FOR RELEASE: 6:30 A.M, EDT, S.

REMARKS BY ROBERT W. HAACK, PRESIDENT
NEW YORK STOCK EXCHANGE
AT A PANEL SESSION
"SOME VIEWPOINTS IN CORPORATE DISCLOSURE"
FINANCIAL EXECUTIVES INSTITUTE
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The current climate over the subject of disclosure might have been depicted best in a magazine cartoon which appeared a few weeks ago. The picture shows a tired businessman and his wife about to relax with a drink after a hard day. She apparently has just asked how business is going, a question that has to be the most perfunctory and non-probing of all questions asked of husbands by wives. His face wears the most painful and defensive expression imaginable. "I can't tell you how business is," he explains, "because if I do, I've got to issue a public announcement."

Perhaps as never before, public attention has been focused on disclosure by the Appellate Court decision in the Texas Gulf Sulphur case and by the most recent Securities and Exchange Commission proceedings against Merrill Lynch. Since August, when the newspaper headlines announced these developments, hundreds of thousands of words have been spoken and written on disclosure to an audience that seems to grow larger and more intent as the weeks go by. At the New York Stock Exchange, we have received many calls from lawyers, corporate officers, member firm partners and public relations people asking for guidance on the handling of corporate information. An Exchange booklet published before either of these developments detailing the Exchange's expanded policy on timely disclosure recently went to a fourth printing. We have never viewed such publications as threats to the best seller list. But as of last week, nearly 15,000 copies of the

expanded policy have been distributed.

One well-known attorney said the other day that the business community is - to use his phrase - "running scared" on the question of disclosure.

I recognize this may be the initial reaction of some businessmen, but I certainly hope that this is a symptom of over-reaction and will pass. If executives react by reducing the flow of corporate information to the investing public, that would constitute a step backward in a century of progress in shareholder relations.

In general, our approach is just the opposite: when in doubt, disclose.

With an estimated 24 million Americans owning stock directly and another 100 million indirectly in various investing institutions, interest in what companies have to say about their operations has never been greater. For their part, corporations have more to talk about than ever before. Major technological breakthroughs, innovations and new products are constantly before us. Takeover bids, tender offers, merger negotations and other acquisition efforts are reported daily - not to mention the more typical flow of news about dividends, earnings, annual reports and changes in capitalization.

The concept of corporate disclosure grew out of industrialization in the last century. One of the classic stories concerns the request the Exchange made in 1866 to the Delaware, Lackawanna & Western Railroad for facts and figures regarding its capitalization. The president of the railroad responded that his firm "made no reports, and publishes no statements, and has not done anything of the kind for the last five years." But the Exchange did not permit such tight-lipped attitudes to continue for long.

From the early listing agreements between the Exchange and the

companies, and later from the Securities and Exchange Act of 1934, the basis of present-day disclosure practices and policies was established. Disclosure now is inextricably bound up in the concept of a publicly-held corporation, since it seeks to provide material information on a timely and equal basis to the public. Despite the complexity of modern business, this approach is neither naive nor unworkable, but is pursued by the most reputable, most hard-nosed and most successful corporations in the country. The result has been a level of communication between companies and investors unknown anywhere else in the world.

Without such a flow of corporate information it is very doubtful that today's high level of public confidence in the securities markets and broad ownership of stock would have occurred. At the same time, this willingness by the public to invest has helped corporations raise record amounts of capital - by internal as well as external means - to fuel expansion and growth because of the ready market for their securities. As one indication, last month the number of shares listed on the New York Stock Exchange alone moved to 12.7 billion. The list grows by about one billion shares a year with stock splits, stock dividends, new listings, issuance of rights, new shares and other financing issued in connection with mergers and acquisitions. Since disclosure helps create the climate for this growth, it follows that it is in a corporation's vital self-interest to describe its operations meaningfully and accurately.

Two developments that have taken place in a relatively short span of time have brought additional pressure on corporations to disclose their activities even more fully. One of these trends has been a growing number of mergers and acquisitions, which seem to reach a new peak year after year

as small companies strive to become big overnight and large companies try to grow even larger. The other is the increasing participation of institutions in the market and the demand by these highly sophisticated investors for more complete and detailed information. Growing evidence of disclosure problems stemming from these two developments prompted the Exchange in July to issue an expanded statement of policy on timely disclosure.

The Exchange statement covered some important new ground. Let's look briefly now at a few of the key areas:

(1) What policy to follow when corporate developments are pending but not yet finally signed and sealed.

(2) How to appraise the dangers of premature disclosure.

(3) How companies should handle relations with security analysts.

(4) How much a company can tell security analysts without making a public release.

(5) How to judge when information is material enough to warrant disclosure.

(6) At what point may a corporate insider buy or sell his own stock.

Mergers and acquisitions create the bulk of problems in the gray area of pending developments. The Exchange's Stock Watch operation, which monitors our entire list electronically, from time to time highlights a problem of security of information during negotiations.

The ability to control information which has not yet been made public varies widely from corporation to corporation and perhaps from situation to situation. Before one major company split its stock a few years ago, the only people aware of this pending development before its presentation to the directors were three executives. So tight was security of information

before the announcement that there were no memos, no written material of any kind on discussions. Perhaps this was security in the extreme, but I think not.

At another corporation, directors voted to raise the dividend at 11 a.m., but decided to hold the announcement until after the market closed, thinking that adequate security measures had been taken. That afternoon the stock shot up 2 1/2 points. An investigation by the Exchange showed that no one in the company, no officer or director, had bought a single share of the stock. It turned out that the stenographer who typed the press release told her boy friend about the dividend increase at lunch. He told his boss, who told a friend. Before the close, orders for 6,000 shares of the stock had come in.

When developments are under negotiation or in the planning stage, the disclosure problem takes on still another dimension, as was illustrated in Texas Gulf Sulphur. At some point, these developments may involve the use of consultants outside the company - for business appraisals, tentative financing arrangements, availability of major blocks of stock, engineering studies - any number of things. Maintaining security of information at this point is almost impossible. Once the word of a material pending development has gone beyond the top management of a company and their individual confidential advisers, the company takes an unwarrantable risk in not making prompt disclosure. I think the posture here should be one of leaning over backwards to insure that no market advantage is created for anyone.

Everybody realizes, of course, that there are often risks in disclosure, particularly in announcing developments under discussion or

negotiation. But the risks incurred by not disclosing important information which could be expected to materially affect the price of securities are far greater than the risks of disclosure. If disclosure in these cases is indeed a "businessman's risk," it seems to me it is a reasonably sound one.

The relationship between companies and security analysts is another area that deserves specific comment. While disclosure means equal access to information by all investors, it would be naive to suggest that the little old lady in Dubuque can get - or wants - the same treatment as the representative of an institution owning 100,000 shares of the stock. Obviously, the company is going to make a more sophisticated response to the institution - one that will in itself elicit further questions. Our concern is whether anything of a substantive nature is revealed to the analyst - some new product development, proposed acquisition, or significant change in personnel. If this happens, we believe the need for full and immediate disclosure is clear and that a press release should be issued.

A caste system for release of corporate information - telling the sophisticates first and the general investing public later or not at all - is not consistent with our disclosure standards.

Sometimes disclosure can be achieved simply by admitting the press to a meeting with security analysts. For example, the other day a leading financial publication called us to say that they had tried to gain admittance to a meeting called by a large automotive manufacturer at which consumer credit executives would be discussing the industry outlook with security analysts. The publication wanted to know if the Exchange could persuade the company to admit the press. We immediately got in touch with

the company and explained to them that, while they were not obliged to invite reporters to their meetings, they did have an obligation to issue a press release if any new material information developed at the meeting. The company finally did open the meeting to the press, and stories resulted on a significant new product development.

Let's turn for a moment to an even more fundamental question - what is material information? Of course, in discussing this matter I am not commenting on any one particular case, such as the questions presented to the court in Texas Gulf Sulphur. Generally speaking, in all but a few cases, the judgment is an obvious one. However, there are times when a determination is not so obvious. In such cases, a good rule of thumb is to ask yourself: Would you buy or sell securities for your own account on the basis of this information?

It seems clear that some decisions on disclosure can only be a matter of judgment rather than the simple application of precise rules. That is why the intent of disclosure and its philosophy must be understood. You in the publicly-owned corporations and we in the securities markets have invited the public to participate in our business - as owners of corporate securities and as buyers and sellers in the securities markets. The public has accepted our invitation - by the thousands, indeed, by the millions. This places responsibilities on us as businessmen.

Quite aside from the advantages that accrue both to the corporations and to the securities markets in terms of public confidence, ethics demand that all investors be treated equally and fairly. It should be clear that the personal interests of management and the corporate good must be treated separately. This may mean passing up an opportunity to realize a profit

on information, or to pass such information on to family or friends.

Here again, I am not passing judgment on the specifics of the questions of materiality and timing presented by the Texas Gulf case. Yet it is interesting to note that Judge Friendly, in his Appellate Court opinion in that case, suggested that the Securities and Exchange Commission should set up guidelines as to when corporate officers and directors may enter into the market in their own stocks.

The Exchange has had a written policy on this subject for several years. It was set forth in 1965 in our publication, "The Corporate Director and the Investing Public," and reiterated last summer in our "Expanded Policy on Timely Disclosure."

For example, we suggest that corporate officials should wait until after the release of earnings, dividends or other important developments has appeared in the press before making a purchase or sale. Where a development of major importance is expected to reach the appropriate time for announcement within the next few months, transactions by officers and directors should probably be avoided. Specifically, transactions just prior to important press releases should probably be avoided.

Every once in a while we must remind ourselves that we are involved with businesses that are, literally, publicly owned. To be sure, the basic mission of a publicly-owned corporation is to make a profit. We should on occasion remind ourselves <u>for whom</u> the corporation earns the profit. Not for the managers personally - though they are entitled to a share. Not for the suppliers. Not for the security analysts of brokerage firms and institutions and their clients and personal friends. Publicly-owned corporations earn their profits for their shareowners - for all of them, according to the

extent of their shareownership. If from time to time as we go about the daily routine of corporate responsibilities we recall that basic condition of corporate life, day-to-day problems such as the application of disclosure rules should be much easier to resolve.

Thank you.

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