NEWS

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REMARKS OF

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SECURITIES AND EXCHANGE COMMISSION

NATIONAL CONFERENCE OF THE
AMERICAN SOCIETY OF
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I plan to discuss this morning some good news and some bad news. The good news is that we are making major efforts at the Commission to simplify some of our reporting requirements for registered corporations and to revise our rules on shareholder proposals to clarify them and to avoid undue expansion of the proxy statement.

The bad news is that corporate management is going to have to undertake major steps in the next several years to improve public confidence in the American corporation. Like other major institutions in our society, large corporations are now the subject of a critical re-examination and far-reaching proposals have been made. This week the Senate Commerce Committee opened hearings on proposals for federal chartering of our major corporations.

Revision of Forms

Let me bring you up to date on certain measures we are taking at the Commission to reduce the regulatory burden on corporate issuers.

Form S-14. We are currently focusing considerable attention on the nature and extent of the disclosures required in merger proxy statements filed with the Commission. We are painfully aware of the length and complexity of merger proxies, and the vast amounts of time and expense devoted to their preparation, printing and mailing. Merger proxies currently range in length from 40 to over 200 pages, with an average of about 75-100 pages. One recent 200-page proxy was mailed to over 5,000 shareholders, and to approximately 2,000 broker-dealers at a mailing cost alone of $13,000.

While the burden imposed on companies by our requirements is a significant factor to be considered, the more important question is whether disclosure documents of such formidable size and complexity are meaningful to the average investor. I seriously doubt that the average investor has the time, the energy or the courage to wade through such vast compilations of financial data and legal prose.

I believe that we can and will develop a means to provide shorter, more understandable, and better disclosure to investors concerning merger transactions.

Under the proposal I envision, a new short Form S-14 would be made available, at least as an initial experiment, to companies meeting the standards for the use

of Form S-7, namely, companies with a stable history of earnings who have complied with the reporting requirements of the Exchange Act for several years.

Certain information presently required to be included in merger proxies would be transferred to a new Part II of the registration statement, which would be filed with the Commission, but which would not be sent to a shareholder, unless requested. For example, consolidated financial statements and essential footnotes would be included in the proxy statements, whereas separate financials for the parent company and for subsidiaries and more detailed footnotes would be included in Part II.

In addition, all items of disclosure are being reviewed for possible condensation or elimination.

Although numerous difficult issues must be resolved, I want to assure you that we will make every effort to find a solution which will alleviate unnecessary burdens and expense to issuers, and provide investors with more meaningful information.

Form S-7. We are also carefully scrutinizing registration Form S-7. An experiment initiated last September which substantially relaxed the conditions for the use of that short form has worked well, and we now

intend to propose additional changes which will permit more companies to take advantage of its benefits. These changes will include eliminating the continuity of management and earned dividends requirements, reducing the number of years for which audited financials are required, lowering the minimum earnings requirements, shortening the time for "no default on debt", and easing the requirements for compliance with the reporting requirements of the Exchange Act. We also propose to make the form available for exchange offers.

Form 8-K. You also may expect to see a proposal shortly which will substantially reduce the number of current reports on Form 8-K required to be filed with the Commission. We propose to eliminate nearly half of the 14 items of information now required, most of which more appropriately should be included in annual and quarterly reports. Under our new proposal, Form 8-K will be used only for information which should be reported promptly such as change in control, defaults on debt, acquisition or disposition of significant assets and extraordinary charges or credits. Reports will be required to be filed within ten days after the reportable event rather than ten days after the end of the month.

Our staff estimates that these changes will reduce the number of 8-K's filed by approximately 44%.

Other Matters. Also, the Commission published earlier this month a proposal to provide a space on the cover pages of Forms 10-Q and 10-K so that companies could indicate their intention to file a registration statement on either Forms S-7, S-9 or S-16, on or before the date of their next quarterly or annual report. Receipt of advance notice that a registration statement will be filed will enable the staff to immediately begin reviewing the company's current filings and should reduce the time required to issue the first letter of comments.

We are also developing a proposal to permit tender offerors to summarize for security holders the information required to be filed with the Commission, with an undertaking to provide the security holder the complete information promptly on request. This should result in significant savings to persons making tender offers and should give security holders simpler, more understandable information.

Finally, we are engaged in a major effort to simplify and rationalize the disclosure requirements of Form S-8, and are considering a proposal to permit Form S-16, the shortest of our registration forms, to be used for rights offerings by domestic, and possibly some foreign issuers.

These are only initial steps. As you know, the Commission's Advisory Committee on Corporate Disclosure is conducting an 18-month study of our disclosure requirements. The Committee's staff is currently conducting in-depth interviews with selected corporations, financial analysts and investors to gather empirical evidence on both the costs and benefits of the current disclosure system and to provide a basis for recommending significant improvements.

We recognize that the continued effectiveness and efficiency of our capital raising process is vital to the future health and growth of our economy, and we intend to take all reasonable steps within our power to make sure that our regulatory and disclosure requirements enhance, rather than hinder, that process.

Shareholder proposals

The staff of the Commission has proposed a number of revisions to Rule 14a-8 relating to shareholder proposals at annual and special meetings. Although some of these revisions would broaden the range of proposals shareholders could submit to management, many are designed to limit certain past shareholder abuses.

As this group well knows, a number of shareholders have submitted ten or more proposals for a single meeting; and on one occasion a shareholder submitted 21. Two companies have received proposals exceeding 3,000 words in length. To prevent further abuses of this kind, the Commission is considering modifications to the rule that would limit both the number and length of proposals that a shareholder may submit to management. A shareholder exceeding the limits would be given the opportunity by management to reduce the number and length of his proposals.

Some shareholders have effectively circumvented the requirement of the present rule that excludes proposals that are "substantially the same" as ones which were previously submitted and did not attract significant support, by recasting the form of their proposals. The Commission has directed the staff to revise the rule to prevent further abuses of this kind. We are also considering adding to the rule additional grounds for omitting shareholder proposals, including proposals which have become moot because of management action, proposals which would violate the proxy rules' prohibitions on false and misleading statements, and proposals which are similar to ones already being included.

Finally, we may propose to increase the timeliness requirement for submitting proposals to management from the current 70-day figure. If the requirement were increased, for example, by 20 days, we would make a corresponding increase in the time in which management must file with the Commission its notice of intention to omit the proposal.

Reforming the Corporation

Now the bad news.

Critics of the modern corporation argue that it is an anachronism for giant multinational corporations such as General Motors and IT&T to be chartered by the State of Delaware. Some of these critics are responsible people who are by no means wild-eyed radicals. They argue that some states, in their eagerness to attract incorporators and to collect fees, have unduly diluted the traditional protections for shareholders as well as the traditional idea that a corporate charter is a privilege granted to serve a public purpose. They accordingly suggest that the Congress should charter the nation's 700 largest corporations and subject them to an entirely new federal code of conduct.

Committees in both the House and the Senate will be holding hearings on these proposals this month.

I believe that we do not need to abandon our current balanced regulatory scheme of state and federal law in favor of a new system of federal incorporation in order to correct current abuses.

However, the current system must be improved. In response to the recent revelations of corporate bribes, kickbacks and other illegal payments, we have proposed new legislation which would require management of every corporation registered under the Exchange Act to establish a satisfactory system of internal controls. Our legislation would also make it unlawful to falsify any corporate accounting records or for corporate officials to make false or misleading statements to auditors.

We have also asked the New York Stock Exchange to consider amending its listing requirements to require large companies to maintain an audit committee of independent directors; and to increase the number of independent directors on their boards. The independence of the board might also be furthered if counsel responsible for giving general legal advice to the company did not also sit on the board.

To strengthen public confidence, the next steps must be taken by industry itself.

The most important step is to strengthen the independence of the board of directors. A strong, independent board is far more likely to solve the major problems of corporate abuses than the myriad current proposals to increase shareholder "democracy" by permitting shareholder nomination of directors, increased shareholder proposals at annual meetings and nationwide cumulative voting.

How can industry increase the independence of the board?

As a first step, a clearer distinction should be drawn between the functions of the board and the functions of management. This distinction is frequently blurred, often because the Chairman of the Board and the Chief Executive Officer are the same individual and because members of management also serve as board members.

Recently, some major corporations have introduced useful measures to separate the two functions.

For example, the Connecticut General Life Insurance Company's Board of Directors will henceforth consist only of the Chief Executive Officer and outside directors.

Other companies have separated the two functions by establishing a position entitled "Officer of the Board", which is often filled by a former officer of the company who can devote full time to the work of the board.

Texas Instruments Corporation has established a variant of this arrangement by dividing its Board into three categories:

-- "General Directors", who are expected to devote approximately 30 days a year to the work of the board;

-- "Directors", who are expected to devote 15 days; and

-- "Officers of the Board".

Neither General Directors nor Directors are employees of the Company.

Exxon Corporation has recognized the distinction between management and the board for some years. Although Directors have traditionally been recruited from management, they have been relieved of operating responsibilities once they became Directors.

A number of other measures can be considered to increase the independence of the board.

The functions of independent audit committees can be expanded to include other responsibilities. Allied Chemical has a committee of three independent directors which appraises the work of the board itself. Other companies have independent nominating committees responsible for proposing the names of potential directors.

Outside directors should meet informally from time to time to exchange views of company problems.

Certain matters probably should not be voted upon at all by inside directors. If an unfriendly tender offer is made for the company's stock or a merger proposal is made to management, outside directors, whose full-time job is not at risk, should have the responsibility of evaluating the proposals from the standpoint of the interest of the stockholders.

My principal dispute with those who favor federal chartering is not over goals, but over the methods of achieving those goals. Proponents of federal chartering would introduce another level of government regulation of business at a time when serious efforts are being made by the White House, Congress and the public to reduce that regulation.

The Commission has traditionally and successfully relied upon the private sector to assume and to discharge public responsibilities once the need to do so has been made clear. We believe that this approach would avoid the need for an additional system of federal regulation.

The fact that more than 135 corporations have disclosed questionable and illegal payments and have taken steps to prevent their recurrence, is proof to me that the current system can be made to work. The notion that a new system should be created at precisely the time that the old system is beginning to respond effectively is surely not a proper governmental response.