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THE CHALLENGES OF TOMORROW FOR THE SEC

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It has become a truism that of the New Deal-spawned agencies the SEC has been the most successful. As Joel Seligman has pointed out in his masterful history of the Commission, *The Transformation of Wall Street*, this success has been uneven, with periods of great achievement alternating with periods when it appeared the Commission had lost its direction and vigor. This should not be surprising: the most successful institution, as well as the most successful man, knows moments of mediocrity.

However, there is a danger that as the Commission basks in these moments of celebration it will forget that it has had shortcomings, it has had failures. I would count among these, at least in recent times, the fact that the Commission, in reaching a successful conclusion of an endeavor, has sometimes seemed to tarry unduly along the way. Instances of that vary in importance. Among the more important was the long journey to the unfixing of commissions. Having said this, though, perhaps the long period of fermentation served a purpose and made the transition smoother (rocky though it was nonetheless for some) than it might have been earlier.

Another of large importance: the integration of 1933 Act and 1934 Act disclosure. This appears to have been first seriously advocated in 1963 in the Special Study (although in a letter to President Roosevelt, then Chairman William O. Douglas, in summing up the state of the Commission on the eve of his elevation to the Supreme Court, made reference to the possibility of such integration) and it was in 1966 that Milton Cohen so brilliantly argued the case for it in the *Harvard Law Review*. Why were the finishing touches on this reform, recognized for at least two decades as worthy and necessary, only accomplished in 1982?

And concomitantly, why so long straightening out (they are not completely straight now) the crooked lines of the transaction exemptions of the 1933 Act? The *Ralston Purina* case was decided in 1953. It took almost thirty years before the Commission solved, at least in some measure, the problems posed by that case (Homer Kripke would say the problem still has not been solved).

I would add one dissent from Mr. Seligman's conclusions: I do not think the Commission has tarried unduly in moving toward a national market system. Without the hardware in place, I think the elimination of Rule 390 of the New York Stock Exchange would have created nightmares of confusion and might well have adversely affected markets.

In short, the Commission has often been right but been late. Priorities undoubtedly have played a role; sometimes the most plausible solution has been slow in manifesting itself. Whatever the reason, it does suggest that the Commission search for more vigorously and define sooner the needs of tomorrow. I am afraid it is not doing that adequately. Let me mention only two areas where I think more could be done.

Everyone knows that the internationalization of a securities markets and the securities industry is proceeding at a breakneck speed. It was in 1973 that Nanny Cohen wrote his prophetic article on the internationalization of securities markets and said it was a concept whose time had come. Since then, events have demonstrated Nanny's foresight, yet I discern little sense of immediacy in the Commission's efforts to deal with the regulatory problems inherent in the development.

And second, I do not feel that the Commission is reacting with sufficient concern to Bevis Longstreth's urging, while he was a commissioner, that the dramatic growth of institutional investing and the increased reliance of individuals upon professional assistance necessitates a searching review and perhaps revision of the Commission's regulatory endeavor,

The Commission now, as in the past, not excluding the time I was there, is heavily burdened with the here and now and it is difficult to find the time to think lofty and future-searching thoughts. However, it is managerial creed that a chief executive officer should spend no less than half his time doing just that.

And it is difficult in days of repeated budget cuts to find the staff to think those thoughts and develop the plans to implement them. It is critical beyond words, though, that the Commission learn from its past, and identify earlier than it has the changes in its regulatory effort that must reflect the changes in the world in which it works and then bring the changes to fruition promptly. Those changes are occurring more swiftly than ever. Unless the Commission learns to move more quickly, it will commit that deadliest of regulatory sins, the failure to learn from its own history.