



NEWS

**SECURITIES AND
EXCHANGE COMMISSION**

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BLUE SKIES AND NEW HORIZONS OF COOPERATION

ADDRESS BY

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North American Securities
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I appreciate your invitation to make a few remarks at this Spring Meeting which provides a forum at which to exchange ideas, discuss differences, coordinate activities and gain the benefits that can come from cooperation between State and Federal regulators who have similar responsibilities. Because our responsibilities are great and our resources limited, we must support and strengthen each other in the task of maintaining securities markets which engender investor confidence and enable legitimate business organizations to obtain needed capital from the public. We must also continue our efforts to meet our responsibilities to protect investors without burdening business operations with unnecessary regulations which stifle private initiative and innovation.

Along with other Federal government agencies, the Commission is in a period of transition. Early next month, John Shad will become chairman of the agency and a month later one of our present members for whom I have great respect, Steve Friedman, will be leaving. A number of you have expressed an interest in what can be expected from the Commission with the changes that are taking place. As with other agencies, the Office of Management and Budget has asked that our proposed budget be reduced, for example, personnel levels would be reduced by five percent in the current fiscal year which ends on September 30, 1981 and by an additional three percent in fiscal 1982. Such reductions will not undermine our efforts to protect investors and provide fair and efficient securities markets but because our agency is already relatively efficient, our effectiveness will be somewhat diminished.

These proposed budget cuts however are minor compared to other suggestions for changes in the Commission's operations. For example, a former subject of a successful Commission enforcement action recently recommended that the "SEC should no longer be permitted to continue as an independent agency but rather should become an adjunct of the Department of Commerce--which is charged with the responsibility of assisting the U. S. business community." Another source of far ranging recommendations is the SEC Transition Team Report.

In my view the report is a mixed bag of somewhat inconsistent statements and recommendations. After referring to the Commission's "deserved reputation of integrity and efficiency" and stating that it "appears to be a model government agency," the report severely criticizes every division and office, our organizational structure, our oversight initiatives, our priorities, and our budget requests, and suggests that "in virtually every area the leadership of the various . . . divisions is unsatisfactory either because of philosophic incompatibility or competence." This is sheer nonsense.

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

Let me focus on the recommendations dealing with enforcement because that is an area where coordination and cooperation between the Commission and state regulators is very important and where it has traditionally been most evident. The report stated correctly, I believe, that "the integrity, dedication and zeal of the staff of the SEC's Enforcement Division is the envy of government", and "that the technique of investigation and litigation and the enthusiasm which the staffers of the SEC bring to their work is truly a model for all government." It continued "It is widely recognized that the Division of Enforcement benefits from highly-trained professionals, good leadership and a dedication to the principles of integrity." Yet the report recommended that the enforcement staff in Washington be decimated and suggested that the Division director be a target for replacement. In response, a ranking U. S. Senator stated that he would "oppose with every means at [his] disposal any nominee to the SEC whose views reflect the recommendations of the transition report to reduce the Commission's enforcement powers." A prominent New York securities lawyer commented that the recommendations to restructure our enforcement effort would "lead to a disastrous result." Equally important, I believe, was a comment of a top official in a large U.S. Corporation who said he was relieved to hear my view that the change in administrations would not result in a major change in budgetary resources or Commission emphasis. It was his belief that our activities are essential to honest markets and investor confidence which are necessary for issuers to be able to obtain needed capital from the public.

Last week the press reported that our Enforcement Division Director will be leaving to become General Counsel of the Central Intelligence Agency. This will be a significant loss. I know that many of you have a special relationship with Stan Sporkin and recognize that he has strongly supported cooperative Federal/State enforcement efforts. Stan is not leaving because his position was in jeopardy, as some have suggested. In fact, he may well have greater staying power and support than any other government staff official. We will miss Stan's innovativeness, his dedication to investor protection, his sense of fairness, and his ability to inspire those who work with him. Nevertheless, as a good manager, Stan has provided opportunities for his co-workers to grow and develop their capabilities, and I believe he would be the first to acknowledge that his departure will not leave the Commission devoid of talent to lead our enforcement efforts. The appointment of a new director will be a Commission decision and I believe you can look forward to a continuous good relationship in enforcement matters.

The Transition Team Report did make some good suggestions with respect to Federal/State relationships. I am aware of the source of most of those suggestions, and it

would be my recommendation that NASSA representatives seek to arrange an early meeting with our new Chairman to inform him of your interest in greater Federal/State coordination and of any specific issues about which you have strong feelings.

While we have broad areas of agreement, we also have some differences, just as is the case in any partnership or among brothers. We must also be willing to discuss those, work out accommodations where possible, and not let differences undermine other cooperative efforts. One area of disagreement is the regulation of tender offers where our contact is often in the form of adversarial litigation. It would be misleading for me to leave the impression that I believe a reconciliation in this area would be easy to achieve because we are dealing with different philosophies. The basic issues in this controversy are the focus of the Mite Corporation case now on appeal to the U. S. Supreme Court.

In that case, the Court is faced with two broad constitutional questions--first, whether, under the circumstances of this particular case, the pre-commencement disclosure provisions, as well as the other provisions of Illinois law, stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress in enacting the Williams Act; and, second, whether the Illinois takeover statute contravenes the Commerce Clause by burdening interstate commerce disproportionately in relation to the local benefit it confers.

The Commission's proposed tender offer legislation presents an opportunity for the rational coordination of Federal and State takeover regulation. Ordinarily shareholders of a company, subject to a tender offer, are domiciled throughout the nation and, therefore, no state has special claim to the protection of the shareholders as a group. The Commission has taken the position that only a national law could provide an effective means of protecting the many, divergent interests involved. Accordingly, the Commission has endeavored to differentiate between those types of state regulation that would interfere with nationwide tender offers and those relating to tender offers where the primary interest is truly local.

Having commented on what may well be our greatest disagreement, I would like to shift the focus to certain projects in which joint efforts of the states and the Commission are enormously beneficial. In this time of federal budgetary restraint, the role of the State regulator should, and in my opinion will, enjoy increasing emphasis.

In no area is state action more essential than in enforcement. I am heartened by the emergence of various joint projects among the states which have proven to be effective in protecting investors. Likewise, mutual assistance between the

states and the SEC with respect to enforcement actions has continued to increase. There are literally hundreds of instances in which we referred cases to you, you referred cases to us, or in which we have assisted each other. Most often the assistance does not receive public acknowledgement but recently, the Commission, in announcing the filing of an injunctive action which was consented to by Heritage Investment Group, acknowledged the cooperation of Tom Krebs of Alabama in bringing this matter to our attention and in providing valuable assistance.

The constant flow of information and joint activities that exist are truly impressive. Among these are regular monthly meetings to discuss matters of mutual concern, and determine how cases should be handled: legal accounting, investigative and trial assistance; joint inspection programs; training programs for broker-dealer examiners; accountants, and investigators; assistance in the processing of filings; joint seminars, and support for necessary budgetary appropriations. I am sure you would agree that these types of activity are in the interests of the investing public.

I would specifically like to commend NASAA for its submission of recommendations to revise Guide 60 relating to real estate limited partnership disclosure. Your subcommittee's extensive and thoughtful study has begun a fruitful dialogue with our Division of Corporation Finance, which should result in providing investors with more uniform and meaningful disclosure.

Unfortunately, our efforts to coordinate with you have been sporadic in the area of private capital formation. In the past, although proceeding with the best of intentions, the Commission has failed to fully consider the pivotal role states play in the capital formation process. While we have included State Securities Administrators on our mailing list when we proposed rules and have encouraged your comments, often we have not encouraged your participation in our preliminary consideration of such rules. The Commission can adopt rules which in and of themselves are beneficial to small business but without comparable rules on the state level the benefits are limited. The problems which result from this lack of coordination were addressed by Congress in the Small Business Investment Incentive Act of 1980.

As you know, one of the declared policies of that Act is greater Federal/State cooperation in securities matters, including the sharing of information, maximizing the uniformity of regulatory standards, and reducing the costs of capital formation. In order to effectuate these ends, Congress directed the Commission to conduct an annual conference with State Securities Regulators. Similarly, the Act also directs the Commission, in conjunction with other federal agencies, organizations representing State Securities Commissioners, and

leading small business and professional organizations to conduct an annual "Government-business forum" to study and report on the problems of small businesses in raising capital. I might note that the Act specifically provided that funds be appropriated for the Commission to conduct these meetings; as of yet we have received no such funding.

This lack of additional funding, however, will not deter the staff from pursuing the objectives of the Act. In this regard, the development of a uniform exemption from registration for small issuers was set forth as a goal for Federal/State cooperation.

In response to this and other goals of the new Act, the Commission published a release in which we announced our intention to re-examine the private offering exemptions under Sections 3(b) and 4(2) of the Securities Act. Concurrently with our examination of these exemptions, NASAA's Subcommittee on Small Business Financing has been working on a uniform private offering exemption among the various states. I believe that coordinating our efforts at this early stage, would provide the greatest potential for formulating a uniform Federal/State private offering exemption which the Commission is empowered to adopt for federal purposes.

In furtherance of this goal, the Commission's Division of Corporation Finance has been in contact with Tom Krebs in order to establish official channels of communication. In Addition, as further evidence of our long range commitment to this cooperative effort, the Division has arranged to meet with NASAA's Subcommittee on Small Business Financing later this afternoon.

We can also improve our sharing of computerized information. The Central Registration Depository or CRD, originated by the Uniformity Committee of NASAA in 1979, is a development of which you can be justifiably proud. This is a long range project with great potential for cost savings and reduced paperwork. I understand that although only two states have inputted their current registration data, two others are in the process and thirty-one have requested to become participants in the system. I am not aware of any reason why the Commission should not also put its public dealer registration data into the system. As the system is expanded, other types of information could also be included.

Our proposed Rule 17a-24 concerning the establishment of customer complaint registries is another means of sharing information that should result in more effective compliance programs. As now drafted, Section 24(c) does not specifically include State securities entities within those groups to which information contained in a complaint registry would be made available. We have received recent comment letters requesting

that this section be amended to provide clear authority for State regulators to obtain data from the registries.

While the Commission has not yet received staff recommendations with respect to final approval of Rule 17a-24, and I do not desire to prejudge the issue, the request that state authorities have access to information about those who do business within their jurisdiction makes sense to me. Let me mention just one other new area of cooperation.

Last fall, for the first time, we invited a State Securities Administrator to be part of the United States delegation to the Interamerican Conference of Securities Commissions and Similar Agencies which was held in Montreal. I believe this should be a continuing relationship. It was interesting to me to find that many of the problems confronting our neighboring countries to the south are similar to those being dealt with by State Securities Administrators. I believe NASAA representatives should be able to play an important role in the 1982 Conference scheduled to be held in the United States.

In conclusion, I hope that none of us will permit differences to undermine the working relationship which we now have with each other. There is every reason to believe that due to necessity and desire, our cooperation and coordination will increase. Only in that way can the benefits to investors and those entities which legitimately seek capital from the public be maximized.