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(202) 272-2650

THE SEC DEREGULATES: RESPONSIBLE STEPS TOWARD A WORKABLE FUTURE

An Address by

Barbara S. Thomas
Commissioner
Securities and Exchange Commission

U.S. Air, Inc.
Board of Directors
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THE SEC DEREGULATES: RESPONSIBLE STEPS TOWARD A WORKABLE FUTURE

I am delighted to have the opportunity to speak with you this afternoon. At this moment, we are in the midst of a period of decreasing government encroachment into the private sector which is, for American business, most exciting and yet, at the same time, very trying. On the one hand we are witnessing a drastic rethinking of the proper relationship between government and industry, which principally is manifested in an increased momentum toward deregulation. On the other hand, we are forced to suffer the growing pains of such deregulation at a period of economic uncertainty. As a result, public companies in America as well as the financial community on which they depend are in a state of flux.

In no segment of the economy are the combined pressures of deregulation and economic downturn as pressing as in the airline industry. With the passage of the Airline Deregulation Act in 1978, the airlines became the first industry to shed the cloak of government regulation. Consequently, airlines were presented with and responded to new opportinities that were once previously denied. These new opportunities and the temptations they offer, however -- particularly in today's recessionary economy -warrant, if not demand, careful planning.

Responding to this challenge, US Air has successfully negotiated what has turned out to be a turbulent period for many airlines. For example, when a number of carriers recently entered the unprofitable, highly competitive glamour markets,

US Air quietly marshalled the resources that it developed while it was a regional carrier and used those assets to become one of America's major airlines. Your cautious and yet innovative management and program of controlled growth is a model for not only other airlines, but for all public companies.

One of the premises of deregulation is the belief, which US Air has demonstrated so well, that a company's management is better equipped to make business judgments than is the government. My experience has shown me that this principle applies not only in the airline industry, but to the entire business community as well.

Prior to joining the Commission, I worked for over a decade as a securities lawyer, and represented many companies seeking to raise capital to build and expand American business. In assisting these companies, however, I often encountered obstacles in the form of governmentally imposed requirements and prohibitions that often seemed unnecessary and that stifled incentive -- obstacles no different than, for example, those faced by USAir when it had to work for years to get a better route system from the CAB. As a result of this experience, I came to the SEC in somewhat of a "deregulatory mode". That is, determined to press the Commission to rationalize, simplify, and where appropriate eliminate, rules that were an unnecessary burden to our American industry.

Of course, the meaning of "deregulation" varies from one substantive area to another and therefore, my experience with

deregulation at the Commission is in some ways unique to the securities industry. In this regard, the type, nature, and purpose of the Commission's regulation of public issuers of securities is very different from the role that the CAB plays in regulating the economic aspects of commercial aviation. Unlike the regulation of the airlines, which pervaded nearly every aspect of the carriers' operations, and particularly in the early 1970's when airline regulation was most intense, controlled every element of competition, the Commission's regulations are much less intrusive. The SEC's regulatory goal is to ensure investor protection and the efficient and smooth functioning of the securities markets, primarily by encouraging full disclosure, preventing fraud and manipulation in the purchase and sale of securities, and maintaining a high degree of confidence in the integrity of the capital market system.

Because of these diferences, the SEC's deregulation of public companies does not mean the removal of regulatory restrictions across the board as in the airline indusy. The objective of both deregulatory schemes, however, is very similar -- to place as little burden as possible on legitimate business. Thus, I would like to discuss briefly with you the steps the Commission has already taken to reduce unnecessary regulatory burdens on public companies, and what we plan to do in the future.

As you probably are aware, the Commission has been actively engaged for a number of years in reviewing and

revising many of its out-dated and overly burdensome regulations. For public issuers such as US Air, our most significant step toward this end, was our recent adoption of the integrated disclosure system. The purpose of the new disclosure scheme, which integrates the disclosure requirements under the Securities Act of 1933 with the periodic reporting requirements of the Securities Exchange Act of 1934, is to simplify the disclosure obligations placed on public companies, without depriving investors of information necessary to make informed investment decisions.

The integrated disclosure system reflects a fundamental belief that information that is material to investors in the context of the distribution of securities is the same type of information that investors would be interested in when trading securities in the secondary market. In other words, if the "management's discussion and analysis" disclosure item is important for transactions involving the offering of newly-issued securities, it is reasonable to believe that this information would be of equal interest to investors purchasing securities from sellers other than the issuer in the after market. This notion is the so-called "principle of equivalency," and has led to the development and expansion of Regulation S-K, which is now the basic textual, or non-financial, information package for both the Secutities Act and Exchange Act forms. This uniformity, in turn, has enabled the Commission to implement a system in which information from Exchange Act periodic reports is incorporated by reference

into Securities Act documents, thereby eliminating the need to make duplicative filings.

As part of the integrated system, the Commission adopted three new registration forms under the Securities Act -- Forms S-1, S-2, and S-3. These forms are designed to work as a coordinated system, with the form a company uses dependent on three factors -- (1) its following in the marketplace; (2) its history of public reporting; and (3) the nature of the proposed transaction. Thus, Form S-3, which is available only to the most seasoned issuers, permits these issuers to incorporate by reference information about the registrant from Exchange Act reports into an abbrieviated prospectus, and include in these prospectuses only information related to the specific transaction at hand. By contrast, Form S-2, which also permits incorporation by reference, requires in addition that the issuer deliver a financial disclosure package to investors which can be either the issuer's annual report to its shareholders as well as subsequent interim reports, or equivalent financial disclosure in the prospectus itself. Finally, Form S-1, is designed for companies that cannot use either of the other two forms, and requires an all-inclusive prospectus.

One very important aspect of the intergrated disclosure package, and one very much in the financial news of late, is Rule 415 -- the Shelf Registration Rule. Rule 415 governs registration of securities to be sold on a delayed or continuous basis in the future and was one of the more controversial aspects of the integration program. Rule 415 is an important

development because it allows companies such as USAir quick access to the securities markets. The Rule allows a company to register an amount of debt or equity securities it reasonably expects to sell within two years of the effective date of the registration statement. As you may know, Rule 415 is an experiment which began in February of this year on a temporary basis, and which was extended by the Commission last week for an additional year. For my part, although I strongly believe in providing seasoned issuers with the ability to access rapidly today's highly volatile capital markets, I dissented from extension of the Rule without substantial modification because I fear that the Rule, in its present form, runs significant risks with respect to impacting investor protection and the capital market system, without providing commensurate rewards.

Another area of import to public issuers of securities in which the Commission is conducting a comprehensive review is proxy regulation. The need for regulatory fat-trimming in this context has become manifest. The existing rules, though generally effective in prescribing adequate disclosure for investors faced with important decisions in the context of the corporate electoral process, were adopted in a piecemeal fashion and have been subject to numerous amendments. As a result, certain duplicative requirements may have been imposed unnecessarily on registrants, rendering it difficult for them to remain current with respect to disclosure obligations in proxy and information statements. Moreover, although the

amount of disclosure required in proxy statements has grown over the years, it is not clear that all additional information has provided benefits to shareholders which outweigh the costs of compliance for issuers.

With these problems in mind, the SEC's overhaul of its proxy rules will consist of six projects. The first of these projects concerns the relationships between companies and their directors. In this connection, the Commission published a release in July of this year proposing a new uniform item in Regulation S-K regarding disclosure of transactions in which certain persons connected with management have a material interest and relationships between a registrant's directors and certain entities with which the registrant conducts business. The proposed rule, if adopted, would be applicable to registration statements, periodic reports, and proxy statements. Although, it incorporates the existing requirements, changes are proposed to clarify certain requirements and to close certain gaps in the disclosure of transactions involving relatives of persons who are connected with the registrant. The other projects that will be considered under the proxy review program are:

1. simplification of the item in Regulation S-K relating to management remuneration;

2. simplification of the merger proxy statement;

3. a review of the rules concerning proxy contests;

4. a re-exemination of the rules relating to shareholder proposals; and

5. an evaluation of the recommendation of the Advisory Committee on Shareholder Communications concerning the process by which issuers communicate with the beneficial owners of their securities.

In a related area, the Commission has also been concerned with the problem of communications between public companies and their shareholders, and in particular those beneficial owners whose shares are carried in "street" or other nominee names. Accordingly, we impaneled an Advisory Committee on Shareholder Communication in April of 1981 to suggest appropriate Commission action to remedy the deficiencies in the existing system for providing investors with relevant corporate information. In June of this year, that Committee completed an exhaustive study of the problem, and submitted a report to the Commission in which it recommended, among other things, that we adopt a rule requiring broker-dealers to determine whether beneficial owners consent to the disclosure of their identity to issuers. I expect these recommendations to be decided upon in the near future.

Finally, I would like to mention that the Commission has also reviewed accounting-related requirements with a view toward eliminating unnecessary regulations, simplifying others, and improving financial reporting. The Commission published a codification of its current financial reporting policies which are embodied in over 200 accounting releases. We also have encouraged the private sector to establish, develop, and improve accounting and auditing standards. In this

respect, as you probably know, the American Institute of Certified Public Accountants has developed and issued an airline audit guide which the Commission accepts as the equivalent of the general accpted accounting principles. In the accounting area, the Commission has reduced the requirements for financial statements for parent companies or unconsolidated subsidaries which supplemented consolidated financial statements and has place more reliance on summarized and condensed information. In addition, the proxy disclosure requirements regarding nonaudit services, such as consulting, performed by independent accountants has been eliminated due to lack of investor interest and the initiatives of the accounting profession's self-regulatory organization.

In closing, I would like to emphasize that I believe that the real pillars of deregulation, in an airlines, securities, or any other context, are: a commitment to responsibly minimize the burdens of government; an active and ongoing dialogue with the regulated community; freedom of the regulator to carry its ideas into practice; and the ability to make reasonable assessments with respect to the risks and rewards of deregulation. In bringing about its regulatory reform I believe the SEC has demonstrated a strong willingness to accede to these standards. Accordingly, I support the deregulatory efforts put forth to date by the Commission, and would strongly urge that we continue our policy of review, in a circumspect manner, to eliminate burdensome and excessive regulation of of public companies, such as US Air. Thank you.