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KEYNOTE ADDRESS

The Honorable Harvey L. Pitt
Chairman
U.S. Securities and Exchange Commission

ADDRESS

Senator Paul S. Sarbanes
Chairman
U.S. Senate Committee on Banking,
Housing and Urban Affairs

ADDRESS

Michel Prada
Chairman
French Commission des Operations de Bourse

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The Honorable Harvey L. Pitt
Chairman
U.S. Securities and Exchange Commission

Harvey L. Pitt, chairman of the U.S. Securities and Exchange Commission, delivered the keynote address. Chairman Pitt began his speech by noting that U.S. capital markets no longer operate in a vacuum. The existence of global markets engaged in global competition requires a re-examination of current U.S. securities regulation, he said. The United States must make appropriate accommodations to differing regulatory and accounting standards worldwide.

Chairman Pitt next outlined the fundamental regulatory objectives of U.S. securities regulation:

- protecting investors,
- maintaining market integrity,
- increasing liquidity and transparency, and
- promoting capital formation.

Chairman Pitt stated that regulation must evolve with markets. He listed recent developments that required a reconsideration of regulation:

- the lack of clear boundaries between categories of investment intermediaries and types of investment products has created a system ripe with regulatory inconsistencies and regulatory arbitrage,
- the Gramm-Leach-Bliley Financial Modernization Act,
- the shifting distinctions between banking, insurance, commodity and securities regulation,
- the development of highly liquid private markets that allow issuers to raise capital in foreign markets without listing there, and
- the increased number of investors in the market, with greater need for information.



Given these changes, Chairman Pitt said that reform was needed in the areas of disclosure and convergence between U.S. domestic and international regulation. With regard to disclosure, he said that the static, periodic disclosure model must be supplemented. He indicated that he thought the SEC needed to move toward a “dynamic model of current disclosure of unquestionably material information.” With regard to financial disclosure, Chairman Pitt suggested that reforms were needed to clarify and sharpen financial disclosure, so that every investor can understand a company’s true financial picture. Finally, he indicated that the differing liability provisions of the 1933 Act and the 1934 Act must be reconciled.

With regard to international convergence of disclosure standards, Chairman Pitt said that it was important to:

- facilitate foreign issuers’ access to the U.S. markets while maintaining investor protection,
- allow U.S. investors access to foreign issuers on the same basis as domestic issuers,
- rethink the distinctions between public and private offerings, and
- work with foreign counterparts to develop converged standards, in particular, accounting standards.

Chairman Pitt said that, to accomplish these goals, unilateral, bilateral and multilateral mechanisms, as appropriate, should be used.

“We stand on the threshold of remarkable changes in our capital markets. If there ever was a time when we could view U.S. capital markets as if they existed in a vacuum, that time is long past. We live in a global economy with global markets engaged in fierce global competition with boundaries that are expanding exponentially given the Internet and changing technology.”

“The changes in our markets are so dynamic that the more specific the regulatory approach we adopt, the more likely it is to become obsolete unless we craft flexible approaches that permit and foster innovative methods of regulation and compliance that are fully capable of evolving with the markets.”

“We are determined to find a way to make our markets as hospitable as possible to issuers around the world while adhering to our mandate of investor protection.”

Senator Paul S. Sarbanes
Chairman
U.S. Senate Committee on Banking,
Housing and Urban Affairs

Senator Paul S. Sarbanes, chairman of the U.S. Senate Committee on Banking, Housing and Urban Affairs, the SEC's oversight committee in the Senate, focused both on the SEC's regulation and legislative reform.

Senator Sarbanes praised the effectiveness of the steps taken in the aftermath of the events of September 11th both by the SEC and various exchanges to ensure that markets opened as quickly as possible and continued to function smoothly. He also discussed issues in the anti-terrorism bill then pending that were of significance for the securities industry. In particular, broker-dealers will be required to report suspicious activities, that no claim can be brought in arbitration against a securities firm for disclosing information about a customer in the course of making a suspicious activity report, and that information from those reports can be shared with self-regulatory organizations. In addition, the legislation would look into how the Bank Secrecy Act should apply to investment companies.

Senator Sarbanes then proceeded to discuss the basic principles that he thought ought to underlie any responsible approach to securities reform. He first stressed the important connection between financial markets and the overall economy, and the fact that the markets cannot prosper unless the economy is prospering.

Senator Sarbanes next stressed the importance of maintaining investor confidence and investor knowledge and education. With regard to these points, he highlighted the fact that the investing public today is large and diverse and comprised of people from all ages, backgrounds and income levels. Senator Sarbanes applauded the SEC's Office of Investor Education and Assistance in particular for the expansion of its education programs that it had undertaken and stressed that he was looking forward to working with the SEC and the private sector to expand financial literacy.

For the same reasons, he also praised the SEC's recent plain English requirements. He said clarity needs to be a benchmark for all forms of solicitation and that some thought needed to be given to develop equivalent disclosure rules for telephone and Internet solicitations, such as cold calls from brokers promoting stocks in small speculative companies. Similarly, he supported the adoption of Regulation FD, which encourages fair disclosure to all investors.



With regard to accounting standards, Senator Sarbanes voiced concern over the large number of recent cases in which companies had had to restate their financial statements and urged the SEC to continue to engage in dialogue and partnership with the accounting profession and analysts to ensure accurate information is provided to investors. He also supported the SEC's efforts to ensure greater compliance with standards and expand enforcement opportunities through the use of voluntary compliance standards.

Senator Sarbanes concluded by saying that, in order for the SEC to be able to enforce effectively the securities laws, Congress needed to provide the SEC with adequate resources. He said that SEC staff needed to be compensated in a manner commensurate with or at least somewhat comparable to private sector salaries.

In addition, he stressed that the budget resources available to the SEC needed to keep pace with the massive growth in capital markets over the past decade. He pointed out that the dollar volume of securities transactions had increased at an annual rate of nearly 35 percent while the number of SEC employees had increased at a rate of less than four percent. Senator Sarbanes pointed out that failure to provide the SEC with sufficient resources was burdensome to the private sector, as it slowed the SEC's ability to respond to requests, review filings and generally make decisions in as speedy a manner as it could have had it had adequate resources.

Finally, Senator Sarbanes said the SEC plays a crucial role in maintaining the integrity of the U.S. capital markets, and that the SEC's role in so doing was central to strong investor confidence in the markets.

"The Commission's Office of Investor Education and Assistance has an important role to play. I applaud an education program that has been expanded to include town meetings, publications and other forms of outreach. We look forward to working very closely with Chairman Pitt and his colleagues in furthering this financial literacy effort as we look forward with Chairman Greenspan and Secretary O'Neill and with the private sector. I see many enterprises in the private sector instituting their own financial literacy programs. We hope to encourage those and also derive some important lesson from them. Disclosure becomes meaningless, of course, if stock and mutual fund prospectuses and other disclosures are not clear to the average investor. So I think the Commission's plain English program is an important initiative. Clarity of disclosure should be the benchmark for all forms of solicitation, including some thought which needs to be given to the telephone and Internet. Increasingly, investors receive cold calls from broker-dealers promoting stocks in small speculative companies. Figuring out how to promote standards in these solicitations is a challenge that ought to be addressed."

Michel Prada
Chairman
French Commission des Operations de Bourse

Michel Prada, the chairman of the French Commission des Operations de Bourse (the "COB"), delivered a speech in which he focused on the role of regulation in governing disclosure by issuers. M. Prada presented his views on three different questions underlying the globalization of disclosure standards: the content of disclosure, the discipline of disclosure and the role of regulators, auditors and others.

With regard to the content of disclosure, M. Prada said he thought significant progress had been made in harmonizing standards. He focused in particular on accounting standards, saying he thought considerable progress had been made in the development of IOSCO standards and IASC standards. He remained watchful as to whether the IASB could deliver standards that would be accepted worldwide, and urged U.S. regulators to consider accepting IAS.

With regard to other disclosure information, it seemed that the basis for harmonized disclosure standards had been set with the template for non-financial disclosure developed by IOSCO. One of the main remaining issues was the disclosure of economic analysis, trends and forecasts. Notwithstanding the problematic issue of issuer and auditor liability for the disclosure of trends and forecasts, it was important that investors not be deprived of such information.

With regard to the discipline of disclosure, M. Prada discussed to whom issuers should be required to make disclosures, and whether there should be a difference in disclosure depending on whether the audience were analysts, professionals or the public in general. He felt that there should not be a difference depending on who the audience is; rather, information that might have an influence on the price of securities should be delivered to all parties, not just to some interested parties.



It is important that issuers disclose on a timely basis any information that might influence the price of securities. M. Prada recognized that issuers also needed to be able to keep certain sensitive information confidential. The major question was whether regulators should be involved in the process of determining which information must be disclosed, and which would be subject to a safe harbor. Such a situation could be problematic, as involving regulators in a determination as to whether information must be disclosed or not increases the risks of leaks, and poses the risk that the regulator becomes the instrument of the issuer.

M. Prada also addressed the issue of frequency of disclosure. He recognized that some regulators and market participants feel that quarterly reporting leads to excess volatility in the market and short-termism. He rejected this view, stating that careful scrutiny of a company's performance on the basis of adequate information would result in more sensible investment decisions. Withholding information from investors and analysts was not the logical way to ensure sensible investor behavior.

M. Prada discussed the role of regulators, auditors and others in ensuring high quality disclosure. Europeans had the feeling that U.S. regulators were reluctant to open their markets to foreign securities and exchanges, not because of protectionism, but because they were doubtful about the quality

"The third question often raised in Europe today, and apparently raised anew by some U.S. issuers, is that of periodicity of disclosure. As volatility has dramatically increased during the past three or four years, many have criticized the consequences of the development of quarterly reporting, which is considered a major cause for short-termism and erratic markets. It seems to me that regulators are certainly not the ones who should make a decision alone on that topic. In my country, this matter is of governmental competence. I shall, therefore, express a personal view. My first remark is that periodicity is not primarily led by regulatory concerns, but by market demand. And it is interesting to mention the example of Euronext, the new multinational exchange between France, the Netherlands and Belgium, which has established a segmentation of its listed companies where a segment is opened to those companies who, besides complying with IAS and observe the most demanding corporate governance principles, deliver quarterly reports."

“My second remark is that short-termism should not be a consequence of improved disclosure. While it is true that Eric Tabarly, a famous French sailor, when he won the transatlantic race some 30 years ago, didn't give the slightest information on his strategy, tactics, gales and weather clearings, today's races are scrutinized on a permanent basis. Information is available at any time to all competitors and to the public. It doesn't lead the skippers to be short-termist and less efficient. Not only should information be disclosed on a timely and regular basis, it should also be interpreted reasonably, and it is not because you will hide the facts that investors and traders' behaviors will get more sensible.”

of compliance with standards and the effectiveness of enforcement of regulation in foreign countries. In order to ensure adequate enforcement, those jurisdictions that have not already done so should transfer enforcement from exchanges to statutory, independent regulators. Exchanges, due to their for-profit nature and competitive situation, were not longer well suited to enforcing adequate disclosure by their clients.

Different countries take different views on the roles and responsibilities of issuers, auditors and financial intermediaries. M. Prada noted that financial intermediaries have less responsibility and less involvement in the preparation of disclosure in France, but that the COB was considering moving to a system with an increased role for financial intermediaries.

M. Prada also addressed the issue of auditor independence and discussed steps being taken in various jurisdictions. Auditors that also provide consulting and other services to their audit clients can hamper the independence of their audits. He called for a clear set of international rules on auditor independence. He also stated that audit activity should be extended beyond checking accounts to include the financial assessment of firms and the methodology of forecasts and the coherence of models used by clients. M. Prada stressed that he did not consider self-regulation sufficiently strong to enforce the principles and standards of auditors' independence.

Finally, M. Prada called for further cooperation among national regulators and between national regulators and international organizations such as IOSCO.

