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News Release

Remarks of

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THE EFFECT OF THE SEC'S FOREIGN COMPANY REPORTING REQUIREMENTS ON THE U.S. EQUITY MARKETS

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

I. INTRODUCTION

Thank you and good afternoon.

My topic today is the effect of the Commission's foreign company reporting requirements on the U.S. equity markets.

I would like to begin by reciting two sets of statistics concerning the explosive growth in international equity trading. The first set of statistics is that in 1983 the total dollar volume of foreign stocks purchased and sold by U.S. investors was estimated at $30 billion. By 1990, this figure had increased by more than $220 billion to $252 billion. 1/ The second set of statistics relates to the ability of the U.S. stock exchanges and NASDAQ to attract foreign company listings. In 1983, 400 foreign stocks were traded on U.S. exchanges and NASDAQ. 2/ Currently, despite the more than $220 billion increase in purchases and sales of foreign stocks by U.S. investors, the exchanges and NASDAQ have only been able to increase their listings of foreign

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1/ SEC Office of Economic Analysis. It should be noted at the outset that all data included herein are necessarily approximate. Ongoing developments often can cause a lag between reported data and the actual data at any particular time. Nonetheless, all data included herein on foreign issuers are substantially correct.

2/ 50 S.E.C. Annual Report 111 (1984); 1983 NASDAQ Fact Book 90 (1984). In 1983, the Commission decided to impose U.S. disclosure requirements on NASDAQ's foreign companies. The dramatic effect of this decision on NASDAQ's ability to attract foreign issuers since 1983 is discussed below. As is also discussed below, foreign companies traded on the stock exchanges have been subject to U.S. disclosure requirements since 1967.

stocks to 447, over 200 of which are Canadian. 3/ Apparently, trading of foreign equities by U.S. investors is either being carried on outside the U.S. on foreign markets, or inside the U.S. but not on our stock exchanges or NASDAQ. In either case, the substantial investor protection benefits provided by our fairest and most efficient markets do not appear to be available to many U.S. investors in foreign securities.

What accounts for this anemic growth in foreign company participation in the U.S. equity markets through our stock exchanges --- and for purposes of the rest of these remarks I will treat NASDAQ as an exchange? Is there some fundamental economic reason that explains the relative inability of U.S. exchanges to attract foreign companies? Or do regulatory factors, rather than economic factors, primarily account for this anomaly? 4/

3/ SEC Division of Corporation Finance. The number of foreign companies with securities traded on the exchanges is a little less than the number of equity issues. There currently are 432 foreign companies with securities traded on the exchanges and NASDAQ.

4/ The Commission has recognized, on several occasions, that U.S. reporting requirements, particularly U.S. accounting standards, have dissuaded foreign companies from choosing to participate in the U.S. securities markets. See, e.g., Securities Act Release No. 6866, 55 FR 23751, 23751-52 (June 12, 1990)("One of the most significant barriers to inclusion of U.S. security holders in an offshore exchange offer has been the need for adherence to, or reconciliation with, U.S. generally accepted accounting principles ("GAAP") and auditing standards, as well as concern over continuing reporting requirements under the Exchange Act."); Securities Act Release No. 6841, 54 FR (continued...)

As you know, Commission rules prohibit a foreign company's securities from trading on a U.S. exchange until the foreign company has registered those securities under the Securities Exchange Act of 1934. 5/ One of the '34 Act reporting requirements for registered foreign companies is that they reconcile their home country financial statements to U.S. generally accepted accounting principles. 6/ Foreign companies that trade over-the-counter, however, are exempt from these registration and reporting requirements under Rule 12g3-2(b) and need only furnish to the Commission the financial statements and disclosure documents required in their home country. 7/

NASDAQ provides a graphic example of how drastically the Commission's foreign company reporting requirements can affect a U.S. exchange's ability to attract foreign listings. Until 1983, foreign companies could qualify their securities for NASDAQ quotation without registering their securities under the Exchange Act. Instead, they qualified for the Rule 12g3-2(b) exemption, and were merely required to

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4/(...continued)
32226, 32226 (August 4, 1989)("Foreign issuers that consider direct access to the U.S. capital markets through registered public offerings frequently are dissuaded by the substantial differences in disclosure standards, particularly with respect to accounting standards.").

5/ 15 U.S.C. 78l(a) and (g).

6/ See Securities Exchange Act Form 20-F, Item 17.

7/ 17 CFR 240.12g3-2(b).

furnish their home country financial statements and disclosure documents. 8/

For reasons which I will discuss later, the Commission decided to terminate this exemption in 1983, but grandfathered those foreign companies that were already qualified for NASDAQ trading. 9/ The effect of the Commission's change was immediate and dramatic. In the period from 1977 to 1983, the number of foreign securities traded on NASDAQ increased from 85 to 294. 10/ In the eight years since the Commission's rule change, the number of NASDAQ's foreign securities has dropped to 271. 11/ Thus, after tripling between 1977 and 1983, new foreign participation in NASDAQ was halted when the Commission imposed new reporting requirements. It is interesting to note by way of comparison that the number of foreign companies traded in the non-NASDAQ over-the-counter market, for whom the Rule 12g3-2(b)

8/ See Securities Exchange Act Release No. 19187 (October 26, 1982), 26 SEC Doc. 756.

9/ See Securities Exchange Act Release No. 20264 (October 6, 1983), 28 SEC Doc. 1530.

10/ See 1977 NASDAQ/OTC Fact Book 1; 1983 NASDAQ Fact Book 90 (1984).

11/ 1990 NASDAQ Fact Book & Company Directory 15 (1991).

exemption is still available, increased from 152 to 1056 during this same period. 12/

In my view, the relative inability of U.S. exchanges to attract foreign company listings, despite the many competitive strengths of U.S. markets in terms of prestige, liquidity and efficiency, raise important questions. It would be worrisome whatever its cause, but when regulatory burdens may impose such a limitation on U.S. competitiveness, there is a particular need to analyze those burdens carefully. 13/ The need for review is heightened even further by the investor protection concerns raised when U.S. investors must trade in foreign securities without the protections provided by our fairest and most efficient markets.

Within the past few years, the Commission has taken several significant actions to increase the access of U.S. investors, particularly institutional investors, to foreign securities, and the Commission is, and

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12/ 55 SEC Annual Report 132 (1990). Major foreign companies that trade in the U.S. over-the-counter market include Toyota, Fuji, All Nippon Airways, Nestle, Hongkong & Shanghai Bank, Siemens, and Volkswagen.

13/ It has been reported that over 130 foreign companies have registered in the U.S. disclosure system for the first time in the past two years, and that this statistic provides evidence that U.S. regulatory requirements do not prevent foreign companies from listing on U.S. exchanges. However, over one-half of these 130 foreign companies appear to be Canadian penny stock companies, and a majority of the rest do not appear to be world-class companies.

should be, proud of these accomplishments. These actions include measures such as the adoption of Rule 144A, which facilitates private offerings of foreign securities to U.S. institutions. 14/ The Commission has also proposed a multijurisdictional disclosure system with Canada that to a large degree accepts Canadian disclosures in lieu of U.S requirements, although, as proposed, reconciliation to U.S. GAAP would still be required for equity offerings. 15/ Commission-fostered cooperation with other jurisdictions and harmonization of international accounting standards holds some promise as a solution to regulatory barriers to international capital flow, though little real progress has been made so far in either of these areas in any time frame that is likely to provide a near term solution.

I believe the Commission is obligated to evaluate carefully the arguments that change is needed in order to attract additional quality foreign issuers to U.S. equity markets. The first step in such an analysis is to understand how the Commission's current position on listed foreign companies came about.

14/ See Securities Act Release No. 6862, 55 FR 17933 (April 28, 1990).

15/ See Securities Act Release No. 6879, 55 FR 45896, 45906 (October 31, 1990).

II. EVOLUTION OF THE COMMISSION'S POSITION ON FOREIGN ISSUERS

The Commission first addressed the issue of disclosure requirements for listed foreign companies in 1935, when it adopted the original Form 20 and Form 20-K for foreign registrants under the Exchange Act. 16/ It may surprise you to learn that, at that time, the Commission took the position that listed foreign companies should not be required to reconcile their home country financial statements to U.S. accounting standards, or otherwise to comply with substantially the same disclosure standards as listed U.S. companies. 17/ While compliance with U.S. standards was required for registered offerings of foreign securities under the Securities Act, home country disclosure was considered adequate for purposes of stock exchange listings. 18/

16/ Securities Act Release No. 324 (Class A) (July 15, 1935).

17/ See Securities Exchange Act Release No. 7748 (November 16, 1965)(release proposing amendments to Form 20-K states that "[t]he instructions to the financial statements would change the requirements of the present Form 20-K by requiring the financial statements to be prepared (or reconciled to) in accordance with the Commission's accounting requirements"). See also Rappaport, SEC Accounting Practice and Disclosure ch. 26 at 38-41 (2d ed. 1963)(discussion of 1963 version of Form 20 states that "[t]here is no requirement that the financial statements comply with Regulation S-X or that they be certified by independent public accountants").

18/ See generally id., ch. 26 at 5-8, 25-41.

In 1967, however, the Commission reversed its position of the previous thirty-two years. It amended Forms 20 and 20-K to require listed foreign companies to reconcile their home country financial statements to U.S. accounting standards. 19/ Oddly, the releases proposing and adopting this amendment do not explain why the Commission changed its position, nor do they mention any disclosure failures or other problems in the market for listed foreign companies that may have prompted the change in position. In retrospect, it is remarkable that this change, which would eventually have such far-reaching effects on the U.S. equity markets, was made with so little explanation. 20/

19/ Securities Exchange Act Release Nos. 8067-68 (April 28, 1967)(adopting releases); Securities Exchange Act Release Nos. 7747-48 (November 16, 1965)(proposing releases).

20/ The only hint of explanation for the Commission's change in position was a sentence in the 1965 proposing release that the "Commission believes that such changes are appropriate for the voluntary listing of a foreign security on a national securities exchange." Release No. 7747 at 3. This reference to the voluntary nature of a foreign company's action appears to be a product of the debate at that time over how to treat foreign companies in light of Congress' then recent decision to extend, for the first time, the '34 Act registration requirement to companies traded in the over-the-counter market. This action raised a particularly nettlesome issue as it related to foreign companies because their U.S. shareholders often had purchased their shares in foreign markets at their own initiative. It was not clear how the Commission could assert jurisdiction over these foreign companies who had done nothing to avail themselves of the U.S. markets. In this context, the voluntary nature of a foreign (continued...)

In 1976 the Commission issued a release soliciting comment on requiring foreign companies to provide disclosure substantially similar to that required of domestic companies. 21/ The Commission listed three potential benefits of such an action:

(1) it would provide more meaningful disclosure to U.S. investors concerning foreign issuers;

(2) it would improve the U.S. market for foreign securities and thereby facilitate the free flow of capital among nations; and

(3) it would reduce competitive disadvantages that U.S. issuers could suffer in relation to foreign issuers.

The comments sparked by the concept release and a subsequent proposing release are quite interesting. Of perhaps more significance than the fact that the commenters were overwhelmingly opposed to the changes are the reasons for their opposition. Among the reasons were:

(1) the absence of any showing of abuses caused by the less burdensome disclosure requirements for foreign issuers;

20/(...continued)
issuer's involvement in the U.S. markets was very relevant for purposes of establishing the authority of the U.S. to impose its own regulatory requirements.

21/ Securities Exchange Act Release No. 13056, 41 FR 36992 (December 15, 1976).

(2) the absence of any showing of competitive disadvantage to U.S. issuers; and

(3) the likely refusal of foreign companies to comply with additional disclosure standards and the consequent impairment of U.S. capital markets for foreign securities, of international flows of capital, and of investment opportunities for U.S. investors. 22/

The Commission, however, in spite of the commenters' views, adopted substantially increased disclosure requirements for foreign issuers, although significant exceptions were made on issues such as segment disclosure and management compensation. The Commission indicated that the primary reason for its action was the benefit it believed would be provided to U.S. investors as a result of increased disclosure. 23/

The most recent major development in disclosure requirements for foreign issuers was the adoption of the integrated disclosure system in 1982. 24/ The Commission's general discussion of the existing

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22/ Securities Exchange Act Release No. 14128, 42 FR 58684 (November 10, 1977).

23/ See Securities Exchange Act Release No. 16371 (November 29, 1979), 18 SEC Doc. 1118, 1119.

24/ Securities Act Release No. 6437 (November 19, 1982), 26 SEC Doc. 1124 (adopting release); Securities Act Release No. 6360 (November 20, 1981), 24 SEC Doc. 2 (proposing release).

disclosure system for foreign issuers noted that the Commission must consider two competing policies in this area:

(1) the needs of U.S. investors for substantially uniform disclosure, regardless of whether the issuer is foreign or domestic; and

(2) the advantages to the public of encouraging foreign issuers to register their securities with the Commission, thus providing an opportunity for U.S. investors to purchase a variety of foreign securities.

The 1982 release stated that the Commission had never formally adopted either approach, but rather had sought to balance them by using a principle of "voluntarism". According to that principle, the more voluntary steps a foreign company took to enter the U.S. capital markets, the greater the degree of regulation and disclosure which would be required. 25/

III. ANALYSIS OF THE COMMISSION'S POSITION

Let me summarize this brief history of the development of the Commission's foreign company disclosure requirements: in 1967 the Commission reversed its longstanding position that home country financial statements and other disclosure were acceptable for listed foreign companies; since 1967, the Commission has increased foreign company disclosure requirements on several occasions; during this

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25/ Id., 24 SEC Doc. at 4-5.

time, both in the releases I have already mentioned and in other Commission pronouncements, the Commission has identified four major factors that have influenced its determination of what disclosure requirements should apply to foreign issuers.

What I would like to do for the remainder of my allotted time today is to analyze each of these four factors and ask whether they really constitute a persuasive rationale for imposing basic U.S. disclosure requirements on foreign issuers as a price of admission to U.S. exchange trading.

The four factors are:

(1) that foreign issuers voluntarily participate in the U.S. securities markets;

(2) that requiring disclosure by foreign issuers reduces unfair discrimination against U.S. issuers;

(3) that material disclosure concerning foreign issuers significantly benefits U.S. investors; and

(4) that requiring material disclosure concerning foreign issuers results in an improved U.S. market for foreign securities and enhances the flow of international capital.

I will discuss each of these factors in turn: Let me start with the matter of voluntary participation by foreign issuers in the U.S. markets.

A. Voluntary Participation.

The Commission on several occasions has indicated that its determination of what disclosure requirements should apply to foreign issuers wanting to list on U.S. exchanges depends on the extent to which foreign issuers voluntarily enter the U.S. capital markets. Because a foreign company seeking a stock exchange listing is voluntarily participating in the U.S. markets, the Commission has reasoned that it is therefore appropriate to impose substantially the same requirements on such a foreign company as those imposed on U.S. issuers.

However, even assuming that voluntarism is an appropriate standard for determining disclosure requirements, it may nonetheless be appropriate to treat foreign companies who simply list in U.S. markets differently from foreign companies who offer securities in the United States. Whereas raising capital in the United States directly and substantially benefits the foreign issuer, listing in U.S. markets, while undeniably beneficial to the issuer, may be primarily a service to existing U.S. shareholders who want to trade their securities --- a service that has been denied to the many U.S. shareholders of the more than 1000 foreign companies whose securities have been relegated to our least efficient markets.

In any event, it is not clear why voluntarism should be determinative of foreign company disclosure requirements. The extent to which a foreign company has voluntarily entered the U.S. markets is certainly relevant for purposes of whether the foreign company is subject to the Commission's jurisdiction, and the Commission certainly has the authority to impose disclosure requirements on such foreign companies. The untested assumption, however, is that because the Commission can impose U.S. disclosure standards it necessarily follows that it should impose U.S. requirements.

Many foreign companies would argue that their customs and practices are inevitably different from U.S. customs and practices, but not necessarily less effective and certainly not so poor that they should be considered unacceptable in the United States. In an increasingly interdependent world, it may not be appropriate to require all foreign companies to do everything our way, even if we honestly believe our way is best.

At bottom, the proposition that foreign issuers which voluntarily enter the U.S. markets should be subject to the same disclosure standards as U.S. issuers appears to based on normative, rather than practical, factors. To some, it just seems right to treat domestic and foreign issuers the same and unfair to allow foreign companies to comply with different standards than those applied to domestic companies.

While there is an undeniable emotional appeal to this argument, it may be preferable to base public policy on a more concrete analysis of what in fact most furthers the Commission's goals of achieving investor protection and healthy capital markets. Consequently, it would seem worthwhile to reexamine the extent to which voluntarism is appropriately considered a major factor influencing U.S. disclosure requirements for listed foreign companies.

B. Unfair Discrimination

The second factor mentioned as relevant for determining foreign company disclosure requirements is reduction of unfair discrimination against domestic companies.

There is no question that disclosure and other regulatory requirements have costs, and that these costs can affect the competitive position of U.S. companies in relation to foreign companies. This is another area, however, where a rational distinction can be drawn between the '33 and '34 Acts. In the context of '33 Act offerings, foreign companies directly seek to raise capital for their own use from U.S. investors. In this respect, they are competing for such capital directly with domestic companies. In the '34 Act context, however, secondary trading is involved and no funds are going directly to the foreign company. Exchange trading may be as much, if not more, a benefit to the existing U.S shareholders of a foreign company than it is to the foreign company itself. The competitive concerns are therefore somewhat less persuasive as a rationale for requiring the some disclosure of foreign issuers as of domestic ones.

Moreover, if there is any widespread belief among U.S. companies that they will be harmed, or any persuasive evidence showing that they will be harmed, if foreign companies can be listed on U.S. exchanges without compliance with U.S. accounting and other disclosure requirements, then that data needs to be placed in the record. U.S. companies may be more concerned that the U.S. put its own house in order and address U.S. accounting and disclosure requirements whose costs exceed their benefits no matter to whom they are applied than that foreign issuers comply with the same disclosure requirements as domestic issuers. Consequently, the unfair discrimination argument also appears to be in need of reexamination.

C. Investor Protection.

The third factor justifying the decision to require listed foreign companies to meet disclosure requirements which are substantially similar to those applied to listed domestic companies is investor protection.

Under the Commission's analysis, the fact that the Commission has determined that a type of disclosure by domestic companies is necessary for the protection of investors necessarily means that substantially similar disclosure by foreign companies should also be required. As the Commission stated in its 1977 release, "it appears difficult to justify one level of disclosure for domestic securities and another for foreign securities when the standard for both is the protection of United States investors." 26/

There are two difficulties with this conclusion. First, it assumes that the adoption of a rule requiring additional disclosure by foreign companies will necessarily result in foreign issuers making such disclosure in order to be admitted to U.S. exchanges. The U.S. markets may not be critical to foreign companies, however, and if they feel that disclosure requirements are unacceptable they may simply choose not to list on U.S. exchanges.

The commenters in the 1970's noted this problem. However, as the statistics on foreign listings suggest, subsequent history, at least thus far, has suggested that the commenters were largely correct. Consequently, the benefits provided to U.S. investors in foreign securities by increased disclosure requirements may be more theoretical

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26/ Securities Exchange Act Release No. 14128, 42 FR 58684 (November 10, 1977).

than real because a large number of foreign issuers whose securities are owned by U.S. investors simply choose not to make such disclosure and either stay out of U.S. markets entirely or refuse to list their securities on U.S. exchanges.

Some argue that if the U.S. will just hold out, many foreign companies will rethink their decision to stay out of the U.S. markets. Under this view, insisting on compliance with U.S. standards as a condition for stock exchange listing is a means to encourage foreign companies, as well as foreign regulators, to adopt U.S. standards. Leaving aside the issue of whether U.S. standards are in all respects better than foreign standards, it would appear to be far from certain that foreign companies will reverse their decisions not to list their securities on U.S. exchanges. They have, after all, managed to maintain their position for well over a decade of dramatic growth in international equity trading. Indeed, as Europe continues to strengthen and integrate its economy, there is a risk that many European issuers will abandon any interest in U.S. listings and prefer to concentrate on increasingly liquid, efficient and unified European exchanges.

Even for those foreign issuers who choose to comply with U.S. requirements, the extent to which additional disclosure will benefit public investors is not clear. There is no question that disclosure is a fundamental aspect of investor protection. Obviously, investors can be greatly harmed by unexpected and undisclosed developments in a company's financial condition. The issue in the context of listed foreign companies, however, is not disclosure versus non-disclosure, but the extent to which imposing U.S. requirements in addition to foreign requirements produces significant additional benefits to U.S. investors.

For investors in high quality foreign companies likely to seek exchange listings, there may not be substantial additional benefits. As the commenters pointed out in the 1970's, and as is still true today, there does not appear to be a record of abuse or disclosure failures by such high quality foreign companies. Moreover, as I noted earlier, many foreign companies have been permitted to trade on NASDAQ that were required only to furnish their home country financial statements and disclosure documents pursuant to the Rule 12g3-2(b) exemption from '34 Act registration. I am not aware of any damage to U.S. investors caused by this arrangement.

Finally, the prices of securities of foreign issuers whose primary market is the home market are likely to be set primarily by home country disclosure. Reconciliation to U.S. GAAP and other U.S. disclosure requirements may therefore have little effect on the price of the security. 27/

27/ Sophisticated investors in the private markets, for whom the (continued...)

I do not mean to suggest by this that all foreign issuers should be allowed into U.S. markets on their own terms. I do believe, however, that it is worth examining whether rational distinctions can be drawn between different foreign issuers and whether different standards should be applied to some as opposed to others.

There is a second difficulty with the Commission's analysis of the investor protection ramifications of requiring listed foreign companies to comply with U.S. standards --- the difficulty is that the Commission's analysis focuses solely on the disclosure aspects of investor protection and ignores the substantial investor protection benefits that could be provided by having trading of foreign equities take place on U.S. exchanges. These trading benefits, however, may be of more real use to small investors than mandated public disclosure.

27/(...continued)
Commission has acted to increase access to foreign issuers on the theory that sophisticated investors can fend for themselves, do not appear to require full reconciliation to U.S. GAAP before investing in foreign issuers. Instead, a description of the differences between U.S. and home country GAAP is generally considered sufficient for their investment purposes. If investment professionals do not consider reconciliation to U.S. GAAP to be a prerequisite for investment in foreign securities, and if public investors rely on the advice of such investment professionals, it is not clear what purpose is served by restricting the access of those investors to securities of foreign issuers who do not reconcile their financial statements to U.S. GAAP.

It is worth noting that market efficiency and transparency are of particular importance to public investors, who may not have the sophistication and market power of institutional investors. Consequently, relegating foreign securities to the nation's least efficient markets seems to disadvantage most those very investors in whose name the Commission has insisted that listed foreign companies comply with U.S. accounting and disclosure requirements.

Consequently, it would appear worthwhile to re-examine the investor protection benefits of promulgating disclosure rules if the result is that most foreign companies simply choose not to subject themselves to the rules and U.S. investors must trade foreign securities in our least efficient markets.

D. Improve U.S. Market for Foreign Securities

The fourth factor relevant to what disclosure standards should be set for foreign companies is the desire to improve the fairness and efficiency of U.S. markets for foreign securities. However, the history of over-the-counter trading of foreign securities illustrates how focusing on disclosure aspects of investor protection to the exclusion of the trading aspects apparently has not helped, but may have harmed, the attempt to develop such fair and efficient markets.

I have already noted that in 1983, in part because of the great success of the NASDAQ market, the Commission decided to require new foreign issuer entrants to NASDAQ to comply with the Commission's U.S. company reporting requirements. The Commission's reasoning was that because a foreign company which sought listing on NASDAQ was voluntarily participating in the U.S. markets to the same extent as one seeking to list on any other U.S. stock exchange, NASDAQ's foreign companies should no longer qualify for the Rule 12g3-2(b) exemption. The Commission took this action despite noting that requiring Exchange Act registration "could force [NASDAQ's foreign companies] to withdraw from NASDAQ, consequently depriving U.S. investors of the accustomed market for such securities and, in some cases, reducing the depth and liquidity [of the market] for these securities." 28/

The commenters, which again were overwhelmingly opposed to the rule change, provided considerably more detail on just how the depth and liquidity of the U.S. market for foreign securities would be harmed. They indicated that price spreads would be increased, price quotes would not be carried in newspapers, NASD trading surveillance would be reduced, and execution of securities transfers would be delayed. 29/

28/ Securities Exchange Act Release No. 20264 (October 6, 1983), 28 SEC Doc. 1530, 1531.

29/ Id. The Commission's response to the commenters was to grandfather the approximately 290 foreign companies that were already qualified for NASDAQ in 1983, but require all foreign companies that sought to be qualified in the future to register under the '34 Act.

Whatever the accuracy of the commenters' views, new foreign issuers have, in the vast majority, gravitated towards the over-the-counter market.

In 1990, the Commission approved the NASD's OTC Bulletin Board, a new automated system that captures and displays on a real-time basis quotation information entered by market makers in non-NASDAQ securities. 30/ The Commission noted the many benefits of the Bulletin Board. These included enhancing the efficiency of pricing, fostering competition within the interdealer market for a security, assisting retail firms in negotiating the best possible price for their customers, expediting the processing of market orders, and broadening the distribution of market information to investors.

However, investors in foreign securities were denied many of the benefits of the Bulletin Board. In order to justify the continuation of the Rule 12g3-2(b) exemption for foreign securities, market makers in foreign securities were prohibited from up-dating their quotations more than twice daily. As the Commission noted, the result of this restriction was that "the quotation entered [for foreign securities] will generally be stale non-firm indications of interest, entirely different in nature from

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30/ Securities Exchange Act Release No. 27975, 55 FR 19124 (May 8, 1990).

the real time dissemination of quotations through NASDAQ," 31/ and, for that matter, the quotations on the Bulletin Board for domestic securities.

Thus, the Commission, charged under Section 11A of the Exchange Act with the task of assuring the economically efficient execution of securities transactions and the availability of quotation information, purposely restricted Bulletin Board trading of foreign securities to ensure that their quotes would be stale, non-firm indications of interest rather than real-time, firm offers or bids to engage in transactions. The trade-off of market place protections for disclosure protections is as significant, if not more significant, in the context of the stock exchanges and NASDAQ.

It seems at least possible that an observer might conclude from all of this that the Commission's position on listed foreign company disclosure may not have appreciably improved the U.S. market for foreign securities or enhanced the international flow of capital.

IV. CONCLUSION

What conclusions can be drawn from the Commission's treatment of listed foreign companies over the years? Perhaps there are more questions than conclusions. First, there do not appear to have been

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31/ Id. at 19129.

disclosure problems with high quality foreign issuers that necessitated imposing U.S. disclosure requirements on them. If that is correct, what is the rationale for imposing those requirements? Second, several of the Commission's reasons for imposing U.S. requirements appear to be open to substantial question. Third, there appear to be valid arguments to treat foreign company listings differently than '33 Act offerings. Fourth, the Commission needs to reexamine its reasons for requiring U.S. investors to trade foreign securities in our nation's least efficient markets. Finally, the Commission's expectation that the domestic market for foreign securities and international capital flows would be enhanced may not have been realized.

I will close by noting that, regardless of what the Commission decides, U.S. investors will continue to buy and sell foreign securities at a record pace, and their interest in foreign securities can only be expected to increase in the foreseeable future. Consequently, the issue is not whether the Commission should permit U.S. investors to invest in foreign companies that are not subject to U.S. disclosure requirements --- U.S. investors already trade in the securities of more than 1000 such foreign companies.

Under these circumstances, I believe the Commission urgently needs to reexamine the reasons for imposing U.S. reporting requirements on U.S.-listed foreign issuers.