SECURITIES AND EXCHANGE COMMISSION
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Some Notes On

LOOKING BACKWARD AND FORWARD AT THE SEC AFTER FIFTY YEARS.

By Homer Kripke

I. THE COMMISSION'S SLOWNESS IN DROPPING OBSOLETE MATERIAL AND CHANGING COURSE

A. A notable past example was the Commission's firm retention of historical cost exclusively and opposition to forward-looking material, long after the early conditions of depression and deflationary economy had ceased.

B. Much of the Public Utility Holding Company Act has long been obsolete. The Commission has recommended a repeal of the Act, but seems not to be pushing the issue.

C. Much of the disclosure under the Investment Company Act has long been obsolete and the Commission has only recently been moving on the subject.

P. The system of reliance on "independent" directors in investment companies is obviously misplaced, and the system of election of directors by stockholders in these companies is an anachronism. I do not pretend to have a good answer; but the Commission seems not to be thinking enough about these issues.

E. I do not here restate my oft-expressed views on the relationship between SEC and the FASB. The Commission should as a minimum be pushing the FASB on the following:

1. Reconsideration of FAS 15, Accounting by Debtors and Creditors for Troubled Debt Restructurings (1977). The message it sent about the securities and accounting authorities' willingness to condone the failure to recognize economic losses contributed, in my view, to the present banking crisis.

2. More recognition of the time value of money

3. Increasing the situations where values, rather than costs, are reflected in the primary financial statements. A change is needed, notably, in FAS 12 on Accounting for Certain Marketable Securities (1975).

4. Reconciliation of the sharp limitations on Extraordinary Items within the income statement with the recent tendency to permit by-passing the income statement altogether by direct charges to equity.

5. Solution of the pooling -- purchase problem and related treatment of goodwill.

II. THE TREATMENT OF SMALL BUSINESS.

On the one hand, small business cannot stand the expense and the diversion of effort required to fulfill all of the Commission's reporting and disclosure requirements. On the other hand, if small business is to go public, full disclosure is necessary here more than anywhere else; but yet, here more than anywhere else, a full disclosure tends to be of little value because of the inability to project from the past to the future in the case of companies without a substantial track record. The solution, it seems to me, is obviously to encourage small business to get its financing privately, without involving public investors, until the risks are somewhat alleviated. (This means, of course, that the rewards of being on the ground floor of a successful company would be lost to the small investor, but I question whether small investors should be, taking those risks in the hope of those rewards).

Former Rule 146, and new Rules 505 and 506, in so far as they force disclosure equivalent to a registration statement even on the part of persons who are well able to fend for themselves (unless they happen to meet the arbitrary definition of "accredited investor") represent exactly the wrong way to go, because they thoughtlessly discourage instead of encouraging private placement in venture capital situations, The lack of justification for imposing this kind of burden of disclosure on a private placement to privately selected investors is made even more clear by the fact that under a recent amendment to Rule 144, after the private investor has held the security for three years, he can dump the securities on the public without limitation as to amount or method, and even though the issuer is not a reporting company and the public has no access to information.

III. MAKING LAW BY LITIGATION.

In my view the Commission has sought to retain flexibility at the expense of burdensome litigation for itself and its targets in trying to make law by litigation. Congress has always been sympathetic to the Commission's reasonable requests for needed powers. The Commission has needlessly worsened its relationships with its constituencies by this method of attack. A notable example of haste-makes-waste is the current effort to get a triple damage bill while leaving the definition of the wrong to future litigation. Even when the current Winans -- Wall Street Journal episode suggests the need for a well-considered rule, I have not heard of the Commission proposing an amendment to its bill to meet the problem.