully constructed, deliberate steps in the evolution of our small business program, and I would not expect the states to do otherwise. I hope, however, that any states which might initially choose not to adopt Rule 506 will consider such a rule after they have sufficient time to review the operation of the balance of Regulation D. Changes in regulatory patterns are naturally met with some trepidation, but we must all guard against that trepidation developing into unyielding resistance to deregulation that is shown to be consistent with investor protection and in the public interest.

Rationalization of federal and state requirements is also the focus of recently proposed revisions to the disclosure requirements relating to real estate offerings. Over the past few years, the size of real estate prospectuses has increased and the disclosure has become more complex due, in part, to outmoded requirements and the lack of uniformity between federal and state regulation. State regulators affiliated with the Midwest Securities Commissioners Association were the first to initiate a program to remedy the situation in early 1980, when a Subcommittee on Financial Statement and Track Record Disclosure was formed. That Subcommittee, now with NASAA, has worked in close association with the SEC staff to design proposals which would coordinate federal/state requirements for more meaningful disclosure of the sponsor's prior experience with real estate programs and would also address the issues of appropriate financial statement presentation. The proposals which the Commission authorized for publication last Thursday are the result of our cooperative efforts in a very difficult area and evidence regulatory benefits that can be obtained through the integration of our technical rulemaking expertise. I have been advised that your Subcommittee has endorsed the related proposed revisions to NASAA's Statement of Policy on Real Estate Programs which, among other things, would incorporate the new proposed Guide 60, and that that recommendation will be considered later this week. Your participation in this project should not end with your vote on the NASAA proposals. Because Guide 60 is part of the those proposals, I encourage you to review the Commission's proposed revisions of Guide 60 and provide us with constructive comments.

We now have a good beginning and I look forward to a continuing dialogue and further accomplishments as state securities administrators and the Commission seek ever greater cooperation and coordination in our rulemaking, training, and enforcement programs.

Perhaps I should end my remarks on that high note, but I believe I could be accused of misleading you today if I did not spend a few minutes on the possible effects proposed budget cuts could have on SEC operations. We have been asked by the Office of Management and Budget and the Senate and House Appropriation Committees to provide them with documents tomorrow, showing how we plan to meet the cuts if required. I am not free at this time to discuss the difficult decisions we have made, but I can tell you that some of the things I have spoken about today would be severely affected and that virtually all of our efforts to become more efficient through the use of modern technology would cease. In addition, such cuts would have a negative impact on our efforts to reduce regulatory burdens on small business, would reduce our ability to provide interpretation assistance to issuers and their legal and accounting professionals, would necessitate a reduction in regional activities, and our overall enforcement effort would be cut.

I strongly support the effort to reduce the burden of government spending and balance the budget and do not want in any way to appear strident, or as an alarmist, or to provide ammunition that might be used for partisan political purposes. However, as a member of an independent commission which, without doubt, is a major reason that our capital markets are as fair and efficient as they are and that corporations are able to obtain necessary capital, I feel obligated to tell you that an additional 12 percent cut in the SEC's budget is not in the public interest. Of course, most of what we do in the public interest is not measurable in dollars. Investor protection cannot be measured in dollars. No one will ever know how many frauds have been prevented or how much corporations save in legal and accounting expenses because of Commission interpretive advice. Moreover, the net reduction in the cost of raising capital that is due to investor confidence and better securities markets cannot be adequately measured. Let me comment, however, on just the decision to eliminate fixed brokerage commissions. On the basis of prior fixed rates, the public has already saved more than the amount of public funds required to support the SEC for over 150 years at the present budget level. This figure, of course, does not include the continuing annual savings of about a billion dollars in commissions, or the disgorgement of ill gotten gains or offers to rescind fraudulent securities transactions. It is my view that when Congress is made aware of the program cuts that would be required and the benefits that would be lost, they will not reduce our funds as proposed.