Remarks Of

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SEC Progress Towards Internationalization

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

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SEC PROGRESS TOWARD INTERNATIONALIZATION

Introduction

At my confirmation hearing before the Senate Banking Committee last September, I stated that one of the policy themes that I would urge the Commission to pursue is the development of an appropriate regulatory framework that would provide for the coordination of securities markets on an international basis. It is my intention, today, to report on the progress of the Commission toward internationalization.

U.S. securities markets are currently among the world's most open and most competitive global markets. This fact is demonstrated by the flow of foreign capital to the United States. Over the last decade, foreign investors' gross purchases and sales of U.S. equity securities have increased over five fold (from approximately $75 billion to approximately $417 billion). Foreign investor's gross purchases of U.S. debt securities (primarily U.S. government securities) have increased over thirty-five fold over the same period (from approximately $123 billion to approximately $4.3 trillion).[1]

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[1] Breeden, Remarks at U.S. Perspectives Conference, Washington, D.C. (October 15, 1990).

U.S. securities markets are attractive to foreign investors because they are based on a sound regulatory structure, emphasize adequate disclosure of information, and provide for investor protection through the active enforcement of U.S. securities laws.

As I indicated, today, I wish to discuss a few aspects of the Commission's international program.

I. Development of the Office of International Affairs

In December 1989, Chairman Richard Breeden announced the creation of the Commission's Office of International Affairs ("OIA"). OIA has primary responsibility for the negotiation and implementation of information-sharing agreements and for developing legislative and other initiatives to facilitate international cooperation. OIA coordinates and assists in making requests for assistance to, and responding to requests for assistance from, foreign authorities. OIA also addresses other international issues that arise in litigated matters such as effecting service of process abroad and gathering foreign-based evidence using various international conventions, freezing assets located abroad, and enforcing judgments obtained by the Commission in the United States against

foreign parties. In addition, OIA operates in a consultative role regarding the significant ongoing international programs and initiatives of the Commission's other divisions and offices.

II. Arrangements for Mutual Assistance and Exchanges of Information

A. Bilateral Arrangements

The increasing internationalization of the world's securities markets has raised many new and complex issues which impact upon the Commission's ability to enforce our own securities laws. For example, a central problem the Commission constantly faces is collecting information located abroad. The Commission has attempted to resolve this problem, as I mentioned previously, through OIA developing information-sharing agreements on a bilateral basis with various foreign authorities.

These arrangements allow the Commission to obtain evidence located abroad while avoiding the conflicts that may result from differences in legal systems. The Commission has entered into various such agreements with foreign authorities in Switzerland, Japan, the United Kingdom, Brazil, Italy, the Netherlands, France, Mexico and three provincial authorities in Canada. These arrangements have proven to be

an effective means for obtaining information and developing cooperative agreements between regulators. In addition, OIA coordinates closely with the regulators with whom it has information-sharing arrangements to develop ways to implement and improve the arrangements.

B. Trilateral Developments

On September 21, 1990, the Commission, the United Kingdom Department of Trade and Industry, the Securities and Investments Board of the United Kingdom, and the Securities Bureau of the Ministry of Finance of Japan met for the first time on a trilateral basis to consider issues of importance to the world's three largest securities markets. At the conclusion of their meetings, the parties issued a precedent-setting trilateral communique in which they stated, among other things:

- their intention to continue to coordinate their efforts to maintain safe and sound securities markets;
- their intention to encourage cross-border business between their markets by pursuing mutual recognition of regulatory systems;
- their agreement on the desirability of regularly exchanging

information to facilitate the monitoring of multinational firms with operations in their respective capital markets;

- their intention to utilize fully their domestic powers to assist each other in the oversight of their respective domestic markets and the enforcement of their respective securities laws; and
- their intention to meet regularly on a trilateral basis to continue discussions about matters of mutual interest.

III. International Securities Enforcement Cooperation Act of 1990

On November 15 of last year, President Bush signed into law a significant international securities enforcement measure called the International Securities Enforcement Cooperation Act of 1990 ("ISECA 1990").

ISECA 1990 contains amendments to U.S. securities laws that authorize the Commission:

- to keep confidential, information provided by a foreign securities authority;

- to provide documents and other information to foreign securities authorities in accordance with the Commission's rule-making authority;
- to institute administrative proceedings against a securities professional based upon a finding of a foreign court or foreign securities authority that the professional engaged in illegal or improper conduct; and
- to accept reimbursement from a foreign securities authority for expenses incurred in providing assistance.

ISECA 1990 authorizes the Commission to withhold from disclosure, documents furnished by a foreign securities authority to the Commission under certain circumstances. Generally, the circumstances are that the foreign securities authority has in good faith determined and represented to the Commission that the disclosure of the documents would violate confidentiality requirements of its country's laws and that the documents were obtained pursuant to an information sharing agreement or Commission procedures.

These legislative provisions were adopted to facilitate gaining the cooperation of foreign authorities in providing the Commission with investigative assistance. More importantly, as highlighted in comments accompanying this legislation, Congress adopted these amendments specifically so that the Commission can provide reciprocal guarantees of confidentiality in its information sharing agreements. In general, the Commission will be able to provide foreign documents confidentiality to the same extent that they would be protected in the custody of a foreign securities authority, and, to that extent, the legislation supersedes the Freedom of Information Act.

IV. Commission Participation in International Organizations

The Commission is an active participant in numerous international organizations. Some of the more significant are as follows:

A. The International Organization of Securities Commissions ("IOSCO")

IOSCO provides a forum for securities regulatory authorities from more than fifty countries around the world to discuss areas of common interest and to facilitate the development of approaches to the issues raised by internationalization. The Commission is an active participant in

the work of IOSCO. In fiscal year 1990, the Commission chaired IOSCO's Executive Committee and prepared a strategic assessment of IOSCO's Technical Committee which reviewed both the structure and operation of that Committee and made recommendations for how it should operate in the future. This strategic assessment was adopted by IOSCO, and the Commission was elected to chair the Technical Committee for 1991. The Commission will host the 16th Annual Conference of IOSCO in Washington this September, which should be a particularly important international event for the Commission.

B. The Group of Thirty Recommendations

The Group of Thirty ("G30") is an independent, non-partisan, non-profit organization established to "deepen understanding of international economic and financial issues, to explore the international repercussions of decisions taken in public and private sectors, and to examine the choices available to policy makers."

The Group of Thirty's primary focus has been the state of the world's clearance and settlement systems. At the original Group of Thirty Symposium in London, in 1988, it was concluded that the world's

clearance and settlement practices require significant improvement in terms of risk, efficiency and cost. The 100 participants from around the world determined that while "the development of a single global clearing facility was not practicable, agreement on a set of practices and standards that could be embraced by each of the many markets that make up the world's securities system was highly desirable." A subsequent report, issued by the Group of Thirty in March 1989 (the "G30 Report"), contained several recommendations.

A U.S. Working Committee was formed and has focused its attention on how best to achieve these recommendations. The Working Committee's efforts resulted in a Commission Roundtable held in November 1990.

The Working Committee's chief recommendations are: (1) to shorten the current settlement cycle of five business days by two business days ("T+3") and (2) to convert next-day funds settlement to same-day funds ("SDF"). The conclusion reached by the Working Committee was that the recommendations were in order to eliminate the risks inherent in two business days of unsettled transactions and in overnight exposure.

While a T+3 and SDF settlement are proper goals, an accelerated conversion period may be unwise. We should be prudent in implementing the recommendations. For example, a conversion to T+3 should be made at some point in time, but not necessarily immediately, particularly in this economic climate. I am concerned that a hasty conversion to T+3 could increase operating costs of broker-dealers and banks, thereby making both industries less efficient in terms of costs. The worst result would be that the industry will pass the costs of the conversion to the already "skiddish" retail investor.

C. The Organization for Economic Cooperation and Development ("OECD")

The Commission has participated in discussions at the OECD regarding the establishment of international standards governing foreign corrupt practices, the OECD Codes relating to securities matters, and accounting issues.

D. Inclusion of Financial Services in the General Agreements on Tariff and Trade ("GATT")

The Commission has been an active participant in the effort, through the Uruguay round of the GATT negotiations, to establish a

multilateral framework of principles and rules for trade in financial services. The Commission also has consulted with the Office of the United States Trade Representative and other United States government agencies in connection with the negotiation of other international trade and investment agreements.

E. The Wilton Park Group

This international organization is sponsored by the United Kingdom Department of Trade and Industry. The Commission staff has participated in extensive Wilton Park Group discussions to facilitate methods for enhancing the exchange of information among securities regulators.

F. EC 1992

The Commission also has been involved with other United States governmental agencies in reviewing the plans and directives of the European Economic Community, which is working toward achieving an internal market among its twelve-member countries by December 31, 1992 (referred to as "EC 92"). The Commission has been involved in several different studies and provided assistance to other United States

government agencies, including the Department of the Treasury, in connection with the impact of EC 92 on the U. S. financial services markets.

G. International Accounting Organizations

Harmonization of accounting and auditing standards poses by far the largest obstacle confronting internationalization. Once this harmonization is achieved, the process of securities internationalization will be accelerated.

Thus, the Commission is very interested in the activities of the two international accounting organizations. The International Federation of Accountants ("IFAC"), whose broad objective is to develop and enhance a coordinated worldwide accountancy profession with harmonized standards, consists of approximately 100 accountancy organizations from 75 countries.

IFAC membership is identical with the other principal international accounting organization, the International Accounting Standards Committee ("IASC"). The IASC is the sole independent body charged by its member organizations with the responsibility and authority to issue

International Accounting Standards. The objective of the IASC is to formulate, publish and promote international standards for financial statements. In this regard, the IASC has published 26 standards to date and has 4 more standards in the exposure stage.

V. Multilateral Progress

A. Adoption of Rule 144A

In April 1990, the Commission adopted Rule 144A which provides a non-exclusive safe harbor exemption from the registration requirements of the Securities Act of 1933 for specified resales of restricted securities to institutional investors. The Commission proposed the Rule in response to the substantial increase in private placements during the last decade; the increasing interest of U.S. investors, particularly institutions, in investing in foreign issuers' securities; and the increasing institutionalization of the markets. The Rule was intended to provide a more efficient and liquid resale market for restricted securities.

Foreign issuers that are unwilling to access the U.S. markets through registered offerings may find our private placements an increasingly attractive means of directly accessing the U.S. market. Since

the adoption of Rule 144A, more than $2.7 billion worth of securities have been privately placed in the United States in "144A deals," $525 million by U.S. issuers and approximately $1.9 billion by foreign issuers.[2] The utilization of 144A by foreign issuers demonstrates that one of its purposes, to bring "onshore," "offshore" deals, has been achieved.

C. Multijurisdictional Disclosure with Canada

On July 10, 1989, the Commission voted to propose a multi-jurisdictional disclosure system ("MJDS") between the U.S. and the Canadian provinces of Ontario and Quebec (the "Original Proposal"). The Original Proposal would have allowed certain Canadian issuers to register securities under the Securities Act of 1933 and to register and report under the Exchange Act of 1934 by use of documents prepared largely in accordance with Canadian requirements.

Concurrently with the publication of the Original Proposal by the Commission, the Ontario Securities Commission and its counterpart in Quebec published for comment proposals that would have provided for the implementation of a MJDS in Canada and permitted U.S. issuers to make

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2 Memorandum from Linda C. Quinn, Director of the Division of Corporation Finance (October 31, 1990).

public offerings and tender offers in Canada using the disclosure prepared according to Commission requirements.

On October 10, 1990, the Commission voted to propose a revised MJDS between the U.S. and Canada (the "Reproposal"). The basic structure of the Reproposal is the same as the Original Proposal although some refinements were made.

Shortly after publication of the Reproposal, the Canadian Securities Administrators followed with a revised Canadian MJDS for U.S. issuers. The Canadian MJDS proposed therein for U.S. issuers is very similar in scope to the Commission's Reproposal.

The MJDS was developed initially with Canada due to its mature capital markets and strong regulatory tradition. While specific disclosure requirements of the U.S. and Canada differ in detail, the regulatory systems share the common purpose of ensuring that investors are given information adequate to make informed investment decisions. Key to the MJDS is the application of accounting and auditing standards. The Commission staff has determined through extensive analysis that Canada, like the U.S., has highly developed accounting and auditing standards.

The Commission intends that the MJDS at some point will be expanded to include other countries. The desire internationally to increase the availability of information may lead to MJDSs with countries having more advanced markets in the near future. For example, the Commission's staff is engaged in preliminary discussions with officials from the United Kingdom regarding a possible MJDS.

D. Multijurisdictional Disclosure Concept Release

Another challenge raised by the internationalization of securities markets is the increased U.S. investment in foreign securities and the need to ensure U.S. investors' participation in multinational rights offerings and tender offers. Foreign bidders and issuers frequently are discouraged from extending such offers to their U.S. shareholders by the expense and time typically required to comply with an additional set of regulations.

Exclusionary or discriminatory treatment of U.S. shareholders in these offerings are of major concern to the Commission. Exclusion from rights offerings not only preclude the shareholder from an attractive investment opportunity, but also may expose the shareholder to

substantial dilution. The consequences may be even more serious in a tender offer situation. U.S. investors not only are deprived of the opportunity to realize significant value on their investments in foreign securities but also must decide whether to sell their shares in the secondary market or remain a minority holder without the disclosure and procedural safeguards afforded by either a U.S. or foreign regulatory scheme.

Last June, the Commission issued a concept release seeking comment on a conceptual approach that would permit foreign offers for foreign targets to

be extended to U.S. investors in compliance with the foreign jurisdiction's laws, where the U.S. holdings are limited and insignificant to the transaction.

Comment from both foreign and domestic parties has endorsed the concept. The Commission hopes to consider rulemaking on cross border rights offerings and takeovers later this year.

VI. Technical Assistance

Because the Commission has a long history of regulating one of the

world's most successful and competitive markets, it is ideally situated to provide technical assistance to emerging market countries. Indeed, emerging market countries from around the world have asked the Commission to assist them in analyzing proposed laws and regulations, providing training for personnel, developing standards for the issuance of securities, setting up stock exchanges, and creating securities regulatory bodies.

The Commission is actively involved in providing technical assistance to other countries concerning the development and regulation of their securities markets. On May 25, 1990, Chairman Breeden announced the establishment of the Commission's Emerging Markets Advisory Committee ("EMAC") to advise the Commission on how best to utilize its resources for assisting foreign regulators and on how best to provide technical and other assistance to the Commission regarding requests from governmental authorities for assistance in developing securities and other financial markets. The EMAC is intended to ensure that the United States is in a position to provide strong and effective leadership to

emerging markets. The first meeting of the EMAC occurred on June 12, 1990 and the second on October 23, 1990.

The Commission also has created the International Institute for Securities Market Development to provide training for foreign government officials that are responsible for the development or regulation of emerging securities markets. The Institute is intended to further market development, capital formation, and the building of sound regulatory structures in countries engaged in such efforts. The Institute's first seminar and consultation program will be held next month in Washington. The faculty of the Institute will consist of, among others, senior Commission officials, experts from self-regulatory organizations, and members of the EMAC.

The new economic and political freedoms sweeping through Eastern Europe, the Soviet Union and hopefully the Middle East should create a climate in which vigorous markets and competitive markets can develop and thrive. These "emerging markets" will, I hope, provide new opportunities not only for those in their home countries, but also for U.S. businesses and U.S. investors.

VII. Conclusion

I have hurriedly attempted to run through some of the Commission's activities undertaken to embrace internationalization. One of the Commission's challenges in the 1990's is to come to grips with the increasingly global character of financial markets, a development that poses both enormous problems and enormous opportunities for our capital - raising apparatus.[3]

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[3] Breeden, "Business Column," Stanford Magazine (March, 1991).