



SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

November 30, 1983

Richard L. Hudson
Staff Reporter
The Wall Street Journal
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036

Dear Rich:

With reference to the extensive questions which accompanied your letter of October 26th to the Chairman, he accepts your statement that it is your "honest intention to write a fair, balanced profile" of him.

The enclosed responses are numbered to coincide with the numbers of your questions. Unless otherwise indicated, the Chairman's statements are in quotes. The others are mine.

Chairman Shad and I are looking forward to meeting with you at noon on Friday, December 2nd, to discuss any further questions you may have, based upon the enclosed responses.

Sincerely,

A handwritten signature in cursive script, appearing to read "Andrew L. Rothman".

Andrew L. Rothman
Director
Office of Public Affairs

Attachment

Responses by
John S.R. Shad, Chairman */
and
Andrew L. Rothman, Director of Public Affairs
U.S. Securities and Exchange Commission
for The Wall Street Journal
November 30, 1983

Dear Rich:

1. Based upon my experience under three SEC Chairmen, the past 2-1/2 years have witnessed an unprecedented number of regulatory reform initiatives, either begun or brought to fruition.

While this question is directed specifically to the Chairman's accomplishments and failures, he believes, "The SEC has one of the most outstanding staffs in Government. The Commission's accomplishments are principally a product of their initiative, long hours and dedicated efforts."

*/ Chairman Shad's statements are enclosed in quotation marks. All others are from Mr. Rothman.

The Commission's accomplishments under Chairman Shad's leadership include the following.

Bush Task Group

In my opinion, in terms of potential long-term consequences, one of Chairman Shad's most significant accomplishments may prove to be his unpublicized role in initiating and participating in Vice President Bush's Task Group on the Regulation of Financial Services, which is expected to propose major legislative initiatives for the entire financial service industry.

Shortly after the Chairman arrived at the SEC in 1981, he began advocating in speeches, Senate and House testimony and individual meetings with cabinet members, and the Chairmen of the key Senate and House committees, the formation of a one-year task force, "To help simplify and rationalize the regulatory structures of the financial service industries". He frequently stated that, "The present regulation by historical industry categories are a product of the depression, half a century ago. They no longer address the problems or the opportunities of the balance of this century. New products and services and major mergers and acquisitions have bridged the traditional gaps between the banking, savings and loan, securities and insurance industries". And that, "Conflicts and overlaps have also multiplied. Today, ten federal and over 100 state agencies exercise jurisdiction over aspects of the securities markets alone. In addition, many financial products and services compete on the basis of their regulatory classifications, rather than their economic merits".

He specifically recommended, "Regulation by functional activities, rather than by outmoded industry classifications; consolidation of overlapping, duplicative and conflicting regulatory activities; and the elimination of excessive regulations within and between agencies".

While he received encouragement along the way, he had to overcome many obstacles in order to induce the decision to proceed. The Vice President's Task Group on the Regulation of Financial Services was formed last January. In addition to the Vice President, Secretary Regan, Attorney-General Smith, and OMB Director Stockman, it includes Shad (SEC), Volcker (FRB), Isaac (FDIC), Conover (Comptroller of the Currency), Gray (FHLBB), Phillips (CFTC) and others.

Inter-agency Meetings

Also, in order to resolve conflicts with other government agencies, Chairman Shad initiated the first round of meetings ever held by the full Commission and senior staff with the Federal Reserve Board, the CFTC, the FDIC, the Comptroller of the Currency and the FHLBB. These meetings have facilitated the resolution of day-to-day problems arising from the overlapping jurisdiction of these agencies, and have helped set the stage for legislative initiatives by the Bush Task Group.

SEC/CFTC Accord

Shortly after his arrival, Chairman Shad got together with Chairman Johnson of the Commodity Futures Trading Commission. Within a few weeks, they worked-out an Accord which resolved a seven-year turf battle between these two agencies. The Shad-Johnson Accord was unanimously approved by both Commissions and enacted by Congress last year.

"The SEC/CFTC Accord has permitted the SEC to authorize trading in options on GNMA's, Treasuries, foreign currencies, certificates of deposit and stock indices. Various of these options have been endorsed by the Federal Reserve Board, the Treasury, the housing, banking and securities industries, because they will facilitate government and mortgage financings, foreign trade and hedging the risks of fluctuating interest rates and securities markets."

Paperless Filing

The Chairman has given high priority, "To commencement of a pilot paperless filing, processing and information dissemination system next year. The objective is to accelerate dramatically such functions for the benefit of investors and their corporations and to facilitate the Commission's screening and processing of filings.

"As documents are filed, it will be possible for investors and analysts to access them instantly on home computer screens and analyze in minutes comparative data on securities that would otherwise take months."

The Chairman has formed a staff task force and a feasibility contract has been let. He has indicated that, "Industrywide implementation is intended to coordinate with the growth of home computers, from 5 million today to over 50 million within five years. By then, it is also expected that investors will be able to enter orders directly and receive confirmations on their own terminals."

Research Forum

The Chairman initiated the first Research Forum, at which leading security analysts recommended improvements in the SEC's disclosure and rulemaking practices to the full Commission and senior staff.

"The Commission has not received adequate input from those it is here to serve, investors and their advisers. Securities analysts spend a great deal of time daily, analyzing Commission filings in order to make recommendations to individual and institutional investors, stock brokers and investment advisory services. Securities analysts know best, the form and substance of the information they need and want."

In order to improve the Commission's communications with investors, analysts, businessmen and the media, the Chairman has also encouraged "plain English" seminars at the Commission.

Major Issues Conference

At the Chairman's initiative, a year ago the Commission held a conference on major issues confronting the nation's financial institutions and markets in the 1980s. The heads of other regulatory agencies and leading financial institutions and exchanges addressed the issues. The audience of 500 included senior industry representatives and the SEC Bar.

Action has been taken on many of the recommendations. As a result of the favorable reaction, the Chairman has scheduled another Major Issues Conference for next year.

Tender Offer Advisory Committee

With the unanimous concurrence of the other Commissioners, the Chairman appointed a committee of recognized authorities on tender offers and asked them to, "Review the methods of changing control of publicly-owned corporations, in terms of the best interest of all shareholders (i.e., those of target, bidder and bystander corporations)". The Committee has recommended the most significant overhaul of tender offer regulations since enactment of the Williams Act in 1968. Their extensive recommendations are being reviewed by the SEC and Congressional staffs, with a view to regulatory and legislative initiatives next year.

Public Utility Holding Company Act

At the Chairman's initiative, with the unanimous support of the other Commissioners, the Commission has proposed repeal or major amendment of the Public Utility Holding Company Act. In

Senate and House hearings, the Chairman has testified that "The principle purpose of the Act - dismantlement of the multi-tiered public utility holding companies - was accomplished 20 years ago, but it continues to subject the utilities which generate 20% of the nation's electricity and distribute 8% of our natural gas to prior SEC approval of their financings, geographical expansion, mergers, acquisitions and intra-system transactions. Such actions by all other electric and gas utilities are also inhibited by concerns over becoming subject to the Act. No telephone, water, sewer or other utilities are subject to such SEC regulations. If the Act is repealed or amended, these utilities will continue to be subject to the SEC's registration and reporting requirements and the pervasive rate and other regulations of the Federal Energy Regulatory Commission and the State Utility Commissions." Additional Senate and House hearings on this legislation are expected next year.

Record Results

This section contains facts which have not been previously released. It would be appreciated if you would include this section in your article.

The Chairman notes that, "As a result of productivity increases, the Commission's major divisions have achieved record results, or the highest levels in several years, in each of the last two

fiscal years, despite budgetary constraints. For example, by comparison with fiscal 1981, in fiscal 1983 (which just ended on September 30th):

- o over a third more enforcement cases were brought;
- o over a quarter more investment company and adviser inspections were conducted;
- o over 15% more broker-dealer reports were processed;
- o and over 5% more full disclosure filings were handled;
- o than in fiscal 1981, despite a 3% reduction in personnel.

"More important than the statistics are the substantive programs the Commission is implementing. Some are increasing investor protections. Others are reducing investors', corporations' and the SEC's paperwork expenses by hundreds of millions of dollars per annum, but not investor protections."

Enforcement

The Chairman has allocated the largest portion of the Commission budget, about a third, to the enforcement program. The enforcement program is discussed in greater detail in response to subsequent questions.

Insider Trading

As reported in the press, shortly after his arrival, the Chairman said, "The Commission intends to come down with 'hobnail boots' on those who trade on inside information". The Commission has since brought a record number of such cases and has unanimously proposed the Insider Trading Sanctions Act, which has passed the House and is pending in the Senate.

In the House hearings on the ITSA, the Chairman pointed-out that, "The benefits to the investing public will be significantly reduced, if the Act inhibits corporate executives from legitimate efforts in behalf of their shareholders, for fear of incurring substantial personal fines; and if it imposes heavy compliance costs on brokers, who in the normal course of business, might incur such fines, as a result of executing transactions that prove to have been based on inside information. Such costs are inevitably passed on to the investing public." The House Bill has been amended to incorporate the Chairman's suggestions. Senate consideration of the ITSA is expected early next year.

Swiss Accord

The Chairman asked John Fedders and Ed Greene to head up the Commission team which conducted the negotiations that led to this Accord. It was signed by the Chairman, following unanimous approval by the Commission.

The Chairman has said, "The Swiss Accord removes the haven of the Swiss secrecy laws from those who would trade on inside information. In this era of increasing internationalization of the securities markets, the Swiss Accord is an historic precedent.

"The Swiss banks have sent notices to their clients throughout the world, informing them that if they do not consent to the disclosure of their identity in connection with insider trading inquiries, the banks will not execute transactions for their accounts in U.S. markets. It is believed these notices have already inhibited such activities.

"In addition, as contemplated at the time of the Accord, legislation has recently been proposed in Switzerland, which would prohibit insider trading for the first time in that country."

Intermarket Surveillance System

At the Chairman's unpublicized initiative, "In order to improve shareholder protection, under the SEC's oversight, the securities exchanges and over-the-counter markets are enhancing their electronic intermarket surveillance systems and their transaction audit trails. These measures permit the quick identification of market manipulation and insider trading. They are also cost-effective, because audit trails reduce the industry's transaction reconciliation costs."

Accountant Peer Reviews

In unpublicized meetings with members of the Financial Accounting Standards Board and the Public Oversight Board of the accounting profession, the Chairman has encouraged enhancement of the accounting profession's self-regulatory efforts. This is an area in which the SEC does not have direct jurisdiction; however, "The 428 firms which audit over 90% of the publicly-owned corporations have increased their peer reviews from 40 in 1980 to 200 in 1983. They are now on a three-year peer review cycle. The purpose of these reviews is to assure high auditing standards. They are also cost-effective, because they reduce auditors exposure to liabilities to those who rely on their audits."

Accounting Series Update

In April of last year, on the recommendation of the Office of the Chief Accountant, the Commission unanimously approved withdrawal of 80 redundant or outmoded Accounting Series Releases, and codification of the balance in a ready-reference manual.

Shareholder Communication

"On the recommendation of the Advisory Committee on Shareholder Communications, in order to facilitate corporations' ability to communicate with their shareholders, the Commission unanimously approved the requirement that brokers provide issuers with the names and addresses of their beneficial shareholders who do not object. The Commission has also unanimously proposed legislation that will require the banks to comply with similar regulations."

Proxy Revisions

Under the Chairman's direction, the Division of Corporation Finance commenced a major review of the proxy rules and regulations in February, 1982. Since then, public comments have been received and the Commission has unanimously adopted regulations which simplify and improve the shareholder proposal and management remuneration provisions.

Also at the Chairman's direction, Commission action on the merger proxy and contest rules is expected next year.

Net Capital and Letters of Credit

In May of last year, upon the recommendation of the Division of Market Regulation, the Commission unanimously approved, "Updating the security industry's net capital requirements to take into account the industry's improved financial and operational conditions; and the use of letters of credit for clearinghouse deposits and stock loan collateral. This freed-up over \$700 million of the industry's capital, which has helped investment banking and brokerage firms handle the much greater volume of financings and transactions since August 1982, and improve other services to investors."

Foreign Corrupt Practices and Glass-Steagall Testimony

The Commission unanimously concurred in the Chairman's testimony in support of major amendments to the Foreign Corrupt Practices Act and the Glass-Steagall Act. In the latter and other testimony, the Chairman urged the formation of a task force, regulation by functional activities and other concepts.

Book-entry Transactions

Late last year, upon the recommendation of the Division of Market Regulation, the Commission unanimously approved expansion of the book-entry system, for institutional transactions, in lieu of physical delivery of securities. "This will save brokers and agent banks an estimated \$400 million per annum." Such estimated savings have not been publicized.

Investment Company Act

The new short form mutual fund prospectus was unanimously approved by the Commission, upon the recommendation of the Division of Investment Management. It reduces investment companies' expenses, borne by investors, and provides them with the information they need and want. More detailed documents are available on request. In addition, at the Chairman's initiative, the Division of Investment Management is conducting a major review of the Investment Company Act, with a view to simplification and improvement next year.

SECO Legislation

Upon Market Regulation's recommendation, the Commission unanimously proposed legislation to abolish the SECO program, under which the staff was required to inspect and supervise 600 over-the-counter firms. "This legislation was recently enacted. The SECO firms are required to join a national self-regulatory organization. Since introduction of the legislation, the firms that employ over 90% of the SECO brokers have voluntarily joined the National Association of Securities Dealers."

Small Business Capital Formation

Under the Chairman's direction, the Commission has conducted the first Government-Business Forums on Small Business Capital Formation. The Chairman requested Commissioner Evans to chair these forums. As a result of these Forums, the Commission has unanimously amended certain of its regulations to facilitate small business capital formation and has unanimously endorsed certain legislation for this purpose.

International Conferences

The Chairman granted Commissioner Evans' request to represent the Commission at two international conferences of securities regulators from 31 nations. "The purpose of these conferences was to coordinate better regulatory and other activities in the rapidly expanding international securities markets."

Integration

"Integration of corporations' registration and reporting requirements last year has increased their financing flexibility and reduced their expenses (for the benefit of their shareholders) by well over \$350 million per annum, as well as the Commission's paperwork, but not disclosures to the investing public. Ed Greene and Lee Spencer deserve special recognition for bringing the integration package to fruition."

The integration concept was first proposed in 1939 by the National Association of Manufacturers. Over the years, many others have endorsed and refined the concept. Shortly after his arrival, Chairman Shad reviewed the concept with Ed Greene and encouraged implementing it within a year, which was accomplished with unanimous Commission approval.

Shelf Registrations

Shelf registrations of employee stock purchase plans and various mortgage, government and other financings have been permitted for many years. Shelf registration was part of the integration package.

The Chairman concurred in adoption of the temporary rule in March 1982 and permanent adoption of the revised rule this month. As revised, "It reduces the risk to investors and underwriters, by limiting such offerings to the largest, most creditworthy and widely followed corporations."

Exemptions

Under a Congressional mandate to assist small business capital formation, the Chairman also encouraged implementing Regulation D, which exempts from registration certain securities offerings to others than the general public.

"Exemption from registration last year of certain offerings, up to \$5 million to others than the general public, and the simplification of the private placement exemptions, have reduced the Commission's paperwork and corporations' expenses, but not investor protections. Over \$20 billion of such financings are expected this year. As a result of a number of staff meetings with the state securities regulators, several states have adopted similar exemptions, which are the first joint state and federal registration exemptions."

Failures

While it has improved, the Chairman views his major failure to have been his inability to effectively convey to the public his views on important matters. Examples include misconceptions concerning his objectives, the Mobil and Citicorp cases, the Commission budget and his personal finances. The following candid comments concerning Jeff Gerth are for background only.

His Objectives

As a former investment banker, he believes that, "By doing an outstanding job for the investing public, security firms build public confidence and clientele, for their own benefit". For example, he rejected, "Scores of potential public offerings of securities, because I did not believe in buying them for public distribution, unless I would buy them for my own account".

Under his direction, his firm was ranked first in the nation among major underwriters, based upon an independent study in 1972 of the after-issue market performance of the various firms' public offerings over a period of years (New York Times, Robert Metz's column, August 1, 1972). In recognition of such results, he received the "Investment Banker of the Year Award" from Finance Magazine in January 1973.

Shortly after joining the Commission, he stated in an interview with Jeff Gerth of the New York Times that, "If corporations make full disclosure of material negative and affirmative facts in clear, concise language, they serve the best interests of corporations and their shareholders." Gerth did not quote this statement. Instead, he characterized the Chairman as believing among other things that companies should project "a glossy image" to investors in order to facilitate their financings.

"Prior to Washington, my dealings with the press were excellent. I was candid and they were fair. Therefore, I was shocked by Gerth's distortions of my views and dismayed to see them picked up in other publications, which did not solicit any response from me. Gerth's characterizations in his initial and subsequent articles were antithetical to my fundamental convictions. However, I intend to continue to be candid with the press, because the vast majority of reporters are fair and accurate. I would appreciate your help and advice in this regard."

Mobil and Citicorp

"The Commission declined to bring the Mobil and Citicorp cases on the recommendation of the senior staff, because we did not have sustainable causes of action. Based on intermediate staff memoranda, recommending that such actions be brought, Jeff Gerth characterized the Commission as reluctant to bring actions against major companies. This is simply not true. There is no reluctance to bring actions against major companies.

"The Enforcement staff's job is to pursue all possible violations aggressively. It is up to the senior attorneys, who head-up the major divisions, and the Commissioners to review such recommendations and determine whether the Commission has a sustainable cause of action.

"For example, the issue in the Mobil case was whether the company should be sanctioned for failure to disclose the interest of the son of the president in a shipping company with which Mobil was doing business. The son did not reside in the father's home and the facts had been widely publicized before the case came before the Commission. At the Commission meeting, the Director of the Division of Corporation Finance pointed-out that the regulations did not require such disclosures, unless the relative resided in the corporate officer or director's household. The General Counsel concurred in the conclusion that we could not win the case. Therefore, it was not brought, but we forwarded to the House Commerce Committee, a full report on our investigation.

"The issue in the Citicorp case was whether Citicorp should be sanctioned for failing to disclose certain foreign currency 'parking' transactions. Based on an intensive investigation here and abroad, the Comptroller of the Currency concluded that there had been no violations of U.S. banking laws. However,

even if the allegations were granted, they did not rise to the level of materiality which the SEC must prove in order to sustain such an action. So on the advice of the senior staff, the Commission did not bring the action."

SEC Budget

The Chairman appealed to the White House OMB's initial budget recommendation and obtained a 3% increase, instead of a reduction. In discussions with the other Commissioners, the Chairman indicated that, "Many are concerned over the large projected federal deficits, but in the next breath they say, 'But don't cut my budget, I want more'. When major welfare and other programs are being cut, it is difficult to justify increasing the Commission's budget." This view was supported by the other Commissioners in the House Appropriations Subcommittee hearings.

At the House reauthorization hearing, the Chairman of that Subcommittee, asked each Commissioner to review the budget and make his own recommendation. Such a request was unprecedented. The Commissioners were asked explicitly not to take into account fiscal policy considerations in making their recommendations. The other four Commissioners recommended an additional 6% increase, over the 3% proposed by the Chairman. Out of thousands of Commission votes, this was one of less than a handful of times in which the Chairman has been in the minority.

At the time, the Chairman stated, "The Commission could do more with greater resources, but it can maintain its present level of activities with only a 3% increase, because of well documented productivity increases at the rate of over 5% per annum. These include increasing paperwork simplification and reduction, expanding electronic data processing and screening of filings, and enhanced self-regulatory efforts, under the Commission's oversight". This opinion has been substantiated by the Commission's subsequent results, which are set forth on page 7. Instead of merely maintaining its level of activities, the Commission's increasing productivity has permitted it to increase such activities, despite budgetary constraints.

His Finances

In a feature article, Jeff Gerth stated that the Chairman participated in the initial Commission decision on the shelf rule in 1982, despite the fact that Morgan Stanley & Co. owed him money under a note (received when he sold his Hutton stock to avoid a possible conflict of interest). The article pointed-out that Morgan Stanley was opposed to the shelf rule and stated that the Chairman had prior correspondence with Morgan Stanley concerning the shelf rule even before he was confirmed as the Chairman of the SEC, and that he met with Morgan Stanley representatives shortly before the Commission meeting on the shelf rule.

Gerth knew first hand and as the result of a two-hour recorded interview with the Commission's Ethics Officer, the Chairman's Executive Assistant and me, but he omitted the fact:

- o that the note was unconditionally guaranteed by an irrevocable letter of credit from a major bank and was not directly nor indirectly dependent upon Morgan Stanley's financial condition;
- o that the "prior correspondence" consisted solely of a letter to the Commission's public files, copies of which were sent, not only to Mr. Shad as Chairman-designee, but to all the Commissioners, some senior staff members and others;
- o that in addition to the Chairman, the Morgan Stanley representatives met with each of the Commissioners shortly before the shelf rule meeting. The brief meetings consisted of presenting the Commissioners with copies of Morgan Stanley's latest letter to the Commission's public files; and
- o that contrary to Morgan Stanley's desires, the Chairman and a majority of the other Commissioners, voted to authorize the shelf rule on a temporary basis. (It has of course subsequently been extended on a permanent basis.)

Gerth's charges were promptly repeated in other publications which did not quote or reflect my or the Chairman's response.

The Chairman subsequently incurred \$70,000 in legal fees defending himself in a Congressional investigation, which ultimately exonerated him. The charges were widely publicized. The exoneration was not.

2. "As a long time investor, I know that it is in investors' interest for the Commission to increase corporations' financing flexibility and reduce their expenses, because in the final analysis, the costs of regulations that reduce corporations' financing flexibility and increase their expenses are borne by their shareholders. I am also keenly aware of the importance of effective investor protections, particularly for unsophisticated investors."

In recognition of his efforts in behalf of shareholders, last month Chairman Shad received the "Distinguished Service Award" from the National Association of Investment Clubs. This award has not been publicized.

As tangible evidence of his commitment to the effective enforcement of the securities laws, he has allocated the largest portion of the Commission's total budget, about a third, to the enforcement of the securities laws. He has repeatedly said, "America has the best securities markets the world has ever known. The SEC's job is to help keep them that way."

3. The Enforcement Division is carefully reviewing the analysis you provided. The Chairman has not had an opportunity to do so, but he offers the following observations.

"I do not know how they classified the cases by a single cause of action and defendant. Most Commission cases involve several causes of action and defendants. I would think a case-by-case review might result in differences of opinion as to how some of the cases should be classified.

"In any event, the Commission's enforcement program is constantly responding to changing market conditions. A large number of questionable payment cases were brought a few years ago. Such activities have since been inhibited by the Foreign Corrupt Practices Act. Corporate executives may be willing to engage in questionable conduct for the benefit of their companies, but few are willing to expose themselves to heavy personal fines and criminal prosecution.

"The large volume of tender offers last year resulted in a record number of insider trading cases. Now we are seeing a large number of accounting cases, so-called 'cooking the books' cases, due largely to efforts by some companies to report favorable results, despite the 1982 recession. When the present 'hot new issue market' collapses, we can anticipate a large number of actions against issuers and brokers, who have failed to comply fully with the securities laws.

"Such is the nature of law enforcement. While we do inhibit violations, we can only prosecute them after they occur."

In response to your question, "Is the Commission less aggressive in pursuit of large companies?", the cases that gave rise to this question are Mobil and Citicorp. In the course of subsequent House hearings, it was made clear that the Commission did not bring actions against Mobil and Citicorp, because it did not have sustainable causes of action. These cases are discussed in greater detail on page 17.

"In specific response to your question, there is no intention, policy or practice to be less aggressive in the pursuit of large companies. The Enforcement Division, under John Fedders' direction, makes every effort to pursue all material violations, regardless of the size of the companies. Successful actions have been sustained against many large companies. If there are fewer cases against large companies, it reflects the reasons cited above. It does not reflect a change of policy or objectives at the Commission.

"With reference to cases against individuals rather than corporations, it depends upon the specific facts, but in some cases, shareholders are harmed, rather than helped, when their companies are sanctioned for the acts of unscrupulous executives, who for example have absconded with corporate funds. In such cases, the corporation and its shareholders are the victims, not the culprits. If we unjustifiably sanction a corporation, we unjustifiably impugn it, and therefore the shareholders' investment. And we make it more difficult for the corporation to hire top quality executives, who are concerned about the reputation of the companies with which they become associated.

"Unscrupulous executives would much prefer to have their companies sanctioned, than themselves; but they, rather than their victims should be sanctioned. Misdeeds are committed by individuals, in the name of corporations.

"Most of these cases come before the Commission a year or two after the misconduct. If the culprits have long departed the company, does it make sense to enjoin the company from a repetition of their misconduct? Why should the corporation, the shareholders and the new management have to incur the litigation expense, the adverse publicity and the opprobria of past miscreants' misdeeds?

"On the other hand, there are many cases when it is appropriate to bring actions against corporations. For example, when the corporation has been the beneficiary of misdeeds. If it has received ill-gotten gains, it must be compelled to disgorge them, but it should not automatically be enjoined from a repetition of past managements' misdeeds. When the Commission seeks an order to correct false or misleading disclosure documents, it is necessary to compel the corporation to comply. These are but a few examples of instances when actions should be brought against corporations."

4. As previously indicated, the Chairman has not had an opportunity to carefully review your study, but I would point out that there has been a substantial increase in the number of cases brought against broker-dealers in the last two years. The 205 cases brought in the two year period, May 1981 to May 1983, compares with only 163 cases brought during the three prior years.

The number of cases brought against large broker-dealers has also increased during the past two years. While there were a higher percentage of broker-dealer cases involving large firms in earlier years, the higher percentage reflects the lower number of cases brought during those years.

Also, I do not agree that failure to supervise charges are merely "technical" violations. The statutory scheme that the Commission administers is designed to remedy past violations and to assure that violations are not repeated. An important means of preventing violations is adequate supervision.

The adverse publicity that accompanies failure to supervise cases, is very costly to the firms. It shakes the public's confidence in the manner in which they handle their clients' accounts, and it is used against them by competitors.

Most broker-dealer cases involve violations on the part of registered representatives in branch offices. It should not be expected that a case will be brought against an entire firm, unless there has been a failure to supervise, or the violations reflect special circumstances that warrant an action against the entire firm, such as a firm-wide breakdown or pattern of misconduct.

The Commission must assess both the culpability of the individuals and the responsibility of the firm to prevent misconduct.

5. Chairmen of the SEC have historically not been known for their public speaking or political abilities.

The Commission is a collegial body and I do not know of any Chairman who has gotten his way all the time. Out of thousands of votes, Chairman Shad has been in the minority less than a handful of times. The vast majority of the Commission's actions on major issues have been unanimous.

Every Chairman has had areas in which he has been more expert than in others and has had the benefit of a different set of experiences. Chairman Shad is a person who worked his way through the University of Southern California, the Harvard Business School and the New York University Law School; who has taught investment banking at the NYU Graduate School of Business Administration and has written numerous papers published in leading legal and business reviews; and who has been a very successful security analyst, investor, outside director of 17 publicly-owned domestic and multi-national corporations, and an investment banker who has personally assisted scores of corporations in consummating billions of dollars of financings, mergers and acquisitions. He has brought an exceptional knowledge to the SEC of how the securities markets and industry really work, and of the information that investors, securities analysts, advisers and brokers need and want. While unpublicized, his efforts within the Commission and with other agencies, the Administration and on the Hill have advanced the interests of the Commission.

6. Since joining the Commission, Chairman Shad has consistently stressed investor protection and regulatory reform.

"I began as a security analyst in 1949 at \$3,500 per annum, saved \$1,000 and became an investor, which I've been for over 30 years. I see the issues from the perspective of an investor, rather than as a lawyer, politician or theoretician. Each has contributions to make, but my fundamental perspective is that of an investor."

7/ "There is much more to be done. The paperless filing, processing and information dissemination system offers enormous potential benefits to investors, issuers and the Commission. The Bush Task Group's legislative initiatives are expected shortly. Major reviews of the merger proxy and contest rules, the tender offer rules and the Investment Company Act are in progress. The Insider Trading Sanctions Act, the Financial Institutions Deregulation Act and major amendments to the Glass-Steagall Act, the Foreign Corrupt Practices Act and the Public Utility Holding Company Act are all pending.

8. "Since August of last year, we have witnessed the broadest and strongest stock, bond and new issue markets in history; unprecedented capital flows of over \$380 billion into the bank money market and super now accounts, and \$55 billion out of the money market funds into such accounts, the stock market and

equity mutual funds; over 700 banks entering the discount brokerage field and brokers acquiring "non-bank" banks and a host of other financial service concerns. Major monetary and fiscal policy issues are also pending. It is an extraordinary period of accelerating change.

"Whether called deregulation or by another name, the Commission will continue to be responsive to the needs and interest of investors in the rapidly changing marketplace.

"The one-year and five-year plans are simply management tools, to anticipate change, recognize opportunities, set priorities and gauge future performance".

9. Traditionally, the SEC has had a close working relationship with the business and financial community. The Commission has also been sensitive to the burdens imposed by its regulations.

The Chairman has heightened these sensitivities and strengthened the Commission's relationships, particularly with investors, securities analysts and the self-regulatory organizations, as well as with the business and financial community.

10. "In order to do an effective job, the Commissioners and staff have frequent conversations with outsiders, and through public releases the views of all are solicited and considered. But, as an independent regulatory agency, the SEC's rules are not subject to prior approval by the Administration, Congress or others. The decisions the Commissioners and I make are based on our independent best judgements."

11. "I enjoy my job, perhaps because like most SEC Commissioners, I'm a workaholic. It is very demanding. The hours are long, but the major issues addressed make it worth the effort. As for the future, I have no commitments - beyond lunch with you on Friday."