Remarks of

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Before the

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It is a pleasure to have been invited here today to address this last annual conference of the Southeastern group of the Investment Bankers Association. I understand that the Southeastern group will soon become part of the Mid-Atlantic District of the Investment Bankers Association. I wish you success and we at the SEC will look forward to continuing our association with you in this new alignment.

There are several topics of current interest that I would like to discuss with you today which run the gambit from a recent court case, to the adoption by the Commission of certain new forms, rules and policies, all of which are important to the work of the Commission and which I trust will be of interest to you as investment bankers. Because financial analysis is so important to the work of an investment banker, I will begin my remarks by focusing on the general area of disclosure. The Commission has recently acted on a number of recommendations to implement the proposals of the Commission's Disclosure Policy Study. I know that the Investment Bankers Association is particularly interested in the fate of several of these proposals, and the comments submitted to the Commission by the IBA on these proposals have been most helpful to the Commission in its deliberations.

Before turning to the particular action the Commission has taken, I would like to emphasize the importance of the Commission's responsibilities in the disclosure area. Although other important matters, such as the commission rate structure proposals, broker-dealer insurance, and the pending mutual fund legislation may have occupied much of the Commission's time recently, administering the disclosure requirements of the Securities Act of 1933 and the Securities Exchange Act of 1934 is still one of the most important responsibilities that the Commission has. Perhaps more than at any time in the past, there is a need for publicly available current financial and other information about publicly owned companies. There are several reasons why this is so. First, there has been an enormous increase in the size of the investing public -- from

6-1/2 million shareholders in 1952 to 31 million shareholders at the beginning of this year. Further, another 100 million persons have participated indirectly in the market through their savings, insurance policies, and in pension funds. Trading volume in recent years has reflected this growth. With public investors participating directly or indirectly in the market to a greater extent than ever before, the need for current and accurate disclosure about publicly owned companies is particularly important.

The need for such disclosure has also been pointed up by the financial difficulties recently experienced by several large corporations. At such a time it is particularly important in order to maintain investors' confidence in the securities markets that public investors know that the Commission is improving and enforcing its disclosure requirements.

Disposition of the Disclosure Study Proposals

The action that the Commission has taken on the proposals of the Disclosure Policy Study reflects its concern that both the quality and timeliness of the disclosure requirements of the securities acts be improved. The Disclosure Policy Study Report, as you may recall, dealt with a broad spectrum of our disclosure requirements and related rules and was first published in March 1969. Proposals to implement recommendations contained in the report were made public in release form in the fall of 1969 and comments and recommendations were invited from the general public at that time. The response was most gratifying; approximately 350 letters were received by the Commission. In the past year, and especially during the course of this past summer, the Commission has carefully considered all proposals and comments received from the general public as well as the recommendations of its own staff. Based on these comments and recommendations, the Commission recently has approved for adoption certain of the implementing proposals. It has rejected all

or part of some proposals and is continuing consideration of another group of proposals. What I propose to do this afternoon is to briefly describe the action the Commission has taken.

For purposes of discussion, I will separate the various proposals into several groups, all of which have been the subject of Commission releases and with all of which I am sure you have some degree of familiarity. The first of these groups, and in many respects the most important, is what may be described as the disclosure package. Included in this package are proposals relating to Form 10, Form 10-K, Form 10-Q, Form 7-Q, Form S-7, Regulation S-X and Related Rules necessary for the implementation of those forms. Basically, with one notable exception, this package has been approved for adoption by the Commission. I will discuss this package in more detail shortly, but before doing so, let me briefly indicate what action the Commission has taken on the other proposals.

The next group covers the "160 series" of rule proposals. These proposed rules relate to underwriters, non-public offerings and broker's transactions under the Securities Act of 1933. The Commission has decided not to adopt the "160 series" of rules at this time. Instead it has published for comment proposed Rule 144 under the Securities Act which is designed as an alternative solution to the problem with which the "160 series" of rules was concerned, that is, to establish more objective standards for determining when a person is presumed not to be an underwriter. Because the new proposed rule is explained in the Commission's release, I will not take the time to describe it in detail here. Briefly stated, it is a presumptive rule which provides for an 18-month holding period with a limited "dribble-out" thereafter. The proposed rule is keyed to the public availability of current financial and other information concerning the issuer.

There are several reasons why the Commission did not adopt the "160 series" of rules. To begin with, it was believed that the one year holding period was too short and

would have resulted in the sale to the public of too large an amount of unregistered securities too quickly. Moreover, the theory of the "qualified issuer" possessed three major draw-backs: First, the preparation and maintenance of a list of such issuers on a reasonably current basis would have required a staff considerably larger than that available to the Commission for this purpose. Second, it would have been difficult to avoid the drawing of an inference, from the mere existence of a list of "qualified issuers," that the Commission had, by placing a security on that list, given it the imprimatur of investment merit. Third, only '34 Act reporting companies could become "qualified issuers" and the basis for discriminating against non-reporting companies was difficult to justify in terms of the provisions of the '33 Act.

The "160 series" of rules would have restricted the free sale of securities of an issuer, if that issuer did not have certain annual gross revenues for each of the five years preceding the proposed sale in order to gain admittance to the qualified list. It was believed this requirement was unduly restrictive and could have adversely affected the ability of small companies to raise capital, by virtue of the stigma that would attach from their failure to make the qualified list, based solely on their lower volume of business. Proposed Rule 144 endeavors to avoid these difficulties, and at the same time provide greater certainty in this area.

Another group of proposals deals with the amendment of Rules 135 and 174 and the adoption of Rules 137, 138, 139 and 15c(2)-8, better known as the "gun jumping" rules. Among other things, these rules would eliminate the requirement for certain dealers to deliver a prospectus in the 40 or 90-day period following the effective date of an offering, and would allow certain broker-dealers to publish opinions or recommendations concerning the issuer, provided certain requirements and conditions are met. I know that this group of proposals

is of particular interest to the IBA. However, since this package has been approved for adoption by the Commission in substantially the form published for comment, I will not pause to describe it in detail today.

The final group of proposals, which includes the proposal to abolish Rule 133, the "exchange of securities" rule, and proposals to adopt several other forms, is still under consideration by the Commission and, accordingly, I will not comment further on the proposals in this group.

While this brief run-down of the present posture of the proposals to implement the Disclosure Policy Study Report describes the action the Commission has taken to date, not all of the forms and rules which have been adopted are now available in printed form. However, they are all in the process of being printed for public distribution, and those materials which are not yet available will be published shortly.

Improving the Quality and Timeliness of Disclosure

I will turn now to a more complete description of the Commission's action with respect to the various proposals in the disclosure package. In acting on the proposals to adopt the various reporting and registration forms in this package, the Commission endeavored to accomplish two purposes: (1) to improve the quality of disclosure in filings with the Commission, and (2) to see that the Commission's files contain the most current information that reasonably can be required. To these ends, the Commission has revised the '34 Act registration form, Form 10, and the annual reporting form, Form 10-K, and has required that certain important additional information be reported on these forms. The Commission has adopted only that portion of the quarterly reporting form, proposed Form 10-Q, which requires the reporting of summarized financial information.

Dealing first with the proposed quarterly reporting form, the idea of requiring that quarterly financial information be reported has considerable merit. While many companies follow the practice of publicly disclosing some form of quarterly financial data either voluntarily or in connection with the timely disclosure requirements of a stock exchange, other companies do not disclose such information. Because current financial data is perhaps the most important information that public investors need to know, it is appropriate to require such information to be filed with the Commission and disclosed to the public. For this reason, the Commission adopted that portion of Form 10-Q which requires the reporting of summarized financial information on a quarterly basis including a summary of capitalization and stockholders' equity and summarized profit and loss data as of the end of the latest fiscal quarter. This report must be filed no later than forty-five days after the end of the quarter.

While the usefulness of financial information that is no more than forty-five days old at the time of filing can be readily seen, it can also be easily envisioned that if a material event should transpire on the first day of any quarter of a company's fiscal year it could be one hundred and thirty-five days later before that event is required to be reported in the textual portion of proposed Form 10-Q. This is less timely disclosure than is presently required by the Commission's current reporting form, which must be filed ten days after the end of the month in which a prescribed material event occurs.

Accordingly, the Commission has instructed the staff to prepare a new current reporting form to take place of the proposed quarterly reporting form. Perhaps the new form could be filed ten days after the prescribed event occurs. In the meantime, while the Commission is considering publishing for comment and adopting this new form, the present current reporting forms will continue to be used.

The Commission has encouraged self-regulatory agencies, such as the New York and American Stock Exchanges, to promulgate their own standards for requiring prompt disclosure. The exchanges have adopted excellent guidelines in this area, and I wish to emphasize that the Commission, in deciding to adopt a timely reporting form, does not wish to appear in any way to be dissatisfied with the activity of the exchanges in this area. It is a fact, however, that not all companies are listed and subject to the rules of the exchanges. Moreover, the exchanges' disclosure requirements are not necessarily keyed to the items of information required by the Commission's forms. The Commission believes that it has an independent responsibility to assure timely disclosure as well as to serve as a repository for information.

The major changes in the '34 Act registration and annual reporting forms which the Commission has adopted can be described rather briefly. Basically, they are designed to integrate the disclosure requirements of the '33 and '34 Acts by requiring that they include most of the information found in Form S-1.

The principal addition to Form 10-K, the annual reporting form, is the requirement for information as to lines of business. Basically, this item would require a statement of the approximate amount and percentage of total sales and revenues, and income or loss before taxes and extraordinary items, for each significant line of business of the company. The same addition was made in Form 10, the registration form, last July, and has been operating reasonably in that Form.

An addition common to both forms is the inclusion of a summary of earnings for the registrant, or for the registrant and its subsidiaries, or both, as appropriate, for the last five fiscal years of the registrant. Where common stock is being registered on a Form 10, or where common stock is already registered and a company files reports on Form 10-K, per share earnings for common stock and common stock equivalents, per share earnings on a fully diluted basis and per share dividends for each period of the summary will, unless inappropriate in the particular case, be included.

Finally, a statement will be required in both forms of the source and application of funds. The amendment of Regulation S-X is designed to implement this requirement.

One final part of the disclosure package which may be of particular interest to you is Form S-7, a short form which may be used for registration of securities to be offered to the public for cash by certain companies having established records of earnings and stability of management and business. Underwriters have expressed satisfaction with the form, and in particular, with the shorter time required for review by the staff of the Commission. The major amendments to the form would have the effect of broadening the class of companies to which the form would be available. A company which has succeeded to the business of another company, is presently unable to avail itself of Form S-7. An amendment to the form would, in many instances, make the form available. Further, the form would become available to companies whose sales or gross revenues and net income are not sufficiently large to qualify them for use of the form under present requirements. As amended, these companies will be able to use Form S-7, provided that they satisfy a significantly less stringent pre-tax income requirement.

Enforcing the Disclosure Requirements

The new disclosure rules and forms, as well as our present ones, can only be effective to the extent that companies comply with them, not only by filing the information that is required to be filed, but also by filing reports at the time they are required to be filed. It is very important that reporting forms in general, and current reporting forms in particular, be filed when they are due if investors and analysts are to have available necessary timely information. In this regard, the Commission has recently instructed its staff to take whatever steps are necessary in order to reduce to a minimum delinquencies in filings with the Commission.

The Commission has also recently taken steps to assure that our periodic reporting requirements are being complied with to the extent that required information is in fact being filed. Until recently, practically all of the Commission's manpower resources devoted to processing filings have been needed to review the unprecedented number of '33 Act registration statements filed in the past few years. In fiscal year 1964, my first year on the Commission, there was a total of 1,192 registration statements filed under the Securities Act. I watched this number progressively increase to 1,376 in 1965; 1,697 in 1966; 1,836 in 1967; 2,906 in 1968, until it reached a record high of 4,706 in 1969. During the last fiscal year, a total of 4,314 registration statements were filed. Only in recent months has there been a decline in the number of filings.

The Commission's staff has made a concerted effort to reduce the number of unreviewed registration statements pending under the Securities Act and the staff has made considerable progress in this endeavor. At the beginning of this month, there were 171 unreviewed registration statements pending compared with 610 such statements pending at the beginning of October 1969. Of the 171 unreviewed registration statements pending, 107 statements had been on file for less than thirty days and only 11 had been on file for over 90 days.

In view of the progress the staff has made in the processing of the '33 Act registration statements, it has been decided as a matter of policy that the staff will concentrate a greater part of its time in the processing and review of registration statements and reports filed with the Commission under the Securities Exchange Act of 1934. This should have the effect of improving the quality of information available to public investors on the '34 Act forms.

I might mention in passing that the Commission's concern about timely disclosure of material corporate events is not limited to the reporting of such information on our forms. The Commission has recently approved a release to stress its concern, in view of financial problems confronting some companies which have recently come to light, that prompt and accurate disclosure of information, both favorable and unfavorable, be made to

security holders and the investing public. Companies should make full and prompt announcements of material facts regarding their financial condition notwithstanding the fact that they are in compliance with the Commission's reporting requirements.

Publication of No-Action Letters

There are two other current matters which I think might be of interest to you. Just as adequate disclosure is necessary for public offerings and keeping the investing community informed of current events of corporations, there exists a need that the Commission disclose to the securities industry its current policies and precedents. The Securities Bar and the investment community have long urged the Commission to make public the informal advisory opinions of the Commission's staff -- the so-called no-action letters.

On July 14, 1970, the Commission published a proposed rule concerning the public availability of requests for no-action and interpretive letters and the responses thereto by the Commission staff. Many helpful comments from the industry were received relating to this proposed rule, and I am pleased to announce that the Commission has adopted that rule, which is now being processed for publication.

The rule generally provides that no-action and interpretive letters and the responses thereto will be available for public inspection or copying 30 days after the staff has given or sent the response to the writer. In particular cases where it appears that a further delay in publishing would be appropriate, the letter and response thereto will be given confidential treatment for a reasonable period extending not more than 90 days upon application therefor. It is anticipated that the requests for confidential treatment shall be limited to the minimum period necessary under the circumstances. Only in extraordinary situations such as mergers or acquisition programs will the full 90-day period be allowed. The Commission is

exploring several methods of giving important interpretive letters the widest circulation possible in order to assist the public and members of the bar. I might also mention that this rule will operate prospectively and will not apply to requests submitted prior to December 1, 1970.

Dow Chemical Case

Another matter of current interest to the Commission relates to the apparent growing concern over the social and general economic functions of corporations. We are watching developments in this area both in terms of what is appropriate by way of our disclosure and proxy requirements and also from the standpoint of how decisions in this area might affect our ability to provide informal and expeditious consideration of questions presented to us. Of particular interest is the Medical Committee for Human Rights v. SEC case decided by the United States Court of Appeals for the District of Columbia Circuit on July 8, 1970. In that case, the Court held that a determination by the Commission not to take enforcement action in connection with a proposal that a shareholder had submitted for inclusion in a proxy statement pursuant to the Commission's proxy rules is partially reviewable.

The Medical Committee has submitted a proposal to the Dow Chemical Company concerning that company's continued sale of napalm. In accordance with the Commission's proxy rules, Dow advised the Medical Committee and the Commission's staff that it did not intend to include the Medical Committee's proposal in the proxy statement since it did not believe that it was required to do so. After the staff indicated that it concurred in Dow's legal analysis, the Commission, at the Medical Committe's request, considered whether enforcement action would be appropriate should Dow omit the proposal from its proxy materials. The Commission determined that it

"would raise no objection" if the proposal was omitted; it did not state the reason for its decision or express any view on the merits of the staff's or Dow's legal interpretation.

Upon a petition for review, the Court of Appeals rejected the Commission's contention that the Court lacked jurisdiction because no reviewable order had been entered. Instead, the Court concluded that since, in its view, the Medical Committee had been compelled to bring its controversy with Dow to the Commission and to exhaust whatever administrative remedies were available and since an adverse decision by the Commission on the merits could be determinative should the Medical Committee subsequently seek to litigate its dispute with Dow in the District Court, the determination by the Commission was reviewable to the extent that it embodied a view of the legal merits of Dow's position. After offering extensive dicta on the meaning of the Commission's shareholder proposal rules, the Court remanded the matter to the Commission for an exposition of the rationale behind its determination to take no action in the circumstances.

The Court of Appeals subsequently denied the Commission's petition for rehearing, in which the Commission suggested that no procedures existed to be exhausted and that the kind of decision made was not of a character entitled to significant deference.

The Solicitor General has until the 26th of November to file a petition for a writ of certiorari to the Supreme Court, should he determine that this would be the appropriate course of action to follow.

Even prior to the Dow decision, we anticipated an increase in the number of shareholder proposals relating to broad social and economic matters. Our staff is now considering procedures which will enable it to handle this anticipated increase with the limited manpower available. Despite the Court's finding of sufficient formality in our procedures to resemble an adjudicatory proceeding, we will attempt as best we can to preserve the informality of our procedures in order to accomodate the time schedules imposed on corporations soliciting proxies.

We are also considering methods to handle the appeals we anticipate will be made from our disposition of these matters. Since one group will always be dissatisfied with any determination we made, we anticipate a number of appeals. These appeals will inject more delay into the process of soliciting proxies.

Finally, although the Court did not render an opinion of the merits of the Medical Committee's proposal, it did, in some strong dicta, indicate how it believed our rules should be applied. For this and other reasons, our staff is reconsidering our substantive rules relating to shareholder proposals to determine if appropriate amendments are needed.

Conclusion

In closing, I would like to take this opportunity to again thank the IBA for the invaluable assistance which it has given the Commission over the years. The dramatic changes which have taken place in our securities markets have made all of our jobs more difficult. We appreciate receiving the IBA's comments in connection with our efforts to meet our statutory responsibilities and I expect that an even greater cooperative effort will be needed if future challenges are to be met. I look forward to your continued interest in the work of the Commission and I know that with your help our job under the federal securities laws will be made easier.