

SECURITIES AND EXCHANGE COMMISSION
MAJOR ISSUES CONFERENCE
WASHINGTON, D.C.

PANEL: CRITIQUE OF THE COMMISSION ON ITS 50TH ANNIVERSARY

Discussion Outline

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and
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I. AN APPRAISAL OF THE PAST 50 YEARS

The Commission has a proud record in restoring and maintaining public confidence in the securities markets, badly tarnished by the 1929 crash and the Great Depression. Throughout virtually all of its life, it has enjoyed the reputation of being one of the best, if not the best, business regulatory agency.

A. What do you believe were the Commission's greatest achievements? When did it perform poorly?

II. DISCLOSURE

Do changes in market structure, the emergence of professional securities analysts, and the institutionalization of the markets warrant further assessment of benefits to investors by the mandatory disclosure system administered by the Commission?

A. Assuming antifraud laws to protect against deliberate misrepresentations, are market forces adequate to produce voluntarily a desirable level of information accurately and timely?

B. How do we weigh benefits against costs when small issues are involved? In this connection, is there a distinction between first-time public offerings and secondary trading? First-time offerings present the dilemma of competing policy goals --

-- avoiding burdening a small business with costs of disclosure when it is just starting out as a public company

--when, at the same time, mandatory disclosure about an unknown business is probably most needed.

How do we approach the reconciliation of these competing policy goals?

III. SELF-REGULATION AND DEFERENCE TO THE PRIVATE SECTOR

The Commission, almost uniquely among federal agencies, administers statutes which largely defer, under a concept of self-regulation, to the industry it regulates.

- A. How effective has that been? Does effective self-regulation depend on a firm government hand behind the scenes -- the "well-oiled shotgun behind the door," so to speak?
- B. An early determination by the Commission, reaffirmed over the years, was to defer to the private accounting profession for the setting of principles and standards rather than the Commission itself doing so. What is your view of the current wisdom of that policy and how should it be continued in the future?

IV. THE LAW ENFORCEMENT PROGRAM

Throughout its history, the Commission has strongly supported enforcement against fraud and manipulation. The SEC's enforcement program has generally been regarded as one of the best in the federal government. At times that program was simultaneously praised for its vigor and success and criticized for overreaching and over-zealousness.

- A. How do you appraise its past and present performance and what do you suggest for its future?
- B. Should the Commission continue to utilize enforcement proceedings to establish new standards of conduct rather than proceeding initially by announcement or rulemaking?
- C. From the late 1930's until the mid-1970's, the Commission enjoyed a spectacular record of success in the courts and especially in the United States Supreme Court. Judge Learned Hand of the United States Court of Appeals for the Second Circuit referred to the Commission as a "sacred cow." Since 1975, while still generally quite successful, the Commission's record in the courts has been more like an ordinary litigant's. How do you explain this and what do you see for the future

V. WHAT SHOULD BE THE FUTURE FOR THE SEC?

An early chairman, William Douglas, expressed the view that every administrative agency should come to an end on its tenth anniversary. After 50 years, the Commission is probably still on the threshold of revolutionary and not yet fully foreseen changes (1) in the field of financial services and (2) in the internationalization of financial markets,

- A. How should government respond? Should it lead and fashion or should it react?

B. Should there still be a vital role for a federal agency like the Commission to deal separately with securities and American securities markets while other agencies of the federal and state governments deal with (1) bank-type institutions, insurance and real estate; and (2) foreign relations?