Speech by Judge Stanley Sporkin before
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FINANCIAL MARKET REGULATION IN THE 1990's

It was the most creative of times and the most unsettling of times. I guess that statement sums up where we are today and where we most likely will be during the remainder of this century. It is quite clear that the technological revolution that now engulfs us still has plenty of steam and will continue at its present pace throughout the next decade and into the twenty-first century. The changes that this revolution has wrought are so dynamic and fast-moving that it is really difficult to get a clear picture of the future.

Our society is changing so fast that major institutions once thought to be impregnable are now in real jeopardy. I need only cite you a few examples to prove this point. As most of you will recall, it was just a few years ago that IBM dominated an industry that sold a product called the typewriter. I am sure those at IBM believed their dominant position in the industry would forever go unchallenged. Then, of course, came a gizmo called the word processor and the typewriter which had been with us for many decades became history literally overnight. In recent times we also have seen those gorgeous watches with the fine Swiss movements being replaced by time machines powered by the micro chip. Thus another major industry bit the dust. I also invite you to look where such longtime industry leaders as Xerox and Kodak are today. Old Ma Bell ain't what she used to be and indeed the entire telephone industry has also undergone dramatic and rapid change in recent times. I might add that I would not be going too far out on a limb by suggesting to you that even such a fundamental and monopolistic institution as the Post Office probably will undergo radical changes and most likely will not exist in its present form in the next five years or so. Just look what impact the Fax machine has already had on our first class mail delivery system. I cannot recall any period in the past where change has been so dramatic and rapid. What we are seeing is literally happening before our eyes.

While the examples I have given all pertain to the demise of old line industries and products, even relatively new technologies are now entering their second, third, and fourth generations. For example, the state of the art personal computer I bought just some three years ago is now outdated, and the cable industry that is really still in its infancy will likely be challenged in the next five years by the miniaturized satellite dish that you will place on the window sill of your home.

I bring up these examples only to make the point that these technological, economic and societal changes so permeate our society that they will have a substantial impact on the future structure and performance of our financial markets. There is literally no segment of our society that is immune from these deep seated changes. Indeed, I would suggest to you that this technological revolution is in large measure responsible for the restructuring that is now taking place in the communist bloc countries. Yes, my friends, the microchip has had an impact on world politics.

Against this background it is quite clear to me that the most fundamental marketplace restructuring will occur in the international arena. True globalization is right around the corner. Yes, let us start getting used to the fact that the United States will no longer be the dominant player it has been in the past. Indeed, as I have said in other talks, we will eventually see an international market oversight organization. A world wide SEC with the United States being just another "Blue Sky" State. The recent mega mergers of certain of our Big Eight accounting firms are but a first step in their positioning themselves for globalization. When such a conservative and staid profession as the accounting profession goes global, then we know that change is in the wind. Our major law firms and the other servicing components of our securities and financial markets probably shortly will follow the number crunchers. The one world financial market in my view is about to become a reality.

What I just described is the macro view. On a micro basis there also are going to continue to be enormous changes. At this time the private sector has outpaced the regulators' ability to adequately regulate our domestic financial markets. Regulation has been unable to keep up with the creativity and inventiveness of the private sector. Although changes in the private sector have been far reaching, regulation of our financial markets remains virtually the same as it has been during the past fifty years, with the one major exception being the very recent changes that have been put into effect with respect to the oversight of our thrift industry. While the private sector has been trying to develop the concept of a financial supermarket with all financial products being made available under one roof, the regulation of our financial markets continues to be Balkanized. It sometimes is difficult to appreciate how much progress has been made in the private sector in spite of the almost suffocating and overlapping regulatory scheme that overlays our securities and financial markets. We have the Securities and Exchange Commission, four or five bank regulatory organizations, the Federal Trade Commission, the Antitrust Division of the Department of Justice, and the Commodity Futures Trading Commission - all on the Federal level. Then there are five or six self-regulatory organizations and fifty state commissioners that exist in the securities field alone. Now, I do not think anybody would be too concerned with all this regulation if it were effective and efficient. The fact is that efficiency and effectiveness presently do not exist. I need only to cite the recent horrendous debacle that took place in the thrift industry to make this point.

Even in the Banking area where we just experienced the massive restructuring of the thrift industry, multiple Federal regulatory agencies continue to exist with problems that normally attend overlapping regulation. In recent days the following statement appeared in the **Washington Post**:

> A new feud among federal banking regulators flared yesterday when the comptroller of the currency stepped into a dispute over how much capital owners must invest in their S&Ls.
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> Described as 'a regulatory donnybrook' by House Banking Committee member Jim Leach (R-Iowa), the disagreement pointed up the interdependence and infighting among the half dozen agencies that now have roles in regulating banks and S&Ls--the Federal Deposit Insurance Corp., the comptroller, the Federal Reserve Board, the Office of Thrift Supervision, the Treasury Department, the Resolution Trust Corp. (RTC) and the RTC Oversight Board.
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> Congressional banking committee sources said the dispute points out again what happens when three agencies regulate three different kinds of banks and a fourth agency is in charge of thrifts.

While the new thrift bill concededly was necessary to the survival of that important industry, it appears that the legislation did not bring about a real streamlining of the oversight process.

I am not trying to use inefficient and ineffective regulation to justify entirely the need for regulatory reform, because there is actually a more compelling reason. As we position ourselves for the last decade of the 1990's and the beginning of the twenty-first century, we must remove those impediments which will prevent our financial markets from realizing their full potential. We must plan for the future. This does not mean that there must be complete deregulation, or no regulation, because the contrary case clearly has been made. But regulation must have a purpose that is compatible with the great economic system we now enjoy. Indeed, as has been demonstrated by what recently has taken place in Russia, China, Poland, and certain other of the communist block countries, we enjoy the finest economic and political systems that any nation has ever devised.

The competition with communism essentially is over. Our capital market and political systems now clearly have surpassed their competition. They will continue to be strong only so long as they adhere to the basic principles that made them the best in the world. This means a system with the fewest impediments and restrictions to capital formation and commerce. As our overall goal we should regulate only to assure that our markets are fair, honest, fully competitive, and accessible to all. It also goes without saying that we must assure that our great industries will continue to provide a national defense that a world class nation needs to assert its world wide leadership. Moreover, under no circumstance can we allow the great freedom of our system to work in a way that produces extreme excesses that in the long run will defeat the very system that we want to flourish. With that said, let us examine some of the reforms that are needed to foster these goals.

The dynamics of our financial markets require a dramatic restructuring of the regulatory mechanism. We must eliminate duplicative and mindless regulation. We must permit access to the market place for new and budding enterprises with the minimum restraints. Whatever new forms of regulation are considered, they must be examined in the context of an evolving society designed to be driven by the innovation of the private sector and not an impediment to it. We must make sure that the creativity of our brilliant scientists and entrepreneurs is not stifled by suffocating regulation.

The first element that needs to be considered to achieve these lofty goals is the de-Balkanization of the present regulatory scheme. As you know, the new word in merchandising is the so-called "lite" product. Thus we must now proceed with the concept of regulatory "lite." That means we must slim down the multiplicity of regulatory organizations to avoid as much duplication as practicable. At the same time, we must make regulation more effective. Our system cannot tolerate another multi-billion dollar S&L debacle. There are several ways to accomplish this goal. One way would be to establish an umbrella organization to fashion the overall regulatory scheme with a second agency to enforce the regulations adopted. The reason for a single standard setting regulatory organization is to be able to deal with the emergence of the financial supermarket concept that, although it is now only in its developmental stage, offers great promise to assure the continued viability of our capital market system. Of course as we proceed in this direction, we must do so with caution. Paramount consideration must be given to safeguarding our deposit insurance system which is so fundamental to the sound operation of our banking system.

The rationale behind a single enforcement arm is to assure that an organization that is dealing in a multitude of products will be precluded from operating where it is not acting responsibly in any of its various business phases. This concept would in effect recognize that functional regulation simply is unworkable. What did not make sense to me when I was Director of Enforcement at the Securities and Exchange Commission was that when we discovered a brokerage firm was cheating its securities clients we were without jurisdiction to examine the firm's non-securities operations. It was obvious to me that a firm that would churn a customer's securities account would do likewise with respect to that customer's commodities transactions. This jurisdictional impediment made us at the SEC look like a bunch of Inspector Clousseaus.

If the regulated are able to cross functional lines, the regulators should be able to do the same. So for those who advocate functional regulation, I suggest they reconsider that view. It would only perpetuate the Balkanization that now exists.

While up to now we have been discussing our securities and financial markets and their regulation, I also want to take a few moments to share with you what I see coming in the 1990's and the next century with respect to the various professions that have a very keen interest, monetary and otherwise, in the operations of our securities and financial markets. We are presently observing truly unbelievable changes in the accounting profession. I do not believe as little as two years ago anyone would have predicted that the Big Eight would become the Big Five and perhaps eventually the Big Two. I hesitate to say the Big One, because I think there will be sufficient conflicts that will demand there be at least another mega accounting firm. Globalization seems to be the main reason for this consolidation movement. I think this trend toward huge world wide participatory entities will also take place in the legal profession. I foresee huge legal firms establishing branch or satellite offices in virtually every major city in the United States. This will put the old line large local firms under tremendous competitive pressures. While certain of these firms may have trouble surviving this onslaught, the "boutique" specialty firm will survive. This is because small litigation, securities, or other specialty shops will be able to deliver expert services at a cost considerably below their larger rivals.

While I believe the broad outlines of what will take place in the next decade are clear, it is difficult to discern the detailed way these changes will occur or the precise contours of the system. As a matter of self preservation, it is imperative that each and every one of you focus on the future and not be so shortsighted as to believe that just because things are going well today they will remain that way in the future. If there is any lesson we can learn from the past decade, it is that nothing is certain any more. You must keep your eye on these recent trends and not dismiss them as something that pertains only to the other person. You must position yourself so that you do not end up like the IBM typewriter, or the Swiss watch, or as the nice fellow that delivers your mail might end up in the next few years.

I thank you for the opportunity to share these thoughts with you.