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**MARKET INFORMATION AND INVESTOR RELATIONS**

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The views expressed herein are those of Commissioner Peters and do not necessarily represent those of the Commission, other Commissioners, or the staff.

## Market Information and Investor Relations

I am very pleased to be able to address the 1985 Fall Conference of the National Investor Relations Institute -- and I mean that quite sincerely. When I learned that the theme of the conference was "The Tax Reform Era -- Brave New Investor Relations World", I tried to come up with a topic for my speech related to your theme -- tax reform -- but I soon realized that my views on tax reform were, at best, unformed. The fact of the matter is that I am a securities lawyer, not a tax lawyer. In short, I found myself in the uneasy position of having accepted an invitation to speak on an issue about which I had precious little to say.

It soon occurred to me that my desire not to speak on tax issues was perhaps only exceeded by your desire not to listen to "Peters on Tax Reform." So I asked myself, what would be a relevant but less-tortuous subject for an SEC Commissioner to explore in this forum? The answer arrived in my office shortly thereafter in the form of a letter from Linda Kelleher, the Director of NIRI's Education Foundation. Linda suggested that I provide an update on shareholder communications initiatives (spelled "Rule 14b-1(c)") as well as other significant investor relations issues before the SEC. Imagine my relief to learn that you expected a discussion of securities and not tax issues. Without further ado then, let us turn our attention to investor relations and the progress of Rule 14b-1(c).

I presume most of you are familiar with Rule 14b-1(c). The rule would allow issuers to obtain a list of non-objecting beneficial owners of their stock from broker-dealers who hold that stock in street name. The list of beneficial owners would be compiled as of any date. Rule 14b-1(c) is important because it will facilitate and possibly improve communications and disclosure between issuers and shareholders -- which of course are fundamental goals of the federal securities laws.

Rule 14b-1(c) is noteworthy also because of its unusual procedural history. Originally the rule was scheduled to go into effect on January 1, 1985. In the summer of 1984, the brokers who will be subject to the rule's disclosure obligations argued that the January 1985 effective date did not give the SRO's enough time to allocate properly the costs of compliance. The brokers also complained that the rule would put them at a competitive disadvantage vis-a-vis banks and that its implementation should be delayed until legislation was passed covering banks as well. To address these issues, NIRI and the American Society of Corporate Secretaries, on the one hand, and the Securities Industry Association, on the other, agreed to a one-year delay to the effective date of the rule, that is to January 1, 1986, on the conditions that both the brokerage community and the issuer community would work together to implement the rule effectively on that date and that all parties would support legislation to impose similar disclosure obligations on banks. The Commission accommodated the compromise agreement and voted to defer the effective date to January 1, 1986.

Since that compromise agreement was reached, there have been several important developments. Congress passed legislation that would impose beneficial-owner disclosure obligations on banks with respect to consenting customers. 1/ Clearly this legislation would not impose identical disclosure obligations on banks and broker-dealers, since brokerage customers would have to object affirmatively to disclosure, whereas bank customers could object by doing nothing. Nevertheless, the legislation would help eliminate the disparity between bank and broker-dealer obligations to which the brokers objected so strongly. The Senate, unfortunately, has not yet passed similar legislation, and thus the business of eliminating this regulatory disparity remains unfinished.

Another significant development is the agreement between the issuer and broker communities on the operation of the Rule with respect to matters such as solicitations of shareholders, dissemination of shareholder lists, mailing of materials to shareholders, and reimbursement of brokerage costs in preparing the lists. The operational details were worked out by the Ad Hoc Committee on Identification of Beneficial Owners appointed by the New York Stock Exchange, whose constituency included representatives of all interested communities. The effort expended on resolving these operational matters simply proves that a good idea is not necessarily self-executing. In any event, on October 15, 1985, the Commission approved amendments

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1/ H.R. 1603 (July 22, 1985).

to Rule 14b-1(c) to clarify its operation. 2/ The amended rule, among other things, permits the use of an intermediary between registrants and brokers for the dissemination of lists of beneficial owners, permits registrants to request a beneficial-owner list more often than once a year and provides for the direct mailing of annual reports by registrants to their shareholders.

The use of a third-party intermediary is fairly innovative and may be essential to the system. Therefore, perhaps this aspect of the amended rule deserves some discussion. The rule contemplates that brokers will supply to a third party information on the identities of their customers for whom stock is held in street name and that the independent third party will process and prepare the data for distribution to registrants upon request. By employing an intermediary to supply lists of beneficial owners, registrants would be assured that the beneficial-owner lists would be compiled and delivered in a standardized and therefore more readily useable format. Brokers, on the other hand, would be assured of client confidentiality since the intermediary would remove any broker identifying information. In revising the rules to reflect the intermediary's role, the Commission was able to address the concerns of the securities industry within the confines of the Commission's regulatory authority. We expect that brokers will recognize the benefits to be derived by employing

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2/ Exchange Act Release No. 34-22533 (October 22, 1985).

the intermediary selected by the Ad Hoc Committee and, therefore, that most brokers will opt to participate in the system as presently established. Incidentally, the amended rule also provides a mechanism for registrants to determine whether a broker has designated the intermediary or anyone else as its agent for compliance with the rule.

I remain confident that the rule as amended will allow issuers to communicate more effectively with their shareholders. I need not elaborate on the benefits of the rule to this audience. I am sure you fully appreciate the public interest in providing a means for issuers to communicate with their shareholders. Therefore, I would like to shift the focus of my remarks now from the important but narrow issue of Rule 14b-1(c) to the "Big Picture" of which the rule, and indeed the issue of investor relations generally, is a part.

Felix Rohatyn of Lazard Freres recently wrote of a growing feeling (and I quote) "that the capital markets have become the property of insiders and of speculators, of raiders and other professionals to the detriment of the general public." <sup>3/</sup> Public confidence in the integrity of our securities markets, he concluded, is a national asset that is rapidly eroding. Mr. Rohatyn's concerns are shared by others. A recent article by Michael Blumstein reports that blocks of 900 shares or less -- the small trade that is generally typical of the individual

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<sup>3/</sup> Rohatyn, "Junk Bonds and Other Securities Swill," Wall Street Journal, April 18, 1985 at 30.

investor -- now account for only 10.5% of all trading, down from 16% in 1982 and 42% in 1975. 4/ In the past, the Times observes,

the huge number of players in the United States market has provided extraordinary liquidity, letting both individuals and institutions buy and sell shares without any one of the millions of daily trades causing a large leap or dip in stock prices. In recent years, however prices have started to move more sharply, as discouraged investors take their money out of the market, flee to safer ports and no longer provide the cherished liquidity. That leaves only the elephantine institutions to do the bulk of the buying and selling. The ultimate concern is that without the millions of individual investors, the stock market will not have the price stability to perform its primary function of helping corporations sell new stock to raise capital. 5/

I am not sure whether Armageddon is as near as Messrs. Rohatyn and Blumstein seem to suggest, but I do think they have identified a serious problem affecting our securities markets. There does seem to be less interest on the part of market participants in investment for the long-term and more interest in parlaying one's money into immediate profits. This is, of course, the goal of some money managers such as speculators and arbitrageurs, but the small investor frequently gets hurt in wildly volatile markets and the result is a crisis of confidence in the market.

The question of whether the presence of small individual investors in the market is necessary has been posed -- but not definitively answered. Richard Jennrette, former Chairman of the Securities Industry Association, stated in a speech in

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4/ Blumstein "How the Institutions Rule the Market", New York Times, November 25, 1984 at F.1.

5/ Id.

1984, that small investors definitely were needed to ensure depth, stability and liquidity in the market. Furthermore, in light of some issuers' recent programs to attract investors and keep shareholders happy by providing "perks" such as free bowling, discount prices on hotel rooms and free lobster dinners 6/, I would conclude that the issuer community also believes they are needed. A 1985 NIRI membership study apparently confirms that increased attention and effort have been directed at gaining additional individual shareholders.

Any efforts to lure the individual shareholder back into the market has to include an effort to determine why he has left in the first place. A principal reason I see for the reduced confidence in our securities market is the lack of access to what I call "market information." As all of you know, the disclosure mandated the 1930's by the Securities Act and the Securities Exchange Act was primarily issuer disclosure, such as audited financial information. Since the 1930's, it has become increasingly clear that disclosure of "market information" is also necessary to protect investors and to ensure the integrity of the securities markets. What do I mean, you might ask, by the term "market information." I mean such things as the identities of the beneficial owners of stock, the amount of trading volume, the location of significant concentrations of stock, who is

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6/ Money Matters, Avila, Wall Street Journal, p. 33, November 11, 1985.



buying, selling and holding a particular stock, and publicity that may affect the market for a stock. Analysts, arbitrageurs, dealers have access to, and in many situations create, market information. The individual small investor does not have equal access to this critical information.

Regulation of the disclosure and uses of market information serves many purposes. In the case of Rule 14b-1(c), access to certain market information facilitates shareholder communications for issuers. Let me take a minute to describe the purposes of other SEC regulations touching on market information. Certain regulations prohibit the creation of false market information and are designed to prevent fraud. Rule 10b-5 prohibits, among many other things, manipulation of and deception on the market. Section 9 of the Exchange Act specifically prohibits various types of manipulative activities designed to create the false appearance of an active market for exchange-listed securities. These provisions are fundamental to ensuring the accuracy of information disseminated into our securities markets and thus maintaining the integrity of those markets.

Other regulations requiring disclosure of market information provide material information to investors. One such provision, ironically not intended for that purpose, is Section 16(a) of the Exchange Act. That section, as you know, requires officers, directors and 10% shareholders of issuers to disclose their transactions in the issuer's stock on Forms 3 and 4. The disclosures were intended to compliment the short-swing-profits

recovery provision of Section 16(b). Analysts and investors, however, have for years found the disclosures on Forms 3 and 4 to be useful in determining whether to recommend a security to clients. They reason that one would be foolish to ignore what those with the best information are doing when deciding themselves whether to buy or sell a security. Section 16(a) is a great example of the beneficial effects, though in that case unintended, of market information disclosure.

Sections 13(d) and 13(f) of the Exchange Act are examples of regulations that provide material information of value to both issuers and investors concerning the identities of large shareholders and institutional investment managers. Let's focus first on Section 13(d). Congress passed Section 13(d) in the late 1960's because persons were then able to take large positions in a stock without any disclosure, resulting in drastic swings in the price of a stock. The legislative history of Section 13(d) indicates that Congress wanted shareholders to be aware of such a position, which might be a springboard to a tender offer and a change in control of the issuer. The Senate report accompanying the Williams Act reasoned that "the persons seeking control ... have information about themselves and about their plans which, if known to investors, might substantially change the assumptions on which the market price is based." Section 13(d) is designed to make the relevant facts known so that shareholders have a "fair opportunity" to make well considered investment decisions."

In 1970, Congress amended Section 13(d) because the original 10% threshold level for Section 13(d) disclosure did not inform investors early enough of the identities, intentions and plans of persons who were accumulating stock. The 10% level was reduced to 5%. Most recently, the Commission has recommended that Congress amend Section 13(d) again to eliminate the 10-day reporting window. To my mind, the evolution of Section 13(d) -- requiring more to be disclosed and (possibly) to be disclosed more quickly -- reflects widespread and growing awareness of the importance of public access to material market information.

In 1975, Congress passed Section 13(f), which was also designed to provide issuers and investors with material market information. Section 13(f) requires certain institutional investment managers to disclose large portfolio holdings and transactions. The Senate Report to the 1975 Securities Act Amendments notes that:

"the most important justification for [Section 13(f)] is the need to collect and disseminate to individual investors data about institutional investment managers. Many people believe that it is not possible to make informed investment decisions on a security without information related to the likely market activity and the degree of institutional concentration in the security.... That different investors may draw different conclusions from the data is not important; rather, what is important is that information about the securities holdings and certain transactions of institutional investment managers be available to all investors -- both institutional and individual -- so that they can all have it, whatever its relative usefulness in making their independent judgements.... [A]n institutional disclosure program should stimulate a higher degree of confidence among all investors in the integrity of our securities market."

I, for one, agree wholeheartedly with those thoughts. The fact that the Commission is requested routinely to exempt large wire houses from the operation of Section 13(f), attests to the perceived importance of this information. While the arbitrageurs may have excellent business reasons for maintaining the confidentiality of this market information, one must acknowledge, nevertheless, that non-disclosure results in an uninformed market which works to the advantage of certain institutional investors and to the disadvantage of those without access to that information.

The point I am trying to make is that issuers, investors and lawmakers are increasingly recognizing the critical importance to a healthy securities market of timely public access to market information. Securities markets are national assets, not the exclusive gaming preserves of the privileged few. The substantive rules and disclosure provisions I have just described, although enacted for widely varying purposes, share common features. Those features are that material information concerning our markets must be accurate and accessible to all.

The history of market-information regulation also suggests its future. For example, I believe that we will see further amendments to Section 13(d), to close the 10-day reporting window and ultimately to lower even further the 5% threshold reporting standard. I also anticipate banks becoming subject to 14b-1(c) type disclosure obligations. Congress and the SEC may have to consider whether additional regulation of market

information is warranted. With respect to enforcement, you have perhaps read the news accounts of the Commission's concerns about the gyrations caused in the market by rumors relating to possible takeovers. Due to the recent volatility of stock prices for potential takeover targets and the potential for inter-market manipulation in "program buying" and other investments strategies, you can expect to see increased scrutiny by the SEC of questionable transactions. If we find problems, we will not hesitate to take appropriate enforcement action. In general, I see focusing more enforcement resources on those who misuse market information and the law requiring more disclosure of market information that is material to issuers and investors.

Of course, such disclosures requirements will be resisted. Those who prosper in the shadows and between the cracks of the present disclosure provisions will argue that such changes will impose extraordinary costs on the securities industry, and ultimately on the investing public. They will argue that shadows and cracks are necessary so that institutional investors and arbitrageurs can take advantage of the superior information they have accumulated. They will argue that such changes will allow freeriding by small investors on the proprietary information of others.

Whatever force these arguments may have, they are outweighed in my mind by the enormous benefits that will result from increased disclosures of market information. Issuers and bidders embroiled in hostile takeover battles should be able

to communicate more quickly and less expensively with the shareholders who must decide the future of the corporation. Investors contemplating purchases and sales of securities should have better information as to the structure of the securities market, and thus better information upon which to base their investment decision. Most importantly, broader and fairer access to market information would help restore public confidence in our markets and thus help preserve this great national asset.

Arthur Sulzberger, the late publisher of the New York Times, once observed that "a man's judgment cannot not be better than the information on which he has based it." The future I see is one in which investors, large and small, will have access to better information on which to base their judgment. I believe that with greater and broader access to material market information, the futures of investor relations and investor protection are bright ones. Greater access will benefit the issuer community, which must be able to communicate with shareholders. It will also serve the interests of investors, who must have confidence in the fairness of our markets. Finally, it will pay dividends to broker-dealers who will benefit from securities markets in which all participants have more confidence. Broader access to market information is, in my opinion, the "Brave New World" of investors relations -- and investor protection.

Thank you for your attention.