

# NEWS

## SECURITIES AND EXCHANGE COMMISSION

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PANEL PRESENTATION

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I am pleased to have this opportunity to join with some of our top staff members to discuss issues that have an effect on the offer and sale of securities and to respond to questions you may have. Many changes are presently taking place in our securities markets, due in great part to Commission initiatives, and it is my opinion that the future holds great promise for better markets for over-the-counter securities.

I do not mean to suggest that the Commission is responsible for the vitality or lack of vitality of our securities markets. Economic forces, tax incentives or disincentives, profits, interest rates, and other matters which affect the relative merits of equity securities as an investment medium are obviously most important. The Commission does play a meaningful role, however, by attempting to assure that our markets are worthy of investor confidence.

There are three key ingredients to the maintenance of such confidence. First, and perhaps most important, investors must believe that they are being treated fairly. For example, the perception that some participants in the market place are trading on the basis of non-public inside information, or that securities professionals are not acting in the best interests of their customers, will surely dissuade the public from investing in equity securities. There must be an adequate flow of information to investors in connection with original distributions as well as secondary trading

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

markets. Finally, the market mechanism must be competitive and efficient in order to properly price securities and allocate investment capital.

These elements of good securities markets are brought about only through constant analysis and regulatory effort, and, of course, regulation is not without its burdens and costs. I believe, however, and various congressional and other studies indicate that the Commission is perhaps the most effective of agencies in carrying out its responsibilities in an efficient manner.

Our approach to regulation requires sensitivity to the various interests involved and a considerable degree of introspection. This process at the Commission has not come about in response to the now fashionable tide of de-regulation which is sweeping the country nor to the political pressures which accompany that phenomenon, but is the result of a long-standing practice of carefully considering the costs and benefits of our regulatory requirements. Shortly after joining the Commission over seven years ago, I cautioned that:

we must avoid the sometimes natural tendency of regulators to so emphasize restriction on improper activities that legitimate business activities are burdened with unnecessary regulations which impede and stifle private initiatives and innovation.

This was not a new concept, but in line with tradition at the Commission.

One of the ways in which we avoid becoming isolated in an ivory tower is to subject discrete areas of regulation, as well as entire programs, to the scrutiny of advisory

committees composed of leading experts from the private sector. Their constructive criticism and collective insights have been tremendously helpful to us in making sure that our rules and procedures keep pace with new developments.

Another way in which we at the Commission attempt to remain responsive is to listen to and learn directly from the persons who are affected by our regulations. Our efforts to alleviate the burdens imposed on small businesses by our requirements is a case in point. In response to a recommendation by our Advisory Committee on Corporate Disclosure, the Commission held public hearings in major cities across the country to better assess the burdens imposed by our periodic reporting requirements as well as the effect of our requirements on the ability of small businesses to raise capital.

While the hearings did not reveal that revisions of our requirements would have a major impact, it did appear that burdens could be lessened in a manner consistent with our obligation to protect investors. We have therefore taken a number of salutary steps designed to achieve that end. As Mickey Beach will no doubt discuss with you in greater detail, we have, for example, developed a simplified and less costly form for the registration of securities for offerings of up to \$5,000,000 which can be filed and processed in our regional offices. Similarly, we recognized that capital can sometimes not be raised efficiently by small business either through the registration process or under pre-existing exemptive alternatives such as private placements. We therefore designed a new

exemption from registration for small businesses pursuant to which up to \$2,000,000 of unregistered securities can be sold in any six-month period to an unlimited number of accredited persons and to 35 non-accredited persons if the issuer meets conditions relating to the manner of offering, the furnishing of information and the filing of notice of sales. While not geared solely to the problems of small issuers, we have also made major changes in the system of continuous disclosure required of reporting companies under the Exchange Act. Small companies should be able to benefit significantly by taking advantage of the opportunity which these revisions represent to combine their informal security holder communications, such as annual reports to shareholders, with official Commission filings, and thereby avoid the costs occasioned by the overlap between the two. I also believe that our substantial participation in the development of the pending legislation designed to foster the availability of capital for small businesses indicates that we are willing to accept a reduction in the authority granted to us by Congress where it is consistent with the broader public interest.

Another area in which you can expect to see beneficial change is the securities market place itself. I'm sure you all have some familiarity with the concept of a national market system which Congress, in the 1975 Securities Act Amendments, asked the SEC to facilitate. Some important progress has been brought about through the cooperative efforts of the securities industry and the Commission. However, I believe the criticisms

of the Commission in a recent Report by the Subcommittee on Oversight and Investigations of the House Interstate and Foreign Commerce Committee have substantial merit. It is no secret that I believe we could and should have done more to remove anti-competitive barriers and create an environment in which market forces rather than institutional power could have a greater influence on developments in our securities markets. Moreover, it is my view that if we had acted more positively and consistently, the overall dislocation and adjustments to change would have been more predictable and less difficult for industry participants.

In any event, with reasonable Commission involvement, I believe the next few years will be a time for substantial progress in the markets in which the securities of over-the-counter companies are traded. National market initiatives during the past five years have applied almost solely to listed securities. Prior to that time, of course, the National Association of Securities Dealers ("NASD") had established a nationwide NASDAQ system to show bid and asked quotations on over-the-counter securities. I now expect the clear dividing line between OTC companies and those whose securities are listed on an exchange to become increasingly blurred. In fact, within the next few years, the advantages of both systems should be available to all public companies that are of sufficient size to profit from increased market making, competition and increased exposure to investors. To me, one of the most exciting prospects on the horizon is the work

now being done by the NASD to enhance its present NASDAQ system to provide a mechanism through which customer orders can be routed for execution on a designated basis to a particular OTC market maker or exchange or to the market with the best quotation. The system will also include the ability to receive automated execution against quotations of all market makers. I believe such a system will assure competition with respect to buy and sell orders for OTC securities. In this regard, the Commission in its recent 19c-3 action opened up the opportunity for any OTC company to list on an exchange and still retain the advantages that come from having competing OTC marketmakers dealing in its stock. When computer facilities are put in place to interface exchange markets with OTC markets, I expect many OTC companies to receive greater interest in their stock and increased interest often results in better markets and higher prices.

This appears to be an area which warrants Commission intervention. As long ago as January of 1978, the Commission, in setting forth its views as to the steps which it believed must be taken during that year, included the linking of all markets in order that any broker or dealer could route orders for the purchase or sale of securities from its offices to any qualified market. In fact, the Commission stated that it would mandate such systems, if necessary, to assure prompt development. Nearly three years has now elapsed and in the most lenient terms, that cannot be considered prompt. Therefore, I believe the Commission should begin the process required to mandate an automated interface between exchange and over-the-counter markets.