SEC ROUNDTABLE

MARKET RUMORS AND TRADING HALTS

February 19, 1986

U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

The members of the Commission attending the Roundtable were Chairman John Shad and Commissioners Charles C. Cox, Aulana L. Peters, Joseph A. Grundfest, and Edward H. Fleischman. Participants from outside the agency were:

George W. Bermant, Partner
Gibson Dunn & Crutcher
Denver, Colorado

Ivan Boesky, Chief Executive Officer
The Boesky Corporation
New York, New York

Professor Daniel R. Fischel
University of Chicago
Chicago, Illinois

Royce Griffin, President
North American Securities
Administrators Association
Denver, Colorado

Boyd L. Jefferies, Chairman
Jefferies & Co.
Los Angeles, California

Arthur Levitt, Jr., Chairman
American Stock Exchange Inc.
New York, New York

Gordon S. Macklin, President
National Association of Securities
Dealers, Inc.
Washington, D.C.

John J. Phelan, Chairman
New York Stock Exchange
New York, New York

William A. Schreyer, Chairman
Merrill Lynch & Company Inc.
New York, New York

SEC staff participants included:

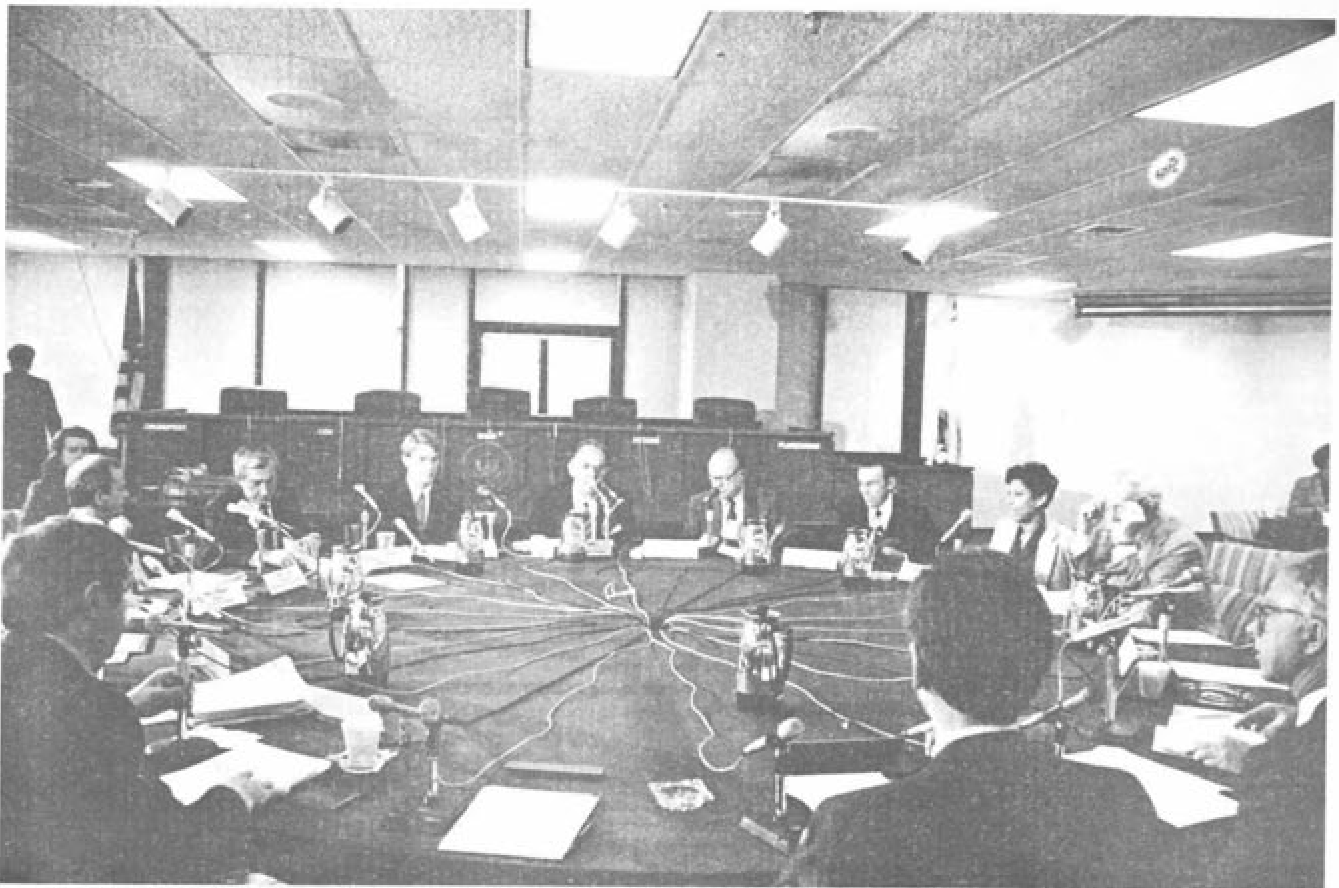
Alan L. Dye
Special Counsel to the Chairman

Richard G. Ketchum
Director
Division of Market Regulation

Gary G. Lynch
Director
Division of Enforcement

INTRODUCTION

The SEC Roundtable on Market Rumors and Trading Halts was convened to discuss disclosure of merger negotiations, trading halts, and the origin and effects of rumors in the marketplace. Sudden and dramatic movements in the price of public companies' stocks have become a source of concern for investors, public companies, regulators, self-regulatory organizations, and other market participants. The purpose of the Roundtable was to afford the members of the Commission and senior staff the benefit of the views of outside authorities and experts on important issues and to develop solutions to perceived problems.



Issues and Actions

With a view to the possibility of recommending regulations or legislation, the SEC staff is reviewing the following issues discussed:

Safe Harbor

Whether issuers should be granted a "safe harbor" if disclosures are accurate when made, without requiring further announcements as a result of subsequent developments.

Disclosure of Extraordinary Events

Whether certain "extraordinary events" should be identified for the purpose of requiring issuers to make immediate or prompt disclosure of such events.

Trading Halts

Whether trading in all markets should be halted when trading is suspended by the primary market.

Rewards to Informants

Whether rewards should be offered to persons who provide information that leads to successful prosecution of violations of the securities laws, specifically market manipulation and insider trading.

Chairman John Shad opened the Roundtable by inviting additions to the agenda. Also pictured are William Schreyer (right), Chairman of Merrill Lynch, and Alan Dye (left), Special Counsel to the Chairman.

Duty to Disclose

Issues
Whether and to what extent issuers should be required or permitted to disclose preliminary merger negotiations or to respond to inquiries about market rumors affecting the market for the issuer's stock.

Problem
Rumors of a pending merger or other material event, whether true or false, may cause substantial movements in the price of an issuer's stock. Some observers have remarked that the Commission's recent Carnation report encourages companies to issue a "no comment" response to all inquiries about market rumors rather than make substantive disclosures.

Views
Most participants agreed that issuers should make timely disclosure of material events, especially when significant market activity in the issuer's stock suggests that word of the material event may have leaked. There was concern, however, that issuers not be required to disclose information prematurely, especially where disclosure might render the material event, e.g., a possible merger, less likely to occur. Many participants stated that issuers should not be required to update statements that, at the time they are made, are true, complete, and made in good faith. Others believed that issuers should be required to update statements that continue to influence the marketplace.

Discussion
Mr. Lynch explained that the question whether an issuer has an affirmative duty to make disclosures under the federal securities laws when its stock is the subject of rumors generally depends on an interpretation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5. The courts have not imposed on issuers an affirmative duty to respond to market rumors unless the issuer is offering, selling, or buying its own securities, or knows that the rumors are attributable to the issuer itself. Mr. Lynch believed that the reluctance of issuers to confirm or deny rumors, coupled with fewer and shorter trading halts, has contributed to the increased trading volatility in today's markets.

Mr. Schreyer stated that takeover rumors are terribly disruptive to a company. Management's first priority is to continue running the business and to assuage the fears and uncertainties of the company's employees and shareholders. Management's primary obligation in dealing with false rumors is to ensure that the company's public statements are true and not misleading. Counsel for Merrill Lynch has advised the company that, based on the current state of the law, the company should adopt a general policy of "no comment" in response to inquiries about rumors or market activity and not issue a statement which may, as a result of subsequent developments, become misleading or untrue and have to be amended. A policy of "no comment," however, does not help calm the volatility of the stock or allay the concerns of employees and shareholders. Mr. Schreyer said that he would like to have greater flexibility, in dealing with unfounded rumors, to state that there is no truth to the rumors, without incurring a possible duty to update.

Mr. Boesky said that, as a general matter, more complete and accurate information for the marketplace is the desired result. For that reason, he said, the Commission reached the right result in the Carnation report. Unless unusual trading activity is occurring, an affirmative duty to disclose

should not be imposed on issuers that are engaged in preliminary merger discussions. If an issuer has taken significant steps toward a merger and its stock has become unusually active, then investors are best served by requiring issuers to disclose the status of discussions.

Mr. Phelan said that one possible problem with requiring issuers to deny false rumors lies in defining the word "rumor" and distinguishing it from "street chatter." Another problem is that "no comment" statements are interpreted by most observers as meaning that something is actually underway. Responding "no comment" seems only to heighten the speculation surrounding the stock. Commissioner Fleischman agreed with Mr. Phelan, noting that "no comment" might carry significant meaning if, in response to prior inquiries about the same rumor, the company had issued denials.

Commissioner Cox said that it would be reasonable for a company experiencing false takeover rumors to state that, as of the time of the statement, it knew of no basis for the rumors. Commissioner Grundfest observed, however, that there is a duty to update such statements. Adverse consequences may flow from a rule that requires issuers to update statements that were true when made. The duty to update may prevent issuers from making accurate, substantive disclosures in the first instance.

Mr. Macklin expressed concern over imposing on issuers an obligation to comment on unusual trading activity. Most companies have underway at any given time a large number of different projects that may affect stock prices. Companies should be required to disclose facts only when they are material, that is, when projects are completed or close to completion. Aside from that, a policy of stating "no comment" prevents more abuses than it generates.

Mr. Bermant said he thought that the reasoning of the Carnation report was wrong and that the decision of the Third Circuit in Heublein was right in determining that, unless trading by the issuer is occurring, preliminary merger negotiations are not, as a matter of law, material. A company should be allowed to make a statement that there have been no material corporate developments if nothing more than preliminary negotiations are taking place.

Mr. Levitt recommended an improvement in the dialogue between the issuer and the SRO so that the SRO may work with the issuer to determine when disclosure is relevant. Issuers have a responsibility to the SRO's and then to the public to disclose material information. Mr. Levitt agreed with Mr. Phelan that rumors are difficult to define, but commented that the public's perception that some persons have an advantage in the markets will hurt the markets. He cautioned against promulgating ironclad rules concerning these issues, noting that the courts can remedy misleading or erroneous disclosure.

Mr. Phelan advised against SRO's actually determining for an issuer what is or is not significant. Once an issuer decides that it is aware of no information or has no comment on a rumor or market activity, the SRO should encourage or disseminate a public statement to that effect.

Professor Fischel stated that there is sometimes a value in keeping information confidential that is not addressed even by "no comment." The Commission's Carnation report went much too far in requiring disclosure by the issuer. The issuer should not have to make disclosures when the beneficiaries of the disclosure, namely the issuer's shareholders, will be worse off after the dis-

closure. If an issuer discloses preliminary merger negotiations, for example, the disclosure itself may kill the deal. In that case, the shareholders will be substantially worse off because they will lose the benefit of a value-increasing transaction. One can argue that "no comment" does not sufficiently protect shareholders, and that something stronger is needed—perhaps even what might otherwise be considered a misrepresentation. The value of the information can be realized only if the issuer gives the impression that nothing is going on. Most shareholders, if asked, would say that they would prefer for management to withhold information the disclosure of which would destroy its value.

From left to right, NASD Chairman Gordon Macklin, Commissioner Aulana L. Peters, and George Bermant, a partner of Gibson, Dunn & Crutcher.

Commissioner Peters stated that Professor Fischel's position seemed to be based on the assumption that the body of shareholders remains static, which is incorrect. Shareholders are part of a fluid marketplace where people buy and sell shares of a company all the time. Congress imposed disclosure obligations because of such movement in the market. Changing disclosure obligations to permit management to lie to the marketplace cannot be premised on the assumption that management is protecting a static body of shareholders.

Mr. Griffin said that the protection of incumbent shareholders of a takeover target is not the primary public policy behind the federal securities laws. There are other investors who would be harmed by a policy that tolerated misstatements by management. The Commission did not go far enough in the Carnation report and perhaps should promulgate a standard governing when preliminary negotiations should or must be disclosed to the public.

Mr. Lynch stated that permitting management to mislead shareholders might lead to problems in other contexts, such as financial disclosure. A company could argue that it should not disclose that its sales are down because such a statement might diminish the company's sales even further and thus hurt its shareholders.

Mr. Jefferies said that the marketplace is entitled to information, good, bad or indifferent. If the market has the information, it will assess that information and appropriately determine the value of the stock.

Chairman Shad asked whether a third party who has been identified in a false rumor as a potential purchaser or bidder should be required to deny the rumor. Mr. Macklin responded that a regulatory reach to third parties would be a major expansion of the securities laws which could be abused. Commissioner Peters questioned whether a third party is ever really involved. There is a potential target and a potential bidder, and Commission rules already establish the disclosure obligations of bidders. It would be a drastic step to impose a disclosure obligation on a party merely because its name appears in a newspaper article. Mr. Schreyer said that the law already requires adequate disclosure and that additional disclosure obligations should not be imposed. Mr. Levitt commented that imposing a disclosure obligation on third parties would be unduly complicated. He suggested that third parties are presently being held accountable through the efforts of the business press, which has become sophisticated and probing enough to elicit a response or uncover information.

Commissioner Grundfest asked Mr. Levitt what the law should require of a company whose employee in good faith denies the existence of negotiations when the company in fact is engaged in preliminary negotiations known to only a few individuals in the company. In particular, should the corporation have a duty to correct the unintentional misstatement? Mr. Levitt responded that a duty to correct should not be imposed on the corporation. In large measure, this problem has

Arbitrageur Ivan Boesky (left) stated his view that trading halts should be used sparingly. Also pictured are Commissioner Edward H. Fleischman (center) and Arthur Levitt, Jr., Chairman of the American Stock Exchange.

corrected itself in the aftermath of Carnation. The press is now likely to ask company spokesmen whether they are speaking of their personal knowledge or instead are speaking for the corporation.

Mr. Boesky said that there are identifiable "extraordinary events" the occurrence of which issuers should have an obligation to disclose. Mr. Boesky and Mr. Griffin suggested that a rule be adopted requiring such disclosure and listing the events considered extraordinary.

Commissioner Grundfest questioned whether it is possible to distinguish between an internal extraordinary event, such as discovery of oil, and an external extraordinary event, such as negotiations with third parties. Commissioner Fleischman suggested that there are two scenarios which should be separated. Real merger negotiations give rise to the kind of question Mr. Boesky posed—when is the information material? It is unlikely that the Commission could or would attempt to craft a rule that defines materiality in the context of merger negotiations. As Mr. Phelan and Mr. Levitt noted, however, there may be means available through the SRO's to elicit disclosure of whatever information is available and thereby avoid harm.

Commissioner Fleischman said that the other scenario is where there are rumors of deals that do not exist, and he asked the Roundtable participants to address this situation. Mr. Jefferies commented that, because Wall Street profits from commission business, and stories generate commission business, regulators will never be able to stop stories that affect the stock market, whether these stories surface as rumors or research reports. Commissioner Fleishman said that research reports are easily traceable, but questioned whether there are any mechanical means available through the exchanges or the NASD to identify the sources of street chatter. Mr. Levitt said that the relationship between the exchanges and their constituent companies allows the exchanges, in questioning the companies, to determine whether a rumor is spurious.

Commissioner Fleischman asked whether the SRO's also have an obligation to go to their constituent members to find out what is happening on the floor when there is volatility in a stock. Mr. Levitt said that the exchanges often do trace the trading in a volatile stock, but that the trail is often very difficult to pursue. The individuals on the floor frequently do not know the origin and nature of the rumor that has given rise to a particular trade. Mr. Macklin commented that, while the NASD can persuade a company to make an announcement that rumors concerning the company are baseless, the NASD's reach is limited to its membership.

Chairman Shad concluded that the staff should review the possibility of granting a "safe harbor" to issuers that respond accurately to rumors, without requiring further announcements as a result of subsequent developments.

Trading Halts

Issue
Whether trading should be halted in all markets when the primary market suspends trading.

Problem
When an exchange suspends trading in a security or the NASD suspends the dissemination of quotations through NASDAQ, many investors, particularly institutions and other sophisticated investors, continue to trade in the third market. The third market is not generally available to the investing public, causing trading halts to have a disproportionate impact on public investors. Moreover, partly as a result of third market activity, the NYSE has limited the duration of news pending trading halts to thirty minutes.

Views
Most participants felt that trading halts are sometimes necessary but should be held to a minimum in number and duration. During a trading halt, the issuer should be encouraged to confirm or deny existing rumors or otherwise issue an announcement. Representatives of the American and New York stock exchanges and the NASD contended that trading should be suspended in all markets when suspended by the primary market. Other participants contended that sophisticated investors should be permitted to trade in the third market, arguing that the competition provided by the third market serves as an incentive to the primary market to react quickly to the problems that necessitate trading halts.

Discussion
Mr. Phelan described the history of the NYSE's trading halt policies and practices. There are essentially two types of trading halt. One results from an order imbalance, and the other, called a regulatory halt, is imposed to permit an issuer to prepare and disseminate an announcement of a material corporate development. In the early 1970's, regulatory halts lasted as long as several days. With the subsequent increase in merger activity, the Exchange began to feel that it was being used as a tool by one or both parties to the transaction. At the same time, the market was demanding increased liquidity in the subject stock. As a result, the duration of regulatory halts has decreased over time to the present 30-minute period. During a trading halt, the Exchange makes an inquiry of the issuer and publicizes its response, even if the response is "no comment." Current market practices have given rise to two significant issues. First, when a regulatory halt is imposed, should all markets halt trading for the duration of the trading halt? Second, when the market for a stock becomes highly volatile, should a trading halt be imposed regardless of the issuer's willingness to issue a statement?

Mr. Jefferies expressed philosophical opposition to trading halts, stating that investors should have the opportunity to implement their investment decisions as soon as those decisions are made. Ideally, the stock exchanges should be open twenty-four hours a day, seven days a week. Issuers themselves should never be permitted to request a trading halt, since they know the information giving rise to the request and should disclose it rather than request a trading halt.

Mr. Phelan and Mr. Macklin stated that a news pending trading halt allows all market participants, including small public investors, an opportunity to digest news before adjusting their trading decisions. Mr. Phelan stated that the market includes investors of all levels of sophistication and that

Royce Griffin (left), President of the North American Securities Administrators Association, and Commissioner Joseph A. Grundfest.

all should have the benefit of the same information. Mr. Macklin suggested that trading halts for material news may provide public customers an opportunity to adjust their pending market and limit orders. In this connection, the NASD will soon propose a rule that will authorize the NASD to halt trading in the over-the-counter market for material news. Mr. Levitt added that an across-the-board prohibition of trading during a news pending situation would increase investor confidence in the markets. Public investors lose confidence in the market when they witness institutions trading during a trading halt; the perception is that institutions are unloading their stock at a time when markets generally are inaccessible to public customers.

Commissioner Fleischman indicated that in a recent visit to the NYSE, he witnessed "trade discontinuity" caused by trading off the NYSE floor during a NYSE trading halt. Mr. Phelan noted that prices frequently drop precipitously in such situations and said that this sort of volatility is unacceptable in light of the unavailability of information in the market. Perhaps a trading halt should be imposed in response to volatile trading regardless of whether news is pending. The NYSE is considering the idea of halting trading briefly when the price of a stock drops by a certain percentage, just to call attention to the circumstance.

Commissioner Grundfest questioned how a regulatory halt pending an announcement benefits investors, since the price of the stock after the announcement will be the same regardless of whether there was a trading halt. Investors who do not want to trade on the basis of incomplete information need only await the issuer's disclosure of the news and then trade at the same price they would have received had there been a trading halt. During the interim, the only traders would be those who wish to reduce or assume the risk associated with the period of uncertainty.

Mr. Phelan responded that smaller and less sophisticated investors are inclined to complain and to lose confidence in the market when the issuer's eventual news release results in a decline in the price of the stock. In those instances, investors tend to suspect that the persons trading during the interim period enjoyed an informational advantage and, because a trading halt was not imposed, managed to avoid losses.

Commissioner Cox questioned whether investors are protected by a policy that prevents willing buyers and sellers from trading. There is a wide spectrum of knowledge and sophistication among investors, and market liquidity should not be eliminated in an effort to achieve parity of information among all investors.

Professor Fischel stated that he understood trading halts to serve the interests of specialists and market makers rather than investors. Specialists stand to lose a great deal of money if forced to make a market for customers who have better information than they do. Trading halts relieve specialists of the obligation to make a market and give them time to gather more information about the issuer. There is a cost to the specialists, however, if someone else is willing to make a market during the trading halt. From the specialist's perspective, the ideal solution would be to prohibit trading in other markets, thus preserving his customer base while relieving him of the risk of making a market. Investors, on the other hand, are benefitted by third market activity in which the most sophisticated investors establish a consensus on the value of information. The Commission should not, therefore, allow any one exchange to force trading halts in other markets.

John Phelan (center), Chairman of the New York Stock Exchange, discussed the difficulty of defining "rumors." Professor Daniel Fischel (left) hypothesized that in some cases disclosure of information can reduce its value and thereby diminish shareholder wealth. Commissioner Charles C. Cox is pictured at right.

Mr. Phelan responded that protection of the dealer has nothing to do with trading halts and that a dealer has no involvement in the decision to halt trading. Since the mid-1970's, there has been a regulatory thrust toward disseminating information to all of the investing public. If that goal is still valid, all markets should be subject to the same rules to avoid placing any one market at a competitive disadvantage.

Mr. Boesky commented that trading halts should be used sparingly. A more appropriate solution to the problem is increased disclosure by issuers. Trading halts are unfair to less sophisticated investors, who do not have access to alternative markets. The threat of a trading halt may also serve as a deterrent to institutional investors, who may be adversely affected by the elimination of liquidity. In those cases where a trading halt is appropriate, perhaps the Commission, under Section 12(k) of the 1934 Act, could impose a trading halt on all markets.

Mr. Levitt agreed with Mr. Phelan that, if trading halts are not imposed across the board, competitive pressures will cause the SRO's not to impose trading halts at all. Commissioner Peters observed that the SRO's are subject to the conflicting pressures of competition and the obligation to ensure the good conduct of their members. If trading halts are beneficial in some circumstances, then perhaps the Commission should be one to impose them rather than require an SRO to do so at the expense of that particular SRO's competitive position.

Professor Fischel argued that institutional and professional trading during trading halts benefits the market by immediately reflecting the most sophisticated investors' pricing decisions. Trading halts ultimately will not protect investors from adverse price volatility. While the pattern of trading may differ in arriving at a price (depending on whether trading is or is not permitted during a news pending situation), the ultimate market price will be the same after dissemination of the news. Commissioner Grundfest agreed that news pending trading halts do not aid in the formulation of the market price. Absent a trading halt, investors can avoid any volatility occurring as a result of trading by simply holding their stock until after the news is disseminated. Commissioner Grundfest questioned why those who have incurred costs to receive and react quickly to news should be penalized by having to stop trading while others receive an extended opportunity to review the situation.

Chairman Shad asked whether a uniform trading halt policy would be viable in view of the availability of foreign markets for U.S. securities. Mr. Boesky said that the interplay among world stock markets is such that other countries are likely to cooperate in the development of an international agreement on trading halts.

Rewards to Informants

Issue

Whether rewards should be offered to those who provide information that leads to successful prosecutions and disgorgements.

Problem

Insider trading and market manipulation are difficult to detect and prove. Such cases are typically based on circumstantial evidence. The detection and prosecution of violations could be facilitated by informants, who identify wrongdoers and direct the staff to evidence of violations.

Views

Participants were divided on the question whether a reward program would be desirable or workable. Some who supported a reward program believed that the scope of such a program should extend beyond market manipulation and insider trading to other types of violations, of which direct rather than circumstantial evidence is difficult to obtain.

Discussion

Chairman Shad asked the participants whether the Commission should follow the lead of the Internal Revenue Service and the Departments of Justice and Defense, which offer rewards to informants, particularly in return for information regarding market manipulation and insider trading.

Mr. Levitt expressed his opposition to the idea of paying rewards to informants, stating that he was against not only the SEC doing so, but also the reward program offered by the IRS. He commented that the program would bring forward an enormous number of informants offering information of questionable value. Chairman Shad pointed out that the IRS has developed effective methods of screening and qualifying informants. He suggested that the Commission might require that the information be provided in writing and that informants sign acknowledgements that the rewards are within the Commission's sole discretion.

Commissioner Cox supported the idea, noting that the Commission's present investigative techniques usually result in prosecution of cases based on telephone records and other circumstantial evidence. It would be more efficient to make a case using a credible witness providing direct evidence of insider trading. Rewards are effective incentives to bring people forward with information. Chairman Shad added that it is especially difficult to trace and prove false and misleading rumors spread for manipulative purposes.

Mr. Bermant expressed doubt whether a reward program would work and suggested that the SEC would be provided with a lot of hearsay evidence. Chairman Shad stated that some of the SEC's most important insider trading cases have been developed as a result of information provided by informants.

Commissioner Peters suggested that another method of providing incentives to informants would be to grant waivers of prosecution, or immunity. Any policy decision on the merits of adopting a rewards program would have to take into account an analysis of benefits versus costs, and would require a clear description of how the system would actually work. Chairman Shad noted that the

Commissioner ***Charles C. Cox*** *(left) expressed support for exploring the feasibility of an informant reward program. Also pictured is Boyd Jefferies, Chairman of Jefferies & Co.*

IRS recovered about $17 million last year, based on information for which it paid rewards of about $400,000.

Mr. Griffin was of the view that paid informants would be useful, particularly in uncovering market manipulation. Although he found the idea of paying informants philosophically distasteful, he recognized that paid informants are used throughout the government and would be just as useful to the SEC.

Professor Fischel opposed the concept of a reward program, stating that a reward program makes more sense for the IRS than for the SEC. Tax fraud typically involves only one person and therefore is very difficult to observe and police. The absence of any "market check" in tax fraud may justify the IRS's paying informants for information. Market manipulation, on the other hand, requires action by the wrongdoer which convinces many other market participants to take action. Among those market participants will be investors who lost money as a result of the manipulation. Manipulation is therefore highly observable. In addition, when a stock price moves in one direction then the other, it will always be in someone's interest to complain that he or she was the victim of a manipulation. A reward program may merely increase the incentives unsuccessful traders already have to cry wolf to the SEC.

Mr. Lynch disagreed that market manipulation is easy to observe. Without the use of informants, it is difficult to gather evidence that a person started a rumor. Informants can be helpful to a case by appearing and testifying at trial, or by telling the Commission where to look for evidence of a violation. A difficult issue is whether the Commission should pay for information from someone who has played a role in the illegal conduct.

Commissioner Grundfest expressed the belief that a reward program could enhance market efficiency if structured to target deceptive internal corporate activities that are otherwise difficult to discover, e.g., cooked books. On the other hand, broadening the scope of a reward program would increase the likelihood of attracting worthless tips rather than useful information. Commissioner Grundfest suggested that the Commission narrowly focus the reward program to cover only those violations that are almost universally viewed as harmful to market efficiency. This approach might address some of the moral and practical concerns voiced by some of the participants and make it easier to achieve a consensus that a reward program is appropriate.

Mr. Macklin remarked that an informant reward program may be an efficient way to deal with the large volume of potential cases, and recommended further study. He also stated that, if the SEC adopted a reward program, it should pay "cold cash for hard facts." Mr. Phelan suggested that the Commission obtain further information from the IRS and others using reward programs to determine possible harmful effects as well as potential benefits. Chairman Shad noted that the GAO analyzed the IRS system and issued a positive report on the results.

Contrasting the Commission's situation with that of the IRS, Mr. Levitt asserted that any recovery of revenue by the IRS is better than nothing, whereas in SEC disgorgement cases, paying informants from disgorged funds would deprive wronged investors of full compensation. Chairman Shad pointed out that, without information from the informant in the first place, the SEC would not have obtained disgorgement with which to recompense the victims. In addition, penalties paid under the Insider Trading Sanctions Act are over and above the amount of disgorgement and are payable to the U.S. Treasury rather than investors.

Commissioner Fleishman agreed that there is merit to the idea of a reward program. If a program is established to obtain information about clearly unlawful acts, it should not be limited to the insider trading area. Financial fraud and other violations of the securities laws are susceptible to this kind of approach.