

NEWS

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REMARKS TO
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CERTIFIED PUBLIC ACCOUNTANTS

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I am delighted to address this Annual SEC Conference of the New York State Society of Certified Public Accountants. The accounting profession is profoundly important to the nationwide enforcement program of the Securities and Exchange Commission. Thus, I am pleased to share with you several observations about the Commission's enforcement program.

CAPITAL MARKETS AND THE
SECURITIES AND EXCHANGE COMMISSION

As Chairman John Shad has said: Our securities markets are the best the world has ever known. The prices of the vast majority of the securities reflect publicly available information and investors' opinions of the prospects for the companies and the economy.

Public confidence in the integrity of our markets is essential to capital formation and to our nation's economic growth and stability. Our markets and even our economic stability can be jeopardized by attempts to abuse the system or to deceive investors. Although abuse and deception are the exceptions, they remain serious problems.

The Commission's purpose is to insure that the nation's capital markets operate with an integrity that promotes investor confidence. Our enforcement responsibility is to ferret out those who abuse the market system and who deceive investors.

Nationwide Enforcement Program

The Commission alone cannot ferret out all those who abuse the capital markets and who deceive investors. We have limited resources. The size of our staff and budget is declining while the securities industry we police is expanding rapidly.

We are in the process of adjusting our strategy to maximize our resources.

As part of its nationwide enforcement strategy, the Commission will strengthen its working relationship with those organizations for which the Commission has oversight responsibility. These include the securities industry self-regulatory organizations. These organizations must improve their surveillance capabilities and enforcement programs.

The Commission will continue to maintain close liaison with the Department of Justice, the various U.S. Attorney's offices, other law enforcement authorities, as well as certain regulatory agencies. In appropriate circumstances, the Commission will refer its files to the Department of Justice or state criminal departments with an affirmative request for prosecution.

If we are successful in our cooperative efforts, more of those who abuse the system will be investigated, prosecuted and sanctioned. Together we will have a greater impact and serve as a greater deterrent to securities fraud and market abuse. We will multiply the effectiveness of the S.E.C.'s

limited resources. A true nationwide enforcement program will develop.

**Procedural Protections
And Due Process**

The Commmsion's enforcement staff is extremely capable and professional. The staff performs with skill and dedication. It is committed to a program which includes due process and legal safeguards for those investigated and prosecuted. It will remain tough-minded, vigorous and fair.

The Commission's enforcement program has been praised by many as the best in government, and criticized by some as over-zealous and over-reaching. I intend to justify the praise and be responsive to the criticism. I am concerned about any criticism that the Commission's enforcement program has not given adequate attention to procedural protections and legal safeguards. I take the criticism seriously. Let me mention some of the criticisms that have been raised.

Some say the enforcement program has lacked standards for the initiation and prosecution of cases; that investigations and enforcement actions have been initiated and maintained out of an emotional reaction to particular factual situations rather than pursuant to policy programs developed at the Commission level.

Others have portrayed the Commission as a prosecutor seeking to expand its jurisdiction, without paying sufficient attention to procedural protections and due

process. Some have said the Commission's enforcement program has not had adequate internal checks and balances.

Others have said that by overuse the Commission has depreciated the quality of the statutes it enforces, and the remedies it seeks. Finally, some have expressed the view that the Commission uses the media in its enforcement program as an unlitigated sanction.

There is a temptation to resist the criticism with vigor and tenacity or to dismiss it as typical responses to effective law enforcement. Prudence and sound management does not permit this reaction.

A law enforcement agency can be effective only if its "public" has trust and confidence in its fairness and professionalism. If the Commission's "public" --- investors, the corporate community, securities industry professionals, attorneys and accountants -- believes that the staff is inattentive to due process concerns, we cannot expect this "public" to assist us in the enforcement of the securities laws. The perception itself, even if not justified, may be an impediment to effective law enforcement.

With the encouragement of Chairman Shad and the other Commissioners, I have initiated a comprehensive examination of the Commission's enforcement policies and practices. Each aspect of the procedures by which the Commission initiates, conducts and closes investigations or commences enforcement actions is being scrutinized.

The Commission will benefit from a wide variety of views and observations during

this undertaking. Our goal is simple. It is to assure the fairness and efficiency of the Commission's enforcement program.

Let me mention a few of the policies and practices that are being reviewed.

We are reexamining the internal standards utilized by the Commission when deciding whether to prosecute, litigate or settle cases.

We are examining the Commission's internal standards for the authorization of formal orders, which open investigations and enable us to issue subpoenas, and how subpoenas should be drafted and enforced.

We are reviewing the specificity of the Commission's formal orders of investigation.

We are considering whether our enforcement orders of investigation should have a specified term after which they will expire, unless renewed by the Commission.

We are studying whether the Commission should require that the opportunity for making a "Wells submission" be provided every prospective defendant, except in emergency situations when immediate enforcement action is essential to protect the public interest.

In 1972, an advisory committee to the Commission, chaired by John Wells, recommended that "where circumstances permit, the Commission should ... give a party against whom the staff proposes to recommend proceedings, an opportunity to present his own version of the facts" The Commission agreed with the objective of the recommendation, but did not adopt formal

rules for that purpose. It did issue a release suggesting the procedure, when appropriate, to the staff.

Recently, a subcommittee of the American Bar Association recommended a suggested rule on "Wells submissions." Although I do not agree with each aspect of the suggested rule, it represents the type of assistance that the Commission must have if its review of enforcement policies and practices is to be successful.

We are examining whether the Commission should inform those under investigation when such investigations are closed without enforcement action.

We are reviewing our press policies and procedures concerning enforcement matters.

Finally, we are exploring ways of improving our capabilities and professionalism.

There is no more important undertaking than for the Commission to assure that its enforcement policies and practices include adequate procedural protections and due process. Our goal is to assure fairness in our process, while achieving efficiency in our enforcement. We will make every effort to achieve that goal.

Enforcement Sanctions

With the approval of Chairman Shad and his fellow Commissioners, I have initiated a study of the sanctions and remedies available to the Commission when it concludes that there has been a violation of the Federal securities laws.

The Commission has available only limited remedies. Indeed, an injunction with equitable relief is the sole civil judicial remedy that the Commission has at its disposal. By reason of such limited remedies, the public often cannot distinguish Commission enforcement actions instituted against repeat offenders of the Federal securities laws from a Commission action instituted against a person engaged in an isolated violation.

Some suggest the Commission needs greater flexibility to deal with different degrees of securities law violations. They urge that Congress empower the Commission to seek judicially sanctioned cease and desist orders. Others recommend that Congress authorize the Commission to seek, and the courts to impose, fines against repeat or egregious violators of the Federal securities laws. The suggestions merit careful study.

This study will involve three areas. First, the adequacy of the remedies and sanctions available to the Commission, and whether new legislation is needed. Second, whether the Commission, in appropriate circumstances, should seek injunctions with a fixed expiration date or upon the fulfillment of certain conditions. Third, whether to recommend that the Commission publish standards or criteria that it would apply when considering whether to consent to a modification or dissolution of an injunction. These are issues of paramount importance.

We embark upon this project with no preconceived notion. By examining the issues, we do not suggest any retreat from our belief in the efficacy of existing enforcement remedies.

The two studies will extend through 1982. We solicit the views of the bar associations, the accounting profession, the investment and business communities, the plaintiffs' bar and the academic community. As we proceed, recommendations will be made to the Commission. Of course, Commission approval is necessary before any changes are implemented.

Areas For Renewed
Enforcement Vigilance

I would be remiss if I did not address those areas that I believe require renewed enforcement vigilance. First, trading while in possession of material non-public information, or what is often called "insider trading." Second, the manipulation of the securities markets. Third, fraud by reporting companies.

By listing these specific enforcement programs, I do not suggest that my predecessors or prior Commissions ignored them. The record is to the contrary. From my selection of these areas, no one should assume that the Commission will be less vigorous when pursuing violations of other provisions of the securities laws. To do so would be folly. I mention these three areas because they are currently in the forefront.

Trading on Material
Non-Public Information

The Commission remains deeply concerned about trading by persons in possession of material non-public information.

The Commission will intensify its efforts to prevent, detect and prosecute trading by persons in possession of inside information. Although the program to date has been successful, there remains widespread abuse of material non-public information by corporate insiders, their professional advisors, their tippees, and others. We will not shy away from cases based on circumstantial evidence if the relevant facts demonstrate that any person breached a trust, confidence or other duty owed to another person or entity by effecting trades while in possession of inside information.

The insider trading issue has been intensified by the many substantial tender offers and business combinations which recently have taken place. We are carefully scrutinizing trading activity that precedes public announcement of such transactions. We do not view the secrecy law of any nation as a safe haven for U.S. citizens or others who illegally invade our capital markets to deceive investors and violate the Federal securities laws.

All enterprises which have confidential information in their possession that may affect the securities trading markets have an affirmative obligation to safeguard such information. While no procedures can guarantee that an employee will not take unfair advantage of his position, enterprises should establish policies and procedures regarding the protection of confidential information and take steps to ensure that all personnel are familiar with those policies, and the serious consequences that may result from conduct violating them.

Manipulation

I will turn next to our enforcement efforts against those who manipulate the securities market.

A chief aim of the Securities Exchange Act of 1934 is to eliminate manipulative and other abuses in the securities markets, and to establish markets where prices are established by the free and honest balancing of investment demand with investment supply. Manipulation threatens the integrity of the capital markets.

One type of violation high among our enforcement priorities is manipulative activities associated with the so-called "hot issue" market centered in Denver.

Another area of potential enforcement action is intermarket manipulation. Listed option trading has made it possible for a manipulator to realize large gains on small manipulated movements in equity securities as a result of the leverage afforded by options.

We will continue to enhance and coordinate our market surveillance efforts in conjunction with those of the self-regulatory organizations. The Commission's objective of preserving market integrity and investor confidence will not be achieved unless there is an increase in enforcement presence in market related investigations, and a substantial increase in our capacity to follow-up on matters brought to our attention by self-regulatory organizations and others.

Fraudulent Disclosure Practices

Now, I will discuss our program against fraud by reporting companies.

At the heart of the disclosure requirements of the Securities Act of 1933 and the

Securities Exchange Act of 1934 is the concept that all material information relating to a company should be fairly and accurately reported. The Commission will continue to devote significant enforcement efforts to the detection and suppression of fraud in this context.

This aspect of the nationwide enforcement program is increasingly important as the Commission continues its efforts to deregulate, to streamline the disclosure process and to expand the scope of exempt offerings.

A fundamental and essential companion to deregulation is strong enforcement. The Commission is committed to an enforcement policy which will prevent deregulation from lessening investor protection.

For lawyers and accountants, deregulation is not a license to abandon high standards of professional conduct. No professional should permit deregulation or reform to lead to complacency. Reform is not a license for professional expediency.

General Observations

Before I conclude, permit me two general observations about the Commission's nationwide enforcement program.

Voluntary Disclosure

First, I share Chairman Shad's desire to encourage voluntary disclosure. Recently, he said that "In order to encourage voluntary corporate

compliance, the Commission will give consideration to efforts of companies which promptly correct erroneous or inadequate disclosure and take other remedial actions."

The Commission's objective is compliance with the law. Obviously, voluntary disclosure will not be a self-immunizing process. The Commission has always taken into consideration voluntary disclosure efforts in formulating its enforcement determinations. Such considerations will continue. Of course, the nature of certain violations will affect the degree of consideration accorded.

Suits Against Enforcement Staff

My final topic is the growing number of suits being filed against members of the Commission's enforcement staff. If the staff is engaged in misconduct, the Commission will suffer the consequences. Staff misconduct is rare. It is not condoned. We are improving our professionalism and controls to avoid mistakes. However, some of the suits are frivolous and only dilatory tactics. Some are designed to divert attention from the underlying substantive issues.

The Commission is committed to vigorously defending its staff members. In those cases where we believe the charges are frivolous, I will encourage the Commission to consider seeking sanctions against plaintiffs for frivolous litigation and moving for our defense costs. We will do what is necessary to prevent the staff from unnecessarily becoming the focus of litigation.

Conclusion

Now, a final point.

Enforcement is an honorable undertaking. The Commission's enforcement efforts must be supported and encouraged because they improve our nation's capital markets and economic stability.

The commission employees engaged in enforcement activities are extremely capable and professional. We know the importance of our mission. We will not be deterred.