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# The Securities and Exchange Commission
# Recent Results and Ongoing Efforts

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Ladies and Gentlemen:
It is a pleasure to be with you again this year. This evening I would like to highlight recent results and ongoing efforts at the Commission.

In the fiscal year ended September 30th, 1983, investor protections were increased and corporations' paperwork and other expenses were reduced - by over a billion dollars per annum.

As a result of ongoing productivity improvements by the staff, the Commission's major divisions have achieved record results, or the highest levels in several years, in each of the last two years, despite personnel reductions and budgetary constraints.

For example, by comparison with fiscal 1981, in fiscal 1983:

- o 37% more enforcement cases were brought;
- o 28% more investment company and adviser inspections were conducted;
- o 16% more broker-dealer reports were processed;
- o and 15% more full disclosure filings were handled;
- o than in fiscal 1981, despite a 3% reduction in personnel.

As a result of the unprecedented volume of trading and financings and new tender offer fees, fiscal 1983 fees amounted to 110% of the Commission's $90 million budget, as compared with 81% and 94% in 1981 and 1982.

More important than the statistics, are the substantive programs implemented by the Commission.

## Enforcement

Enforcement of the securities laws is the largest activity at the SEC. It accounted for about a third of the 1983 budget.

The SEC is coming down hard on egregious offenders, while reducing unneccessary paperwork, time delays and other expenses in implementing legitimate corporate activities.

Nearly 60% of the 261 enforcement actions brought last year were injunctions.

Most involved alleged hard-core fraud by corporations, brokers and individuals, such as misrepresentations in the sale of securities, conversions of investors' funds and market manipulation.

Only 8% were insider trading cases, but the 24 brought in fiscal 1983 and 20 the year before amount to 35% of all such cases that have been brought by the Commission since 1934.

Over $11 million in disgorgement and $53 million in asset freeze orders were obtained, bringing the two-year total to over $130 million.

Most of the 261 enforcement cases have been settled under consent decrees in which the defendants or respondents have neither admitted nor denied the charges, but have committed not to engage in such activities in the future.

## Evolving Enforcement Actions

The enforcement program is constantly responding to changing market conditions. A few years ago, there were a large number of questionable payment cases. Passage of the Foreign Corrupt Practices Act has inhibited such activities.

The record volume of tender offers during the past two years has resulted in a record number of insider trading cases.

Due in part to the 1982 recession, there have been an increasing number of accounting - or "cooking the books" cases. And as a result of the 1983 hot new issue market, a number of related investigations are in progress. In addition, the Commission has announced an inquiry concerning transactions in the securities of the Washington Public Power Service System.

## Accounting Cases

Accounting cases are particularly serious because of the thousands of investors harmed when a company releases false or misleading financial statements. There have been many such cases and more are in prospect.

## Accounting Self-Regulation

The AICPA is continuing to strengthen the profession's self-regulatory programs. The firms which audit over 85% of all publicly-owned companies are on a three-year peer review cycle.

Among other things, these reviews test the firms' quality controls. Peer reviewers are now required to consult immediately with the Peer Review Committee, when they discover serious potential problems. The Public Oversight Board, an independent body, evalutes the peer reviews, under the SEC's oversight.

## Hot New Issue Markets

The abuses that accompany hot new issue markets, are also under investigation. In September, an SEC-NASD task force began an intensive examination of several New York firms. Some actions have been brought and more are in prospect.

Illegal practices by promoters, issuers, underwriters and broker-dealers are being addressed by the SEC and the self-regulatory organizations.

In addition to false and misleading prospectuses and sales practices, they include:

- o conditioning the market through pre-offering publicity;
- o circulating false rumors;
- o holding back or parking shares - in order to increase their scarcity value and then sell them later at higher prices;
- o manipulating the price or volume of transactions;
- o requiring investors to buy additional shares at higher prices in the after-market, purchase shares in other offerings, or not sell the the shares they have purchased;
- o as well as violations of the customer suitability, funds segregation, escrow, net capital and other broker-dealer requirements.

## Insider Trading

Insider trading is another continuing area of enforcement efforts.

The Supreme Court's Dirks decision will be carefully examined in the course of this seminar. The current state of the law will also be reviewed during the Senate hearings on the Insider Trading Sanctions Act next month. As you know, this bill would permit civil fines up to three times inside traders profits (or losses avoided).

The House passed the bill in September, without a definition of insider trading, choosing to rely on the courts' evolving definition. The Senate is expected to reconsider the question of a definition.

## Additional Enforcement Remedies

The Commission has also recently submitted four additional legislative proposals to Congress. They would:

- o permit administrative proceedings, to correct violations of proxy or tender offer provisions of Section 14 of the Exchange Act;
- o clarify the Commission's authority to institute administrative proceedings against individuals associated with transfer agents and those who cause issuer violations of Sections 12, 13, 14 or 15(d) of the Exchange Act;
- o provide that disclosures to the Commission in enforcement inquiries do not waive the attorney-client or other applicable evidentiary privileges;
- o and exempt from the Freedom of Information Act, records obtained from private persons and businesses in the course of enforcement investigations.

## Internationalization of the Securities Markets

The Commission is also focusing on international enforcement problems. Approaches being considered include:

- o International agreements and conventions, such as the Swiss Accord on insider trading;

- o New subpoena enforcement sanctions, such as impoundment of interest and dividends, revocation of voting rights, or prohibitions against the transfer of shares;

- o And "waiver by conduct" legislation, under which transactions in U.S. markets would waive foreign secrecy or blocking laws and constitute consent to service upon appropriate agents in the U.S.

Bush Task Group

In another area, one of the many recommendations, expected shortly, by the Vice President's Task Group on the Regulation of Financial Services is the proposal to consolidate within the SEC the public reporting and registration requirements of the banks and saving and loans. These regulations are presently administered by five different federal agencies. Consolidation within the SEC will result in more uniform regulation and enforcement of such disclosure, at lower costs.

Banking Legislation

Major pending legislation includes the Treasury's Financial Institutions Deregulation Act and bills introduced by Senators Garn and Proxmire.

The Commission has advocated for over 2 1/2 years, regulation by functional activities, rather than by outmoded industry classifications.

Each of these three bills would be a major step toward functional regulation. They would permit depositories to enter a variety of new activities, including the underwriting of municipal revenue bonds and the sponsoring of mutual funds, but through separate corporate affiliates, subject to the same rules and regulations as all others engaged in such activities.

The Treasury's bill would require depositories that offer the new securities services to transfer their other securities activities to such affiliates. It would also permit securities firms - that engage in no greater securities activities than those permitted the depositories - to set up separate banking affiliates, subject to the same regulations as all other banks.

Bank Rule

In a related area, the Commission has requested public comment on a rule that would, in effect, require banks that offer public brokerage services, or in-house investment advice and brokerage services, to do so through corporate affiliates, subject to the SEC's jurisdiction.

Other Legislation

The Commission has also testified in support of pending amendments to the Foreign Corrupt Practices and the Public Utility Holding Company acts. These amendments would reduce regulatory burdens, but not investor protections.

O'Brien v. SEC

Last year the 9th Circuit Court of Appeals held that the Commission must give notice of third party subpoenas to all targets of investigations. This decision has inhibited the Commission's ability to conduct 9th Circuit investigations quickly, privately and fairly to all concerned.

For example, there are scores of possible targets in the SEC's inquiry concerning transactions in Washington Public Power securities. The Commission has therefore - for the first time - made its formal order of investigation and its subpoenas publicly available. The Supreme Court has granted certiorari and we hope it will reverse the O'Brien decision this year.

Corporate vs. Individual Sanctions

The Commission is a collegial body in which issues and concepts are frequently discussed and debated. In January, I informally solicited the other Commissioners' views as to whether the SEC sometimes harms, rather than helps shareholders, by enjoining their companies for the misdeeds of former employees. These include cases in which former employees have absconded with corporate funds or falsified records in order to obtain bonuses, promotions or other personal benefits at the expense of their companies.

Surely investors and most others agree that such individuals should be pursued and prosecuted by the companies, the SEC or other law enforcement agencies. The question is whether - or under what circumstances - the Commission should also seek court orders to enjoin the companies against a repetition of such abuses.

The Commission's actions, by law, must be remedial, not punitive. The Commission therefore brings injunctive actions in the courts to prohibit a repetition of violations and to obtain equitable and ancillary relief. When the Commission brings such actions, companies incur significant legal and other costs and adverse publicity, at the ultimate expense of their shareholders.

The other Commissioners and I have concluded that such situations should be considered on a remedial, case-by-case basis.

Cases are typically brought before the Commissioners a year or more after the event. A critical consideration for the Commission and the courts is the likelihood of a recurrence of the abuse. Factors to be considered, include among others:

- o the nature and consequences of the abuse;
- o whether the perpetrators are still with the company or have an interest in it;
- o prior or subsequent infractions of the securities laws by the company or its employees;
- o and the company's efforts to prevent a repetition of such abuse.

There is no issue as to whether actions should be brought against companies that have been the beneficiaries of misdeeds. If a company has received ill-gotten gains, it must be compelled to disgorge them. If it has raised funds on a false or misleading prospectus, it must be subject to rescission and other sanctions. If it issues false or misleading disclosure documents, it must be compelled to restate them. These are but a few of the many instances in which the SEC should and does bring actions against companies, and sometimes their executives.

Some have misinterpreted the Commission's discussions of corporate vs. individual sanctions as a proposal only to charge executives and never charge corporations. This has never been suggested. There have been no proposals and it is not an "either/or" issue. Rather, the question is how to best serve investors. Depending on the facts of each case, investors are sometimes best served by sanctioning corporations, and at other times, executives or both.

Shelf Rule

Some additional highlights of the past year include the revised shelf registration rule, which was adopted last November. As you know, it permits corporations to file a single registration statement covering securities they expect to sell on a delayed or continuous basis within two years. The revised rule limits such offerings to S-3 companies - the largest, most creditworthy and widely followed corporations.

A recent study indicates that the discounted present value of the interest saving on debt offerings under the shelf rule has aggregated over a billion dollars. This is in addition to the estimated fiscal 1983 saving of well over $350 million, as a result of the 1982 integration of corporations' registration and reporting requirements.

Net Capital and Letters of Credit

Last year's updating of the Options Clearing Corporation's deposit requirements, is expected to free-up an additional $300 million of industry capital.

Book Entry Delivery System

Expansion late last year of the institutional book-entry delivery system, is expected to save brokers and agent banks over $350 million per annum.

SECO Legislation

Recent legislation abolished the SECO program, under which the Commission staff has been supervising directly, 600 over-the-counter brokerage firms. Henceforth, these firms will be subject to the NASD's supervision, under the Commission's oversight.

Proxies, Communications and Prospectuses

Last summer, the proxy and shareholder communication rules and investment company prospectuses were also simplified and improved.

The revised shareholder proposal rule requires - among other things - that a shareholder own at least $1,000 in market value of shares for at least a year, in order to submit a proposal, and it raises the prior vote requirements for repeat proposals.

Continuation of Proxy Review Program

Comments will be requested shortly on streamlined merger and exchange offer registration statements.

Tender Offer Advisory Committee

Joint Senate and House hearings are scheduled for later this month on the extensive recommendations of the SEC Advisory Committee on Tender Offers.

Registration of Partnership Interests

The staff is also in the process of developing uniform disclosure requirements for limited partnership offerings and codifying past informal practices where appropriate.

Reports of Officers, Directors and Principal Shareholders

The complex reporting requirements of officers, directors and principal shareholders - under Section 16 of the Exchange Act - and the possibility of a single definition of beneficial ownership - under Sections 13, 14 and 16 of the Exchange Act - are also under review.

Also, the Enforcement Division is investigating chronic delinquent filers of these reports.

Electronic Filing

Last year, a staff task force was formed and a feasibility contract let, with a view to commencing later this year a pilot, high speed electronic filing, processing and information dissemination system. The objectives are to accelerate the dissemination of corporate information to investors and securities analysts and to reduce the expenses of investors, issuers and the SEC.

As corporations file such information electronically with the Commission, investors and analysts will be able to access it instantly on home and business computer screens. They will also be able to:

- o display current comparative price-earnings, yield and other data on securities;
- o instantly refine such lists by industry, size, markets and other criteria;
- o display the latest SEC filings, annual and quarterly reports of those companies in which they are interested or that appear to be the most undervalued;
- o retain their portfolios in their data banks and price them to the market at any time;
- o maintain running totals of their dividends, realized and unrealized capital gains and losses;
- o and enter orders with their brokers, directly on their own computer terminals and receive confirmations.

Hard copy can be obtained on accessory print-out equipment. The system is also intended to reduce transcription and oral communication errors and to accelerate the SEC's identification and processing of filings which require detailed reviews.

The pilot operation will be tested and debugged for a year or more. Industrywide implementation is intended to coordinate with the growth of home computers - from 5 million today to over 50 million within five years.

Conclusion

In conclusion, progress is being made in increasing investor protections and reducing unnecessary paperwork. The future offers the prospect of major improvements in the regulatory structures of the financial service industries and the exciting potential of high speed, electronic communication and analysis of corporate information.

Thank you.