Remarks Of

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"More Speculation"

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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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I. Introduction

I appreciate the opportunity to participate in this seventeenth annual Securities Industry Association's ("SIA") Sales & Marketing Conference. I view such a conference as timely since the securities industry is changing rapidly. Also, it is always a pleasure to participate in an SIA conference. While I do not always agree with the SIA's views, I am nonetheless interested in those views. I believe that communication with the industry enables me to do a better job as a regulator, and I expect that everyone agrees with the proposition that I need all the help that I can get. I certainly wish to encourage such continued communication.

I have been requested to offer my views on where I see securities regulation headed over the next ten years or so. I wish I could do that. For that matter, I wish I knew where I was headed for the next ten years or so. Unfortunately, I am not much of a visionary. What I will attempt to describe today are several securities regulatory initiatives that the Commission may attempt to address in the reasonably near future.

Obviously, any sound predictions concerning potential Commission action or direction are elusive for a couple of reasons. First, the Commission often must respond to unpredicted, external events. Secondly, the Commission's discretionary agenda is set by the Chairman, and not by any one Commissioner.

With that background in mind, I wish to begin by reflecting briefly on the past and how the past may influence the future.

II. Industry Overview

Last year the nation's securities firms had pretax profit of over $6 billion, topping even 1991's record earnings. Apparently heavy trading by individual investors and a record surge in new stock and bond issues underwritten by securities firms triggered 1992's record year. Thus far in the first half of 1993, the securities industry appears to be earning record profits again. These profits are the result of most lines of

business, but in particular the result of underwriting IPOs. Underwriting revenues were at record levels in the second quarter of 1993, with the driving force being IPO volume. The volume of secondary trading in corporate debt set a new record during the second quarter as well, and activity in the private placement market showed renewed life too. Exchange volume remained at record levels, and last but certainly not least, revenues from retailing mutual funds continue to set records.

Obviously the securities industry is much more robust today than it was in 1990 when I joined the Commission. Although I hope that these good times continue indefinitely for the securities industry, I caution the industry to take advantage of the good times and to save for a rainy day or two in the event that the good times grind to a halt. However, I do congratulate the industry for the success earned in 1991 and in 1992 and for the strong year thus far in 1993.

III. Lack of Resources to Oversee Mutual Funds

Since I have mentioned the growth of mutual funds, I should indicate that mutual fund supervision is the one area where Commission resources are glaringly sparse. Commission resources to oversee the $2.1 trillion investment company industry have lagged far behind the growth of the industry itself.

In 1982, the Commission had approximately 123 staff members to oversee 5,000 investment company portfolios with aggregate assets of about $335 billion, or 41 portfolios and $2.7 billion of assets under management per staff member. By last year, despite a 74% increase in investment management staff to 214, there were 87 portfolios and $8.9 billion in assets per staff member. Similar growth and a similar Commission resource shortage exists in the investment adviser area. All aspects of Commission oversight have been affected -- not only the inspection of funds and advisers, but also the reviewing of prospectuses, and the handling of exemptive, interpretive and no-action requests.

The investment company industry, to a great extent, rests on public trust and confidence. There is no governmental safety net. Nevertheless, Commission resources for investment company supervision have been far more scarce than resources available to other financial regulators. Even though the investment company industry is two-thirds the size of bank, thrift, and credit union assets, the entire Commission had only 214 staff members for its 1992 investment management program compared to almost 21,000 staff members available for the oversight of banks, thrifts, and credit unions. Thus, there was a ratio of $8.9 billion in investment company assets per staff member, as compared to $150 million in bank, thrift, and credit union deposits per staff member.

I believe these figures show a dangerous shortfall in the Commission's resources to oversee one of the fastest growing and most important segments of the financial services industry. While the Commission has an extremely dedicated and resourceful staff, if nothing is done to add or to supplement to their ranks, the task they face may become too great to provide any real measure of deterrence or investor protection.

One solution would be to increase dramatically the size of the Commission's staff. For example, legislation is now pending in Congress to add approximately 200 additional examiners to the Commission in an attempt to upgrade the current woefully inadequate Commission investment adviser inspection program. While that solution would be an improvement over the status quo, increasing Commission bureaucracy may not be the most cost effective solution. Possibly it is time to consider, or rather reconsider, other alternatives to address the shortage of oversight resources that exists in the investment company and investment advisory areas.

IV. Legislation

Since I have mentioned legislation, on the securities legislative front, I anticipate pursuit of the same legislative reforms sought in the last Congress in this Congress.

This would be small business reform, securities litigation reform, auditing reform, government securities reform, and investment adviser reform. I would add municipal securities reform to the list, as the municipal securities market also appears to be receiving a great deal of attention recently.

There were a number of legislative recommendations contained in the Investment Company Act Study which to date have not received much attention. That is too bad. One that I am very much in favor of is the recommendation for legislation eliminating most of the exemptions from the federal securities laws for interests in bank collective trust funds and insurance company separate accounts in which self-directed defined contribution plans invest. I believe that such legislation is necessary to ensure full and fair disclosure to every pension plan participant responsible for investing his or her own retirement funds. This may be the most important investment decision that these individuals will make. As a related matter, the Commission also should review its own disclosure rules to ensure that the disclosures currently required do indeed "trickle down" to the end user, the pension plan participant.

Another legislative recommendation contained in the Investment Company Act Study was concerned with several proposals intended to streamline and to strengthen the governance requirements for investment companies. Perhaps the most significant of these was the recommendation to raise the percentage of independent directors required to serve on investment company boards. Independent directors serve as the "watchdogs" for fund shareholder interests. Currently, at least 40% of an investment company's board must be independent. To strengthen the independence of fund directors as a group, the Study has recommended that this be changed to a majority. I believe that such a change is warranted given the vital role accorded independent directors under the Investment Company Act and the increased emphasis the Commission has placed on independent directors.

Hopefully, at least these two legislative recommendations of the Investment Company Act Study will receive more attention in the future.

V. Enforcement

I am often asked what will be the Commission's enforcement priorities in the future. Of course, enforcement actions are often driven by external, unforeseen events, such as the municipal securities matters which are receiving a great deal of attention today. It does appear that the municipal securities area will be the focus of enforcement scrutiny for some time to come.

I do anticipate that the Commission will continue to focus on failure to supervise actions. The Salomon Brothers Section 21(a) Report issued last year by the Commission should have delivered that message. It also should be clear that the systemic abuse of retail investors, as has been demonstrated by the securities industry in the past, will not be tolerated by the Commission and will result in an enforcement action.

In addition to the usual array of penny stock cases, insider trading cases (including possibly some debt cases), and cases involving misappropriation of client funds, I expect that the Commission will continue to expend enforcement resources ferreting out financial accounting fraud cases and, to a lesser extent, on serious accounting or bookkeeping violations not involving fraudulent conduct. Some examples of these latter cases are those recently pursued by the Commission in the broker-dealer, banking, insurance company, investment adviser, and investment company areas. I also expect that the Commission will continue to bring scattered enforcement cases involving management, discussion, and analysis disclosures when the facts so warrant. Further, under the appropriate facts and circumstances, I anticipate that the Commission will continue to pursue a handful of enforcement cases in the government securities area and in the corporate bond area. Moreover, the Commission will

probably continue to bring enforcement actions where serious violations of fiduciary duties by securities professionals are uncovered.

In its enforcement program, the Commission has attempted to be tough and aggressive on the one hand and fair and reasonable on the other. That is a difficult balance to maintain and often results in actions that are thorough and effective but rather slow. I assure the SIA that above all, the Commission strives to "do the right thing" in its enforcement program.

VI. Potential Rulemaking Actions

There are a number of rulemaking initiatives that could receive Commission attention in the reasonably foreseeable future. I will mention several potential ones that appeal to me.

I believe that the Commission will continue to plug along with the Market 2000 Study underway. Hopefully, the Study will be out before the end of the year. I believe that the structure of the equity markets will be the focus of Commission attention for the next couple of years and that Market 2000 will provide the framework for that focus. The Commission may break out the payment for order flow issue soon with respect to both cash and non-cash inducements and may initiate rulemaking proposals in that area prior to the publication of Market 2000.

I also believe that the Commission will continue to implement the rulemaking recommendations deriving from the Investment Company Act Study. Further, the Commission soon will begin to consider the recommendations contained in the recently issued Staff Report on the Municipal Securities Market.

The Commission has been concerned for some time with the potential equity market risks associated with the growing, yet difficult to quantify, market in conventional or over-the-counter ("OTC") derivative products. Reliable information is difficult to obtain in this area, particularly with respect to the OTC market. The staff

of the Commission will continue to attempt to analyze the potential risks in this area to the equity markets. Specifically, the staff will continue to work on developing the appropriate capital treatment of derivative products under the net capital rule. Further, the staff of the Commission is expected to continue to review and to analyze the risk assessment filings currently being made with a view toward ascertaining the potential risks to which regulated broker-dealers are exposed and the potential systemic risk posed as a result of the derivatives activities of a broker-dealer's holding company or affiliates.

I expect the Commission to propose amendments to Rule 2a-7 for tax-exempt money market funds generally paralleling the amendments adopted for and now applicable to taxable money market funds. I also expect the Commission to adopt soon, in some modified fashion, the proposal to mandate three business days as the standard settlement cycle for broker-dealer transactions. I recognize that a T+3 rule is controversial, and I continue to have some misgivings with certain aspects of such a rule.

I anticipate that the Commission will continue to monitor arbitration proceedings and the Financial Accounting Standards Board's project on stock option valuation. Further, the possibility looms that the Commission may look into certain bondholder issues. In an atmosphere of plummeting interest rates, corporate issuers apparently have been involved in all sorts of gyrations to enable the bypass of indenture covenants and the replacement of high interest rate bonds with low interest ones. Some of these gyrations may be inconsistent with the spirit if not the letter of existing securities laws.

I suspect that the Commission will continue to work on a large trader reporting rule. Moreover, the Commission may consider developing disclosure rules for asset-backed financings. I understand that currently there are no such guidelines.

I have discussed the subject of rating agencies often in the past. Bypassing the more controversial issue of whether the Commission's oversight of rating agencies is sufficient or insufficient, at a minimum, the Commission rating agency designation process should be formalized. The staff of the Commission currently handles this process through no-action letters. Thus, the process has never been authorized by the Commission, is devoid of published standards, and is not judicially accountable. In sum, the current designation process arguably is unfair. In my view, the Commission should engage in a rulemaking action to formalize the Commission rating agency designation process within the confines of our authority.

Given the influx of new investors into the securities markets and the growing complexity of the securities products being peddled, the securities industry should embark upon some standardized continuing training and education program. The SROs are exploring such a program, but apparently no consensus has emerged to date. The Commission should take a leadership role in this area and should push through a consensus for an appropriate program. For investors to be informed, securities sales representatives must be informed as well.

In an area that has always sparked considerable controversy, the rulings from the Commission and the staff in the shareholder proposal area continue to produce confusion. While clarity and consistency would be nice, it may be difficult to achieve. The judgments in this area become very difficult and expose the Commission to substantial criticism. Nevertheless, once a litigation outcome pattern is more definite, the Commission may attempt clarity and consistency either through an interpretive release or a rulemaking project, or may attempt to withdraw from serving as a referee altogether with respect to these issues and to leave them for issuers, shareholders, states, and courts to decide. While the former approach is more responsible, the latter approach is easier and sidesteps the criticism so common in this area.

The Commission has been active in the past on the international securities front, and I expect that activity to continue. I know that the SIA has been interested for some time in the creation of a separate listing standard to accommodate foreign issuers. While I am sympathetic to such a concept, it now would be imprudent in my view to attempt to implement that notion until a better handle is gained on the ramifications of the Daimler - Benz decision to list on the New York Stock Exchange. I view this decision as an important one in the short-term and hope that a handful of foreign issuers will make a similar decision soon. While I am not entirely comfortable with the current case-by-case approach, that appears to be the Commission approach of choice, at least for the foreseeable future.

Debate over a special foreign listing standard notwithstanding, I believe that everyone would agree that the best long-term solution in the international area would be the harmonization of accounting standards on an international basis. Along those lines, I understand that the staff of the Commission has intensified their efforts to reach an accord with the IASC with respect to some standards. Hopefully, this extra effort will bear fruit in the near future and will hasten the international accounting harmonization process.

There are several Commission staff interpretive releases that possibly should be endorsed and published by the Commission in the near future. I will mention two specifically.

First, the staff of the Commission has been working for some time on an interpretive release to help the securities industry avoid the registration requirements of the Investment Company Act when conducting legitimate wrap fee programs. Some additional disclosure rules in the wrap fee area also may be necessary.

Secondly, the Commission's accounting staff, pursuant to a congressional request, has undertaken a study of current accounting independence requirements.

The present requirements are entirely too lax in my view. I am uncertain as to what may be required in this area, but some type of interpretive release is a possibility.

Finally, I recognize that "regulatory simplification" is an oxymoron, but there exist several areas where the Commission could engage in a modernization and/or simplification process. I will mention a few projects that appeal to me which also may be of interest to you.

Direct Marketed Mutual Fund Sales – In my view, the Commission should move forward and adopt the off-the-page mutual fund sale proposal. I believe that the disclosure concerns in this area can be appropriately addressed. I also hope that substantial progress is made soon toward encouraging a more simplified, comprehensible mutual fund prospectus.

Accounting — The accounting standards are too complex which has led partially to the litigation problems that are presently gnawing at the accounting industry. In my view, Commission accounting staff should immediately begin working with the FASB, and the AICPA, among others, as a priority matter to simplify these standards.

Trading Rules — Exchange Act Rules 10b-6, 10b-7, and 10b-8 should be modernized and simplified. The Commission, with its approach thus far, has handled this issue on a piecemeal basis. Now it is time to deal with the big picture, and the Commission should initiate rulemaking action in this area.

Exchange Act Section 16 — Rule 16b-3, which involves employee benefit plans, should be simplified for certain. The Rule now is approximately 13 pages doubled spaced in length. That appears to me to be longer than necessary. A few other rules under Section 16 probably could be simplified as well.

VII. Conclusion

I suspect that I have overlooked a number of laudatory initiatives that the Commission will undertake in the near future. For almost 60 years, the Commission

has attempted to protect investors without unnecessarily impeding the natural progression of market forces. The result to date has been a vibrant, active securities market, second to none. I intend to work with Chairman Levitt and my other colleagues on the Commission and with the SIA, among others, to perpetuate that result. While there may be differences in the approach taken from time to time, I know that everyone is committed to such a goal. I look forward to working with each of you in the future toward that objective.